



Retail Market Review

Conclusions

October 2016

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Executive summary

Introduction

1. The rail retail market has developed since privatisation, with passengers now having a wider range of ways to buy tickets (e.g. through Apps) and more choice in what format of ticket they use (e.g. smart cards and tickets uploaded to their mobile phone).
2. Much of this reflects the efforts industry is making to drive innovation and competition. However, based on conversations with passengers and when compared with retailing in other sectors, we consider that there is room for improvement. That is why we set out a range of recommendations to industry and to governments in June 2015 on how they could facilitate more competition and innovation to the benefit of passengers, as well as taxpayers and industry overall.
3. These recommendations are set out in Table 1 below, along with an explanation of the progress we, industry and governments have made in these areas and (where applicable) what we intend to do next.

Background to the Retail Market Review

4. Our recommendations reflect the findings of our wide-ranging Retail Market Review. This focused on who sells tickets, what tickets are sold, where and how tickets are sold, and the ticket format. We considered this from the point of view of the industry rules and practices that govern how all retailers (train operating companies (TOCs) and third party retailers) sell tickets.
5. We undertook the Retail Market Review as part of our responsibilities to keep markets under review and to take appropriate measures where we identify a detrimental effect on users and funders. We have no direct role over the industry rules and practices for retailing tickets. They are mainly set out in an intra-industry document called the Ticketing and Settlement Agreement (the TSA). The TSA is owned and managed by TOCs working together through the Rail Delivery Group (RDG). Most changes to the TSA are managed by the Department for Transport (the DfT). As such, the emphasis of the Retail Market Review was to 'shine a light' on where we think improvements could be made for the benefit of passengers, industry and taxpayers.
6. We began this work in February 2014. It involved, for example, three public consultations, two industry workshops and primary research about passengers' views on ticketing.

7. This document covers three related areas:
 - Chapter 1 discusses our recommendations to TOCs/RDG to be more transparent and consultative in the way they make decisions that affect third party retailers. These are designed to build on RDG's own work to date;
 - Chapter 2 sets out our findings regarding the merits of TOCs' ability to discount fares and to restrict their distribution so that they are not available through all their sales channels and/or to other retailers; and
 - Chapter 3 explains the progress we, industry and governments have made regarding the other recommendations we made in June 2015 to facilitate competition and to improve collaboration among retailers.
8. This document marks the formal conclusions to the Retail Market Review. We will continue to monitor TOCs' compliance with its consumer-facing obligations and we will take action where necessary. Furthermore, where we identify wider and/or more systemic issues that affect passengers' experience, we will consider them in more detail. A good example of our recent work in this area is our research into whether (and to what extent) TOCs have made progress to improve ticket vending machines (TVMs) so that they meet the needs of passengers.

Improvements to TOCs' governance regarding third party retailer arrangements

9. Third party retailers play a key role in improving ticketing for passengers. They offer different ways to access information about rail fares and journeys and provide more choice in where and how to buy tickets. They also play a role in expanding the rail market (to the benefit of TOCs and taxpayers) and in putting competitive pressure on TOCs to improve their offering, including by innovating.
10. TOCs (mainly through RDG) determine and oversee most of the rules and practices third party retailers are subject to when selling tickets. For example, third party retailers must secure a licence granted by RDG in order to sell tickets; the commission rates that third party retailers earn for selling tickets and the costs they pay towards use of shared industry IT systems are determined by RDG; and changes to these IT systems that affect how third party retailers sell tickets are made by RDG.
11. Reflecting the importance of third party retailing, it is important that these industry rules and practices encourage third party retailers to compete and to innovate. However, as set out in our June 2015 consultation, we found that the way in which TOCs/RDG make decisions about these industry rules and practices is insufficiently transparent and consultative. We recommended ways they could be improved upon.
12. Since then, we have worked with TOCs, RDG and third party retailers to develop four main recommendations:

- **An independent consumer champion-type member should participate in TOCs' decision-making groups that affect third party retailing.** His/her role would be to scrutinise and to challenge TOCs' decision-making processes regarding the industry ticketing regime, in particular to protect the consumer interest within the context of decisions that impact on the third party retailer. **RDG does not intend to implement this option;**
- **TOCs/RDG should be more transparent in the way they make decisions that affect third party retailers.** We recommended that RDG produces public guidance that explains how third party retailers' commission for selling fares and the costs for using shared IT systems are determined, as well as how TOCs/RDG will involve third party retailers in decisions that affect them. We note RDG's recent efforts to be more transparent in its engagement with third party retailers and **we welcome RDG's commitments to implement our recommendations for public guidance in this area;**
- **A new working group made-up of existing or prospective online third party retailers should be established** to provide a formal and frequent forum in which TOCs and third party retailers can discuss developments to the industry ticket regime that affect third party retailers. **We welcome RDG's commitment to take forward our recommendation for an online third party retailer working group,** building on the success of its recent workshop to discuss barcode ticketing; and
- To complement the above, **we recommend that the existing provision for online third party retailers to raise a dispute through independent dispute resolution be extended to all third party retailers.** Again, **we welcome RDG's commitment to take this forward.**

13. In explaining why it does not intend to take forward our recommendation for an independent consumer champion-type role to participate in its decision-making groups that affect third party retailers, RDG has cited concerns that the independent member could undermine its accountability in managing the relationships with third party retailers and could cut-across wider governance changes that it intends to take forward. Noting these concerns, we have explored options around making the tenure of the independent member time-limited and/or providing for a mechanism to review the approach in 6-12 months' time. However, those options have failed to persuade RDG to take this forward. On further reflection, **we continue to see the merits of an independent consumer champion-type role participating in RDG's decision-making groups,** and suggest that RDG leaves open our idea as part of its future governance changes.

Retailers' access to discounted fares

14. Some stakeholders have raised concerns about TOCs' ability to offer a discount on the price of some fares without making them available to all retailers and through all channels.
15. Having considered this issue more fully, we consider that there is no basis to intervene in relation to industry-wide arrangements for discounted fares. Discounted fares offer more choice and a direct financial benefit to passengers. We note that it is important for third party retailers to be able to offer a reasonable range of products. We expect TOCs to effectively monitor and adhere to their own arrangements to limit the timeframes in which discounted fares may be offered. **We therefore ask TOCs to explore ways in which their IT systems could be used to support compliance and we invite the DfT to consider taking action to secure compliance with these provisions** (possibly through on-going franchise compliance monitoring), where necessary. We note that widespread use of discounted fares through restricted channels by a particular TOC, or a significant increase in their use across the sector, could lead to competition becoming less effective in the long term. As such, we have indicated the possibility that the competition law prohibitions may become applicable in certain circumstances. **We therefore ask TOCs to satisfy themselves that they remain compliant with the law when limiting access to discounted fares to other retailers.**
16. We also note RDG's work to trial third party retailing of season tickets. Reflecting the likely scope for improvements in this market and the important role third party retailers play in the non-season ticket market, **we ask RDG to proceed quickly with the second phase of its trial** in order to provide assurance to existing and prospective third party retailers about their future role in selling season tickets. We note RDG's intention to consider widening the number of participants for this second phase. This is welcome, though we would also highlight the importance of RDG adopting an open and consultative approach in engaging with all prospective retailers.

Wider changes required

17. We also made a number of other nearer-term recommendations for ways in which the retail market could be improved upon. Since then, we, governments and industry have made progress in these areas; this is summarised in Table 1 (options 7-12 below). For example:
 - **There is greater recognition of the important role that governments, working with industry, can play in driving forward a longer-term strategy for ticketing.** For example, the recently-established Cross Industry Group on Rail Ticketing, led by the DfT and RDG, is seeking to provide for a more collaborative approach to the delivery of smart ticketing, as part of the overall

development of a longer-term vision for ticketing. We remain committed to contributing to this debate, including by drawing on our work from the retail market review and our other work on passenger and consumer initiatives; and

- **The RDG has committed to work with TOCs to identify possible improvements to the industry processes for introducing new products to the market** (namely those set out in the TSA). In turn, **we note the DfT's support for considering RDG's proposals in this area** (reflecting the DfT's formal role in overseeing such changes).

18. We note stakeholders' particular interest and support for considering further the idea of differential pricing (whereby the price of fares could differ by sales channels to reflect their relative cost of sale). **We are not suggesting that this is taken forward at present**, particularly given the perceived complexity of the fares systems and, in turn, the need to support and protect passengers. However, we note that developments to retail systems (such as more smart or account-based ticketing) may make it easier and more intuitive to buy rail products, which may make this a realistic option to be considered again in the future.

Role of franchising

19. As discussed above, our recommendations have mainly focused on industry's rules and practices for selling tickets. Most of these are set out in the complex and lengthy TSA (whereby any changes that alter a TOC's rights or obligations are required to be approved by the DfT) and third party retailer licences.
20. Under the franchising system, DfT and (Transport Scotland in Scotland) contract the operation of passenger services to different TOCs, typically for seven to ten years. Stakeholders have stressed to us that the franchising process is a key driver for improvements in ticketing as it delivers commitments from TOCs about what innovations they will make. We note that this determines to a significant extent what kind of tickets and ticket formats passengers can use, and how they buy them.
21. As such, **we recommend that franchising authorities continue to keep ticketing and the way passengers buy tickets and the products they can choose from, central to the overall franchising process. We welcome funders' work in this area.**

Table 1: Summary of our June 2015 recommendations and update / suggested next steps

June 2015 recommendations		Update / suggested next steps
Recommendations to improve TPR arrangements	1. TOCs (working through RDG) should provide a role for an independent consumer champion-type at its senior decision-making groups	RDG does not intend to take this recommendation forward. We reiterate the importance of such a role and invite RDG to consider this again, possibly as part of any future changes to RDG governance.
	2. In being more transparent about its decision-making, TOCs (through RDG) should produce guidance / change-control procedures that set out the rationale for the particular rules and explain how changes will be determined and implemented	RDG intends to take this forward, and plans to have its guidance agreed by March 2017.
	3. TOCs (through RDG) should establish a formal working group for online third party retailers	RDG intends to take this forward, seeking to agree terms of reference for an online third party retailer working group by late 2016, with a view to having the first meeting of the working group by March 2017.
	4. To enhance dispute resolution mechanisms, TOCs (through RDG) should provide independent arbitration to all third party retailers	RDG intends to take this forward, seeking to have the provision in place by March 2017.
Recommendations on all retailers' access to fares	5. TOCs and industry should consider whether a 'net pricing' approach could be explored for TOC discounted fares	We do not suggest this option is pursued to address this issue. Rather, we invite the DfT to consider taking action to secure compliance with the TSA rule that limits the timescales over which discounted fares may be offered, and we ask TOCs to explore ways in which their IT systems could be used to support compliance in this area. We also ask TOCs to satisfy themselves that they remain compliant with the law when limiting access to discounted fares to other retailers.
	6. TOCs should explore the merits of making all fares and products available to all retailers	We note RDG's work to trial third party retailing of season tickets. We ask it to proceed quickly with the second phase of this trial.

Other nearer-term recommendations	7. Governments, working with TOCs, should (continue to) develop a longer-term strategy for ticketing	RDG will shortly publish a longer-term ticketing strategy. To complement this, governments, RDG and wider industry are coming together through a Cross Industry Group on Rail Ticketing.
	8. Governments and industry should ensure that TOCs have stronger incentives to introduce new products, including within the period of their franchise	Notwithstanding the scope for further improvements to encourage TOCs to innovate mid-franchise, we note DfT's recent work in this area (e.g. a requirement on recently-let franchisees to cooperate in cross-industry schemes to improve retailing).
	9. Governments and industry should ensure that the industry processes through which TOCs introduce new products is improved upon	RDG intends to work with TOCs to develop proposed changes to the TSA to improve the way in which TOCs introduce new products. The DfT has said it is supportive of this, saying it is open and willing to consider such proposals (reflecting its formal role in approving such changes to the TSA).
	10. TOCs should ensure they do not suppress the potential for innovation from technology providers of ticket machines	RDG notes our findings in this area. By March 2017, we will report on our work to understand whether, and to what extent, TOCs have made progress to improve TVMs so that they meet the needs of passengers.
	11. Industry should identify the barriers smaller retailers face from selling tickets	RDG is supporting individual TOCs in developing this at a local level.
	12. Governments and other bodies awarding innovation funding should consider retailing and its role in delivering an integrated network	The DfT is increasingly helping to deliver more integrated travel, including by supporting private sector-led projects and through industry research in this area. RDG is also beginning to work more closely with RSSB in this area, which is delivering research in this area.
Possible longer term options	13. Differential pricing, whereby prices could vary by sales channel to reflect their relative cost of sale	We are not suggesting that the idea of differential pricing is taken forward with immediate effect. However, as part of longer-term developments to ticketing systems, we remain open to the idea of differential pricing, particularly where those developments improve passengers' confidence in choosing a ticket that best meets their needs.
	14. Greater separation between the wholesale and retail market, whereby a 'net price' for each fare is created over which all retailers compete in selling based on their cost of sale (i.e. the retail margin)	We do not recommend further consideration is given to this option, at least at this time.
	15. Relaxing of obligations to create and sell inter-available fares	

1. Proposed improvements to TOCs' governance regarding the third party retailer arrangements

Summary

We consider that TOCs (working through RDG) could engage better with third party retailers when making decisions about the industry regime for ticket selling. We recommend that this engagement could be improved by: providing independent oversight of its decisions affecting third party retailers; introducing more transparency in its decision-making process; providing a formal role for third party retailers in discussions on industry developments; and enhancing the dispute resolution mechanisms for all third party retailers. We note that while TOCs intend to take forward the latter three options, it is not minded to introduce any independent oversight of its decision-making. Below, we discuss our specific recommendations.

Introduction

- 1.1 Currently, TOCs determine many of the rules and industry practices that third party retailers are subject to when selling tickets; for example, TOCs decide who may be granted a third party retailer licence and, in turn, what commission they may earn for selling rail tickets.
- 1.2 As part of our June 2015 findings, we found that there are some features of the market for ticket retailing that can adversely impact third party retailers' effectiveness in providing a competitive retailing alternative. This is a concern given that third party retailers provide passengers with wider choice and greater access to more innovation in how and where they buy tickets.
- 1.3 To address this, we recommended that TOCs be more transparent and consultative in *how* they make decisions that impact third party retailers. We suggested this would help to minimise third party retailers' concerns about unfairness or industry bias and provide greater predictability for third party retailers who, otherwise, have little insight into likely future changes that impact their business.
- 1.4 In response, stakeholders (including TOCs and third party retailers) were broadly supportive of this recommendation. Since then, we have worked to help develop possible improvements to the TOC governance regime that affects third party retailers, including with TOCs and some third party retailers.
- 1.5 We welcome the recent progress TOCs have made in encouraging new third party retailers to enter the market, though we consider that passengers would benefit from having an even wider choice of retailers to choose from in buying tickets. Box 1.1 discusses some recent developments in the third party retailer market.

