c2c

Siobhán Carty
Competition and Consumer Policy team
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

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Dear Siobhán,

Response to the Office of Rail Regulation's consultation on the potential impacts of regulation and industry arrangements and practices for ticket selling

This submission provides the response of c2c to ORR's consultation on the operation of the rail retail market. The commencement of c2c's new franchise falls within the ORR's consultation period - we confirm that the views expressed in this submission survive into the new franchise which will continue to be operated by National Express Group plc.

c2c is happy for this response to be made public and published on the ORR's website. We have also worked closely with ATOC in the preparation of its response to this consultation which provides the views of the TOCs collectively to the issues raised by ORR, and we refer ORR to ATOCs submission for further background and detail on the issues we discuss below.

Summary

We welcome the opportunity to respond to your consultation. The key summary points we would like to make, before answering your questions in turn, are as follows:

- Several indicators suggest that the rail retail market is in good shape and has performed well in recent years. These include the ongoing strength of rail revenue and patronage growth; the fact that Third Party retailer growth considerably exceeds the industry average; the substantial shift in retail channel share over the last ten years; and the emergence of new channels and fulfilment methods enabled by technology.

- The structure of the rail retailing market is unusual. Overarching industry regulation and franchise agreements heavily influence and fetter the freedom of participants; whilst the preservation of 'network benefits' requires participants to collaborate together on the one hand whilst competing on the other. It is important that the Review recognises the special nature of the rail industry as consisting of regulated businesses who are not always able to freely respond to market forces.

- In a complex and highly regulated industry there are of course areas for improvement. For example new retail and fulfilment methods have often emerged slowly; split ticketing risks confusing customers; and investment cases can be difficult to make for new retailing investment. These are issues need a collective industry approach to resolve; in particular, involvement of the Department for Transport (DfT) as franchising authority and industry funder is essential in achieving change.

We trust you find our responses helpful and informative, and would be glad to meet with you to discuss these further as the consultation progresses.

Response to questions posed

Below we provide our response to the questions you have asked in your consultation.

Chapter 2

1. Is our description of the retail market for tickets and passenger buying behaviour correct? If not, are there any relevant trends/issues we are missing?

We broadly agree with the description you give of the rail retail market. We do however believe that the pace and scale of change that the industry has experienced in recent years is underplayed in your document, and in particular how this varies by segment of the rail industry.

Your analysis of ticket sales trends in Chapter 2 focuses on the proportional change in the mix of ticket types over the last ten years (Figure 1 of the document), and shares by channel (Figures 2 and 3). We believe there are a number of important trends and conclusions missing from your analysis:

(a) The growth of the rail passenger market since privatisation has been unprecedented, outstripping the growth seen in any other western European country, and is evidence of a strong and healthy market for rail travel in the UK. Nationally, rail revenue more than doubled in real terms between 1995/96 and 2013/14 showing a 107% real terms increase in revenue, reversing in full the ongoing decline in passenger since the First World War. Real average yield has remained roughly unchanged, suggesting consumers have been successful in accessing good value tickets.

(b) Passenger growth has been broadly similar across the London & South East (LSE), Intercity and Regional sectors of the market, in the range of around 3.5%-4.5% p.a. on average over this timeframe. Variations in growth by ticket type and sector however show that technology has been used to develop the ticketing and retail offer. For example in Intercity markets, the development of revenue management tools and internet retailing has led to the shift to purchasing Advance tickets you show in Figure 1. Passengers traveling with LSE TOCs have switched into travelling on Oyster PAYG in Greater London due to its convenience and good value.

(c) The change in share of sales by retail channel you show in Figure 3 is material and is evidence of rapid change in consumer buying habits. The reduction in ticket sales over ten years from being around 70% to 40% of sales shows an ongoing movement away from face to face retail in favour of self-service: the internet has emerged from its beginnings as a new channel to now account for one in five sales nationally; whilst the proportion of TVM sales has broadly tripled to also account for 1 in 5 sales. These trends have again varied by market: the internet has become the primary channel for long distance TOCs; whilst on c2c, as other LSE TOCs, there has been a major shift towards self-service ticket purchase and the use of Oyster Pay as you go (PAYG).

