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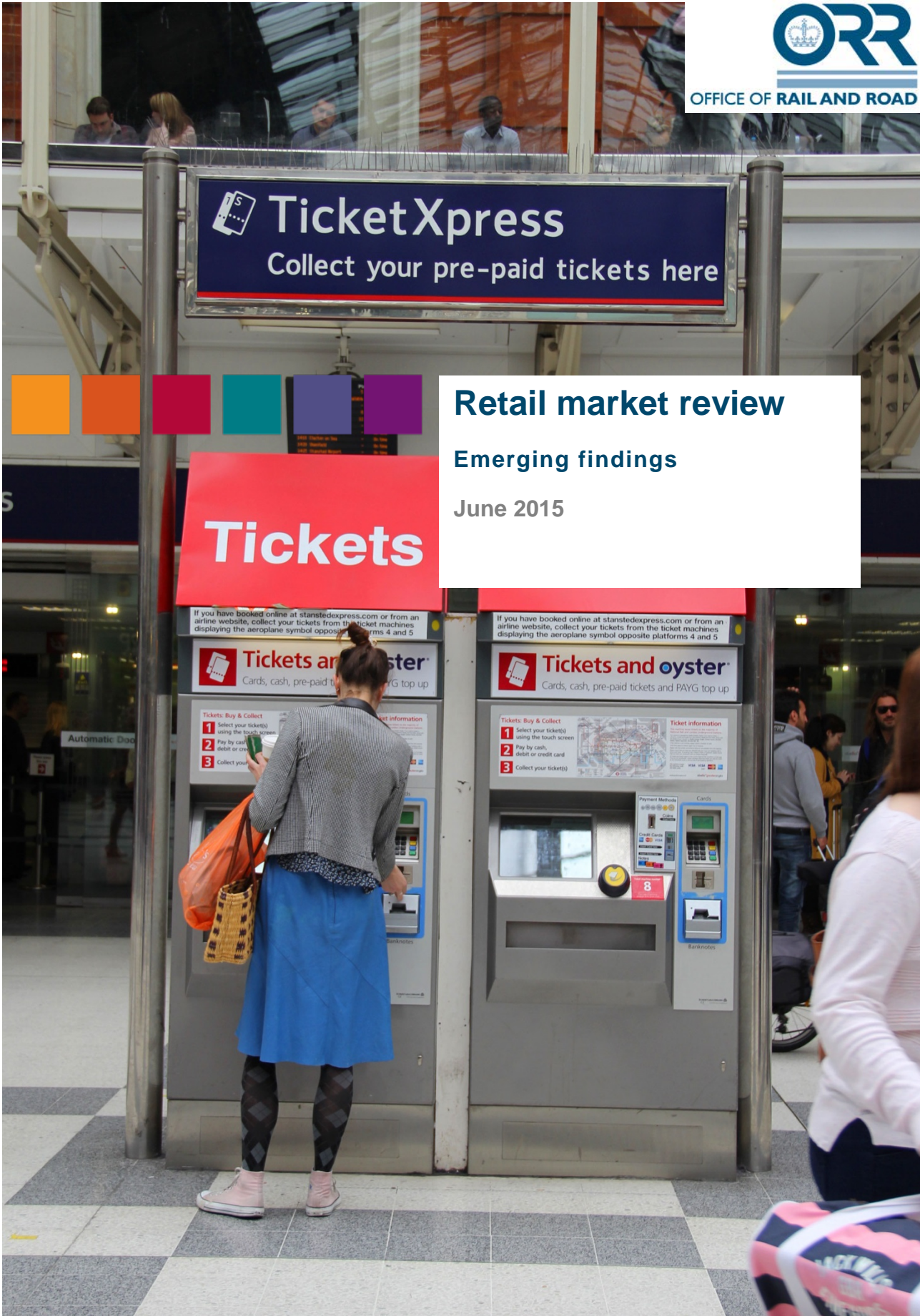
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# Contents



<b>Executive Summary</b>	<b>5</b>
Box 1: Summary of proposed remedies	12
<b>1. Introduction</b>	<b>14</b>
Summary	14
Purpose of the retail market review	14
Scope of the Review	15
Box 2: The Retail Market Review and wider interactions	17
Characteristics of the rail retail market	18
Our methodology	19
Purpose of this document	20
Next steps	20
Question for Chapter 1	21
<b>2. Passengers' experiences of the rail ticketing market</b>	<b>22</b>
Summary	22
Introduction	22
Where passengers buy tickets	22
Box 3: Passengers' appetite for having a wider range of retailers, including smaller retailers	27
How passengers buy tickets	28
Ticket formats	30
Passengers' choice of tickets	34
Box 4: Passengers' take-up of inter-available and through fares	36
Passengers' opportunities to find different / cheaper fares	38
Questions for Chapter 2	38
<b>3. The industry regime for TOCs and possible remedies to promote effective competition</b>	<b>39</b>
Summary	39
Introduction	39
TOCs' ability to offer new fares and products	40
TOCs' ability to differentiate the ticket buying experience	44
TOCs' ability to differentiate by sales channels	45
Questions for Chapter 3	47

<b>4. The industry regime for third party retailers and possible remedies to promote effective competition</b>	<b>49</b>
Summary	49
Introduction	49
Third party retailing in ticket selling	49
Incentives on potential third party retailers to enter and to expand in the market for ticket selling	52
Box 5: The level of third party retailers' commission	57
Scope for third party retailers to compete	60
Box 6: ATOC's trial to allow third party retailers sell Season tickets	61
Box 7: Retail rail prices in Sweden	64
Questions for Chapter 4	66
<b>5. The extent to which industry arrangements facilitate effective collaboration between retailers while supporting competition</b>	<b>67</b>
Summary	67
Introduction	67
Collaboration among TOCs to facilitate a national, integrated network	67
Box 8: Case study on collaboration to introduce smart ticketing in Greater London	69
TOCs have limited incentives to collaborate with each other in the development of shared systems and shared ticket formats	70
Box 9: Innovation funding in rail	74
Box 10: Upgrade of the Ticket on Departure function	75
The role of third parties	75
Questions for Chapter 5	77
<b>Annex A: List of consultation questions</b>	<b>78</b>
<b>Annex B: Summary of non-confidential responses to the September 2014 consultation</b>	<b>80</b>
<b>Annex C: Draft impact assessment of proposed remedies to promote effective competition among TOCs (Chapter 3)</b>	<b>87</b>
<b>Annex E: Draft impact assessment of proposed remedies to facilitate collaboration between retailers, while supporting competition (Chapter 5)</b>	<b>110</b>
<b>Annex F: Innovation in other sectors</b>	<b>119</b>
<b>Annex G: Further details on measuring passengers' take-up of inter-available fares</b>	<b>122</b>
Box 11: Choosing the right 'cut off point'	123
<b>Annex H: Further information on the role of third party retailers in the retail market</b>	<b>126</b>



# Executive Summary

## *Introduction*

1. Passengers' experience of buying tickets is an important aspect of their overall satisfaction with the railways: welcome innovation in ticketing has led to new ways to buy tickets, a wider range of tickets to meet passengers' different needs and different ticket formats, such as mobile ticketing.
2. Currently, passengers can choose from a range of fares such as Season, AnyTime, Off-Peak, and Advance. They can buy their ticket from any train operating company (TOC) or a third party retailer (such as The Trainline or a travel management company) at the station ticket office, online or by phone – and in some cases – on the train. The ticket delivered to the passenger is usually in the orange credit card-sized paper format.
3. The Retail Market Review (the Review) is focused on who sells tickets, what tickets are sold, where and how tickets are sold, and the ticket format. We are considering this from the point-of-view of the industry regime, i.e. the rules and practices in which retailers (both TOCs and third party retailers) operate under when selling tickets, to ensure it is working to the benefit of passengers, industry and taxpayers. The Review is not considering the structure of fares or the overall level of fares.
4. The current industry regime for ticket selling was put in place at privatisation of British Rail, and it has broadly remained the same since. However, between now and then, the rail industry has undergone some considerable changes: more passengers are buying tickets from retailers other than the TOC they are travelling with; they are increasingly using websites and ticket vending machines (TVM); and they are buying more Advance fares and using different ticket formats, particularly smartcards for local journeys. At the same time, the range of retailers and the technology for ticket selling has changed. As such, we consider it the right time to now review the rules and practices for ticket selling, in particular to ensure it is working as effectively as it could be for passengers, for retailers and for taxpayers.
5. For passengers, we want to ensure that they can engage effectively in the retail market and that the retail experience instils confidence in them that they have been able to seek out and purchase a fare that best meets their needs. As such, the Review is focused on ensuring that the industry regime for ticket selling is working effectively at moving the retail experience forward at a pace that is comparable with other sectors so that passengers can benefit from new and innovative ways of accessing tickets. The Review forms part of a package of work

we are undertaking to achieve this, including the development of a Code of Practice with the industry on retail information to ensure passengers get the information they need to enable them to purchase the most appropriate ticket for their needs.