- 1.6 While we have focused on the role of third party retailers, we note that this work is also relevant to other non-TOC parties, such as passenger representative bodies, technology providers (e.g. of ticket vending machine or shared IT systems) and ticketing suppliers. This reflects the fact that TOCs' decisions on the industry regime for retailing also affect these parties.
- 1.7 The recommendations discussed in this chapter are not legally binding on TOCs or RDG, and it is for the TOCs (and (to some extent) the DfT, given its role in approving changes to many of the industry rules and practices) to take these forward.

Box 1.1: Developments in the third party retailing market

Third Party Retailers are playing an increasingly important and influential role in all areas of the rail retailing landscape.

The number of online third party retailers (who hold third party investor licences) has doubled in the last year, from three in 2015. These parties previously held interim licences. Explaining why these retailers have moved to longer-term arrangements, RDG has pointed to retailers' ability to establish partnerships with TOCs and/or other retailers; the relaxation of certain requirements on licence holders (e.g. to demonstrate marketing investment of at least £1m); and the new third party commercial arrangements from April 2016 that provides retailers with longer-term certainty of commission rates (which have a three years minimum horizon, renewed annually). RDG is in discussion with a number of other prospective retailers, and expects another three to four retailers to be operating by 2017; for example, in November 2015, Expedia announced its intention to add rail to its portfolio, beginning with the British rail market.

RDG also points to developments third party retailers have helped bring about in the technology supply market that has led to the establishment of retailing partnerships between TOCs and third parties. For example, in September 2016, Silver Rail Technologies agreed to partner with c2c Rail to provide it with end-to-end retailing services.

The overseas market has grown significantly since the appointment in 2010 of the first three International Sales Licensees (ISLs), who sell domestic National Rail fares worldwide. Since then, RDG has appointed a further two ISLs and plans to appoint more ISLs in 2017.

Background

Current industry arrangements affecting third party retailers

1.8 As discussed in some detail in our September 2014 and our June 2015 consultation documents, the arrangements that third party retailers are subject to when selling tickets are overseen by TOCs through its industry association and organisations (namely RDG)¹. For example:

- Third party retailers must secure a licence granted by RDG in order to sell tickets. The licence is effectively a bilateral contract between the third party retailer and RDG that sets out the requirements on third party retailers in how they operate in the market. Each licence is specific to each third party retailer²;
- Third party retailers must use a ticket issuing system (TIS) that is accredited by TOCs in order to access and sell fares. They must also use other shared IT systems and common industry owned data to sell tickets, such as the fares database, the national reservations systems (NRS, which all retailers user to allow a passenger to reserve a seat on the train) and the ticket-on-departure system (ToD, which enables passengers to collect pre-purchased tickets at stations). While TOCs have a unilateral right to change systems in line with industry requirements, third party retailers contribute towards their cost (with the level of contribution reflecting their size and/or use of the system); and
- The commission rates that third party retailers earn for selling rail tickets are determined by RDG.

1.9 Many aspects of these third party retailer arrangements are similar or equivalent to the requirements on TOCs for selling tickets. However, third party retailers' role over how the arrangements develop differs from TOCs' role. This is discussed below.

¹ RDG is the new term to describe ATOC (Association of Train Operating Companies), which it is adopting from October 2016 for all its activities. We note that previous submissions, decisions and engagement were made in ATOC's name. However, for ease, we use the term 'RDG' when referring to ATOC. Furthermore, and as discussed in chapter 3 of our September 2014 consultation, TOCs also own the Rail Settlement Plan (RSP) that is responsible for overseeing the industry processes for ticket selling (e.g. new products, TIS accreditations, money flows between retailers) and National Rail Enquiries. TOCs have various governance fora in which decisions are made (e.g. the RDG Customer Experience Board and the Ticket and Settlement Scheme Council (the TSSC)). For ease, we use 'RDG' as the collective term for these TOC decision-making groups.

² RDG uses five different types of licences to reflect the different third party retailers (e.g. online third party retailer; travel agent or TMC; and/or international retailer of GB rail tickets). The full list of third party retailer licences is set out in Table 2 of our September 2015 consultation document.

Our June 2015 findings regarding TOCs' decisions over third party retailers

1.10 The requirements on third party retailers are designed to ensure that parties selling tickets are reputable and that there is a common set of approved systems, thus protecting passengers and other retailers.

1.11 However, as set out in our June 2015 consultation document, we found three significant concerns with the governance arrangements associated with the third party retailer arrangements, namely:

- The way the rules are set creates **real or perceived conflicts of interest** that may deter parties from entering and/or expanding in the market;
- The way TOCs, working through RDG, make decisions that affect third party retailers sometimes **lack transparency and a clearly articulated rationale**, with third party retailers having limited access to the reasons for changes; and
- Third party retailers (and, more widely, industry third parties such as IT providers) **have limited influence and no formal role** over decisions that affect them, such as the level of commission and costs and the development of industry-owned IT systems and processes.

1.12 To help address these issues, we recommended four mutually compatible ways in which the third party retailer arrangements should be improved upon:

- **Independent oversight** of the TOC decisions that affect third party retailers;
- **Increased transparency of TOCs' decisions** regarding changes to the arrangements that affect third party retailers;
- **A formal role for third party retailers in TOC-decision-making**; and
- **Enhanced dispute resolution for all third party retailers.**

Our work since June 2015 to develop these improvements

1.13 Working with TOCs and third party retailers, we have developed specific measures for how improvements to the governance of the third party retailer arrangements could be delivered.

1.14 In deciding upon our final recommendations, and in line with the approach we used in assessing the wider industry regime for ticket selling, we have assessed the options against the extent to which the measure:

- **Promotes effective competition:** Ticketing retailing is a competitive activity, and any measure to improve the governance of the third party retailer

arrangements should ensure they improve all retailers' ability to compete to sell tickets, to the benefit of passengers;

- **Facilitates industry collaboration to the benefit of passengers:** While retailers compete with each other to sell tickets, they also need to work together to facilitate a national, integrated network (for example, they are obliged to sell through and inter-available tickets). Any measure to improve the governance of the third party retailer arrangements should ensure they enable retailers to work together where necessary; and
- **Promotes consumer empowerment and protects passengers.**

1.15 We have considered stakeholders' views, including those set out as part of a formal response to our June 2015 recommendations; see Annex A for a summary of stakeholders' views to this consultation. We have also drawn on the experiences of other sectors, in particular those that need to work together to deliver a network service. See Box 1.2 for a summary of arrangements in the electricity and payment systems sector. This analysis builds on the work undertaken as part of our June 2015 impact assessments.

1.16 Below, we discuss our final recommendations for how TOCs' governance regime regarding the third party retailer arrangements could be improved upon.

Box 1.2: Governance arrangements in other sectors

Electricity

So that the system remains balanced, National Grid ensures that the levels of electricity consumed and generated remain the same. How National Grid does this, and how it charges generators and suppliers for any actions it needs to take to rectify imbalances, is set out in the Balancing and Settlement Code (the BSC). This is overseen by the BSC panel, which is made-up of a cross-section of industry representatives, including:

- A Chairperson, appointed by Ofgem;
- Five industry members, appointed by signatories to the BSC;
- Two members, appointed by the Chair;
- One-two consumer members, appointed by Citizen Advice or Citizens Advice Scotland; and
- One transmission network owner representative.

Modifications to the BSC may be proposed by any party. They are then considered by the panel, which makes a recommendation to Ofgem, the energy regulator. Ofgem makes the final decision on whether the proposed modification should be implemented.

Payment systems

Banks, card providers and retailers use payment systems to process payments (e.g. a payment by credit card or a cash withdrawal from an ATM). Payment systems include secure telecommunication networks and hardware and software IT. They are owned by the largest UK banks, though all banks need to use them.

Following concerns about how third parties could gain access to payment systems, the Payment Systems Regulator (PSR) was established in 2014 to oversee the arrangements. The framework established by the PSR³ seeks to:

- **Ensure effective industry-wide decision-making.** A Payment Systems Forum develops and agrees strategic priorities for the long-term development of payment systems. Membership of the forum includes an independent chair, payment services providers and user representatives;
- **Ensure the interests of users are considered.** The owners of the inter-bank systems are required to ensure appropriate representation of service users' interests, which the regulator assesses on an annual basis;
- **Improve the transparency of the ownership, governance and control of payment systems.** The owners of inter-bank systems are required to publish the minutes of their governing body that includes (for example) the summaries of proposals, discussions and votes (that identifies parties' positions); and
- **Ensure access to the systems is fair and appropriate:** Payment system owners are required to keep under review their access requirements (for users); to provide the regulator with an annual compliance report; and to publish their access requirements.

Independent oversight

Current oversight of TOCs' decisions regarding third party retailing

1.17 In general, and notwithstanding passengers' role in holding TOCs to account, the decisions that TOCs (through RDG) make about changes to the arrangements that affect third party retailers are subject to a limited level of oversight. For example, the DfT has an approval role for some of the arrangements that govern how TOCs sell tickets⁴ but does not approve the terms and conditions that attach to third party retailers' ticket sales. Such terms and conditions are for the industry (via RDG) to

³ See [here](#) for further information.

⁴ Much of this is contained in the Ticketing and Settlement Agreement (the TSA), which is an intra-industry agreement that sets out much of the obligations, rules and processes for retailing; see [here](#).

establish but may reflect terms that have been approved by the DfT in some areas⁵. In this sense, the DfT has some influence over what third party retailing looks like but has no direct role⁶.

1.18 As set out in our June 2015 findings (and supporting impact assessment), we recommended that the industry regime affecting third party retailers should be subject to some independent oversight. We proposed some ideas for the responsibilities/powers of this body, as well as possible candidate bodies.

Stakeholders' views regarding our recommendation for independent oversight

1.19 At least in principle, most stakeholders – including TOCs, passenger representative bodies and third party retailers – supported the idea of more oversight over the TOC decisions that affect third party retailers⁷. Stakeholders were also broadly supportive of the idea that ORR should provide the oversight of the third party retailer arrangements.

1.20 However, stakeholders' views were more varied on the question of the *form* of the independent oversight and the powers it should have:

- TOCs favoured something more 'hands off', with many of them suggesting that independent oversight should be through ORR bi-annual reviews, potentially complemented by the appointment of an independent member to the ATOC Commercial Board (which has now been replaced by the RDG Customer Experience Board); and
- Third party retailers and passenger representative bodies preferred something more formal, with many favouring an independent body that proactively monitors or oversees the third party arrangements⁸. Some parties also suggested that the independent body should be able to make binding decisions.

⁵ For example, changes to the intra-TOC commission rates have been made in parallel with third party retailers' commission rates and the methodologies for determining TOCs' and third party retailers' cost contributions for use of shared IT systems are broadly similar.

⁶ Furthermore, the DfT may only opine on a change if it has been proposed by a TOC through RDG; this provides a TOC with some influence over the subject matter of the changes, the potential change and the timings of the change to the rules.

⁷ This included Abellio Greater Anglia, Arriva, Campaign for Better Transport, East Midlands Trains, First Group, Keolis, London TravelWatch, Raileasy, Trainline, Transport Focus, TravelWatch NorthWest. For example, Transport Focus said that, "*We think an independent body that oversees arrangements would be a positive development as it would help address any actual or perceived conflicts*". While RDG suggested in its response to our June 2015 recommendations that "*a potential package of measures could include appointment of an independent member to ATOC's new Customer Experience Board*", in discussions with it since then, it has said it has concerns with this approach, as discussed below. Govia said the current governance arrangements should be sufficient.

⁸ For example, Trainline suggested that while there could be a role for an independent member on TOCs decision-making groups, it should not act as an alternative to ORR assuming a fuller, oversight body function.

Our proposals for independent oversight

- 1.21 At least at this stage, we are not recommending that a single body be appointed to oversee all TOC decisions regarding third party retailing, either as a final arbitrator and/or as an auditor of TOCs' decisions.
- 1.22 Reflecting stakeholders' views, we suggest that RDG builds on its existing arrangements to establish a role for an **independent consumer champion-type member on TOC decision-making groups that address third party retailing or that make decisions which affect their arrangements. We entered into discussions with RDG, following our June 2015 consultation, on this basis.**
- 1.23 The idea we initially discussed with RDG (and some third party retailers) was that the independent member's role would be to scrutinise and to challenge TOCs' decision-making processes regarding the industry ticketing regime. In particular, this role would be designed to protect the consumer interest within the context of decisions that impact on the third party retailer. The independent member would report periodically to the RDG Customer Experience Board, making recommendations for change as necessary. This would be a public document published on the RDG website. The objective of this approach would be to ensure that the process became appropriately inclusive and decisions that impact on the ticketing regime took full account of the need to protect and promote the passenger interest. Crucially, the independent party would **not**:
- Represent any particular group of industry interests (e.g. third party retailers');
 - Have voting rights;
 - Duplicate or cut-across existing TOC engagement with passenger representative bodies (e.g. Transport Focus); and/or
 - Provide an arbitration role.
- 1.24 The independent member would be expected to:
- Attend TOC decision-making groups on matters concerning third party retailing (in particular the RDG Customer Experience Board and the TSSC, or any new group(s) formed that decides upon changes to the industry regime that affects third party retailers);
 - Have access to the relevant documentation that supports TOCs' decision-making;
 - Be appointed based on a short-list produced by RDG. His/her appointment would then be decided on a majority vote by existing online third party retailers (with RDG holding a casting vote in the event of a deadlock in voting); and

- Possibly, have a role in other RDG industry groups to help widen his/her understanding of the ticketing regime. This could include a role on the proposed online third party retailer/TOC forum (as discussed in paragraphs 1.48-1.50 below).

Our assessment of our proposals for independent oversight

1.25 We recommend that TOCs' decisions affecting third party retailers be subject to some independent oversight in this way because⁹:

- It will help address concerns held by potential or existing third party retailers around (real or perceived) conflicts of interest in TOC decision-making, possibly encouraging new parties to enter and existing ones to expand, to the benefit of passengers;
- In formally consulting on potential changes, it will facilitate greater predictability about the likely developments to the industry regime, including the costs of these developments; and
- It may improve the quality of TOCs' decisions regarding changes to the industry regime by providing a means for formal consultation with non-TOC parties.

1.26 Furthermore, we consider that providing oversight in this way could be done relatively easily and cheaply: while we would anticipate that the independent member would be paid for his/her time, this could be relatively cost-efficient.