(d) Figure 3 in your document shows that revenue earned through Third Party Retail channels has increased more rapidly than TOCs sales. This suggests that the Third Party retail market has evolved and functioned well over this time frame.

2. Have we appropriately captured the most significant changes to ticket retailing in the last 10 or so years? Do you consider that the pace and level of developments and changes have been appropriate in meeting passengers' changing needs?

The discussion in your consultation document makes references to products, retail channels, and fulfilment. It is useful to consider each in turn.

Changes to Products:

Product development has been ongoing, and the examples of Advance and Oyster PAYG show the industry has been successful in introducing new products. Oyster PAYG has grown from being available on a minority of flows in 2009 to achieving revenue in excess of £400m p.a. in 2014, a share of around 10% of the LSE TOC market. After four years, annual growth of PAYG remains in double digits.

However, there are some areas where product development has lagged behind. For example, commuters from outside of London (on c2c and other TOCs) have until now continued to use the traditional season ticket despite working patterns becoming more flexible and irregular. Technology has provided the potential for many years to create a product better tailored to this market's needs but in the context of short term franchise agreements and fares regulation it has not been possible to make a commercial case for such investment. The DfT funded SEFT project promises the development of flexible commuting products in due course, and c2c plans to be among the first to trial such products.

It is important to realise that products are not set by retailers but by TOCs as the carriers of passengers. Whilst retailers can influence the development of products through the development of new and improved retail solutions (Advance and Oyster are indeed examples) it is important to understand there are constraints on TOC product development:

a) Regulation and agreements:

- The regulation of fares exists to protect the consumer but can also constrain product development. For example, 75% of c2c's fares (by revenue) are subject to regulation and can only be altered within the parameters set by DfT.

- The Ticketing and Settlement Agreement (TSA) exists to regulate the pricing, retail and settlement of tickets across the national rail network but is a heavily prescriptive document which has seen very little evolution in the last 20 years. The industry did proposed wholescale modernisation of the TSA, but did not meet with DfT support. Consequently the TSA remains in place, largely unaltered since 1995, and reflects the pricing, retailing and ticketing environment as it stood at that time.

- Various other inter-operator schemes and agreements (e.g. the London Travelcard Agreement) provide a framework within which TOCs have to act. Many of these are mandatory.

b) Management of complexity

– the industry has often been criticised for its complex ticket product range. To address this, TOCs have adhered to a voluntary code over the last five years whereby most tickets can be described as season, anytime, off peak or advance, with standard Ts and Cs governing these. Whilst we believe this standardisation is helpful to consumers, it provides a degree of constraint on product development.

c) Franchise agreements

– franchise competitions tend to produce innovative thinking that result in new product development. However, once a franchise is let, the terms of its agreement can affect the extent of any further product development beyond initial commitments, unless a business case can be made. In particular, revenue support and revenue share mechanisms, which have been a feature of franchise agreements in recent years, reduce the incentive on the TOC to drive additional revenue through product development.

Changes to Retail

We described under question 1 above the substantial changes to channel share in recent years with a shift away from ticket office to self-service vending machine, on-line, and smartcard automated purchase. These changes have been heavily customer driven, and parallels can be made to other industries such as banking and supermarket retailing where customers and retailers have similarly shifted to self-service. TOCs, including c2c, have responded to customers by increasing the number and quality of ticket vending machines at stations, and by providing the facility to purchase tickets on-line and, increasingly, on mobile apps. Up to a point, the industry has evolved in line with customer demand.

However it is again important to recognise that TOCs as retailers are heavily regulated and that this is a constraint on change. Schedule 17 of the TSA determines the hours that each ticket office must be open. The effect of this historically has been to make investment cases for alternative means of retailing harder to make because the potential cost savings from a shift away from ticket office retail cannot be fully realised. This is a market distortion which slows the pace of change in adapting to consumers.

Equally it is important to remember that franchise competitions tend to boost investment and innovation – our new c2c franchise which includes plans for a significant enhancement of both on-station and on-line retail quality and capability is an example of this.