6. More broadly, we want to ensure the industry regime is working effectively for retailers (particularly given that some have suggested that they are prevented from competing to sell tickets) and for taxpayers (given the likely scope to reduce retailing costs and/or increase revenue).
7. We are conducting the Review, therefore, to encourage the delivery of better outcomes for passengers, taxpayers and industry and, by promoting transparency about how the industry regime works, to lead and to encourage a debate about the future design of the retail market. We are also undertaking the Review in line with our responsibility to keep markets under review.

#### *Purpose of the consultation*

8. In seeking your views on the problems associated with passengers' experience of buying tickets and the remedies that are needed to bring about an improvement, this document:
  - a. Builds on our February 2014 Call for Evidence and our September 2014 consultation to consider the dynamics of the market for ticket selling and, correspondingly, the industry regime for ticket selling. In doing this, we are seeking to promote debate among stakeholders on the effectiveness of the current regime and the future design of rail retailing;
  - b. Sets out our emerging findings that while competition between and collaboration among retailers has delivered some benefits to passengers' ticket buying experiences, there is scope for improvements. This centres on, in particular, where passengers can buy tickets from, how they can buy them and what they can buy, including the ticket format;
  - c. Proposes some recommendations for TOCs, wider industry and governments that are nearer-term in nature which could improve passengers' ticket buying experiences and which could be undertaken over the coming year or so; and
  - d. Discusses possible longer-term options that involve more significant change to the way tickets are sold to improve retailers' ability to compete in selling tickets. This could include, for example, encouraging retailers to charge different prices through different sales channels to reflect their

relative cost of sale (such as in the Swedish rail and the energy and mobile telephony markets in Great Britain, for example).

### *The industry regime for ticket selling*

9. Rail retailers are subject to certain rules and practices in selling tickets some elements of which are approved by government
10. The ticket selling regime is managed by TOCs, who come together through various governance arrangements to undertake a range of functions. For example, ATOC (the association of Train Operating Companies) oversees third party retailer arrangements and is the trade association for TOCs. The Rail Settlement Plan (RSP) facilitates integrated retailing in managing shared IT systems (such as the national reservations system).
11. Third party retailers require a licence from ATOC that detail requirements to enter the market (e.g. minimum bonding requirements). All retailers earn commission for selling tickets on behalf of others, the rate of which is set by TOCs (though changes to the inter-TOC rate, where TOCs sell tickets on behalf of other TOCs, are approved by governments). Third party retailers are also obliged to sell (and TOCs to accept) the orange credit card-sized paper ticket, though other ticket formats may be used for a TOC's dedicated services or where TOCs have bilaterally agreed to accept other ticket formats on shared flows.
12. Ticket retailing is a competitive activity, with TOCs and third party retailers competing with each other to sell tickets. At the same time, TOCs also need to work together to facilitate an integrated, national network. These characteristics create a market where competition drives better outcomes for consumers, but where collaboration is needed to implement and deliver some new products and services. These two requirements can be at tension with one another. We are proposing some remedies to address this.

### *Our initial position on the retail market*

13. The findings of our work suggest that the market is working well in some respects: passengers enjoy having a national, integrated network, expecting and making use of inter-available and through fares; they can often access a range of information on fares from a choice of retailers; and there is some choice in where to buy tickets and the format they use.
14. However, when compared with experiences in other sectors (including other railway systems), both passengers and industry point to the limited innovation and competition in the market. As discussed further in Chapter 2:

- a. There is reasonable choice in where and from whom passengers can buy tickets, and many appear happy with the *status quo*. However, we consider there is scope for improvement, particularly in enabling passengers to buy train tickets through smaller retailer outlets (such as newsagents) and in having a wider range of online third party retailers;
- b. While passengers are benefitting from some technology developments in how they buy their tickets (such as Apps), the pace of innovation and technological developments is slow and has been limited, as illustrated by the lack of functionality of TVMs and websites. Their limitations often reflect the limitations of shared IT systems and industry-owned data;
- c. Notwithstanding the efforts made by some TOCs to roll out more innovative ticket formats (such as smartcards, contactless payment cards and mobile phone ticketing), we are concerned that the orange credit-card sized paper ticket remains the only universally accepted ticket format. Innovation in ticket formats is not keeping pace with other sectors and passengers' expectations, particularly younger and more frequent travellers. This suggests there is considerable room for improvement, particularly on shared flows or products;
- d. To meet passengers' different needs, we note the importance of passengers being able, as they currently can, to choose from a range of fares. While passengers often perceive the current choice to be complex, this shouldn't lead to a need to limit the number of products available for sale. Rather, research suggests passengers would benefit from having a wider choice, such as more flexible ticketing (e.g. part-time Season tickets and carnet tickets) and ancillary products (such as a financial product to spread passenger's cost of a Season ticket). To help address passengers' concerns about the complexity of fares, we note that retailers can play a role in helping them to choose the right ticket and in making the terms and conditions as accessible as possible; industry's Code of Practice on retail information is relevant to this also; and
- e. Currently, the price of like-for-like fares is broadly the same, regardless of the sales channels and/or the retailer. This is not what consumers experience in other markets. This prevents the cost of different sales channels from being properly reflected in the price of fares and, by limiting retailers' incentives to compete and to innovate in attracting passengers, may hold back changes that could improve retailing, to the benefit of passengers.



15. This suggests that while we've seen some developments in retailing that benefits passengers (and that many are happy with the *status quo*), passengers want more choice in how they buy tickets and what tickets they buy. Furthermore, the retail market may not be working as well as it could be for wider industry and taxpayers in driving efficiencies and value for money. For example, ticketing technology that showed passengers in real-time where there are spare seats on different services could drive better capacity management across the network. Or, having a fully multi-modal price comparison tool could drive better or greater use across different transport types.

16. Our assessment of the evidence suggests that there are features of the current market for ticket retail in rail which, whilst enabling an integrated retail network that deliver significant benefit for passengers, continue to slow the pace of innovation and competition to the detriment of passengers, industry and taxpayers. The features of the industry regime that contribute to this, and the proposed remedies to address it (as set out in Box 1), are:

- a. **Competition among TOCs:** While ticket retailing is a competitive activity, we consider that some elements of the industry regime for ticket selling limit TOCs' incentives to compete. In particular, we consider that TOCs could be better incentivised to compete in the creation of new products by improving the industry process for introducing new products to the market. As a possible longer-term measure, we also note that consideration could be given to allowing prices to differ by sales channel so that passengers could benefit from using lower cost sales channels and innovations that TOCs and other retailers may choose to develop (e.g. contactless payments). We note that some of the proposed remedies discussed in Chapter 3 could stimulate competition across the market. (Chapter 3);
- b. **Competition between TOCs and third party retailers and among third party retailers:** Third party retailers play an important role in expanding the market and putting competitive pressure on TOCs to improve their offering, including by innovating. However, there are currently some limits in passengers' choice of retailers (and, correspondingly, the innovation passengers enjoy). To address this, we consider that industry should take forward a set of nearer-term measures to improve its governance regime to better take account of other parties' views in the retail market, including third party retailers (by, for example, more formal consultation with parties on changes to the industry regime). We also note a possible longer-term remedy around providing for a wholesale price that could provide for greater scope for third party retailers to compete (Chapter 4); and

- c. **Collaboration between retailers, while supporting competition:** While TOCs work well together, we consider there is room for improvement, as highlighted in the slow pace of innovation (in, for example, the shared IT systems and in the ticket format of shared flows). This is important given the value passengers currently attach to an integrated network. As such, and recognising that all TOCs operate under different, specified and short-term franchises, we consider that there is a greater role for government to work across industry in leading the development of a longer-term strategy for ticketing. In addition, we consider that innovation-funding bodies could put greater emphasis on how to encourage TOCs and others to collaborate. This could be complemented by providing a role for other parties to collaborate, possibly through formal working groups. Longer-term, we note there may be a role for relaxing the obligations around having a fully integrated, national network, particularly in the longer-distance market (Chapter 5).

#### *Next steps*

17. We want stakeholders' views on our emerging findings, as set out in this document. In particular, we would like to know whether the nearer-term proposed remedies are likely to be sufficient to address the problems we've identified with passengers' ticket buying experiences, or whether stakeholders consider that the longer-term options should be pursued now alongside or instead of the nearer-term remedies.
18. We would also welcome views on other remedies which we should consider instead of or in addition to the remedies discussed herein. We also welcome views about how these measures could be taken forward.
19. We propose that, having sought stakeholders' views and undertaken further analysis as necessary, we publish our final recommendations in spring 2016.