1.27 **However, from discussions with RDG, we understand that it does not intend to implement our recommendation for an independent consumer champion-type member on TOC decision-making groups that affect third party retailing.** RDG say it is concerned that the independent member could undermine its accountability in managing the relationships with the third party retailers (particularly around how he/she may be inappropriately used to settle and/or hear disputes) and could cut-across wider governance changes that RDG intends to take forward.

1.28 We have listened to these concerns. To help mitigate them, we proposed to RDG that they could be addressed by making the independent member's tenure a time-limited one (e.g. for 12 months to allow RDG's new processes and structures to take effect) and to provide for a six month review clause where all parties could indicate a view on the value or otherwise of retaining this role. However, RDG's concerns remain.

1.29 Reflecting our limited powers in this area, we cannot compel RDG to adopt our recommendation for an independent, consumer-champion type role in TOC decision-

⁹ To the extent necessary, this analysis builds on the discussion of independent oversight and right of appeal, as set out in chapter 4 and Annex D of our June 2015 consultation (proposed remedies A and D).

making groups. However, we continue to see the merits of this idea and we suggest that RDG leaves it open as part of its future governance changes.

Increased transparency

Current transparency of TOCs' decisions regarding third party retailing

- 1.30 As discussed in our June 2015 findings, the way TOCs make decisions regarding changes to the industry regime that affect third party retailers sometimes lacks transparency and a clearly articulated rationale, owing to a lack of formal consultation and engagement. We are concerned that this undermines the third party retailer market.
- 1.31 From time-to-time, TOCs (typically through RDG) do engage with third party retailers about potential changes to the industry regime that are likely to affect them, sharing information about the possible options for change and their implications. For example, RDG had a series of discussions with the relevant third party retailers about possible changes to the commission rate in the context of new rates from 2015.
- 1.32 However, TOC engagement with third party retailers is voluntary and relatively informal: there is no obligation on TOCs (through RDG) to share information and/or to consult formally and/or publically with third party retailers about potential changes. Similarly, TOCs are not required to notify third party retailers in advance of any such potential change or to explain why a particular change is being made.
- 1.33 To address this issue, we recommended that there should be increased transparency around TOCs' decisions relating to third party retailers, in particular regarding the commission and costs they face. We also suggested ways in which this transparency could be provided for.

Stakeholders' views regarding our recommendation for increased transparency

- 1.34 We received broad support for our proposals on transparency from RDG and third party retailers, with all stakeholders generally agreeing that the information provided to potential and existing retailers could be more transparent and explanatory
- 1.35 For example, the third party retailer, Trainline, said that it “*welcome[s] the proposal for increased transparency... [noting] that the costs of system and cost allocation can too easily be changed, with no involvement from retailers*”.
- 1.36 RDG noted that “*the current governance arrangements are insufficiently transparent and exacerbate concerns about potential conflicts of interests*”. It outlined ways in which it will work to make these improvements that included the publication of the rationale for key commercial terms (including commission and costs); the provision of additional information on its website about the standard costs of licences and other

costs that could accrue to third party retailers; and a formal three month consultation on changes to key terms that affect third party retailers (with publication on the RDG website of the results of the consultation).

Our proposals for increased transparency

1.37 We note the recent efforts TOCs (through RDG) have made in being more transparent with third party retailers. For example, some third party retailers have said that its increased engagement has been positive, enabling them to understand and influence potential developments to the industry regime; see Box 1.3 for some recent examples. However, particularly in some areas, we (continue to) consider that there is scope for further improvement.

1.38 To address areas where TOCs (through RDG) have not been as transparent as they could be, as well as helping to formalise what TOCs are doing in areas that have been more positive, **we welcome TOC's commitment to implement our recommendations in this area. Specifically, and by March 2017, TOCs (working through RDG), are committing to:**

- **Produce public guidance that sets out how third party retailers' commission and cost contributions for using each of the shared IT systems/common industry owned data are determined.** This will set out, for example, what third party retailers are expected to contribute towards; how the cost allocation is determined; and how this compares with TOCs' cost contributions. This could complement and/or build on the relevant licence; and
- **Explain (possibly as part of the above guidance) how TOCs will implement significant changes to third party retailers, by setting out its change control process for key licence changes and changes to the above guidance.** This formal change control process will relate to any significant decisions made by TOCs that impact third party retailers, in particular changes to commission and costs and major developments to shared IT systems/common industry owned data. This will involve a formal consultation, either through correspondence with all affected third party retailers and/or through RDG's website, and will be complemented by engagement with relevant parties (including through a working group for third party retailers (see paragraphs 1.48-1.50 below)). The period for consultation will depend on the nature and impact of the proposal but could vary from, for example, two weeks to 12 weeks. As RDG noted in its response to our June 2015 consultation, this formal consultation could take place alongside the informal consultation and negotiations that currently occur. If a third party retailer was unhappy with the outcome of the consultation, it could refer the matter to independent dispute resolution.

Box 1.3: Examples of recent TOC engagement on changes to the third party retailer arrangements

We note the recent efforts that TOCs, working mainly through RDG, have made in involving third party retailers and other non-TOC parties. For example:

- In developing a replacement to the current NRS, TOCs engaged with non-TOC parties, such as third party retailers and TIS suppliers, about the possible functionality of the new system; and
- More recently, TOCs have been developing a longer-term national ticketing and retailing strategy (or vision), based mainly around the adoption of more innovative ticket formats (e.g. barcode ticketing) and approaches to retailing. This has involved third party retailers and other non-TOC parties (albeit on an *ad hoc* basis).

However, we note that engagement has not been consistent in all areas, with some parties highlighting areas for improvements. For example:

- Some third party retailers have said they are not provided with sufficient information about the rationale for the level of on-going costs they are expected to pay for use of the shared IT systems and common industry owned data. For example, one third party retailer said there is no way for them to determine if the amount being charged is correct or fair, and that they tend to be provided with the costs without much notice, causing challenges for budget planning;
- In the upgrade of the ToD system, a third party retailer said that TOCs decided to change the basis over which it charges (from one based on a retailer's revenue to one based on a retailer's number of issues) without any consultation or representation from third party retailers. Similarly, another third party retailer suggested it has insufficient certainty over the timescales and costs to secure RDG accreditation of an upgrade to its ticketing systems; and
- Regarding the financing of new systems, a third party retailer said that discussions on the functionality of the replacement to the NRS should have included the likely costs of the options and non-TOCs' share of these costs.

Assessment of our proposals for increased transparency

1.39 We are recommending that TOCs improve the transparency of their decision-making in this way because¹⁰:

- Ensuring that TOCs have considered a more diverse range of opinions will help strengthen their decisions regarding developments to the industry regime, including using stakeholders' views to identify possible issues and improvements;
- It will help increase the predictability and certainty of TOCs' decisions, including the timescales over which they are made;
- In turn, it will help mitigate any perceived conflicts of interest with respect to TOCs' decisions over third party retailing; and
- It will play an important role in enabling parties (particularly third party retailers and other non-TOC parties) to work together in facilitating an integrated network to the benefit of passengers¹¹.

1.40 Furthermore, we consider that making TOC decisions more transparent in the ways we are proposing could be done relatively easily and cheaply. In their responses, no stakeholder (including RDG) disputed our analysis around the costs of implementing this option.

A formal role for third party retailers in TOC decision-making

Third party retailers' current role in TOC decision-making

1.41 Third party retailers (and other non-TOC parties) have no formal role over potential developments to the industry regime for ticket retailing. While all TOCs are represented at the RDG decision-making fora (with their voting rights broadly reflecting their respective share of the market), third party retailers are not represented, despite accounting for just under 20% of tickets sold¹². Furthermore, and as discussed above, TOCs are not obliged to consult with third party retailers about potential changes to the industry regime.

¹⁰ To the extent necessary, this analysis builds on the discussion of increased transparency on the industry regime for third party retailers, as set out in chapter 4 and Annex D of our June 2015 consultation (proposed remedies B and C).

¹¹ Indeed, recent experiences to date (such as Trainline's work with TOCs and RDG to develop inter-available (and inter-operable) m-ticketing in the north of England) highlight the benefits of more parties working together. There is likely to be further scope for similar initiatives, and increased transparency through the provision of guidance could help identify and facilitate that.

¹² 19.7%. By gross receipts, 2015/16. Source: LENNON. This excludes TfL sales.

1.42 We are concerned that this reflects limited industry collaboration, giving rise to a risk that the industry regime develops only in line with the needs of the TOCs who make the relevant decisions, rather than the wider group of retailers and users (who make use of and contribute towards the cost of the regime). Importantly, this arrangement could fail to harness the benefits of innovation and efficiencies that could otherwise be identified by a more inclusive process. Consequently, passengers and taxpayers could lose out¹³.

1.43 To help address this, we recommended that there should be more involvement from across industry in the development of ticketing, possibly by means of more formal decision-making. This could take the form of formal working groups for third party retailers (or a sub-set of different types of retailers), as well as other groups (such as passenger representative bodies and technology providers).

Stakeholders' views regarding our recommendation for a more formal role for third party retailers

1.44 No stakeholder disputed our recommendation that there be greater involvement in TOC decisions regarding ticketing.

1.45 For example, Trainline said that there is a role “*through cooperation amongst industry stakeholders (including all TOCs and relevant third parties)*” to drive innovation. A respondent (who wished to remain confidential) also said collaborative initiatives need to be timely, inclusive, independently governed, and adequately funded.

1.46 Similarly, RDG said it considers that, as part of a package of measures, there is a role for, “*the establishment of standing working groups with third party retailers*”. However, it also highlighted the importance of striking a balance between meaningful involvement and possible increased timescales and costs. This concern was shared by two TOCs.

Our proposals for providing a more formal role for third party retailers

1.47 As per our June 2015 recommendations, we support the speedy establishment of a new working group made-up of existing or prospective online third party retailers.

1.48 We note RDG's recent work to involve third party retailers in its decision-making. For example, it has established a working group to engage with travel management companies (TMCs, see Box 1.4) and it has recently convened representatives from the online third party retailing community to discuss barcode ticketing. Building on this work, **we welcome RDG's commitment to formalise its engagement with third party retailers along the lines of our recommendations.**

¹³ In our June 2015 consultation, we cited the limited engagement from third party retailers in the 2014 upgrade of the ToD system which, some third party retailers suggested, was a missed opportunity to improve passengers use of the system (e.g. by chunking up the collection references to make them easier to read).

1.49 In taking this forward, **RDG has committed to agree and to develop terms of reference for an online third party retailer working group by late 2016, with a view to having the first meeting of the working group by March 2017** (though notes this is somewhat subject to the wider governance changes it is considering). The purpose of this group will be to provide a formal and frequent forum in which TOCs and third party retailers can discuss developments to the industry ticket regime that affect third party retailers, in particular by providing online third party retailers with early visibility and involvement in the development of industry retailing.

1.50 While RDG and third party retailers are best-placed to decide how best to work together under this forum, at a minimum, we consider that the following principles (which seek to minimise the risk that this option is overly costly and time-consuming, which some stakeholders have raised) should be adhered to:

- Regarding the **scope of the group's discussions**, we suggest that it includes all potential developments to the industry regime that might affect online third party retailers. At a minimum, we would envisage that this include any potential changes to commission and cost allocation methodologies and potential developments to the shared IT systems and common industry-owned data. It should also allow for discussion around future opportunities for online third party retailers to support TOCs' wider ticketing strategy. We note that some issues may be better addressed on a bilateral basis between RDG (or relevant TOCs) and the third party retailer, and this working group should not preclude that from happening;
- Regarding **the composition of the working group**, we suggest that it is made up of existing online third party licensees; parties who are close to securing a licence¹⁴; and TOC representatives;
- Regarding **the frequency of the working group meetings**, we consider that that is a matter for TOCs and online third party retailers but would suggest, at a minimum, the group meets tri-annually; and
- Regarding **reporting**, we would expect an anonymised set of minutes to be produced shortly after the meeting, which would be made publically available on RDG's website.

¹⁴ In identifying those parties who are 'close' to securing a licence, RDG suggests that this could refer to those parties involved in development work; undergoing accreditation; and/or holders of an interim third party licence. For example, RDG do not envisage that it would include potential retailers who have (merely) expressed an interest in becoming a retailer (though it notes that such parties would benefit from future public guidance).

Box 1.4: The TOC / TMC Liaison Group

Bringing together senior representatives from TOCs and from TMCs, the TOC / TMC Liaison Group is designed to improve understanding and engagement between the two sides.

The group initially began as a series of meetings to agree the design of the TMC commercial arrangements that should apply from April 2016. However, following their success, both sides agree to continue these discussions and to formalise them into a new forum, which would meet regularly to discuss issues of particular relevance to the TMC community and to share updates on market trends.

The agenda for the meetings are agreed in advance between the TMC and TOC representatives, with RDG acting as secretariat. Topics covered to date include: future ticketing strategy, the new Customer Journey initiative and delay repay arrangements (including how TMC involvement can streamline the process for corporate customers).

Assessment of our proposals for a formal role for third party retailers in TOC decision-making

1.51 We recommend that third party retailers be provided with a formal role in TOC decision-making in this way because¹⁵:

- It will help facilitate cross-industry collaboration;
- It will strengthen TOC decisions regarding development of the industry regime; and
- It will help mitigate third party retailers' concern about real or perceived conflicts of interest associated with TOC decision-making.

Enhanced dispute resolution for all third party retailers

Current dispute resolution mechanisms

1.52 Under the terms of its licence, an online third party retailer may formally raise a dispute regarding its arrangements to RDG¹⁶; see Figure 1.1. If the dispute cannot be resolved between RDG and the third party retailer, RDG has the option of referring it to independent arbitration. However, formal dispute resolution has never been invoked (despite third party retailers' concerns). Furthermore, there is no similar

¹⁵ To the extent necessary, this analysis builds on the discussion of formal working groups, as set out in chapter 5 and Annex E of our June 2015 consultation (proposed remedy M).

¹⁶ See clause 42 of the third party investor licence [here](#).

provision for other types of third party retailers (e.g. interim online third party retailers, TMCs, travel agents) to use the independent dispute resolution mechanism.

1.53 As set out in our June 2015 findings (and supporting impact assessment), we recommended that consideration is given to allowing *all* third party retailers a mechanism to appeal changes.