Change to fulfilment

Over time new methods of retail fulfilment have been introduced in the industry. Ticket on Departure (TOD) was developed early in the last decade; Oyster began to introduce ticket fulfilment to smartcard soon after; and now CPAY, which we adopted in London in September, has removed the need entirely for a ticket for those travelling around Greater London. Intercity TOCs have introduced barcode print at home and mobile for Advance tickets; and currently the first trials are underway by Southern of new flexible ticket products on ITSO media. We too have introduced our c2c smartcard this year; it has been available since the summer for journeys outside of Greater London and we are now rolling it out within the London area too.

We see smart ticketing as being the future of ticketing for LSE TOCs in particular, as SEFT introduces inter-operable smart ticketing across the south east over the next couple of years. The ticketing media need not be constrained to plastic cards – phones and bracelets are examples of other media being experimented with.

Nonetheless, the orange credit card sized ticket (CCST) has remained the only national interoperable standard for rail tickets and is likely to remain so for some time to come. This is an issue recognised by the industry and a DfT-RDG jointly chaired industry steering group, also involving TfL and the PTEs, has now been set up to develop a national ticketing strategy.

The reason the CCST endures lies in the requirement laid down in the TSA for TOCs to operate through ticketing between all origins and destinations on the national rail network. In order to fulfil these tickets, there needs to be a common fulfilment method. Some fulfilment methods are better suited to particular markets (for example smartcards are well suited for commuting but have lesser benefits for the occasional long distance traveller). This makes agreeing a new national ticketing standard challenging, particularly given the fact that any change would require considerable investment in technology to retail and read tickets with payback over periods exceeding the terms of many franchise agreements.

In the absence of a national strategy, development is rather more piecemeal. Sometimes this has been through franchise agreements (e.g. SWT's smartcard roll out), sometimes on a commercial basis (e.g. print at home ticketing on Intercity TOCs) and sometimes brought about by public sector support to invest regionally (e.g. Oyster in London, or SEFT across the south east).

3. Are there insights on passenger behaviour, market share and sales channels from other sectors that are worth considering?

Through ATOC we were involved in a piece of benchmarking analysis comparing aspects of the rail market in Great Britain with relevant comparator markets such as air travel and the rail markets in other developed countries. We are aware ATOC has provided this to you and refer you to this piece of research.

More generally as described earlier, it is worth considering the example of supermarkets and other B2C retailers to illustrate the range of retailing options customers now expect, and how these have changed over time. In general, B2C retailing has been characterised by a move away from over the counter service, and a move into self-service, sometimes at the retailer's premises, and increasingly online. Frequently retailers now provide a mix of face to face, self-service and on-line options. In reviewing these sectors it is important to consider the extent to which their regulatory structures have provided freedom or constraint on development.

Chapter 3

4. Have we accurately described the ticket selling arrangements in respect to i) retailers' incentives in selling tickets; ii) retailers' obligations to facilitate an integrated, national network; iii) retailers' governance arrangements; iv) retailers' industry rules; and v) retailers' industry processes and systems?

Whilst the description is broadly true, there are some important points of accuracy to correct:

Paragraph 3.2 (d): Retailers (i.e. TOCs/ATOC) did not develop the industry rules. They were given to the industry at privatisation by Government and evolution of these rules since as, for the most part, required approval of DfT.

Paragraph 3.7: TOCs are not restricted to changing fares at only three points during the year. The restriction is on changing permanent fares at 'permanent fares setting round', of which there are currently three a year, but which may be increased in future once the new fares system (called the Product Management System or PMS) is introduced.

Paragraph 3.10: We point out that most, not some, third party retailers charge fees, and can earn additional remuneration through bilateral arrangements with individual TOCs or owning groups.

Paragraph 3.13-3.15: Retailing accuracy and impartiality should not be confused. The obligation upon retailers to provide accurate information essentially stems from general consumer law as well as the rail industry's specific regulatory framework. The obligation to sell impartially is a TSA regulation to ensure one TOC does not favour selling its own tickets over another TOC.

Paragraph 3.15: Retailers do not have to offer the same prices as other retailers or through every channel. However, all retailers, must settle with RSP at the full price as specified by the operator who has created the fare. As such there is very limited incentive for retailers to vary price of a ticket set by a different carrier TOC.