#### *Responding to this consultation*

20. We welcome stakeholders' views on this consultation, in particular the questions listed in Annex A. Please submit your response, in electronic format, to the ORR Retail Review inbox ([ORRretailreview@orr.gsi.gov.uk](mailto:ORRretailreview@orr.gsi.gov.uk)) by **Monday 14 September 2015 at 5pm**. If you wish all or part of your response to be confidential, please indicate this clearly. Alternatively, if it is not possible to email, please send in hard-copy to:

Siobhán Carty,  
Competition and Markets Policy team,  
Office of Rail and Road,

One Kemble Street,  
London WC2B 4AN.

21. We also draw stakeholders' attention to a workshop we are hosting on **Monday 7 September 2015, from around 9.30am-12.30pm** (exact timing to be confirmed) at our London offices. The purpose of the workshop is to discuss views about our emerging finding, and requisite next steps. **Please register your interest by Friday 17 July 2015.** Where necessary, participation may be limited to one representative from each organisation. We will confirm your place at the workshop by late July, and provide the agenda in due course.
22. We also welcome the opportunity to discuss our findings of this consultation face-to-face. If you would find this helpful, please contact us through the ORR Retail Review inbox ([ORRretailreview@orr.gsi.gov.uk](mailto:ORRretailreview@orr.gsi.gov.uk)).

## Box 1: Summary of proposed remedies

We are proposing some nearer-term and some longer-term remedies to improve the retail market for passengers and, in turn, to deliver benefits to industry and to taxpayers. Our proposed remedies are not mutually exclusive. As such, we invite stakeholders' views on how the proposed remedies could form a package of measures to meet the issues. We propose to work with stakeholders to develop the remedies and, where appropriate, to help implement them.

### Summary of nearer-term proposed remedies

As discussed in Chapter 3, to improve competition among TOCs which, in turn, could enable passengers to access a wider range of products that meet their needs:

- **Governments and industry** (including TOCs, governments, Passenger Transport Executives, and other stakeholders) should ensure that TOCs have stronger incentives to introduce new products (such as part-time Season tickets), including within the period of their franchise;
- **Governments and TOCs** should improve the process through which TOCs introduce new products by, for example, streamlining and accelerating the process used; and
- **TOCs** should ensure that they do not suppress the potential for innovation from individual retailers in working with the technology providers of ticket machines.

As discussed in Chapter 4, to improve the competitive role of third party retailers which, in turn, provides passengers with more choice in where and how they buy their ticket:

- **Governments and industry** should introduce independent oversight of the third party retailer arrangements to address the (real or perceived) conflicts of interests that arise from the fact that TOCs set the entry requirements on third party retailers while competing with them;
- **TOCs** should provide for increased transparency on third party retailers' likely costs and commission by, for example: having publically available and accessible guidelines; consulting on changes to the third party regime; and providing a right of appeal to all third party retailers in the event they wish to challenge TOCs' decisions;
- **Industry** should identify and address the barriers smaller retailers face from selling tickets, for example around the requirement to have relatively expensive ticket machine to access and sell a range of fares;

- **TOCs** should explore the merits of making all fares and products (such as carnets and Season tickets) available to all retailers; and
- **TOCs and industry** should consider whether a ‘net pricing’ approach could be explored for TOC discounted fares, to enable all retailers to access TOCs’ discounted fares, without creating a risk they are not created.

As discussed in Chapter 5, to improve necessary collaboration among retailers so that, for example, shared IT systems support effective retailing through TVMs and that ticket formats on shared flows develop to meet passengers’ expectations:

- **Governments**, working with TOCs, should continue to play a role in developing a longer-term strategy for ticketing, particularly in the context of specified and time-limited franchises through, for example, having a public statement on longer-term ticketing. In doing this, they should consider the needs and preferences of a wide range of stakeholders, including passenger representative groups, third party retailers and technology providers;
- **Governments and bodies awarding innovation funding mechanisms** (e.g. Railway Future) should give emphasis to innovation in retailing and, specifically, how it can encourage parties to collaborate to facilitate the benefits of an integrated network; and
- **TOCs** should establish formal working groups (made up of, for example, passenger representative groups, third party retailers and technology providers) to inform the development of the industry regime, particularly the shared IT systems and industry-owned data.

## Summary of possible longer-term remedies

In the longer term, there may be ways to provide for greater competition among all retailers, including by allowing the lower costs of certain sales channels to be reflected in ticket prices, and facilitating the growth of valuable new services (the cost of which would also be reflected in prices). For example, the lower cost of online sales could be reflected through price reductions, whilst greater flexibility might support ticket sales in more convenient locations or formats. In any move away from uniform pricing, consideration would need to be given to how passengers could continue to be protected.

Furthermore, and reflecting the challenges associated with collaboration among competing retailers, there may also be merit in relaxing the obligations on TOCs to create and sell inter-available tickets on all routes. This could allow for more TOC-led competition on certain routes (and, in turn, could reduce reliance on shared IT systems that make it difficult for retailers to sell tickets in different, more innovative ways).

# 1. Introduction

## Summary

This Chapter explains the purpose, drivers, scope of and approach to ORR's Retail Market Review. It also discusses the work we've done since the September 2014 consultation.

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## Purpose of the retail market review

- 1.1 The Review is focused on who sells tickets, what tickets are sold, where and how tickets are sold, and the ticket format (for example, a smartcard, orange credit-card sized paper ticket)<sup>1</sup>. We are considering this from the point of view of the industry regime for ticket selling (namely, the rules and practices retailers (including TOCs and third party retailers), particularly the extent to which it enables investment and innovation in the best interest of passengers, industry and taxpayers. The Review is not considering the structure of fares or the overall level of fares<sup>2</sup>.
- 1.2 We are concerned that passengers lack confidence that they are buying the 'right' ticket<sup>3</sup>. Although our research has demonstrated that the incidence of incorrect purchases is low, there is at the very least a strong perception of complexity and a feeling that the system is not easy to navigate<sup>4</sup>. We want to ensure that passengers can engage effectively in the retail market and that the retail experience instils confidence in passengers that they have been able to seek out and buy a fare that best meets their needs. It is focused on ensuring that the industry regime for ticket selling is working effectively, moving the retail experience forward at a pace that is comparable with other sectors so that passengers can benefit from new and innovative ways of accessing tickets.
- 1.3 The Review forms part of a package of work we are undertaking to achieve this, including the development of a Code of Practice with the industry on retail information to ensure passengers get the information they need to enable them

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<sup>1</sup> In this document, the terms we use for fare, product and price are broadly the meanings given to them in the Ticketing and Settlement Agreement (the TSA). As such, a passenger's fare provides him or her with the right to make one (or more) journeys on the network; a product refers to a passenger's fare, as well as ancillary products that could be made available for sale; and ticket refers to the passenger's physical or electronic proof of their right to travel. The TSA is an intra-industry agreement that sets out much of the obligations, rules and processes for retailing; see [here](#).

<sup>2</sup> Note that, for the purposes of this document, the term 'market' typically refers to the activity of ticket selling and is not used to characterise the boundary of any relevant economic market in a competition law sense.

<sup>3</sup> For example, "Fares and ticketing – information and complexity", June 2012; see [here](#).

<sup>4</sup> For example, research undertaken in 2011 suggested that (only) five per cent of surveyed passengers held AnyTime tickets when they could have used an Off-Peak ticket; see [here](#).

to purchase the most appropriate ticket for their needs<sup>5</sup>. See Box 2 for a fuller discussion of the Review and its wider interactions.

- 1.4 We are also concerned that the industry regime is not working effectively for industry and for taxpayers. For example, some retailers have suggested that they are prevented from competing to sell tickets in more competitive and innovative ways. There may also be scope for greater efficiencies, in the form of reduced costs of retailing and enhanced revenue, to the benefit of industry and taxpayers (and, in turn, passengers)<sup>6</sup>.
- 1.5 Through the Review, therefore, we are seeking to encourage the delivery of a better experience for passengers, for industry and for taxpayers. We want to promote debate among stakeholders on the future design of rail retailing. We are also undertaking the Review in line with our responsibility to keep markets under review<sup>7</sup>.

## Scope of the Review

- 1.6 As noted above, the Review is focused on the industry regime for ticket selling, and the extent to which it is delivering for passengers, industry and taxpayers. The main features of this regime are:
  - **Who sells tickets:** All TOCs sell fares for their own and other TOC services<sup>8</sup>. Third party retailers, which include online third party retailers (such as The Trainline) and Travel Management Companies (TMCs, who mainly sell to businesses), also sell fares, without running the services themselves. To sell fares, they require a licence from ATOC (the Association of Train Operating Companies) that details certain rules (e.g. minimum bonding requirements). All retailers earn commission for selling tickets on behalf of others, the rate of which is set by TOCs (though changes to the inter-TOC rate are approved by the DfT);
  - **What tickets are sold:** Most TOCs sell the full range of fares (i.e. Season, Anytime, Peak, Off-Peak, and Advance). They are also obliged to sell

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<sup>5</sup> This was published by ATOC in March 2015. It sets out the information passengers might need to buy a ticket, as well as the principles for how it should be presented; see [here](#).