Stakeholders' views regarding our recommendation for enhanced dispute resolution

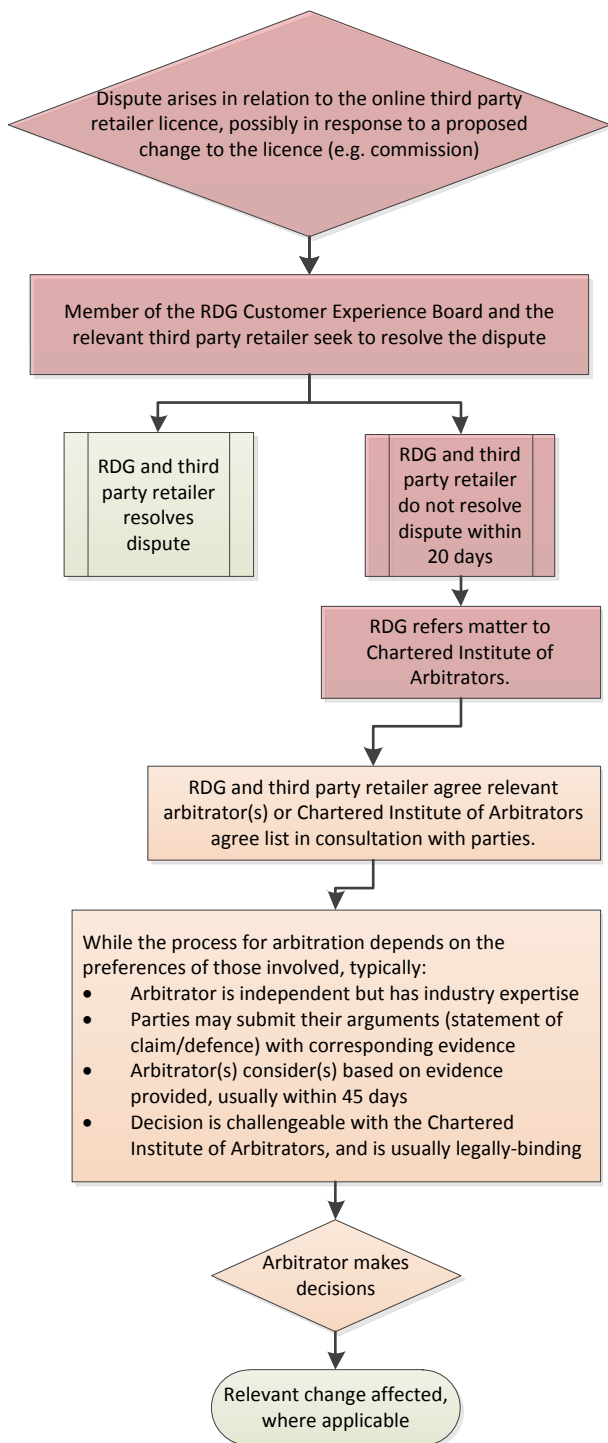
1.54 In the spirit of supporting independent oversight of TOCs' decision-making over third party retailers, most third party retailers and passenger representatives bodies supported the idea of extending the option for independent dispute resolution to all third party retailers. In discussions with some online third party retailers, they also suggested that they and RDG could consider using this route more regularly, where necessary, as a way to resolve disagreements.

Our proposals for enhanced dispute resolution

1.55 Reflecting both our recommendation and stakeholders' views, **we welcome RDG's commitment to extend the provision for independent dispute resolution to all third party retailers, which it is seeking to have this in place by March 2017.**

1.56 We also suggest that further consideration is given by both online third party retailers and TOCs to use independent dispute resolution to resolve an issue. However, in the spirit of a more accountable, transparent and collaborative relationship between third party retailers and TOCs, we would (of course) anticipate that this is invoked only where necessary.

Figure 1.1: Current dispute resolution process for online third party retailers



2. Retailers' access to discounted fares and season tickets

Summary

Some stakeholders have raised concerns about TOCs' ability to offer a discount on the price of some fares without making them available to all retailers and through all sales channels. Having now considered this issue, we consider that there is no basis to intervene at this time. Discounted fares offer more choice and a direct financial benefit to passengers. However, given the importance of third party retailers being able to offer a reasonable range of products and reflecting the fact that some stakeholders have questioned whether TOCs are always compliant in this respect, we would expect TOCs to adhere to the industry rules that limit the timescales over which they can make their discounted fares available.

We also discuss RDG's progress in piloting the third party retailing of season tickets.

Introduction

- 2.1 Some TOCs offer a discount on the price of some of their fares. These are often available only through certain sales channels and retailers, and are typically offered on a temporary basis. We refer to these types of fares as 'discounted fares'.
- 2.2 In response to concerns from some parts of industry and in follow-up to our June 2015 consultation, we have undertaken some further analysis on the merits or otherwise of:
 - TOCs' ability to discount fares; and
 - TOCs' ability to restrict the distribution channels of these 'discounted fares', either by not making them available through all their sales channels and/or to other retailers.
- 2.3 This chapter sets out our findings, as well as our recommendation for next steps.

Our work to date on discounted fares

- 2.4 In our June 2015 emerging findings consultation, we discussed the possible benefits and dis-benefits of having discounted fares, including the fact that other TOCs and third party retailers are often unable to access these fares and may have limited ability to match the scale of the discounts.
- 2.5 In their response, stakeholders' views varied on whether TOCs should offer full access to the discounted fares. Three TOCs (East Midlands Trains, First Group and

Virgin) explain why they discount, saying it is part of their overall commercial strategy. However, other TOCs (e.g. Govia, Keolis); some third party retailers (Trainline and Raileasy); and passenger representative bodies (Campaign for Better Transport, Transport Focus) said there should be full access to discounted fares.

- 2.6 In our June 2015 consultation and to address this potential issue, we suggested that a 'net pricing' approach could be explored for TOC discounted fares as a means to enhance competition in the retailing of discounted fares among all retailers. Under this approach, TOCs would make certain fares available that reflect only the cost of carrying the passenger (the net price) and would compete with other TOCs and third party retailers to sell these tickets based on the level of mark-up applied for retailing the tickets.
- 2.7 However, in response to this suggestion, stakeholders were generally sceptical that this was workable. For example, some questioned whether it would improve competition in the market and others suggested that it would be difficult to implement.
- 2.8 Reflecting on this stakeholder feedback, we have undertaken more in-depth analysis on discounted fares, the main findings of which are set out in this chapter, along with recommendations for next steps.

Background to discounted fares

Our definition of discounted fares

- 2.9 Discounted fares are those that are available at a cheaper price through certain retailers/sales channels compared with the equivalent fare that is typically and more widely available¹⁷. They include the following type of products:
- Time-limited % discounts: Some TOCs offer a percentage discount on the price of their normal fare, often marketed as 'seat sales'; and
 - Time-limited promotional fares: Many of these are set out in Table 5 of our June 2015 consultation document and include, for example, Abellio Greater Anglia's Duo Tickets that gives 50% off the second fare when two adults travel together and c2c's 33% savings for groups of 3-9 people.

¹⁷ Our definition of discounted tickets doesn't refer to Advance tickets (which are (often) available at a cheaper price compared with the Anytime fare, reflecting the fact that it has different terms and conditions) or discounted fares/offers available to railcard holders (e.g. Arriva Trains Wales provides discounted fares on some of its 'normal' fares for members of its Club 55 card, which is open for passengers aged over 55).

Industry arrangements for discounted fares

2.10 As discussed in our September 2014 and June 2015 consultation documents, TOCs are usually required to make their fares available to purchase through all retailers and through most sales channels (e.g. online, station ticket offices).

2.11 However, there are provisions in the industry arrangements that provide for an exception to this general principle, allowing TOCs to make so-called ‘temporary fares’¹⁸ that typically represent a discount on the standard fare. TOCs are permitted, through these provisions, to restrict the distribution channels (either specified retailers or sales channels) by which such discounted fares are sold to consumers. TOCs may therefore create discounted fares and reserve their distribution to themselves or to limited channels (e.g. a TOC has the ability to offer discounts and prevent their sale by other TOCs and third party retailers, should it so wish). The relevant industry arrangements limit the duration of discounted fares to 34 weeks, and they cannot have been offered in the preceding 17 weeks prior to their introduction.

Estimated scale of discounting

2.12 A TOC can decide whether, how and to what extent it wishes to sell discounted fares. Indeed, in practice, the usage and the nature of how the ability to create discounted fares and restrict distribution channels varies considerably by TOC. Some TOCs (typically those primarily providing commuter services) appear to utilise the provisions on an extremely limited basis. However, other TOCs (typically longer-distance and regional TOCs) appear to use the discounted fare provisions more widely. In the context of this review, we have not looked at or assessed the effects of the conduct of any particular TOC in relation to discounted fares. Rather, in line with the wider objectives of this review, we have focused on the overall impact of the industry-wide arrangements for discounted fares¹⁹.

¹⁸ Chapter 4-5(3) of the TSA states that, “An Operator may (by itself or in conjunction with any other Operator(s)) only Create a Temporary Fare if... the period during which it may be offered for Sale (as specified in the relevant Product Implementation Form) is 34 weeks or less and no other Temporary Fare in respect of the same or substantially the same Flow and with substantially the same Rights and Restrictions and Price, has been offered for Sale at any time during the previous 17 weeks”. Chapter 6-6(2) provides that such a temporary fare may be sold only by the TOC which created it, or any other retailer which the TOC has authorised (whether that is a TOC or a third party retailer). Chapter 4-5(3) also allows temporary fares to be created provided it has the consent of the Secretary of State; we are not aware of any fares that have fallen under this provision.

¹⁹ If we were to consider the practice of a particular TOC this would be assessed in light of the market conditions in which the relevant TOC was operating and the specific utilisation of the temporary fares provision and the scale and nature of restrictions being imposed on distribution channels. The effects of such conduct on competition (and otherwise) would need to be carefully assessed before conclusions were drawn about the use of the discounted fares provisions. We note assertions from some stakeholders that some TOCs may be applying discounted fares (with restrictions on distribution channels) for longer than the 34 week period specified in the TSA; if correct, this would be a factor to be taken into consideration in an analysis of the conduct of a particular TOC or TOCs. Undertaking an individual analysis of a particular TOC

2.13 Owing to the design and functionality of the industry-owned systems (particularly the ticketing system²⁰) and the fact that not all retailers sell tickets through the shared IT system, it is very difficult to estimate with accuracy the level of discounting and, correspondingly, retailers' access to these fares; this is discussed in more detail in Annex B. However, notwithstanding these limitations, our analysis has provided some broad indications about the practice; for example it *may* suggest:

- Over 7% of industry revenue in 2014/15 is associated with both types of discounted fares. Breaking this total down, 4.6% of industry revenue in 2014/15 was associated with promotional fares and 3.1% of industry revenue was associated with % discounted fares. With respect to tickets issued, 2.8% were promotional fares and 1.5% of those issued were % discounted fares;
- The average discount may have equated to around £3 in the four-week period between the start of December 2015 and the start of January 2016²¹. However, the actual size of the discount varies considerably between TOCs; and
- By revenue, third party retailers appear to have sold 3% of the % discounted fares issued and 37% of the promotional fares²².

2.14 Reflecting the difficulties of estimating with accuracy the level of discounting, we are not relying on our analysis (as summarised above) to any significant extent. Rather, we set this out (above and in Annex B) to provide some insights into discounting.

Our assessment

Our approach to assessing the provision of discounted fares

2.15 We have focused on the merits of both discounted fares (compared with other fares available) and the ability for TOCs to not make such fares available to consumers through all retailers (e.g. intra-TOC or third party retailing).

or TOC's conduct is beyond the scope of this review; we note that to date we have not received any complaints about the use of temporary discounting provision by any specific TOC or TOCs.

²⁰ Retailers use the industry-owned system called LENNON (the Latest Earning Network Nationally Over-Night system) to record their sales.

²¹ Standard fares only; Period 10 of 2014/15. Source: LENNON. Rail retailers provide data on their activity (e.g. sales data) for 13 periods a year. We use Period 10 as it was the most recently available data at the time we were undertaking the analysis. We note the limitations of only focusing on one period; however, the design of the industry systems means we would need to have extracted the data 13 times for this particular exercise. Furthermore, we note that this figure is not particularly robust as it is not weighted across TOCs. The difficulty with weighting it is that at the aggregated TOC level, the price of discounted fares appears to be higher than for non-discounted. This is because the flows that tend to be discounted are the longer distance, higher priced fares. Therefore, we would need to look at individual origin and destination flows to get a more accurate representation of the level of discount.

²² Note there is some overlap between the categories of ' % discounted' and 'promotional fares'. For example, some 'promotional fares' also have an additional % discount so are included in both groups.

2.16 In line with the approach we used in assessing the wider industry regime for ticket selling and as set out in our June 2015 document, we use the following criteria to assess the issue of discounted fares:

- The extent to which the practice promotes effective competition in the market;
- The extent to which the practice promotes industry collaboration to the benefit of passengers; and
- The extent to which the practice promotes consumer empowerment and protects passengers.

Impact of discounted fares on competition

2.17 In offering a wider range of fares for passengers and in conferring a direct financial benefit, discounted fares appear to enhance competition among retailers, thus potentially benefiting passengers. As such, we are concerned that any attempts to remove or significantly limit the scope of the discounted fare provisions could adversely impact the market. This is because:

- It is possible that the number and size of the discounted fares would fall. While it is difficult to predict with any certainty, we would expect at least some form of response from TOCs to a regulatory intervention²³. Experience from the energy sector suggests that the overall volume and/or the level of discounting could fall as a result²⁴. Furthermore, some TOCs have suggested they would remove discounts, or significantly reduce them, if they were required to make them available to other retailers²⁵. This is significant given the importance passengers place on the price of fares²⁶; and
- Discounted fares may encourage price-sensitive leisure customers (who could be more inclined to travel by other modes and/or not travel at all) to use rail,

²³ This is known as the Lucas Critique, which argues that a change in regulatory environment is likely to lead to a different pricing strategy.

²⁴ In an attempt for consumers to understand the prices on offer to them, Ofgem required suppliers to limit their offering to four tariffs per fuel type (electricity and gas), per payment type. However, by (effectively) requiring suppliers to make their 'special' tariffs available to all and/or by removing the scope for promotional tariffs, suppliers reduced their number and/or withdrew them entirely (See Waddams and Zhu, 2016, "Non-discrimination Clauses: Their Effect on GB Retail Energy Prices"). This requirement was criticised by the Competition and Markets Authority in its recent findings on the energy market.

²⁵ For example, in its response to our September 2014 consultation, East Coast (now Virgin East Coast) suggested that, "*should this [availability of discounting fares] be restricted the end result would be a price increase for a substantial amount of customers*".