Paragraph 3.21: TOCs have a regulatory obligation to offer Senior, 16-25 and Disabled Persons Railcards. Other Railcards are offered by TOCs on a voluntary basis.

Paragraph 3.24 and 3.25: The TSA and many other mandatory industry 'Schemes' (e.g. the TSA, Senior, 16-25 and Disabled Persons Railcard Schemes and NRE Scheme) are not strictly 'owned' by TOCs. These are inter-operator agreements, drafted prior to privatisation, and have since been regulatory obligations upon the newly created franchises. Any change since has been subject to DfT approval.

Paragraph 3.32: Accreditation exists to ensure TIS conform to RSP standard specifications and adhere to the requirements of the TSA. A full description may be found on the ATOC website.

Paragraph 3.34 (a): The requirement to share marketing plans with ATOC only applies to third party retailers who hold Third Party Investor Licence (TPIL) holders and to International Sales Licence (ISL) holders.

Paragraph 3.34 (c) Bonding requirements: All third party retailers are required to provide security against settlement default. For TPIL and ISL holders this is typically provided in the form of a bond or a combination of a bond plus cash. TMCs with a clean history of at least three years rail retailing may apply to join the Travel Agents Reserve Insurance fund (TARIF) scheme which is funded by a levy (currently 0.18%) on the value of the TMC's sales in the previous settlement period.

Paragraph 3.34 (d) To date, Third party retailers (TMCs, TPIL and ISL holders) have not been permitted to sell season tickets because of the increased administrative burden and customer service obligations this presents. However ATOC will be running a season ticket retailing pilot in 2015, on which we are engaged, which will assess the feasibility of selling season tickets through third parties. Third party retailers are free to sell other types of ticket except railway staff privilege tickets, Disabled Person's Railcard and HM Forces Railcard (since these require validation of entitlement), Travel Agent TX fares (as these may only be sold by ITX licence holders) and Eurostar interlining fares (which may only be sold by special agreement with ATOC and Eurostar).

Paragraph 3.38 (h): The reason the carrying TOC does not receive all of the revenue from the Third Party sale of a fare is not because of ORCATS but because RSP deducts the commission owed to the retailer prior to settlement.

Paragraph 3.38: Footnote 56 is incorrect in inferring that TSA Chapter 6-26 does not provide an absolute requirement to settle tickets. TSA Chapter 6-26 does not discuss settlement but covers the retailing requirement in issuing a physical ticket. TSA Chapter 12-2 states that 'The RSP will provide clearance and settlement services on the terms of this Chapter in respect of RSP-settled Products and RSP-settled Refunds.'

Chapter 4

5. What are your views on the impact of the retailers' incentives in the way they sell tickets? To what extent do the incentives discussed herein impact retailers' approaches, and how do these differ by retailer type? From the point of view of a retailer, what factors have to be present to make the development of new products an attractive proposition?

Regarding incentives on retailers there is a fundamental difference between TOCs and Third Party Retailers.

- TOCs are carriers of passengers primarily, and their incentive is to maximise fares revenue. Retailing is a necessary activity to earn fares revenue, albeit one with a cost attached. The TOC incentive is therefore to provide a range of customer focused retail opportunities that strike the right balance between maximising the TOC's retail and distribution reach to drive revenue, whilst managing the cost of sale. This takes place within the regulatory and franchising framework already described which set the minimum requirements to be met, and the limits on what may be commercially attractive.

- Third Party Retailers on the other hand are not carriers of passengers and their revenue is earned solely from commission and fees. They are therefore incentivised to maximise commission rates, sell high value tickets which maximise their earnings per sale, and charge booking fees to the extent the market will bear.

The question of what factors have to be present to make the development of new products an attractive proposition for a retailer is confusing as it is <u>carriers</u> who develop products, and <u>retailers</u> who sell them. Therefore whilst TOCs are incentivised as carriers to develop products that drive their revenue growth and grow / manage passenger demand, we do not consider this question is of direct relevance to retailers.