<sup>6</sup> This has been noted in, for example, the Rail Value for Money Study; see [here](#).

<sup>7</sup> Our statutory responsibilities to monitor markets arise from sector specific legislation, including the Railways Act 1993, the Railways Infrastructure (Access and Management) Regulations 2005 and from responsibilities which we hold concurrently with the Competition and Markets Authority (CMA) and other regulators under the Enterprise Act 2002. It is worth noting that the Review is not being undertaken under our powers to investigate alleged infringements of competition law, set out under the Competition Act 1998.

<sup>8</sup> Some TOCs do not sell the full range of fares, for example Gatwick Express and Heathrow Express sell tickets only for their own services.

inter-available tickets (this enables passengers to use the same ticket for different operators, flows and terminals) and through tickets (this enables passengers to travel across the network using only one ticket). Any new fares or products TOCs wish to sell must be created in accordance with industry rules (following certain processes and using shared TOC-owned IT systems)<sup>9</sup>, with a role for the DfT in the event that TOCs object to the new fare or product;

- **Where and how tickets are sold:** TOCs are required to have their station ticket office open on certain days and at certain times<sup>10</sup>. At most station ticket offices and when selling online, retailers are obliged to sell impartially, offering a full range of fares without favouring certain services<sup>11</sup>; and
- **The ticket format:** Retailers are obliged to sell (and TOCs to accept) the orange credit card-sized paper ticket<sup>12</sup>. Other ticket formats, such as print-at-home tickets and mobile tickets, may be used for a TOC's dedicated services or where TOCs have bilaterally agreed to accept other ticket formats.

1.7 The ticket selling regime is overseen by TOCs, who come together through various governance arrangements to undertake a range of functions. For example, ATOC oversees third party retailer arrangements and is the trade association for TOCs. The Rail Settlement Plan (RSP) facilitates integrated retailing in managing shared IT systems (such as the national reservations system) and National Rail Enquiries (NRE) manages the NRE website and telephone service and manages some central industry data, such as real time train information. The industry regime for ticket selling is discussed in detail in Chapter 3 of the September 2014 consultation document.

1.8 Outside of the industry regime, franchised TOCs are also subject to specific requirements about what services they offer and how they sell tickets. About 45% of fares - usually Season, long-distance Off-Peak and commuter fares for major cities - are regulated by government.

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<sup>9</sup> These are set out in the TSA.

<sup>10</sup> TSA Schedule 17. A change to Schedule 17 is a matter for the DfT.

<sup>11</sup> TSA Chapter 6-30. Impartial points of sales usually include station ticket offices and retailers' websites. Retailers' ticket vending machines (TVMs) are not required to be impartial on the basis that they are unable to offer a large number of fares. TOCs' temporary fares are not required to be made available for sale by other retailers through all sales channels. TMCs are not required to sell on an impartial basis, but usually do so.

<sup>12</sup> This reflects industry practice that enables this format to be issued by any TOC or third party retailer and to be accepted by any TOC.



- 1.9 The Review is focused on the industry regime for ticket selling to the extent it impacts passengers' experience in buying a ticket and the range of fares and products they can buy. We recognise that many factors affect a passenger's satisfaction with his or her journey, such as the punctuality of their train service, the cleanliness of the train and the journey times. These factors are outside the scope of the Review.

## Box 2: The Retail Market Review and wider interactions

- The over-riding concern of most passengers when buying a ticket is its price. The Review is considering the price of a fare only to the extent that the industry retailing regime imposes certain rules on retailers in how they should sell tickets which, in turn, represents a cost to retailers. However, given that the cost of selling a ticket is around 6% of the price of a fare, it is unlikely that the finding of the Review will give rise to a material fall in prices. Other initiatives, such as the DfT's commitment to limit increases in the price of regulated fares, are likely to play a more significant role in addressing the price of fares.
- Passengers are concerned with the range of fares available to them. The Review is considering the fares available to passengers (and the corresponding ticket format) given that this is somewhat determined by retailers' incentives and ability to compete and to collaborate in developing new products. More direct initiatives, such as the DfT's work to develop smart ticketing across TOCs in the South East, is also likely to play a role in the range of fares and ticket formats available to passengers.
- Passengers consider ticketing and fares to be complex and confusing, adversely impacting their (real or perceived) ability to choose a ticket that's best for them. The Review is considering this to the extent that how retailers sell tickets – such as the information they choose to present or the sales channel used – can play a role in helping passengers to be confident about their ticket purchase. More direct measures should also address passengers' perceptions about the complexity of fares. This includes the DfT's single-leg pricing trial (to remove the scenario that some single Off-Peak fares are nearly as much as the return fare) and our aforementioned work with industry on a retail information Code of Practice.
- The Review is focused on who sells tickets, what tickets are sold, where and how tickets are sold, and the ticket format. We are considering this from the point of view of whether the industry regime for ticket selling (or, in other words, the supply-side rules, processes and systems or selling tickets). We are

focused on the impact on passengers, but also considering the possible impact on industry and taxpayers.

- The Review will continue to work within the context of wider developments, engaging closely with the DfT and industry as necessary.

## Characteristics of the rail retail market

- 1.10 Ticket retailing is a competitive activity, with TOCs and third party retailers competing with each other to sell tickets and to offer passengers other ticketing services, such as journey information. They do this by competing on where and how to buy tickets (i.e. the sales channel, for example the location of ticket office or the design or functionality of the website or mobile App), the price and range of the fares (or products) and the ticket format<sup>13</sup>.
- 1.11 Retailers are also obliged to facilitate an integrated, national network. This obligation was established at the time of privatisation to retain the benefits of an integrated, national network for passengers, particularly over time and regardless of changes (for example, in franchising). It gives rise to a framework of rules which requires TOCs to collaborate in certain ways to deliver an integrated system of fares and ticket retailing. For example, retailers are obliged to sell a full range of other TOCs' fares (impartial retailing)<sup>14</sup> and TOCs are required to create and to sell inter-available fares and through tickets.
- 1.12 These characteristics seek to create a market where competition drives better outcomes for consumers, but which is balanced against collaboration where it is needed to implement and deliver some new products and services, including the ticket format on shared services. These requirements appear, in some ways, to be at tension. TOCs would not be able to maintain the integrated network without some collaboration with each other. However, collaboration also has the potential to lessen or restrict competition between TOCs. For example, a new product developed by one TOC needs other TOCs' and third party retailers' collaboration to be introduced and sold, reflecting the impartiality requirements on retailers to sell a full range of fares.

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<sup>13</sup> We note that another key characteristic of the wider rail market is the competitive franchising process that aims to ensure effective and efficient train operation. Parties bid to run franchised 'flows' in specified areas for a specified amount of time. As a result, many different companies operate train franchises, with these companies often change when a franchise is re-tendered and awarded.

<sup>14</sup> Impartial points of sale usually include station ticket offices and retailers' websites. Retailers' ticket vending machines are not required to be impartial on the basis that they are unable to offer a large number of fares. TOCs' temporary fares are not required to be made available for sale by other retailers through all sales channels. TMCs are not required to sell on an impartial basis, but usually do so.

1.13 We are seeking to ensure that the retail market supports the conditions that incentivise retailers to offer a range of fares and products that can be bought in a way that meets passengers' expectations and needs. The industry regime should also support the creation of incentives on retailers to innovate in terms of how those tickets are delivered and can be used, and to offer ancillary products alongside tickets that passengers value and want to pay for. We address how competition and collaboration have a role to play in delivering a ticketing system that protects passengers while, at the same time, promotes their interests in the development of new ticketing technology.

## Our methodology

1.14 We launched the project in February 2014 with a Call for Evidence, which sought stakeholders' views on our initial thinking on the scope and approach of the Review<sup>15</sup>.

1.15 Between February and September 2014 and using the responses to the Call for Evidence, we sought to understand the industry regime for ticket selling and its potential benefits and issues, including its impact on the functioning of the retail market. We undertook extensive stakeholder engagement (including hosting an industry workshop in May 2014), desk research and market analysis (through, for example, data on ticket sales). We also commissioned external input from Cambridge Economics Policy Associates (CEPA), in the form of a comparative analysis of the third party retail markets outside rail. This work resulted in our September 2014 consultation document that sought stakeholders' views on the materiality and relevance of certain aspects of the industry regime. We received 28 non-confidential responses to this consultation; see Annex B for a summary of the non-confidential responses<sup>16</sup>.

1.16 Since September 2014, we have undertaken further analysis, considering the rail retail market against other markets and considering in more detail how passengers buy tickets and the fare type, considering how this varies over time and by sector (i.e. long-distance, London & South East, regional). We have also undertaken further stakeholder engagement. Furthermore, we commissioned primary research, undertaken by BDRC Continental, to understand better passengers' views on ticketing and the way they benefit (or otherwise) from the current industry regime<sup>17</sup>.