²⁶ In considering the different features of fares (e.g. price, flexibility, ticket format), BDRC Continental (in the context of research we commissioned on passengers' views on rail ticketing; see [here](#)) found that price is "*overwhelmingly the most important driver in deciding which ticket to buy*". Indeed, in its willingness-to-pay exercises that passengers undertook, the price of the fare was over three times more important than the time flexibility, the second most important feature of the ticket. See [here](#) for further information. This is consistent with the findings of Transport Focus' National Rail Passenger Survey.

thus offering a wider choice of modes to these passengers. We note that, in turn, this may help to grow the overall rail market, potentially increasing revenue to the benefit of passengers, industry and taxpayers²⁷.

2.18 Some stakeholders have suggested that discounted fares have been made available by TOCs to passengers for longer than the 34 week maximum period permitted by the TSA. We have not, as part of the retail market review, investigated any individual breach of the TSA. We note in this regard that compliance with the TSA is principally a matter for the signatories (i.e. TOCs, with the DfT having an approval role over potential changes).

2.19 However, we also note the potential adverse impact of restricting the distribution channels of discounted fares on the third party retailer market. For example, some stakeholders have expressed concern that restricting third party retailers from selling discounted fares may encourage passengers to use other websites and, over time, undermine third party retailers' ability to compete in selling tickets. This is concerning given third party retailers' role in expanding the rail market and in enhancing the competitive pressure on TOCs to improve their retail offering to passengers.

2.20 While there is insufficient basis to suggest that the restriction of discounted fares is currently adversely impacting the third party retailer market²⁸, we note that should the scale of discounting increase to the extent that third party retailers are unable to offer a reasonable range of products that are broadly comparable to what TOCs can offer, the restriction of access to discounted fares could damage the market. This could, over the longer-term, adversely impact passengers. We do not, therefore, rule out the possibility of considering the exercise of its powers under the Competition Act 1998 should it receive evidence that a TOC (or TOCs) was operating so as to effectively exclude third party retailers from the market.

2.21 **We, therefore, stress the importance of TOCs ensuring compliance with the relevant TSA provisions that limit the timescales over which their discounted fares may be offered.** In doing this, we note the scope for:

- **The DfT (and other franchising authorities, where applicable) to consider what they could do to support and review compliance in this area, including through their on-going franchise compliance monitoring.** For

²⁷ This point has been made by some TOCs. For example, East Midlands Trains said that it offers a number of specifically discounted fares to TMCs on a bilateral basis in order to “*grow the market for rail amongst selected corporate customers*”; First Group said that it is in discussions with a third party retailer to offer *ad hoc* discounts when it has available seat capacity; and Virgin said it works with some third party retailers to offer discounted fares “*on the basis they can deliver incremental revenue*”. We note that were third party retailers also able to offer discounted products, it should have the same effect (i.e. grow the overall market). However (and as discussed above), the extent to which the volume and level of discounting would remain is uncertain.

²⁸ For example, the overall market share of third party retailers continues to increase. See chapter 2 of our June 2015 consultation document.

example, the DfT and Transport Scotland (as franchising bodies) could seek information from TOCs on their discounting as part of their regular reporting commitments;

- **Consideration be given to these reports being made available to ORR for publication²⁹**; and
- **TOCs, through RDG, to consider how their retailing systems (including shared IT systems) could be improved to support compliance with TSA** by effectively preventing discounted fares being offered in contravention of the rules without the appropriate regulatory consents.

Impact of discounted fares on industry collaboration

2.22 Reflecting the characteristics of the rail market (in that an integrated network is important to passengers) and as discussed in our June 2015 consultation, both competition and collaboration can play important roles in driving a good outcome for passengers. The extent to which each plays a more significant role is likely to depend on the circumstances; for example, in driving the development of a shared IT system that enables retailers to sell each other's fares, industry collaboration is likely to play a more important role than competition.

2.23 The current level of discounting does not appear to undermine retailers' incentives to collaborate to facilitate an integrated network, for example in selling through tickets that provide a benefit to passengers.

Impact of discounted fares on passenger empowerment and protection

2.24 By rewarding passengers who have sought out such fares, discounted fares can offer a wider choice of prices and tickets to passengers. For example, the practice may enable passengers to buy a superior ticket (e.g. a more flexible one or a first class ticket) than they would otherwise have been prepared to pay for at the full price. As noted in the BDRG Continental research, passengers would like more choice over ticket and product types³⁰.

2.25 The existence of more fares (through discounted fares) could give rise to a risk of additional passenger complexity. This is important given that passengers already perceive rail fares to be complex. However, we have no reason to consider that the existence (or scale) of discounted products (in and of themselves) leads to

²⁹ For example, we could make data available (e.g. the overall levels of discounting available, the sales channels through which they are being made available through etc) on our data portal website and/or we could produce periodic updates (e.g. by way of a factsheet). However, we note publishing such information is likely to require TOCs' approval, reflecting the fact that they (through RDG) own LENNON (and thus its data). This could be on a risk-based approach given the difficulty associated with monitoring all relevant fares (reflecting the limitations of industry systems).

³⁰ See chapter 4 and 6 of the BDRG Continental report.

passenger confusion. Furthermore, and as noted in our June 2015 findings, perceived passenger complexity should not necessarily lead to a need to limit the number of products available for sale. Rather, retailers can play a role in helping passengers choose the right ticket, including by making the terms and conditions as accessible as possible³¹.

Retailers' access to other fares and products

- 2.26 Reflecting the strength of stakeholders' views on this issue, our analysis has focused on retailers' access to discounted fares, rather than other fares and products (such as carnet tickets and season tickets). However, in our June 2015 consultation, we suggested that TOCs consider how third party retailers (and other TOCs) could be enabled to sell all products.
- 2.27 Particularly with respect to season tickets, we note the importance of RDG's work to allow third party retailers to sell these tickets. By having a wider choice of retailers (and, in turn, sales channels) in which to buy a season fare, there is greater scope for passengers to benefit from competition arising from, for example, service quality; speed of transaction; and/or the provision of ancillary products³².
- 2.28 Following a tender exercise in late 2014, RDG appointed two third party retailers, Trainline and Evolvi Rail Systems, to participate in a season ticket retailing pilot through both consumer and corporate/TMC channels. In preparation for the pilot, the TSA was amended to allow commission to be paid on internet sales of season tickets by both third parties and TOCs³³.
- 2.29 The pilot begun in May 2015 for an initial period of 12 months. It was designed to monitor indicators such as customer reaction, sales volumes and operational efficiency/issues. RDG's evaluation in spring 2016 revealed positive customer reaction and minimal operational problems, albeit from a lower than expected volume of sales. Both of the pilot third party retailers pointed out that a 12-month trial period was not long enough for them to justify the investment in systems and processes required to maximise the potential opportunity.
- 2.30 Given the inconclusive outcome to the initial phase, RDG now plans to renew the pilot for an extended period which, it says, will give retailers sufficient time to invest, build their business and see a return. RDG has said that it will consider applications

³¹ Again, the experience of the energy market is of note here, where attempts to reduce the number of tariffs do not appear to have led to any reduction in consumers' perceived complexity (Waddams and Zhu, 2016; see [here](#)).

³² For example, an insurance product to protect the passenger against loss/theft of a season ticket or a finance product to help fund the cost of a season ticket.

³³ This was amended to two per cent for the sale of season tickets online. Before the pilot, only sale at station ticket offices could earn a two per cent commission, with no commission was payable on internet sales.

from other retailers to join the pilot, providing they can demonstrate how they will add value to season ticket retailing and meet the same criteria as the retailers in the first phase of the trial. In doing this, **we ask RDG to proceed quickly to its second phase in order to provide assurance to existing and prospective third party retailers about their future role in selling season tickets.** We note RDG's intention to consider widening the number of retailer participants for this second trial. This is welcome, though we would also highlight the importance of RDG adopting an open and consultative approach in engaging with all prospective retailers.

Conclusions and suggested next steps

- 2.31 In light of the above, we consider that the industry-wide arrangements that confer discretion upon TOCs to offer discounted fares and to restrict the channels by which they are distributed (by virtue of the temporary fares provision) offer passengers a greater choice of fares and the potential to benefit from direct financial gains. We consider that such benefits are not obviously outweighed by other considerations. On that basis and on balance, therefore, we do not consider there is a sufficient basis for regulatory intervention in relation to the industry-wide arrangements for discounted fares, at least at this time.
- 2.32 We note, however, that the widespread use of discounted fares by a particular TOC, or a significant increase in the use of discounted fares across the sector, has the potential to lead to negative consequences for competition in the retail ticketing market in the long-term – namely through having the potential to exclude third party and alternative TOC retailers.
- 2.33 The Retail Market Review has not considered the conduct of any particular TOC in this regard. Rather, it has focused on this issue from a whole industry perspective. We nonetheless consider, in light of the above, that individual TOCs should carefully self-assess their conduct in relation to discounted fares and pay particular attention to ensuring that the scale of their use of the practice is compliant with competition law. We also highlight the importance for TOCs to ensure compliance with the TSA provisions on discounted fares, not least to provide certainty for all parties and to ensure that the pro-competitive objectives of the rules are strictly complied with.
- 2.34 As such, we consider that:
- Any regulatory intervention that could affect the existing benefits of discounted fares should be undertaken with caution. In light of the analysis above, we do not propose to make any regulatory intervention in this respect;
 - Notwithstanding that and reflecting the importance of compliance with the industry regime, TOCs should carefully self-assess their conduct in relation to discounted fares and its potential to restrict competition in the retail ticketing

market. We suggest that TOCs should satisfy themselves that the scale of their usage of the discounted fares provisions is compliant with competition law; and

- To support this, TOCs (working through RDG) should consider how their shared IT systems could be improved to support compliance with TSA. The DfT (and franchising authorities, where applicable) should also consider what they could do to support and review compliance in this area, including through reporting mechanisms in the franchise.

2.35 Additionally and separately, we ask RDG to proceed quickly to its second trial in order to provide assurance to existing and prospective third party retailers about their future role in selling season tickets.

3. Other recommendations for the retail market

Summary

In addition to improvement in the governance regime for third party retailers that we recommended as part of our June 2015 findings, we also made a number of other nearer-term recommendations for ways in which the retail market could be improved upon. We also put forward for discussion some possible options for longer-term consideration. Reflecting stakeholder feedback, this chapter explains the progress we, industry and governments have made on these recommendations and outlines the next steps, where applicable.

Introduction

- 3.1 In addition to the chapter 1 recommendations to improve the governance regime for third party retailers, our June 2015 findings suggested additional nearer- and longer-term recommendations to improve the functioning of the retail market. These centred on options to improve competition and collaboration between among TOCs and between TOCs and third party retailers. This reflects the nature of the ticketing market, whereby all retailers compete with each other in selling tickets while working together (e.g. in facilitating the benefits of a national, integrated network).
- 3.2 This chapter sets out what we, industry and governments have done since June 2015 on those options, as well as areas for further work (where applicable).

Nearer-term recommendations

- 3.3 This section addresses each of the nearer-term recommendations we made in our June 2015 findings; see options 7-12 in Table 1.

Developing a longer-term strategy for ticketing

- 3.4 To improve the way in which retailers work together, while respecting the importance of competition among retailers, we recommended in our June 2015 findings that governments and TOCs (continue to) work together, and with wider industry, to build consensus around the strategy for future ticketing.
- 3.5 In response to our suggestion, TOCs, passenger representative bodies and third party retailers³⁴ were supportive of the need for a longer-term strategy, though there

³⁴ Abellio Greater Anglia, Arriva, Campaign for Better Transport, Govia, PTEG, RDG, TfL, Trainline. This point was also made by two respondents who wished to remain confidential.

was some debate among respondents about whether TOCs or government should lead this³⁵.

- 3.6 Reflecting stakeholders' views, **we reiterate the importance of ensuring there is a longer-term strategy for ticket retailing. We welcome the work RDG is taking forward to publish a longer-term ticketing strategy, including through working with governments and wider industry;** see Box 3.1.

Box 3.1: DfT and RDG's engagement initiatives to improve ticketing

Governments and TOCs are increasingly working more closely together to deliver improvements to retailing and ticketing. In doing this, they are also involving local funders, passenger representative bodies and third party retailers

The recently formed Cross Industry Group on Rail Ticketing, jointly led by the DfT and RDG, brings together senior representatives from across the rail industry to ensure a collaborative approach to the delivery of smart ticketing. To help complement and inform this work, RDG is bringing together TOCs and wider industry representatives to develop improvements in specific areas (reflecting their experience of engaging with passengers on their retailing preferences). This is explained in Figure 3.1.

Through these initiatives, we consider that there is scope to consider further:

- The on-going development and implementation of a longer-term strategy for ticket retailing;
- Improvements to the way in which TOCs introduce new products through the industry process (as set out in the TSA); and
- The rules relating to the introduction of temporary fares (particularly in relating to promoting competition), reflecting different views on retailers' access to discounted fares (as discussed in chapter 2).

³⁵ For example, Abellio Greater Anglia and Campaign for Better Transport point to the role of government, while Keolis and RDG stress the role of industry leadership.

Figure 3.1: RDG's priorities for rail retailing

Barcode	•Acceptance of barcode across the rail network as the default interoperable standard
LSE	•Benefits maximisation from smart infrastructure in London & the South East
Future	•Development of a long-term industry ticketing vision
Mag	•Roadmap and action plan to retire magstrip ticketing
Reform	•Regulatory and contract reform to maximise industry business case and customer benefits

To improve TOCs' incentives to introduce new products within a franchise period

3.7 As discussed in our June 2015 consultation, we are concerned that TOCs have limited incentives to offer new products and fares within a franchise period because doing so represents additional risk on TOCs³⁶. To address this, we recommended that governments and industry consider how TOCs could be better encouraged to introduce new products *during* a franchise. Reflecting views on the impact of franchising on rail retailing (as discussed in Box 3.2), there was some support among stakeholders for considering how the franchising process could be improved upon to address this³⁷. However, reflecting the complexity of the franchising process, there were also limited ideas among stakeholders for how this issue could be addressed in practice.

3.8 **We note the DfT's recent efforts to increase TOCs' focus on investment in ticketing throughout the franchise period.** For example:

- For recently-let franchise agreements (such as South Western and West Midlands), it has put an explicit obligation on the relevant TOCs to cooperate in cross-industry schemes that are designed to improve retailing. This could relate

³⁶ This reflects the strict financial requirements within franchises (e.g. risk- and revenue-sharing mechanisms many TOCs have, especially from the middle of the franchise period) and regulations regarding fares (e.g. the existence of regulated fares).