6. What are your views on the impact of the impartiality obligation? What is your view on passengers' awareness of impartial retailing? How does the cost of impartial retailing impact passengers' services? How could this be addressed?

The requirement to retail impartially was introduced at privatisation to ensure TOC retailers do not favour their own products over another TOC's. It puts the onus on retailers to ensure the staff and electronic systems they rely on can accurately provide impartial advice to passengers on the ticketing options that exist for their journey, to then go on and sell the customer's preferred ticket option in light of this information.

It seems likely that most passengers are not fully aware of this obligation since it is not widely advertised but that passengers nonetheless benefit from a higher quality of service as a result. This is because i) accuracy of information is a prerequisite for impartiality (the ATOC Mystery Shopping survey consistently finds high levels of accuracy in retailing nationally), and ii) it gives customers the convenience of a one stop shop, negating the need to enquire at multiple sources to compare and contrast available fares.

That said, the requirement doubtless increases cost. For example, c2c predominantly sells tickets between south Essex and London, but our retail systems need to be able to interrogate and impartially present the fares for any origin-destination combination across Britain; and our staff need to be trained in, and aware of, the ticketing options across the whole country.

If a wider review of network benefits were to be undertaken it would seem sensible to include review of this obligation.

7. With respect to split ticketing, what are you views? Are passengers appropriately safe-guarded against the risks attached to split ticketing? To what extent do industry processes and systems enable split ticketing to be developed by industry and used by passengers? Where there are issues, what could be done to address them?

We firmly believe that passengers should be given information on the best ticket for their journey – indeed our new c2c franchise will include a promise to customers to give money back if we fail to sell them the best ticket for their journey. However we are concerned about the development of split ticketing options to exploit inconsistencies and anomalies in fares.

The architecture of fares nationally ensures inconsistencies and anomalies exist. Many examples have their roots in the 1960s and 1970s when British Rail began to market price its fares rather than pricing on a per mile basis. TfL price differentially to TOCs which can cause anomalies for through journeys involving both modes. Similarly sometimes one TOC can cause anomalies by pricing onto another TOC's network but is constrained under competition law from mutually agreeing an alternative fare. Some are the temporary consequence of a low Advance fare price point which rises later in the booking horizon. Some anomalies have resulted from the geographical complexity of the network; other have come about as fare regulation over the years has held down some fares but allowed others to rise; and some are simply errors which often cannot be fixed within the limits of fares regulation.

What *is* new is the computing power to calculate split ticketing options and present these to customers. If customers are planning their journey on a leg by leg basis there is merit in investigating the cost of each leg separately, particular where discounted long distance advance fares are an option. However, split ticketing options where the split is not at a natural break in the customer's journeys are by their very nature confusing for customers, because they arise unintentionally. We consider therefore that the focus for the industry should be to find and agree ways to fix fare anomalies and inconsistencies and minimise their occurrence in future, rather than finding ways to make it easier to purchase split fares.

There are some possible solutions but these all require regulatory intervention, and careful consideration of the public interest and impact on industry revenue streams, for example:

- Reviewing break of journey conditions;
- TOCs to price fares on their network only rather than through to other networks;
- Provide TOCs with latitude under fare regulation to fix anomalies, and even undertake wholescale restructuring if necessary;
- Differentiation between the fares valid on fast trains and slow trains.

The importance of this issue, and the need to involve Government in addressing it, has previously been raised with DfT via ATOC. We therefore believe that the Review needs to consider the underlying issues that give rise to split-ticketing, rather than exploring how it can be exploited by retailers.

8. What are your views on the requirement on TOCs to create and retailers to sell inter-available and through tickets and to offer a timetabled, walk-up service? What are your views on the benefits passengers and TOCs derive from these tickets and the timetabled, walk-up service? What challenges does this obligation give rise to, if any? Where there are issues, what could be done to address them?

There are two issues here:

(a) the requirement to offer a timetabled walk-up service

By "walk-up service" we assume you mean (in the context of retailing) the sale of walk-up tickets. Walk-up tickets exist for all journeys nationally; for short and medium distance journeys they are frequently the only option that exist for passengers (this has certainly been the case on c2c historically). They provide passengers the benefit of freedom to choose exactly when to make a journey, and to do so at short notice - on short distance TOCs, the cheapest fare is normally a walk-up fare. We do believe there is a market for book-ahead tickets even on short distance services as mobile technology makes it increasingly convenient to purchase tickets off-station; but we expect walk-up tickets will remain the mainstay on TOCs like c2c (albeit that increasing these will be fulfilled on smart media).