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<sup>15</sup> The Call for Evidence letter and the 21 non-confidential responses to it are available [here](#).

<sup>16</sup> The September 2014 consultation and the non-confidential responses to it are available [here](#).

<sup>17</sup> BDRC Continental Report, '*Rail ticket retailing: the passenger perspective*', April 2015; see [here](#).

## Purpose of this document

- 1.17 Drawing on our work to date, this document sets out our emerging findings regarding the likely problems with the retail market and the features of the industry regime for ticket selling that, we consider, may give rise to these. We propose some remedies that are likely to be relatively straightforward and could be implemented in the nearer-term. We also propose some possible longer-term options for discussion that could require further consideration.
- 1.18 In doing this, we first examine passengers' current experience with ticketing (Chapter 2). We explore how passengers currently use rail and what (they say) they like or would like in the future. To do this, we have drawn on industry data regarding ticket sales<sup>18</sup> and research into passengers' own views, including the research undertaken for us by BDRG Continental. We also look at the experience of comparative sectors<sup>19</sup>.
- 1.19 Our analysis is then structured according to the two key characteristics of the market and our objectives of the Review, namely:
- The extent to which the industry regime promotes effective competition. Reflecting the fact that the industry regime for TOCs and for third party retailers is rather different (which, in turn, reflects the nature of their different roles), we address each of them separately (Chapter 3 and Chapter 4); and
  - The extent to which it facilitates effective collaboration (Chapter 6).

## Next steps

- 1.20 We welcome stakeholders' views on:
- Our emerging findings, in particular the questions listed at the end of each chapter and in full in Annex A; and
  - Our assessment of the proposed remedies, as set out in the draft impact assessment in Annex C – D (including on our initial views around the likely

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<sup>18</sup> This has mainly focused on use of the LENNON database. LENNON refers to the Latest Earning Network Nationally Over-Night system. It is a shared IT system industry use to record ticket sales. We note that there are some limitations to the LENNON system. It doesn't capture all ticket sales; in particular sales of multi-modal tickets that include a rail element are not typically reflected in LENNON (that account for around two per cent of gross receipts).

<sup>19</sup> We have made use of the CEPA research undertaken for us in 2014, as well as existing, publically-available research.

benefits and costs of the proposed remedies and how they may be implemented)<sup>20</sup>. Specifically, we would like views on:

- The merits of the nearer-term options and whether you agree that we should focus on them over the coming year or so, working with governments, TOCs and wider industry to develop them and, where appropriate, help implement them. We also welcome views on the likely timelines for taking these forward; and
- The merits of the longer-term options and what further work should be done to assess their merits. We could return to them when we undertake a follow-up review in around 3 years' time, considering them further depending on the progress TOCs have made on the nearer-term options.

1.21 We welcome stakeholders' views on this consultation, in particular the questions listed in Annex A. Please submit your response, in electronic format, to the ORR Retail Review inbox ([ORRretailreview@orr.gsi.gov.uk](mailto:ORRretailreview@orr.gsi.gov.uk)) by **5pm Monday 14 September 2015**. If you wish all or part of your response to be confidential, please indicate this clearly. Alternatively, if it is not possible to email, please send in hard-copy to:

Siobhán Carty,  
Competition and Markets Policy team,  
Office of Rail and Road,  
One Kemble Street,  
London WC2B 4AN.

1.22 We also draw stakeholders' attention to a workshop we intend to host on xx 2015 (from 9.30am-12.30am), to discuss further our emerging findings and to provide a forum for stakeholders to share their initial views. Please contact the ORR Retail Review inbox ([ORRretailreview@orr.gsi.gov.uk](mailto:ORRretailreview@orr.gsi.gov.uk)) if you wish to attend, preferably by xx 2015. We will confirm whether your place by late xx 2015.

## Question for Chapter 1

**Q1:** Do you agree with our description of the features of the market for ticket selling?

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<sup>20</sup> This has been undertaken in line with governments' approach to impact assessments. For further information on impact assessments, see [here](#). Note this is a draft impact assessment. While we've sought to be comprehensive in considering the potential options, the draft impact assessment does not consider in detail all possible options. As such, we welcome stakeholders' views on the range of options and, as such, how the impact assessment should be developed.

## 2. Passengers' experiences of the rail ticketing market

### Summary

This Chapter examines passengers' experiences of buying rail tickets and the choices available to them. Our analysis suggests that while passengers' needs are being met in some important ways, there is scope for improvement, particularly regarding where they buy tickets (retailer / sales channels), the ticket format and technology they rely on when using TVMs and websites and the range of fares and related products available to them.

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### Introduction

2.1 This Chapter discusses passengers' current experience of and preferences for buying rail tickets, comparing this with similar retail markets such as other transport sectors and with other rail ticketing markets, where appropriate. It looks at the following aspects of this experience, including:

- Where and from whom passengers buy tickets, including the types of retailers they buy tickets from and the sales channel (for example, station ticket office or TVM);
- The ticketing technology passengers make use of when buying through TVMs and websites;
- The ticket format;
- The range of fares and products available; and
- The opportunities for passengers to save money on like-for-like fares.

### Where passengers buy tickets

2.2 With respect to the choice of where to buy tickets, passengers can buy rail tickets from the TOC they're traveling with, from any other TOC and from third party retailers. In London, Transport for London (TfL) sells most rail travel cards and rail fares via Oyster smartcards and in other conurbations, local transport

authorities (Passenger Transport Executives (PTEs<sup>21</sup>)) may retail multi-modal fares that contain a rail element (though typically unable to sell rail-only tickets).

2.3 In general, passengers are most likely to buy from TOCs, in particular the TOC they are traveling with; see Table 1. Indeed, as a group, TOCs continue to make up the majority of passenger receipts, though this continues to fall over time; see Figure 1. Figure 2 also shows that passengers make particular use of third party retailers in the long-distance market<sup>22</sup>. This shows that the retailer passengers choose to buy their tickets from tends to vary according to the purpose of the journey, using online third party retailers and TMCs more for longer-distance (and typically higher-value) journeys compared with shorter journeys in regional areas and in London & the South East<sup>23</sup>.

**Table 1: Sales by retailer, proportion of total ticket issues, 2013/14**

	Long-distance		London and South East		Regional		Total
	£m	%	£m	%	£m	%	£m
<b>TOC 'own sales'</b>	1,034	35%	2,720	63%	560	57%	4,314
<b>Inter-TOC sales</b>	555	19%	601	14%	282	29%	1,438
<b>TfL sales</b>	0	0%	691	16%	0	0%	691
<b>Third party sales</b>	1,378	47%	292	7%	143	15%	1,813
<b>Total</b>	2,963	100%	4,309	100%	985	100%	8,257

Source: LENNON

2.4 With respect to the sales channel, and as illustrated in Figure 3, station ticket offices remain the most popular place for passengers to buy rail tickets, with those purchases accounting for nearly 40% of all ticketing revenue. TVMs and the internet each account for around 20% of revenue<sup>24</sup>. Other sales channels include call centres (run by TOCs and third party retailers), from ticket inspectors on trains and international purchases.

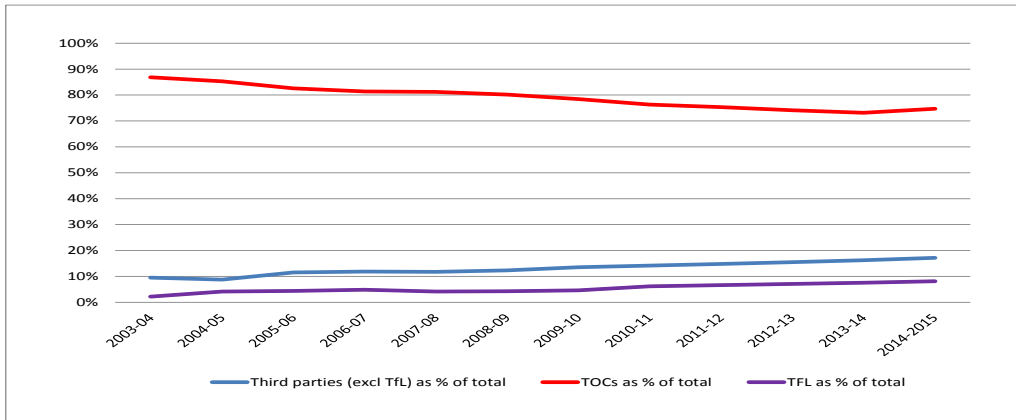
<sup>21</sup> There are six Passenger Transport Executives (PTEs). Operating outside London, they plan, procure and promote public transport in their relevant areas, namely Tyne and Wear, West Yorkshire, South Yorkshire, Greater Manchester, Merseyside and the West Midlands.