³⁷ For example, RDG said that, "*the role of franchising (and the DfT) should be considered further in terms of encouraging innovation*" and Trainline said it "*agree(s) that methods of incentivising TOCs to introduce new products (...) within the terms of a franchise would be beneficial*".

to, for example, the introduction of new railcards; the roll-out of new inter-available tickets³⁸; and/or the provision of new ticket formats on shared routes;

- It is emphasising the role of change / variation mechanisms in a franchise agreement, as well as mid-term reviews of the franchise, as a means for TOCs to bring-forward new retailing initiatives that could benefit its passengers (but that may require some financial support); and
- It is continuing to use individual schemes to support particular retailing initiatives, including those with funders' support where appropriate (e.g. smart ticketing in particular regions).

3.9 Reflecting on the progress made, **we recommend that franchising authorities continue to keep ticketing, and the way passengers buy tickets and the products they can choose from, central to the overall franchising process.**

Box 3.2: Impact of franchising on rail retailing

As discussed in our June 2015 consultation, franchising (including the bidding process) plays a very important role in determining the range of products and ticket formats available to passengers, as well as where and how they buy their ticket³⁹.

In their response, many stakeholders point to the importance of franchising as a means to improve ticketing and, more generally, to grow the market⁴⁰. This reflects, in part, the fact that franchising authorities use the franchise process to encourage TOCs to compete on the quality of retailing (with 'quality points' being made available for innovative proposals).

However, some stakeholders also said that franchising explains why passengers are not benefitting from as much competition and innovation as they could be. They suggested that it:

³⁸ Inter-available fares enable passengers to use the same ticket for different operators, flows and terminals and through tickets enable passengers to travel across the network using only one ticket. This is discussed further in our June 2015 consultation document.

³⁹ For example, we understand that some TOCs' bids have included proposals relating to where they would sell tickets (e.g. newsagents, independently-run ticket offices). Franchising also plays an important role in determining whether new/upgraded TVMs will be introduced, as noted by Arriva in its response to our June 2015 consultation, "*the TIS supply market is, ultimately, driven by the franchising process. The more tightly specified franchises become and the shorter they are, the more TOCs are constrained into solely making investments promised during bid processes*".

⁴⁰ This includes four TOCs, Transport Focus and Trainline. It is worth noting that some longer-distance TOCs refuted the suggestion that they are not incentivised to compete outside of the franchise period, pointing to their own voluntary introduction of new products and/or ticket formats.

- Constrains the incentives on TOCs to introduce new products because of the risks of revenue abstraction⁴¹;
- Provides TOCs with insufficient financial flexibility to introduce new ticket formats voluntarily, meaning TOCs only do so where it is a franchise obligation;
- Limits the incentives on TOCs to innovate and invest, giving rise to ‘bursts’ of investment only really seen at the beginning of the franchise; and
- Gives rise to a fragmented and inconsistent approach to passengers’ services, owing to its regional nature and differences in timings of franchises.

Indeed, while they were generally supportive of our recommendations (many of which do not relate to the franchising framework), stakeholders stressed the importance of the role and impact of franchising in rail retailing. They argued that this is very significant as is, in turn, the role of governments in ensuring that passengers’ ticketing experience is considered carefully as part of the franchising process.

To improve industry processes for introducing new products

3.10 In addition to the franchising point above, we recommended that improvements could be made to the industry processes TOCs use to introduce new products in order to improve their incentives to offer new products and fares⁴². We suggested that:

- The TSA should be revised so that the process for introducing a new product is accelerated and streamlined;
- Consideration be given to revising TOCs’ allocation of voting rights for these kind of decisions (to minimise the risk that individual TOCs are too easily able to block the introduction of a new product); and
- Pilots, whereby new products are introduced on a temporary basis to test the impact of the new products (including the impact on other TOCs’ revenue), are used more readily.

⁴¹ However, Campaign for Better Transport point to the additional revenue generated when TOCs extended Oyster to southeast London services, despite TOCs’ concerns.

⁴² As discussed in our June 2015 consultation, any new product or fare a TOC wishes to introduce must be consistent with the TSA. If the RSP considers that it may not be, the relevant TOC may consult with other TOCs, providing a means for those TOCs to object to the introduction of the new product (e.g. on grounds that it would be revenue abstractive). We highlighted the lengthy timescales and significant resources required to introduce Cross Country’s Advance Purchase on the Day ticket that allows passengers to buy Advance fares up to 10 minutes before the train’s departure.

- 3.11 Stakeholders were supportive of our recommendation to make improvements to industry processes, with seven respondents⁴³ saying they would support revisions to the TSA to affect such changes (though RDG said that it considered that doing so is “*unlikely to fundamentally alter the current position*”). A respondent (who wished to remain confidential) also suggested that there could be “*more automated approval and compliance checking*” of processes to reduce the workload on TOCs in engaging with the relevant bodies.
- 3.12 Reflecting on our June 2015 recommendation, **we welcome RDG’s intentions to work with TOCs to improve the way in which they introduce new products**. In turn, **we note and welcome the fact that the DfT has signalled its support for this**, with it saying it is open and willing to consider such proposals (reflecting its formal role in approving such changes to the TSA).

RDG’s work with TIS suppliers to improve the functioning of websites and TVMs

- 3.13 The design and functionality of retailers’ websites and TVMs are heavily determined by the TIS machines they use to access and sell all fares⁴⁴. In our June 2015 recommendations, we suggested that RDG’s work to provide increased direction to TVM-TIS suppliers (through its TVM Design Guidelines, for example) should be cautious about the risk of suppressing potential for innovation arising from individual retailers.
- 3.14 In its response, some stakeholders noted the importance of market-led innovation, particularly with respect to suppliers of web-TIS machines⁴⁵. However, for TVM-TIS machines, some stakeholders suggested a more coordinated approach (that RDG is taking forward) is helpful⁴⁶.
- 3.15 Specifically with respect to TVM-TIS machines, a number of stakeholders used their response to highlight problems in this market. For example, they said⁴⁷:

⁴³ Abellio Greater Anglia, RDG, Trainline, Transport Focus, TfL, TravelWatch NorthWest. A respondent who wished to remain confidential also made this point.

⁴⁴ As discussed in chapter 1 of this document and in the June 2015 consultation, all retailers must use a TIS to access and sell fares.

⁴⁵ For example, East Midlands Trains said that with respect to web-TVMs, “*Centrally specifying [website design] would limit innovation and provide dis-benefits to customers*”.

⁴⁶ RDG said that “*we would always generally favour innovation driven by competition, but believe that in some circumstances, such as the station TIS market [i.e. TVM-TIS], industry structures may not be capable of supporting a fully effective market, and that a degree of central direction may, therefore, be required to achieve desired outcomes*”. However, East Midlands Trains said that, even for the TVM-TIS, innovation is best delivered by the market.

⁴⁷ Stakeholders who highlighted issues in the TVM-TIS market include Arriva, East Midlands Trains, Campaign for Better Transport, Keolis, and RDG.

- TVMs are not typically designated franchise assets (meaning they have no residual value to the TOC at the end of the franchise), making it difficult to justify investments that are outside of a franchise commitment;
- There are a limited number of TVM-TIS suppliers and the market is insufficiently large and/or stable to support innovation outside of what might be specified through a franchise; and
- TVMs may be obsolete over the longer-term, meaning there is limited appetite for innovation.

3.16 Reflecting the material role TVMs play, **we have recently launched some work to understand whether, and to what extent, TOCs have made progress to improve TVMs so that they meet the needs of passengers.** Specifically:

- We are seeking information from TOCs about what progress and improvements they have made with respect to the main issues associated with TVMs that we identified in our June 2016 “*Measuring up*”. We are also seeking information on the barriers they face in making further improvements and how these are being overcome. We will also be examining TOC data on TVM-related complaints⁴⁸;
- We will undertake a mystery-shopping exercise of TVMs users to consider the extent to which they are meeting the needs and expectations of passengers. This will also allow us to develop a robust understanding of the level of passenger detriment arising from TVM-based transactions;
- We are seeking information from TOCs on the processes and practices they have in place to allow them to meet the principles of the Code of Practice on Retail Information in relation to TVMs⁴⁹ and will conduct an audit to identify areas of weakness; and
- We are working with RDG to understand progress toward achievement of its *10-point improvement plan* that is aimed at delivering and facilitating improvements on TVMs⁵⁰. We are also working with RDG around delivery of the replacement to LENNON (called the Product Management System) which is intended to improve the quality of sales data.

3.17 We will bring our findings together into a published progress report on the information TOCs provide to passengers when they are buying tickets from TVMs by March 2017. This will seek to identify what further action may be required to improve TVMs for passengers. This could include, for example, use of our consumer law powers

⁴⁸ See [here](#) for further information.

⁴⁹ See [here](#) for further information.

⁵⁰ See [here](#) for further information.

and/or work to improve the market for TVMs. This will draw on stakeholder feedback on the issues in this market (as discussed above) and the possible ways it could be improved upon⁵¹.

Encouraging smaller third party retailers to enter the market

- 3.18 In addition to suggested improvements to the way TOCs make decisions regarding the third party retailers (as discussed in chapter 1), we suggested that TOCs and the wider industry explore ways in which the barriers smaller retailers face in selling tickets could be reduced. This reflects our concern that such retailers (such as newsagents, PayPoint or PayZone outlets and post offices) may be deterred from selling rail tickets.
- 3.19 A range of stakeholders⁵² indicated some support for the idea that smaller, physical third party retailers should be better-encouraged to enter the market. A number of those in support agreed that there are barriers to entry for these types of retailers, including the absence of nationwide smart ticketing and the need to procure TIS machines/sell a full range of fares. Stakeholders were also supportive of our suggestion that smaller retailers be allowed to sell a more narrow range of fares (to mitigate the need for a full TIS machine and/or full accreditation), though some passenger representative bodies stressed the need to avoid mis-selling in these cases.
- 3.20 Reflecting general stakeholder support, **we welcome TOCs' work (through RDG) to progress ways in which smaller, physical retailers could be better encouraged to enter the market.** For example, RDG is engaging directly with convenience store retailers on this subject and is facilitating discussions between these potential retailers and individual TOCs. RDG is also exploring ways to address the barriers smaller retailers face in selling rail products, given both the constraints of their existing in-store technology and the need to be able to sell products that are consistent with industry standards (so they can be recognised at the ticket gate, for example).
- 3.21 However, as discussed in our June 2015 findings and reflecting on some stakeholders' responses, we note that further consideration needs to be given to certain industry requirements in order to encourage more smaller, physical retailers to enter the market. For example, regarding the obligation on retailers to sell a full range of fares, we consider that there is merit in exploring further the impact of

⁵¹ Stakeholders' suggestions for improvement include use of the primary franchise asset mechanism to enable TOCs to spread the cost of TVMs over their lifetime (rather than the actual franchise); industry-agreed minimum standards for TVMs; and a centrally-funded innovation scheme for TIS suppliers to enable them undertake customer research and development.

⁵² Abellio Greater Anglia, Campaign for Better Transport, Keolis, PTEG, RDG, Transport Focus, TravelWatch North West. Arriva and First Group said they support RDG's response on this issue. Govia said it would like to understand further what these barriers are before commenting.

relaxing the obligation on retailers to sell a full range of fares, including the impact on passengers. This could be taken forward as an option in discussions of longer-term ticketing and the strategy regarding retail systems. This would need to include consideration around adequate consumer protections.

3.22 Furthermore, we note that RDG has suggested that, in order to encourage smaller, physical retailing of ticket sales, further consideration needs to be given to the requirements on TOCs to have their station ticket offices open for a minimum number of hours (as set out in schedule 17 of the TSA). This particularly relates to how those requirements could vary to reflect the arrangements a TOC has (or plans on having) for tickets to be sold by alternative, local retailers (i.e. a smaller, physical retailer such as a convenience store).

A role for retailing and delivering an integrated network in innovation funding

3.23 In our June 2015 findings, we noted the importance of funding to support (in particular) integrated retailing, for example by encouraging a TOC to work with neighbouring TOCs to promote integrated travel on a new ticket format. In their responses, stakeholders indicated some support for this idea⁵³.

3.24 Reflecting stakeholders' views, **we reiterate the role innovation funding could play in delivering more innovative retailing for integrated travel** (in particular rail travel) and **we welcome the DfT and industry's work in this area**. For example:

- In establishing the Transport Systems Catapult, the DfT is supporting innovation in integrated travel, including by providing over £10m to particular projects. This could include supporting innovative ticketing across operators/routes; and
- The Rail Safety and Standards Board (RSSB) is delivering research and development in this area (which, we note, the DfT is helping to support). RDG is also increasingly working with RSSB in this area⁵⁴.

Possible longer-term options for further consideration

3.25 In our June 2015 consultation, we discussed some longer-term options; see options 13-15 in Table 1. While these were designed to prompt further consideration and debate (rather than options to be taken forward in earnest), we considered that they – or similar variants of more radical change to the rules governing the retail market –

⁵³ For example, RDG said that any funding should be put towards “*leading-edge technology*” and Keolis said it liked the idea of, “*directing innovation funding to customer experience enhancements*”. Transport Focus also welcomed the suggestion, though it noted that any funding would need to be considered alongside franchising.

⁵⁴ In granting any funding, we note the importance of considering the role for market-led opportunities (given any risk that such funding ‘crowds out’ market-led initiatives). For example, as discussed in chapter 1, Trainline has worked with TOCs and RDG to develop inter-available m-ticketing in the north of England.

could have considerable scope to unlock significant benefits for passengers. We address below each of the three possible longer-term options in turn.

Differential pricing

3.26 Reflecting the obligations on rail retailers to sell on an impartial basis, like-for-like fares are typically the same price across retailer and sales channel. However, this does not reflect the different costs of sale associated with different channels nor does it reflect practices from other transport markets (e.g. aviation, TfL) or other sectors (e.g. energy).

3.27 In our June 2015 consultation, we suggested there may be merit in considering whether retailers should be allowed to reflect the different costs of sales in the final price. We suggested that this could introduce more competition among retail sales channels (and, correspondingly, retailers) and help reduce industry's overall cost of sale. We also acknowledged that consideration would need to be given to passenger protection and education given concerns about complexity.

3.28 A number of stakeholders (especially TOCs) reiterated these potential benefits, pointing to the potential for large cost savings and lower fares for customers⁵⁵. Indeed, at the very least, most respondents (including TOCs and Transport Focus) said they would support further evaluation of this option (with others saying that this should be taken forward as a matter of urgency). However, in doing this, they also highlighted areas for further consideration, for example:

- The possible interaction with regulated fares and the (financial) impact on franchises;
- The 'price' that would be provided to third party retailers;
- The implications for passenger confusion and the impact on certain consumer groups (e.g. those without internet access)⁵⁶; and
- The means in which it could be implemented (e.g. at re-letting of the franchise)⁵⁷.