In contrast, Intercity TOCs are heavy retailers of reservable Advance tickets for their services. The success of these tickets comes as a result of a propensity in this market to plan ahead for a longer distance journeys, in order to receive a saving against a relatively expensive walk-up alternative.

(b) the requirement to sell inter-available tickets

The ability to purchase a fare from any station to any other station in Britain is a "network benefit" which preserved a pre-privatisation feature of a single national operator. As with the impartiality obligation discussed earlier, this gives passengers the benefit of being able to purchase any ticket from any retailer, but inevitably increases retailing cost. With reference to question 7, the pricing of inter-available tickets can give rise to fare anomalies.

We suspect this benefit may not always understood by infrequent passengers who may not realise that, for example, a multi-leg journey from say Upminster to Manchester can be undertaken on one ticket. Equally, we believe regular passengers take this benefit for granted at a more localised level – customers originating on the c2c network typically purchase tickets to destinations beyond our London interchange stations to destinations elsewhere in London and the south east, and do not expect to rebook at the point they change trains. Again we suggest any further consideration of this is undertaken as part of a wider review of network benefits.

9. With respect to having minimum obligations on TOCs to have their station ticket offices open, what are your views on the impact of these obligations on how the market can develop in line with passengers' needs?

We highlighted under question 2 that this obligation comes about under Schedule 17 of the TSA and that what was intended for consumer protection 20 years ago has sometimes constrained the industry from developing its retail offer and realising cost savings. We do not argue for the complete removal of a retailing obligation as we recognise that customers rightly expect some protection. However, we do consider it to be in any TOC's interest to provide a comprehensive retail service to its customers to ensure it collects revenue through ticket sales, and therefore regulation in this area could be lighter touch and provide the flexibility to respond to the market.

The direction of travel in consumer retailing in recent years has been towards choice, as our example of supermarket retailing quoted earlier demonstrates. Consumers expect to have a choice of channels and use the one most convenient to them. A model of self-service retailing on station and on-line, backed up by staff assisting customers in their purchase is well established in other sectors and is just as applicable to rail retailing.

A more contemporary interpretation of Schedule 17 therefore would be that an operator must provide retailing assistance at a station between certain times of day leaving the operator to determine how that is provided. Importantly, this could allow staff to be deployed more effectively in assisting customers.

We recognise that DfT is moving the retailing requirement into Franchise Agreements in future and we consider it is important that this is done in a way which allows TOCs to evolve their retail offer on a commercial basis whilst still protecting the customer as necessary.

10. With respect to TOCs being prohibited from charging fees, what are your views on the impact of this requirement? To what extent, if any, does this give rise to a distortive effect between TOCs and third party retailers?

We consider it a distortion of the market that Third Party rail retailers are permitted to choose to charge fees and others not. Were this prohibition on TOCs to be lifted, we can see some regulation around the level of fee or the preservation of at least one free channel may be necessary.

Chapter 5

11. What are your views on the current form of industry governance? Are there specific examples where the governance has enabled or limited retail innovation? Where necessary, how could industry governance be improved?

Industry Governance is inherently complex. There are a large number of parties who must collaborate together to run a national network, navigating regulation, industry agreements, completion law and franchise agreements in the process. We can fully appreciate that to a new entrant or outside observer the workings of the industry may seem hard to understand, and the reasons for decision may not be obvious.

However it is not true to say that there is an absence of methodologies, criteria and processes for making such decisions as your consultation document suggests at paragraph 5.4. To facilitate industry governance, ATOC members meet under industry Schemes, where agendas are tabled in advance, subjects are debated, decisions are taken by consensus where possible and by resolution where necessary, all of which being carefully minuted.