<sup>22</sup> This appears comparable to other sectors. For example, in aviation, we estimate that around 13% of bookings are made through online third party retailers. In energy, 31% of domestic customers used a Price Comparison Website to switch. We note the obvious limitations in comparing rail with these sectors given the differences in the nature of the products and the role of the third party retailers.

<sup>23</sup> In categorising by sector, this data allocates each TOC to a single sector, with the exception of First Great Western which is split across all three sectors.

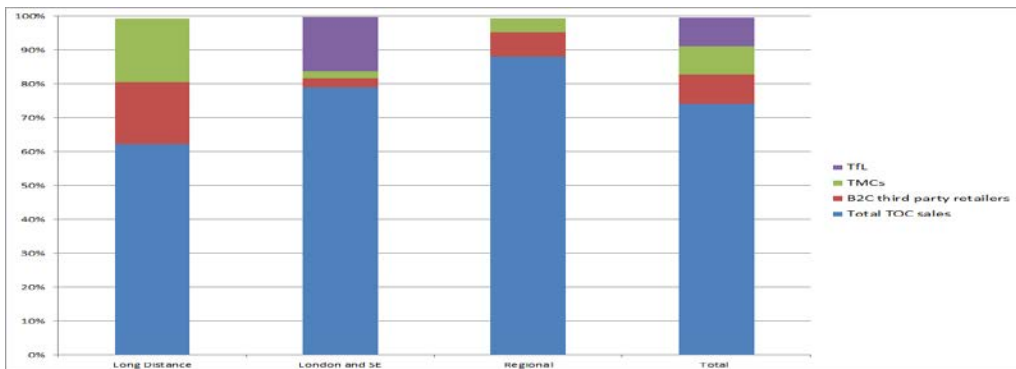
<sup>24</sup> 2013/14. See Figure 3 of the September 2014 consultation.

**Figure 1: Gross receipts by retailer type, 2003/04 to 2014/15**



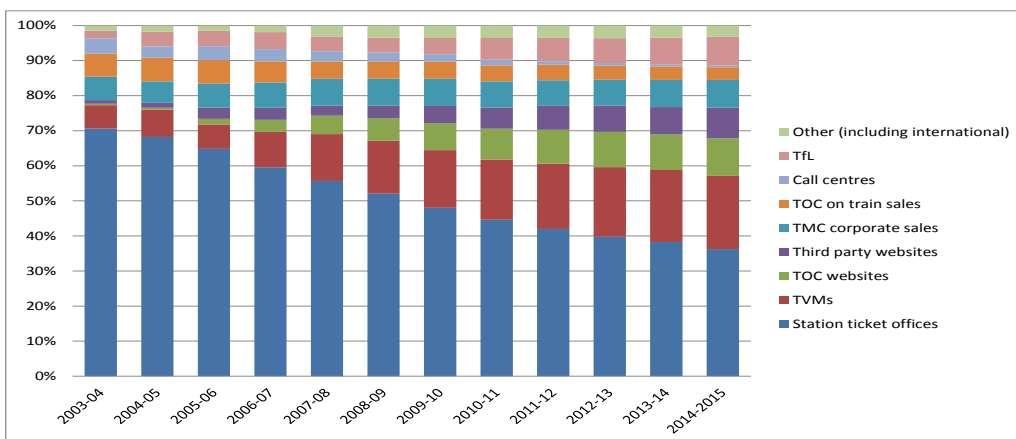
Source: LENNON

**Figure 2: Retailers' revenue by retailer type and carrying sector, 2013/14**



Source: LENNON

**Figure 3: Gross receipts by retail channel, 2003/04 to 2014/15 (% of total receipts)**



Source: LENNON



2.5 Passengers' use of sales channels tends to vary considerably by the purpose of the journey. In the London & South East and the regional markets, station ticket offices and TVMs are most popular. In the latter, buying tickets on the train is also popular. In the long-distance market, third party retailers' websites are most popular, followed by TOC websites and station ticket offices (which reflects their on-going popularity, even for more expensive tickets).

**Table 2: Retailer sales by selling channel and carrying sector, 2014/15**

	Long-distance		London & South East		Regional	
	£m	%	£m	%	£m	%
<b>Online third party retailer</b>	606.1	19%	150.6	3%	87.0	8%
<b>Call centre third party retailer</b>	18.5	1%	3.1	0%	1.8	0%
<b>TMCs</b>	608.1	19%	103.5	2%	46.6	4%
<b>TfL</b>	-3.2	0%	798.2	17%	0.0	0%
<b>International</b>	21.3	1%	5.1	0%	3.2	0%
<b>Station ticket offices</b>	728.3	23%	2065.8	45%	465.3	44%
<b>TVMs</b>	298.9	9%	1047.3	23%	154.2	14%
<b>TOC websites</b>	765.2	24%	185.0	4%	87.0	8%
<b>Call centre TOCs</b>	13.9	0%	7.2	0%	7.5	1%
<b>On train</b>	74.2	2%	124.7	3%	153.7	14%
<b>Other</b>	49.8	2%	129.1	3%	58.4	5%
<b>Total</b>	3,181.2	100%	4,619.6	100%	1,064.7	100%

Source: LENNON

2.6 With respect to the choice of retailer, passengers buy a sizable proportion of tickets from third party retailers, particularly for travel in the long-distance sector. However, as discussed further in Chapter 4, there is a limited choice of online third party retailers (with only five parties operating and the leading one accounting for 90% of receipts among all online third party retailers and three together accounting for less than 3%<sup>25</sup>). Furthermore, while passengers can buy tickets from all TOCs (and not just the TOC they're travelling with), take-up of this provision appears low<sup>26</sup>. However, passengers also appear to have some choice with respect to the range of sales channel used.

<sup>25</sup> There are also relevantly few TMCs. While total revenue has increased 250% between 2004/05 and 2013/14 (partly reflecting growth in the rail market), the number of TMCs has declined twofold. Furthermore, the top ten TMCs, who account for around 3% of all TMCs, hold 81% of market revenue. This is likely to reflect wider changes in the TMC market, including considerable consolidation and a reduction in the number of Travel Agents operating in the leisure market.

<sup>26</sup> Furthermore, our research found that around 40% of passengers believed that TOCs sell tickets for their own services only.

- 2.7 When asked, passengers appear fairly content with their choice of retailer and sales channel. For example, with the exception of those who bought their ticket by phone, passengers say they're using their preferred channel. They also say that they'd use the same retailer for their next journey as they used for their last one<sup>27</sup>.
- 2.8 However, this may reflect, in part, the fact that passengers are often unlikely to easily or spontaneously conceive of other options available to them, especially if they do not currently exist or individual passengers are not aware of them. Indeed, passengers themselves acknowledge that it's difficult to imagine using an alternative type of retailer or sales channel until it becomes the norm<sup>28</sup>.
- 2.9 This is corroborated by our research that suggests that passengers could benefit from a wider choice of retailer and/or sales channel. Once prompted to think beyond the current retail offer, passengers in our interviews and focus groups reacted openly to the possibility of alternative sales channels, such as newsagents, supermarkets and post offices, and the research as a whole indicated the benefits and importance of a mix. Furthermore and particularly for simple journeys and/or those involving a smartcard, some passengers consider that these types of retailers could be useful. The experience of other sectors appears relevant here; see Box 3. See also Table 3 that summarises passengers' experiences in rail compared with other transport sectors, including passengers' choice of where to buy rail tickets.
- 2.10 With respect to stakeholders' views on passengers' choice of whom and where to buy tickets, they tend to differ. Some stakeholders acknowledge that there could be scope for more passenger choice in where to buy tickets, with some highlighting the potential role smaller retail outlets such as newsagents could play<sup>29</sup>.

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<sup>27</sup> See Chapter 5, BDRC Continental report.

<sup>28</sup> See Chapter 5, BDRC Continental report. This has also been noted by some stakeholders; for example, in its response to the September 2014 consultation, Chiltern Railways noted research undertaken by Arriva that suggests that, "26% of customers do not know where they will want to buy their tickets in future". It also notes that, "passengers in London were not demanding the Oyster card before it was provided to them, any more than the iPod was requested before it was invented".

<sup>29</sup> For example, in its response to the September 2014 consultation, PTEG highlight the role that travel centres located at strategic transport interchanges and third parties (such as Payzone) can play. TravelWatch NorthWest raises this in its response to both of our consultations. For example, in response to our February 2014 Call for Evidence, it says that the availability of tickets through newsstands in continental Europe "operates well" and suggests that it could be attractive to buy tickets at libraries and/or post offices, saying that "the more outlets the better". Also in response to our February 2014 Call for Evidence and in the context of innovation in PTE areas, Centro highlights the "success" of the Payzone retailing network which, it says, has delivered rail patronage growth in metropolitan areas outside London.