3.29 Reflecting these concerns and given the limitations of current retailing (as highlighted through this work and our wider work on ticketing and passenger information), **we are not suggesting that this is taken forward at present**, particularly given the

⁵⁵ A notable exception is Campaign for Better Transport, who said it doesn't agree that differential pricing would be in passengers' interests.

⁵⁶ For example, London TravelWatch (pointing to TfL's experience) said that "*clear, consistent and targeted messages to consumers about how to obtain the best fare*" is (or would be) important.

⁵⁷ A handful of respondents suggested that a means to implement differential pricing could be through allowing TOCs to charge a fee at the time of booking (possibly in the form of a fulfilment charge), possibly for more expensive sales channels.

perceived complexity of the fares systems and, in turn, the need to support and protect passengers. However, we note that developments to retail systems may make it easier and more intuitive to buy rail products in the future, which may make this a realistic option to be considered again at some point.

Greater separation between the wholesale and retail market (net pricing)

3.30 In our June 2015 consultation, and reflecting both the structure of the rail market as well as third party retailers' inability to set the price of their own fare (including discounted fares), we suggested that there may be merit in having increased separation in the wholesale and retail market. We suggested that, under this approach, TOCs could create a 'net price' to cover the cost of carrying a passenger that they would make available to all retailers. In turn, all retailers would compete on the cost of sale (i.e. the retail margin). As discussed in chapter 2, we also proposed this as a possible option to address issues around access to discounted fares.

3.31 In their response, stakeholders were generally not supportive or, at the very least, expressed scepticism⁵⁸ about this suggestion. While RDG suggested that it would be "*interesting*" to consider further, it also highlighted risks around additional complexity; the difficulty in determining 'base prices'; and incompatibility with impartial retailing. However, Raileasy said it has potential to "*open up a totally new way to look at fare levels*" and suggests it is worth looking at.

3.32 Reflecting the majority of stakeholders' views, **we are not putting this forward as a recommendation for further consideration.**

Relaxing of obligations to create and sell inter-available fares

3.33 Passengers can make use of a national, integrated network that enables them to buy inter-available and through tickets, which allows them to travel across the rail network from anywhere to anywhere using one ticket. While passengers make use of and benefit from these tickets, it also means that TOCs and other retailers need to work together to make use of shared IT systems.

3.34 In our June 2015 consultation, we suggested that this may constrain retailers from creating their own systems which could, in turn, dampen their ability to tailor the way they sell tickets to suit their passengers' preferences. As such, we suggested there may be merit in relaxing the obligation on retailers to sell inter-available fares, particularly for fares on longer-distance, inter-city travel (given that our analysis suggested that take-up of inter-available fares on these routes were at least 10% lower than the average route).

⁵⁸ Abellio Greater Anglia, Campaign for Better Transport, Keolis, PTEG, Trainline, Transport Scotland. London TravelWatch said it's difficult for it to opine on it without further information.

3.35 In their response, some stakeholders⁵⁹ questioned why the fully integrated, national network should be challenged given the importance passengers attach to it and the risk of giving rise to additional passenger confusion (pointing to our research). However, RDG and two TOCs⁶⁰ said it should be reviewed as part of a wider review of regulation.

3.36 Reflecting on stakeholders' views, and given the significant impact on passengers of not being able to access inter-available fares, we consider that we would need compelling evidence from stakeholders as to the potential countervailing benefits that could be gained from relaxing the requirements to provide for inter-available fares (and, in turn, the requirements that provide for an integrated, national network). We have not been provided with such evidence and **we are, therefore, not putting this forward as a recommendation for further consideration.**

⁵⁹ Campaign for Better Transport, First Group, London TravelWatch, TfL, Trainline, Transport Focus.

⁶⁰ Arriva, East Midlands Trains.

Annex A: Summary of non-confidential responses to the June 2015 findings consultation

Summary

1. We consulted on our emerging finding and proposed recommendations for the retail market between June and September 2015. We received 19 non-confidential responses; see Table A1.
2. In general, stakeholders were supportive of our work under the Review Market Review. For example, some stakeholders (particularly RDG and some TOCs) use their response to reiterate a commitment to work together in developing options, including in the production of an action plan.
3. However, there was some push-back on our overall findings that the market isn't working as well as it could be or. Furthermore, a number of respondents (including RDG, TOCs⁶¹ and some passenger representative bodies⁶²) pointed to **role of and/or limitations of the franchising approach** and said it is the reason why passengers aren't benefitting from a wider choice of products and/or ticket formats. While some supported our recommendation to allow for some more flexibility in the franchise process, equally, there did not appear to be appetite for wholesale changes to the current framework. This is discussed further below.
4. There was also a lot of push-back (from RDG and six TOCs⁶³) on why we haven't addressed requirements on TOCs to meet minimum opening hours for their ticket offices. There was also a sense from some⁶⁴ that the scope for improvements in ticketing is limited **until fares are simplified and/or there are less onerous requirements on TOCs regarding fares** (e.g. the requirement to offer Off-peak return fares on longer-distance routes). To address this, RDG and some TOCs⁶⁵ proposed that there be **another, wider review of ticketing, fares and regulation** to be led by the DfT.
5. There was a sense from some respondents⁶⁶ that we had under-played the role **smart ticketing** could have in delivering change beyond just the ticket format. For example,

⁶¹ Abellio Greater Anglia, Arriva, East Midlands Trains, Govia. TfL also point to the “*relatively short term nature of the franchising system*”.

⁶² Campaign for Better Transport, Transport Focus.

⁶³ Abellio Greater Anglia, Arriva Group, East Midlands Trains, First Group, Keolis, and Virgin.

⁶⁴ Campaign for Better Transport, London TravelWatch. This was also raised by a respondent who wished to remain confidential.

⁶⁵ Govia, East Midlands Trains, Keolis, Virgin. The latter suggests that this also include franchising.

⁶⁶ Campaign for Better Transport, London TravelWatch, PTEG, TfL, Trainline. This was also raised by a respondent who wished to remain confidential.

they suggested it could make it easier for TOCs to offer more flexible tickets (e.g. carnets or part-time seasons) and better-enable more smaller, physical retailers (who may not wish to use the current credit card-sized tickets) to enter the market on a nationwide basis. There were significant differences of opinion about how this should be delivered, with parties (including RDG and some TOCs) disagreeing over whether a **central approach or strategy for ticketing** is necessary; this is discussed further below.

6. There was general support for our **nearer-term recommendations**, particularly regarding our suggested improvements for the third party retailer arrangements (however, one notable point of difference related to what form any oversight role should have). As above, TOCs are divided about the role of a longer-term ticketing strategy and whose responsibility it is to do that. However, there was some support for more involvement from technology providers, third party retailers and passenger representative bodies in the development of ticketing (including in the development of central IT systems that support it) and, to a lesser extent, using innovation funding to support improvements to retailing. These topics are discussed further below.
7. Views around our **longer-term options** tended to be more mixed. There was interest in the idea of differential pricing by sales channels. However, most stakeholders were sceptical about the more radical idea of net pricing. Regarding the idea of relaxing the requirement to create inter-available and through tickets, RDG and some TOCs⁶⁷ suggested this could be considered as part of a wider review. However, First Group, TfL and two passenger interest groups⁶⁸ dismissed the idea of opening this up. This is discussed further below.

Independent oversight of third party retailing

8. While most⁶⁹ stakeholders supported the idea of (more) oversight of third party retailing, they differed in their views about the form of this **independent oversight**. In general, TOCs favoured something more 'hands off' while third party retailers and passenger representative bodies preferred something more formal. For example, RDG and six TOCs⁷⁰ suggested that independent oversight should be in the form of ORR bi-annual reviews / meetings, potentially complemented by the appointment of an independent member to the ATOC Commercial Board (now RDG Customer Experience Board). However, many non-TOC parties⁷¹ favoured an independent body

⁶⁷ Arriva, East Midlands Trains, Govia. This was also raised by a respondent who wished to remain confidential.

⁶⁸ London TravelWatch, Transport Focus.

⁶⁹ Abellio Greater Anglia, Arriva, Campaign for Better Transport, East Midlands Trains, First Group, Keolis, London TravelWatch, Raileasy, RDG, Trainline, Transport Focus, TravelWatch NorthWest.

⁷⁰ Abellio Greater Anglia, Keolis. Four TOCs (Arriva, East Midlands Trains, First Group, Virgin) said they supported RDG's response to this question/matter. Virgin said that it while it doesn't see a need for "an independent arbitrator", it is comfortable with RDG's proposals. Govia is the notable exception, saying that "the current governance arrangements... should be sufficient".

⁷¹ Campaign for Better Transport, London TravelWatch, Raileasy, Trainline, Transport Focus.

that proactively monitors, or “oversees”, the third party arrangements. Raileasy discussed the importance of clarifying what powers an independent body would have and highlighting the importance of it having “*real clout*”. RDG called for clarity about how it would interact with the existing dispute mechanism under the third party retailer licence, and it and Trainline suggested that the oversight body could address more third party-wide issues rather than individual retailer issues. Abellio Greater Anglia said it did not support the idea of having an independent body to oversee the arrangements (saying it’s too costly and complex) and Govia said the current governance arrangements should be sufficient.

9. With respect to parties who supported more oversight, some⁷² suggested that that **ORR should provide the oversight of the third party retailer arrangements**. However, Raileasy suggested it should be the DfT given the need to consider third party retailing in the wider context of franchising. Transport Focus said it was very resistant to it subsuming this role, suggesting it doesn’t have the expertise in commercial / financial arrangements between suppliers.

Transparency of information provided to third party retailers

10. Stakeholders (including TOCs)⁷³ generally agreed that information provided to potential and existing third party retailers could be more transparent and explanatory and, in turn, supported the recommendation. Trainline said that the costs of using the systems and the cost allocation can too easily be changed, with no involvement from retailers (citing re-development of the ToD system). RDG said it will work to make these improvements. However, Raileasy said it wants us to look again at the actual costs and commission, ask asked us to re-open this issue.

Working groups for third party retailers

11. There was some support⁷⁴ for our recommendation that there should be more involvement from across industry in the development of ticketing, possibly by means of more formal decision-making (e.g. working groups). While RDG pointed to the way it involves others, it said it would be open to discussing ways this could be improved (notwithstanding the need to strike a balance between meaningful involvement and possible increased timescales and costs). However, it and some TOCs⁷⁵ stressed the risk of additional time and cost. PTEG said that the most appropriate approach is likely to depend on the specific circumstances of the project being delivered.

⁷² Abellio Greater Anglia, Keolis, RDG, Trainline. Four other TOCs (Arriva, East Midlands Trains, First Group, Virgin) said they supported RDG’s response.

⁷³ Campaign for Better Transport, Govia, London TravelWatch, PTEG, RDG, Trainline, Transport Focus, TravelWatch NorthWest. Three other TOCs (East Midlands Trains, First Group, Virgin) said they supported RDG’s response.

⁷⁴ Campaign for Better Transport, Trainline, Transport Focus. Keolis said there involvement of other groups could (probably) be improved.

⁷⁵ Abellio Greater Anglia, First Group. Arriva and First Group said their views are aligned with RDG’s.

Access to temporary discounted fares

12. Regarding **temporary discounts**, RDG declined to comment as it said it is a commercial decision for individual TOCs. Some respondents⁷⁶ explain why TOCs may discount and/or why TOCs should be allowed to limit access (e.g. it is part of an overall commercial strategy, it encourages passengers to use certain sales channel, it grows the market). Indeed, Virgin said that if it discounting did not provide the additional benefit of “*getting closer to the customer*”, it would not look to offer discounts and customers would pay more. However, passenger representatives groups and third party retailers tended to support wider access, with some suggesting that the current situation dis-benefits passengers.

Access to all produce types

13. There was much debate about **retailers’ access to all product types**. Some respondents⁷⁷ said that retailers should have access to all product types, citing the role it could play in increasing innovation and supporting door-to-door travel (Campaign for Better Transport) and in promoting value for money (Trainline). Trainline said it is disappointed we didn’t go further in saying that retailers should have full access. While RDG said that it is only season tickets that third party retailers can’t currently sell (and that this is being addressed through the current trial), some third party retailers said that would like to be able to sell railcards and to market to international passengers (ITX fares). They argued that the absence of such equal access is detrimental to consumer confidence and trust. Indeed, Raileasy said RDG/TOCs should not oversee the availability of fares, pointing to what it sees as an unfair tendering process for season tickets.

Longer-term strategy for ticketing

14. There was some discussion among stakeholders⁷⁸ about the role that a **central strategy for ticketing** can play in encouraging wider adoption of new ticket formats. Two stakeholders⁷⁹ agreed with our suggestion that this is likely to be best-developed through wider and more collaborative industry engagement, involving RDG, TOCs, third party retailers, technology suppliers, governments, and ORR. However, RDG and Arriva suggested that TOCs should lead this, while Campaign for Better Transport and Keolis pointed to a greater role for governments and ORR in this space. Some TOCs suggested that a central strategy could be complemented by central funding to help deliver this.

⁷⁶ East Midlands Trains, First Group, Virgin.

⁷⁷ Abellio Greater Anglia, Campaign for Better Transport, Transport Focus, Trainline, Raileasy.

⁷⁸ Arriva, Campaign for Better Transport, Keolis, PTEG, RDG, TfL.

⁷⁹ PTEG, TfL.

Interactions with franchising and retailing

15. As above, some TOCs⁸⁰ (as well as passenger representative bodies, TfL and Trainline) pointed to **franchising** as the reason why passengers are not benefitting from as much innovation and competition as they could be. They said it limits the incentives on TOCs to introduce new products because of risks of revenue abstraction (though Campaign for Better Transport point to the additional revenue generated when TOCs extended Oyster to southeast London services, despite TOCs' concerns). Stakeholders also pointed to its limitations in providing financial flexibility (e.g. because of franchise revenue targets) for TOCs to introduce new ticket formats (so they only do so where it is a franchise obligation); the regional nature of franchising (whereby they're managed in isolation without joined-up thinking and delivery); and the length of franchises which (they said) limits the incentives on TOCs to innovate and invest, with 'bursts' of investment only really seen at the beginning of the franchise. The exception is some longer-distance TOCs who refute the suggestion that they are not incentivised to compete, pointing to their own voluntary introduction of new products and/or formats.
16. To address the limitations of franchising, there was some support (from RDG, Transport Focus and Trainline) for our recommendation that governments consider how the franchise process could be improved to create more incentives on TOCs mid-franchise. However, stakeholders did not present any firm suggestions for how franchising could be improved. RDG notes that this could require "*fundamental re-thinking of franchising policy and the regulatory framework*" and PTEG said that any "*large scale changes... mid-way through franchises can potentially be detrimental to passengers and tax-payers*".