The speed of decision making sometimes comes under criticism. Slow decision making tends to result from the sheer number of parties involved (TOCs, owning groups, DfT, TfL etc), each of which has its own position, responsibilities and governance processes. It also results from the fact that decisions in the industry are sometimes highly political, requiring the sign off of Government ministers.

The introduction of Oyster PAYG on national rail is sometimes given as an example of slow pace of decision making. Whilst it may be the case that the parties involved worked cautiously, PAYG is also an example of a successful project involving several TOCs, ATOC, TfL and DfT, where funding and regulatory constraints were overcome to the great benefit of passengers. The fact that the introduction of CPAY was more rapid is evidence of that a maturing of these relationships can speed up the time taken to make major industry wide decisions.

12. What are your views on the current form of industry rules? What benefits do they give rise to, and how? Are there any specific aspects of industry rules that limit or dampen innovation in retail? How could they be addressed?

In the context of retailing, industry rules exist to ensure that retailing is conducted to high standards, and to ensure that the industry remains compliant with it regulatory requirements. Given the importance of both of these requirements, we consider the rules around Licencing and Accreditation to be relatively light touch, not excessive or disproportionate as your document suggests. We briefly summarise why below:

(a) Licencing

As your document makes clear, Third Party Retailers operate under specific licences. Your document queries three specific obligations on Third Parties:

- The requirement to produce a Marketing Plan - currently this obligation applies to only three licenced retailers who hold a full TPIL licence. We understand from ATOC these plans are high level, are used primarily for monitoring the market.

- The requirement for staff training - this is designed to ensure that retailers have a minimum number of staff who have a basic understanding of the rail network, services and product and is necessary therefore for the retailer to retail competently.

- The bonding requirement - the requirement to hold a bond against settlement default is a reasonable requirement (indeed TOCs themselves are subject to a season ticket bond in their franchise agreements with DfT). The bond is equivalent to the risk TOCs are exposed to.

(b) Accreditation

Your document queries the burden of accreditation on TIS suppliers. Accreditation is necessary to ensure TIS devices interface correctly with industry systems, provide accurate information to the customer, and ensure revenue settlement takes place correctly. Given the importance of this to customers and industry alike, we do not consider the accreditation requirement is disproportionate. Indeed, we are aware that ORR is consulting in parallel on an Information Code of Practice, and proper control of industry retail systems is essential to ensure the information provide is accurate and of high quality.

Regarding the central setting of commission rates for Third Party Retailers on a rolling three year basis, we agree with the benefits of this that you list (i.e. removal of any need for bilateral arrangements, and increasing certainty to both third party retailers and TOCs). We recognise that the setting of Third Party commission by TOCs does give rise to some conflict of interest because TOCs are also retailers, but we again draw the distinction that TOCs are first and foremostly carriers not retailers. TOCs appoint Third Party Retailers to sell tickets on the TOCs' behalf in return for earning remuneration, and TOCs/ATOC use a number of criteria to assess what commission rates should be: average transaction values, opportunities for other remuneration, benchmark rates, cost of sale and the value added by third party retailers. The current commission structure reflects all these factors and seeks to take a balanced and equitable approach across all retailers/channels.

Whilst a centralised commission rate is beneficial, Third Parties can enter into bilateral deals with TOCs to earn additional remuneration. Such arrangements are fairly common in the TMC market and sometimes occur in the internet market. In addition third parties can charge fees, whereas TOCs cannot (TMCs charge an average of £9 per transaction for instance). Internet retailers can also enter into 'white label' and technology supply arrangements with TOCs to earn additional revenue.

Finally it is worth commenting that commission rates taken in isolation can be misleading as it is the combination of commission rate and average transaction value (which vary significantly by channel) that determines how much remuneration a retailer gets. For instance, TMCs receive 3% commission, which means that they receive £1.75 per transaction on average, significantly higher than the £1.15 per transaction average received by TOCs for non-Season Ticket sales through station ticket offices.

13. With respect to the third party retailers' arrangements, to what extent does the nature of their relationship with TOCs enable them to benefit passengers, including bringing about competition and innovation? How are the arrangements between the wholesale provider and the third party retailers in other sectors relevant to rail? What is the impact of third party retailers in rail not having access to a wholesale market / wholesale price? Do the industry governance, rules, processes, and systems pose additional impacts for third party retailers that we have not captured?