2.11 **There is, therefore, reasonable choice in where and from whom passengers can buy tickets, and many appear happy with the *status quo*. However, we consider there is scope for improvement, particularly in enabling passengers to buy train tickets through smaller retailer outlets (such as newsagents) and in having a wider range of online third party retailers.**

### **Box 3: Passengers' appetite for having a wider range of retailers, including smaller retailers**

- In many other transport sectors, passengers may buy their tickets from local retailers, such as supermarkets, newsagents and post offices.
- In London's TfL, there are over 4,000 Oyster Ticket Stops and passengers appear to make considerable use of the ability to buy tickets (or top-up using their Oyster card) at such outlets, typically newsagents. For example, in the most recent period for which data is available, almost a third of all transactions took place through a newsagent, accounting for almost 22% of revenue. This was the second most popular sales channel, after London Underground's own TVMs (38%).
- Outside of London, passengers buying multi-modal tickets can also buy tickets through smaller retailers. For example, in Greater Manchester, passengers can buy multi-modal products at shops with PayPoint functions (typically newsagents) and in West Yorkshire, passengers can buy multi-modal products at staffed post offices and bus stations. In the Strathclyde area, 'ZoneCards' can be renewed at some newsagents and bus stations, in addition to the ScotRail stations. These retailers can't sell rail-only products.
- By way of comparison, consumers in other sectors have started to use alternative outlets, such as supermarkets for products that include insurance, mobile phone and energy packages (some of which are perceived to be at least as complex as rail).
- In discussions with passengers about buying tickets through other retailers, views were mixed. For example, some felt that they would be in the wrong mind-set for purchasing a rail ticket when shopping or using these types of outlets. There was also concern that the staff working in these outlets would not have the right specialised knowledge to help sell the right tickets. However, many acknowledged that it is difficult to imagine using a service until it becomes the norm – as such, few ruled it out entirely. And when they were made aware of other options and considered their experience in other sectors, they could see real benefits in their use, particularly for simpler purchases.

## How passengers buy tickets

- 2.12 Changes in ticketing technology have led to some changes in the way rail passengers buy tickets, with the number of passengers using TVMs and websites continuing to grow<sup>30</sup>. Transport Focus (then Passenger Focus) research suggests that TVMs can provide a quick way to buy tickets at stations (particularly for more simple or frequent purchases), while websites enable passengers to access more information, potentially to make a more considered decision<sup>31</sup>.
- 2.13 However, the same research suggests that the innovations have not always been implemented in a way that fully benefits passengers. For example, some passengers report difficulties in using TVMs and (to a lesser extent) websites<sup>32</sup>. This may reflect difficulties passengers have in finding the most appropriate fare(s) for their needs arising, in part, because TVMs do not sell the full range of fares and/or because of the way the information is presented<sup>33</sup>. Transport Focus suggested in 2010 that TVMs have too much information on certain screens, that the information is often technical and that passengers find it difficult to identify the relevant buttons<sup>34</sup>. It suggested that TVMs need to ‘guide’ passengers to select the ticket that is best for them, rather than requiring the passenger to work out what ticket is best.
- 2.14 In the main, most stakeholders agree that there could be improvements in how passengers buy tickets, particularly in the functioning of TVMs<sup>35</sup>.

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<sup>30</sup> See Figure 3. Gross receipts by TVMs have increased from 7% in 2003/04 to 21% in 2014/15. Gross receipts through internet (TOC and third party retailer) have increased from 1.5% to 19% in 2013/14.

<sup>31</sup> See, for example, London Economics, 2013, “Ticket retailing Code of Practice – what information is relevant”; Transport Focus, 2010, “Ticket Vending Machine Usability”; and Transport Focus, 2011, “Ticket Retailing Website Usability”.

<sup>32</sup> Transport Focus found that passengers have difficulty with the layout of information on TVM screens (e.g. certain screens containing too much information). With respect to websites, Transport Focus also found that passengers may find it difficult to interrogate websites to help them find the best ticket.

<sup>33</sup> We note also that it’s important that passengers are provided with appropriate information, in an accessible and easy-to-understand format, so they’re confident that they’ve bought the appropriate ticket for their needs. The aforementioned Code of Practice plays a role here.

<sup>34</sup> We note the research undertaken by Transport Focus (in the context of the December 2014 TVM summit hosted by the DfT) that highlighted examples of TVMs displaying technical, industry jargon that is likely to be difficult to understand. For example, a TVM at London King’s Cross displayed tickets that were valid only on Govia Thameslink Railways as “GRT ANG TRNSONLY”, with the same information being displayed (albeit in larger font) under the ‘further info’ button. In the context of research on websites in 2010, Transport Focus suggested that some websites have limited functionality, for example not recognising London stations with or without the London prefix (i.e. typing “Paddington” and/or “London Paddington”).

<sup>35</sup> This was recognised in responses to both our February 2014 Call for Evidence and our September 2014 consultation. In the former, for example, the Association of Rail Agents, Centro, Transport

**Table 3: Summary of ticketing innovations in GB rail compared with other transport ticketing systems in Great Britain**

Ticketing innovation	National rail	Local rail transport in London (TfL)	Local rail transport outside of London	GB buses	Airlines
<i>Where passengers buy tickets (retailer / sales channel)</i>					
Ability to buy through newsagent / supermarket	x <sup>36</sup>	✓	✓	✓	x
Pay as you go smartcards	✓ <sup>37</sup>	✓	✓	✓	x
<i>How passengers buy tickets</i>					
Smart phone payment (mostly using near-field communication <sup>38</sup> )	x	✓	✓	✓	x <sup>39</sup>
Smartcard use to purchase in-transit services <sup>40</sup>	x	x	x	x	✓
Smart phone use to activate / purchase in-transit services	x	x	x	x	✓
<i>Passengers' ticket format</i>					
Smartcards	✓ (14 TOCs)	✓	✓	✓	x
Print at home tickets	✓ (11 TOCs)	x	✓	✓	✓
M-tickets	✓ (11 TOCs)	x	✓	✓	✓ (some airlines)
<i>Passengers' choice of tickets</i>					
Carnet tickets	✓ (8 TOCs)	x	✓	x	x
Part-time season tickets	x	x	x	x	x
<i>Passengers' opportunities to find cheaper fares</i>					
Uniform pricing across	✓ <sup>41</sup>	x	✓	✓	x

Focus, and Which? highlight problems with TVMs. More widely, many stakeholders acknowledge that, while it hasn't been absent, the pace of innovation in has been slow.

<sup>36</sup> As discussed, some passengers can buy some rail tickets through local retailers (such as local information centres) and, in London, national rail tickets and travel cards may be purchased on Oyster at newsagents. Also, some passengers can buy multi-modal tickets that may include a rail element through newsagents.

<sup>37</sup> We note that, of the TOCs that do offer smartcards, some provide this on a Pay As You Go basis.

<sup>38</sup> Smart phone payments using near field communication allows passengers to use this technology to pay for services. In this way, it acts as a wallet so that payments can be made by swiping the phone. See [here](#) for information on its introduction on TfL.

<sup>39</sup> However, airlines appear to be trialling near field communication boarding passes; see [here](#).

<sup>40</sup> In-transit services could include, for example, ordering and purchasing food and beverages or transit entertainment via a smart phone.

<sup>41</sup> This is broadly true, except in the case of some TOCs who offer a discount for certain fares bought through their own website. This is discussed further in Chapter 4.

retailer/sales channel/ticket format					
<i>Other</i>					
Ticket-linked live travel information <sup>42</sup>	x	x	x	✓	✓

Source: ORR

2.15 Table 3 suggests that passengers in other transport sectors are benefitting from some ticketing innovations that are not currently available to rail passengers; see Table 3. For example, in local transport in London (TfL), passengers can pay through automatic top-ups (on Oyster Pay As You Go smartcards). In rail systems outside Great Britain, passengers can buy and validate regional train tickets with near field communication smartphones in France and, in Tokyo, tickets can be bought through a ticket machine and delivered wirelessly to mobile phones. In aviation, the functionality of booking a seat appears to offer more by way of choice<sup>43</sup>. See Annex F for a further discussion of innovation in other sectors.

2.16 Therefore, **while passengers are benefitting from some technology developments in how they buy their tickets (such as Apps), the pace of innovation and technological developments is slow and has been limited, as illustrated by the lack of functionality of TVMs and websites.** Their limitations often reflect the limitations of shared IT systems and industry-owned data.

## Ticket formats

2.17 The ticket format refers to the way a ticket is physically delivered to a passenger. The orange credit card-sized paper ticket remains the only universally accepted ticket format, though other formats have been introduced, including 'tickets' uploaded to a smartcard, e-tickets (that the passenger prints out at home) and m-tickets (that are uploaded to a mobile phone). For example, a number of TOCs offer smartcards to passengers (particularly those who operate in the London & South East market); seven TOCs offer m-tickets; and six TOCs offer e-tickets; see Table 4.

<sup>42</sup> This could include, for example, live information on disruptions to train services that have been purchased.