Industry processes for introducing new products

17. There was broad agreement that the TSA could be improved to encourage TOCs to introduce new products. Six respondents⁸¹ supported our recommendations to **improve the processes for introducing new products**. Specific suggestions to improve the processes came from Abellio Greater Anglia (e.g. mid-term reviews; fast-track decision-making; compensation mechanisms to fund and facilitate innovation (though it's not clear to what extent these could relate to franchising); and more automated approval and compliance checking. Transport Focus said there is no good reason why these improvements shouldn't be made now. However, RDG said improvements are unlikely to be fundamental. A respondent who wished to remain confidential discussed the importance of providing a proper outlet for a TOC to opine on other TOCs' product introduction, to allow TOCs to air their concerns about implications on revenue (as they are tightly specified in the franchise).

Encouraging innovation through TIS machines (including TVM-TIS machines)

⁸⁰ Abellio Greater Anglia, Arriva, East Midlands Trains, Govia.

⁸¹ Abellio Greater Anglia, RDG, Trainline, Transport Focus, TfL, TravelWatch NorthWest.

18. Reflecting the more material issues with the **TIS machines for TVMs** (which are needed to access the full range of fares and accredit revenue correctly among TOCs), most respondents⁸² who discussed TVMs focus on TVM-TISs. They pointed to the lack of customer-led competition, the limited range of suppliers and the likely longer-term obsolescence of TVMs. As discussed above, some stakeholders⁸³ pointed to the role a central ticketing strategy could play in improving the market (possibly by making TVMs obsolete more quickly). Other options cited included using the primary franchise asset mechanism to enable TOCs to spread the cost of TVMs over their lifetime, rather than the actual franchise; industry-agreed minimum standards for TVMs (Govia); and a centrally-funded innovation scheme for TIS suppliers to enable them undertake customer research and development (Virgin).

A role for smaller, physical third party retailers

19. A range of respondents⁸⁴ supported the idea that **smaller, physical third party retailers** should be better-encouraged to enter the market. A number of them agreed that there are barriers to entry for these types of retailers, including the absence of nationwide smart ticketing and the need to procure TIS machines (linked to the obligation to sell a full range of fares). RDG also mentioned the need to consider appropriate remuneration (which may suggest that it doesn't envisage a simple extension of the existing arrangements). Regarding the need for smaller, physical retailers to procure TIS machines, which are described as expensive and cumbersome, stakeholders' views were mixed about how this should be addressed: while RDG said that (our) idea that retailers lease the machines from TOCs is an "*interesting*" one, Abellio Greater Anglia said this is not practical because TOCs already lease them direct from TIS suppliers. There was some interest/appetite⁸⁵ in our suggestion that these retailers be allowed to sell a more narrow range of fares (to mitigate the need for a full TIS machine and/or full accreditation). However, Campaign for Better Transport, Trainline and Transport Focus stressed the need to avoid mis-selling (citing the need to avoid the current situation with TVMs)⁸⁶ and Virgin said that the typically high value of its transactions would also need to be considered. RDG highlighted that it is, on behalf of TOCs, already discussing the potential for wider market entry by smaller third party retailers (including the possibility of introducing a new licence type).

⁸² Arriva Group, Campaign for Better Transport, East Midlands Trains, Keolis, RDG.

⁸³ Abellio Greater Anglia, RDG. This was also raised by respondents who wished to remain confidential.

⁸⁴ Abellio Greater Anglia, Campaign for Better Transport, Keolis, PTEG, RDG, Transport Focus, TravelWatch North West. Arriva and First Group said they support RDG's response on this issue. Govia said it would like to understand further what these barriers are before commenting.

⁸⁵ This included from Keolis, London TravelWatch, PTEG, RDG.

⁸⁶ Transport Focus highlighted the importance of explaining their limitations to customers and Campaign for Better Transport suggested that these retailers should only be allowed sell pre-paid tickets and those on smart cards.

Innovation funding

20. There was some support for a greater role for **innovation funding**⁸⁷, with RDG saying any funding should be put towards “*leading-edge technology*”. It also said that the emphasis should be on making the process for securing funding more transparent. Only one respondent (who wished to remain confidential) made suggestions for its use (TVM development and upgrades to gate-lines to accommodate barcodes and smart-based ticketing (where station use is shared by TOCs)). Transport Focus said that any funding would need to be considered in line with the franchising process.

Differential pricing

21. A significant majority of respondents⁸⁸ recognised the advantage of allowing the **price of fares to vary by sales channel**, pointing to the potential for large cost savings and lower fares for customers. However, Campaign for Better Transport said it doesn't agree that differential pricing would be in passengers' interests. Most respondents (including TOCs and Transport Focus) recommended further evaluation of the overall effect of the option before any implementation. They highlighted the issues around how it would interact with regulated fares; the (financial) impact on franchises; the 'price' that would be provided to third party retailers; the implications for passenger confusion; the impact on certain consumer groups (e.g. those without internet access); and the means in which it could be implemented (e.g. at re-letting of the franchise). London TravelWatch (pointing to TfL's experience) said that “*clear, consistent and targeted messages to consumers about how to obtain the best fare*” is important. A handful of respondents suggested that a means to implement differential pricing could be through allowing TOCs to charge a fee at the time of booking (potentially in the form of a fulfilment charge), possibly for more expensive sales channels. TfL said its questions over differential pricing does not mean it's suggesting that current ticket office opening hours should be retained (reflecting interaction between pricing a price signal to move away from ticket offices and schedule 17).

Net pricing

22. Stakeholders were generally not supportive of **net pricing** or, at the very least, expressed scepticism⁸⁹. While RDG said it was “*an interesting one*”, it highlighted risks around additional complexity; the difficulty in determining 'base prices'; and incompatibility with impartial retailing. However, Raileasy said it is worth ORR investing some time in looking at this, saying it has potential to “*open up a totally new way to look at fare levels*”.

⁸⁷ Abellio Greater Anglia, Keolis. The former also said that there is a risk that there would be risks of delays and complexity given need for additional stakeholder engagement to allocate funding. Arriva, East Midlands Trains and First Group said that their response is aligned with RDG's.

⁸⁸ Network Rail does not address the idea, and Transport Scotland focuses on net pricing (which it does not support, citing risk of additional complexity).

⁸⁹ Abellio Greater Anglia, Campaign for Better Transport, Keolis, PTEG, Trainline, Transport Scotland. London TravelWatch said it is difficult for it to opine on it without further information.

Relaxing of obligations to create and sell inter-available fares

23. Some respondents⁹⁰ questioned why the **fully integrated, national network** should be challenged given the importance passengers attach to it and the risk of giving rise to additional passenger confusion (pointing to our research). However, RDG and two TOCs⁹¹ said it should be reviewed as part of a wider review of regulation.

Table A1: List of non-confidential respondents to our June 2015 consultation

No.	Name of respondent
1	Abellio Greater Anglia
2	Arriva Trains UK
3	Campaign for Better Transport
4	East Midlands Trains
5	First Group
6	Govia
7	Keolis
8	London TravelWatch
9	Network Rail
10	PTEG
11	Rail Delivery Group (then ATOC)
12	Raileasy
13	Trainline
14	Transport Focus
15	Transport for London
16	Transport Scotland
17	Travel Watch North West
18	Virgin
19	West Midlands ITA

⁹⁰ Campaign for Better Transport, First Group, London TravelWatch, TfL, Trainline, Transport Focus.

⁹¹ Arriva, East Midlands Trains.

Annex B: Further information on our analysis relating to the level of and access to discounted fares

1. This section considers in more detail the level of discounted fares and how these have changed over time. As discussed in chapter 2, we have not relied on this analysis to any significant extent. However, we provide this herein as a way to provide some insights into discounted fares.

Our approach to analysing the level of discounted fares

2. We have analysed the level of discounting using data extracted from the industry-owned LENNON system. We have focused on 2014/15 data. Our data extracts and analysis was primarily undertaken between February and April 2016.
3. We note that there are certain limitations of using the LENNON system for the purpose of this exercise:
 - a. **It doesn't capture all ticket sales by all retailers.** It doesn't capture the sale of some multi-modal tickets that include a rail element or some other types of fares, for example Megatrain fares (that are marketed as low-cost fares sold via the Megabus website). However, separately available data suggests that the sale of these types of fares is generally low and, in some cases, is a very low proportion of an individual TOC's sales and revenue;
 - b. **It is sometimes very difficult to identify discounted promotional fares,** given that we have needed to rely on TOCs' description of the product as set out in their production description in LENNON. We identified fares as promotional ones if their product description contained certain descriptors (e.g. "PROMO"). We acknowledge that this approach is likely to omit certain promotional fares. However, without prior knowledge of all TOCs' selling methods, it is impossible to tell within Lennon whether they are permanently discounted or not. To take account of this, we undertook some analysis of an individual TOC's selling practices and aggregated this across TOCs to assess whether this factor might have a material impact on the scale of TOCs' overall discounting; we found that it increased the scale of discounting by a couple of percentage points. We do not consider this particularly material. In any case, we note that promotional fares are only a proportion of all discounted fares.
 - c. **It is sometimes difficult to distinguish between own-TOC selling and intra-TOC selling.** For example, with respect to which type of retailer sells discounted fares, we have often been unable to distinguish between own-

TOC retailing and intra-TOC retailing of discounts. This is because we have used the pre-allocation (sales) dataset within LENNON to identify the number of tickets issued. This dataset does not identify which operator(s) actually carried the passenger. For the purpose of this exercise, however, we think this does not have a material impact.

d. **It has not been possible / justifiable on resource grounds to get a full year of data for certain data requests.** This reflects the fact that some full-year datasets of TOC-level data is too large for our systems to handle. To manage this, we have sometimes relied on data from just one period⁹².

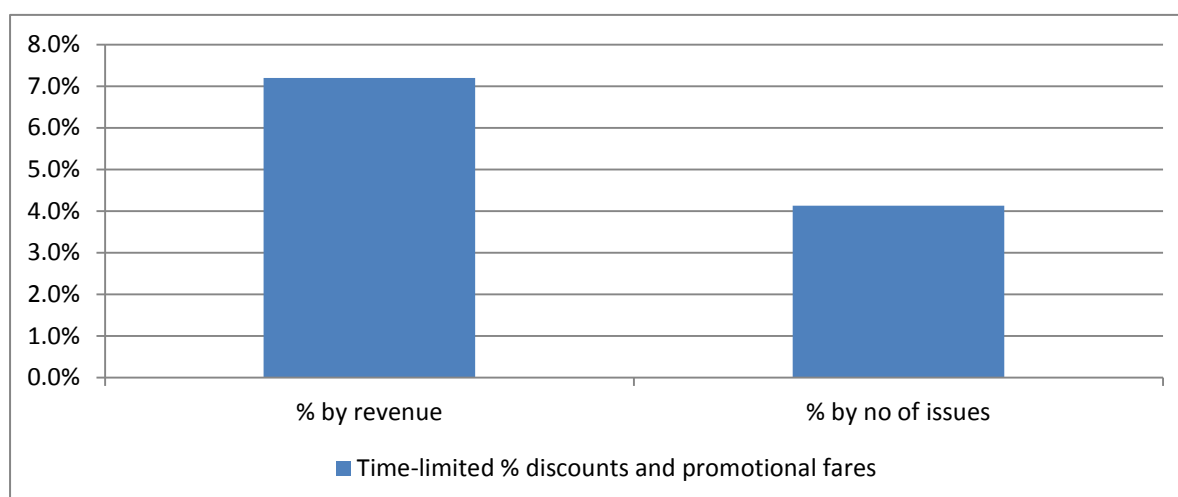
4. There are also limitations with some specific requests, as discussed below. These limitations reflect (in part) the more general limitations of the shared IT systems and the fact that they were not designed to undertake this type of analysis. We understand that the industry is seeking to improve the shared IT systems, including through the replacement of LENNON with the Product Management System (the PMS).

The overall level of discounting

5. Figure B1 suggests that just over 7% of industry revenue in 2014/15 is associated with discounted fares: 4.6% of industry revenue in 2014/15 appears to be associated with promotional fares and 3.1% of industry revenue is associated with % discounted fares. There is some overlap between the two categories of fares; 0.6% of industry revenue is from tickets that are both promotional fares and have a % discount attached to them.
6. With respect to ticket issues, 1.5% of issues appear to be % discounted fares and 2.8% of issues are promotional fares. As with revenue, some tickets issued are both promotional fares and % discounted; this equates to 0.1% of issues.

⁹² As discussed in chapter 2, industry has 13 periods per year over which ticket sales are recorded.

Figure B1: The level of overall discounting, by revenue and issues, 2014/15



7. We have also analysed the level of discounting by TOC. This shows that the level of discounting varies by TOC, with *some* longer-distance and regional TOCs tending to discount more than others.

The size of individual discounts by TOCs

8. Our analysis suggests that the average size of the discount (not weighted across TOCs) is £3.02, based on an average undiscounted fare price of £10.06.

However, there are a number of limitations with this data:

- a. For each individual TOC, it includes all of its types of fares (short and longer-distances). This masks the fact that certain flows are more likely to be discounted compared with others. To get a more precise picture, we would need to look at journeys by origin destination but this is challenging and time-consuming (and open to bias on which particular journeys would be considered);
- b. It is not weighted across TOCs so is less statistically robust⁹³;
- c. The level of discount varies greatly between each TOC;
- d. It excludes London Overground because of the very large figure returned⁹⁴; and

⁹³ The difficulty with weighting it is that it shows the price is higher for discounted fares but this is because it is the higher fares that tend to be discounted. Furthermore, the data excludes London Overground (because of the very large figure returned).

⁹⁴ It also excludes Serco Caledonian, which didn't exist during the relevant period.

- e. It refers only to % discounted fares. It is not possible to identify the size of the discount for promotional fares because there is typically no obvious 'undiscounted' comparison fare.

9. Reflecting the limitations of this data, we are not relying on this data to any significant extent.

TOC and third party retailer sales of discounted fares, by revenue and issues

10. As illustrated in Figure B2, both TOCs and third party retailers sell discounted tickets. For third party retailers, they sell 29% of non-discounted fares and 26% of discounted fares (by revenue).

11. Looking specifically at the kind of discounted fares third party retailers sell (and noting that there is some overlap between the two categories of fares), our analysis suggests that:

- a. With respect to % **discounted fares**, around 3% of the revenue is associated with third party retailers' revenue. Similarly, around 3% of the total number of issues of % discounted fares were sold by third party retailers; and
- b. Regarding **promotional fares**, around 37% of the revenue is associated with third party retailers' revenue. Of the total number of issues of promotional fares, around 13% were sold by third party retailers.

Figure B2: Sale of discounted versus non-discounted products, by type of retailer, 2014/15





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