We commented at question 1 that Third Party revenue growth has significantly exceeded average industry growth, suggesting Third Parties have been successful in growing the market for rail travel in Britain. A particular benefit they have brought is the development of internet retailing - a number of Third Party Retailers have been at the forefront of developments over the years, and have extended retailing into the on-line market both in their own right, and as "white label" retailers under licence to TOCs. The competition between retailers has driven improvements to retail websites over time; and the advertising campaigns specific retailers have undertaken are likely to have raised the profile of internet retailing and good value fares in the industry. Research work undertaken by ATOC confirms the benefits of Third Party retailing and we refer ORR to ATOC's submission for more information.

Regarding the wholesaling of tickets, a key factor in rail is that it is the <u>carrier</u> TOC who determines the fare; and the TSA requires settlement needs to be at the full value of the fare. A new mechanism would be required to sell tickets wholesale to Third Parties to allow the Third Party to resale at a fare which they determine. It is difficult to see how this would work in a situation where fare revenue is shared between TOCs as joint agreement would be required on the wholesale price.

Regarding discounting and availability of product range, you include c2c (which you incorrectly label "City2Coast") as an example of a TOC retailing a discount on-line which is not available to other retailers. Whilst the example you give was a promotional fare, our intention was not to exclude other retailers from these offers; rather it is a consequence of the mechanism used to discount the base fare in our webTIS.

14. What are your views on the current form of industry processes and systems? What benefits do they give rise to, and how? Are there any specific aspects of industry processes that limit or dampen innovation in retail? Do these processes have other impacts, either causing problems or leading to benefits?

TOCs do have an incentive with regards the central industry systems to i) develop them to support the need to offer a modern retail environment and customer service and ii) to drive down costs. It is incorrect to say these are "are owned and managed by TOCs". Most systems are owned and managed by RSP who are accountable to and take direction from TOCs whom they charges for their use. TfL is also a supplier in London of central systems to the TOCs to support Oyster and CPAY.

We consider it entirely necessary to have centralised systems to manage the exchange of retail data in the industry. Because of the various requirements already discussed as ‘network benefits’ to retail impartially and accurately at a network wide level, it is more pragmatic to have centralised back offices to manage this data and settle revenues, rather than retailer-specific systems. We are confident that the economies of scale from removing this duplication reduces cost to the industry. It also avoids problems caused by the short term nature of some franchises limiting payback period and delaying investment.

Oyster PAYG and CPAY in London are examples of this, where TOCs including c2c have been able to use TfL’s back office to provide a pay as you go fares system covering the whole of London. It is difficult to imagine how this would work if each party had their own back office infrastructure.

However, such decisions are subject to industry governance and can have long gestation periods. The procurement of a back office for the SEFT project is an example of this where c2c found it more expeditious to launch its own smartcard scheme using our National Express back office, with a view to moving it into an industry wide back office in future.

15. With respect to industry data, how does access to and quality of data manifest? What is the impact?

As well as common IT systems, the industry also uses common data to ensure a single point of truth. Examples are the fare database which feeds all retail systems and the Network Rail timetable to feed all journey planners. This ensures all systems report a common fare or timetable at any point in time and benefits passengers through clarity and consistency.

Access in recent years has been extended by the industry to give Third Party access to fares, timetable and train running data.

16. What are your views on our proposed approach to assessing the materiality and relevance of the impacts?

We note your intention to use the “core principles of access, quality, empowerment, and choice” to assess the impacts you identify. We stress the need to ensure that this evaluation is based on firm evidence, and we in this regard we draw your attention to the documents submitted by ATOC under this review which give an extensive analysis of the rail retail market.

17. What are your views on proposed approach to Stage Two of the Review?

We agree that it is sensible for ORR to develop options for change as a first step in Stage Two. We encourage you to continue to engage closely with us and the industry more generally including DfT, and would be happy to meet with you to discuss our response further.

18. What other views have you regarding the Review that has not been captured in the questions above?

We have no further comments to add at this stage.

Yours sincerely

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Julian Drury
Managing Director c2c