<sup>43</sup> For example, unlike rail, aviation passengers can typically reserve a particular seat using websites and self-service machines at the airport. Furthermore, outside of the actual ticket buying purchase, some passenger innovations such as finger-print technology allow customers to access lounges (Alaska Airlines) and smartcard payment for in-flight refreshments (Hong Kong Express).

2.18 However, particularly when compared with other transport systems and sectors, the pace of innovation in ticket formats is slow. For example, TfL introduced contactless payments (where passengers use debit or credit cards to pay, without needing to enter a PIN) for single fares on London buses in 2012 (followed in 2014 for all TfL and national rail services); New York and Tokyo provide m-tickets; and Madrid's metro system is trialling mobile ticketing via near field communication. Most airlines in Great Britain (and all low-cost carriers) have introduced e-tickets and many have introduced m-tickets. This is also discussed further in Annex G.

2.19 Our research also suggests that passengers' preferences for ticket formats are not always being met in ticketing<sup>44</sup>. For example, 20% of business travellers said they would have liked to use a smartcard for their most recent trip (with passengers saying it allows them to avoid queues to buy tickets and speeding up transition through ticket gates) and 13% have said they would like to use an m-ticket, but could not. This suggests that passengers value the convenience of smartcards<sup>45</sup>.

2.20 Innovation in ticket formats appears to be a particular problem where TOCs need to work together because they share a product and/or a flow. While revenue from inter-available fares accounts for 37.5% of all TOCs' revenue, only four TOCs have developed mutually-recognisable e-tickets on inter-available fares and none offer m-tickets on inter-available fares (see Table 4). Furthermore, where TOCs allow passengers to use smartcards on inter-available fares, this has mostly been through use of Oyster in the South East<sup>46</sup>. Consequently, the traditional orange credit-card sized paper ticket remains the most commonly used ticket format on these services.

2.21 The relatively slow pace of innovation in ticket formatting has been highlighted as an issue, with ATOC suggesting that ticket fulfilment "*has proved to be one of the most challenging issues for the industry over recent years*"<sup>47</sup>.

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<sup>44</sup> BDRC Continental Report, Chapter 6.

<sup>45</sup> Additionally, our research found that in discussions with passengers, they often spontaneously suggested that it would be good if smartcards or m-tickets could be used in rail, drawing comparisons with flights or event tickets. This indicates a desire for faster and more widespread innovation (as well as a lack of knowledge among some passengers that such options are available on some journeys or products).

<sup>46</sup> TOCs involved in the Oyster scheme are Abellio Greater Anglia, c2c, Chiltern Railways, Thameslink and Great Northern, First Great Western, London Midland, London Overground, Southeastern, Southern, and South West Trains.

<sup>47</sup> ATOC response to our September 2014 consultation. It also suggests that the pace of change has lagged behind other industries. The pace of innovation in ticket formats has also been raised by others, such as Transport Focus.

2.22 Therefore, and notwithstanding the efforts made by some TOCs and over some flows to roll out more innovative ticket formats (such as smartcards, contactless payment cards and m-ticketing), we are concerned that the orange credit-card sized paper ticket remains the only universally accepted ticket format. Innovation in ticket formats is not keeping pace with other sectors and with passengers' expectations, particularly younger and more frequent travellers. This suggests there is considerable room for improvement, particularly on shared flows or products.



**Table 4: Current availability of more innovative ticket formats, by TOC<sup>56</sup>**

Operator	Smartcard		M-ticket		E-ticket	
	Own flow	Shared flow	Own flow	Shared flow	Own flow	Shared flow
<b>Abellio Greater Anglia</b>		✓	✓		✓	
<b>Arriva Trains Wales</b>			✓ <sup>48</sup>			
<b>c2c<sup>49</sup></b>	✓	✓				
<b>Caledonian Sleeper</b>						
<b>Chiltern Railways<sup>50</sup></b>		✓	✓		✓	
<b>CrossCountry Trains</b>			✓		✓	✓
<b>East Midlands Trains</b>	✓				✓ <sup>51</sup>	
<b>Eurostar</b>			✓		✓	
<b>First Great Western</b>		✓	✓			
<b>First Hull Trains</b>			✓			
<b>First TransPennine Express</b>					✓	
<b>Gatwick Express</b>			✓		✓	
<b>Grand Central</b>					✓	✓ <sup>52</sup>
<b>Heathrow Connect</b>						
<b>Heathrow Express</b>			✓		✓	✓
<b>Island Line</b>						
<b>London Midland</b>	✓	✓				
<b>London Overground</b>	✓	✓				
<b>Merseyrail</b>	✓					
<b>ScotRail</b>	✓					
<b>Southeastern</b>	✓	✓				
<b>Southern</b>	✓	✓				
<b>South West Trains</b>	✓	✓				
<b>Thameslink and Great Northern</b>		✓	* <sup>53</sup>			
<b>TfL Rail</b>		✓				
<b>Virgin Trains West Coast</b>			✓ <sup>54</sup>		✓	✓ <sup>55</sup>
<b>Virgin Trains East Coast</b>			✓		✓	

Source: ORR

<sup>48</sup> Can only be used when buying 12 advanced fares; see [here](#) for further information.

<sup>49</sup> The bPayband (offered in partnership with Barclaycard) can only be used on c2c flows and those which accept Oyster cards. It acts in the same way as contactless payment cards.

<sup>50</sup> Chiltern is currently piloting the use of contactless payment cards.

<sup>51</sup> Between Nottingham and selected stations

<sup>52</sup> Grand Central and/or CrossCountry Trains Advance tickets.

<sup>53</sup> Thameslink Great Northern has discontinued the First Capital Connect m-ticket scheme. It says it will be "introducing its own key smartcard shortly, which will allow passengers to travel on its services in the same way as an Oyster card"; see [here](#) for further information.

<sup>54</sup> Only on Advance services for its own West Coast Trains' services.

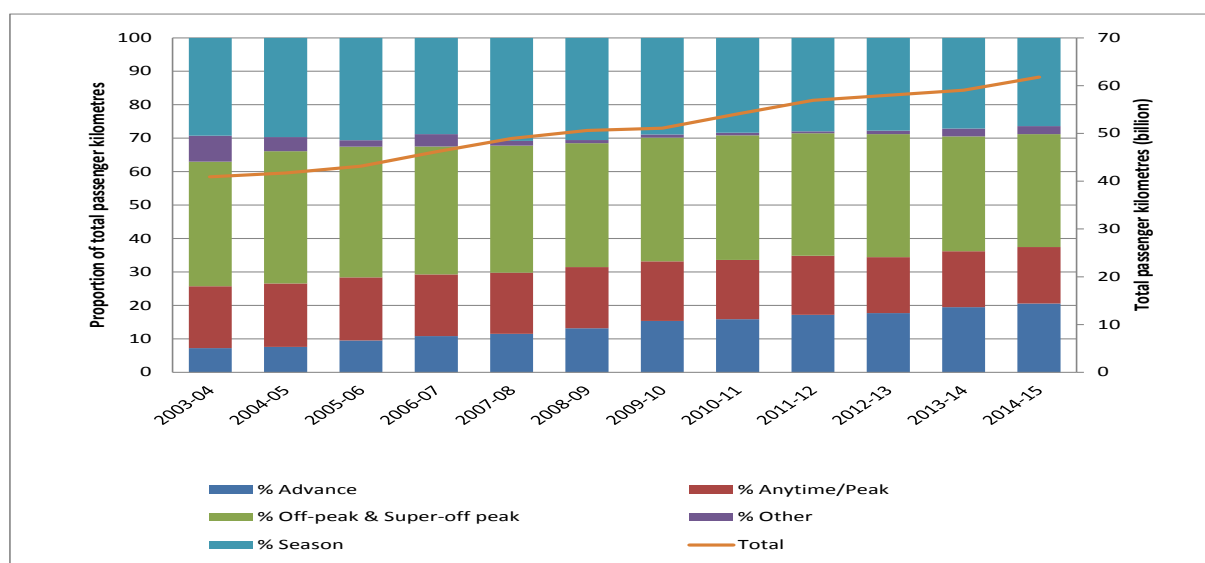
<sup>55</sup> Only available on Advance tickets on the West Coast mainline and/or CrossCountry Trains services.

<sup>56</sup> This is based on the list of TOCs currently operating, available [here](#) (accessed in early June 2015).

## Passengers' choice of tickets

2.23 Passengers can currently choose from Off-Peak (including Super Off-Peak), Season, Advance, and AnyTime tickets, see Figure 4. They can also buy carnet tickets from some TOCs for certain services.

**Figure 4: Passenger kilometres by ticket type (total passenger kilometres), 2003/04 to 2014/15**



Source: LENNON

2.24 The existing mix of ticket types caters for different needs and journey purposes. For example, Advance fares typically offer cheaper prices in return for restricting validity to dates and services specified by the TOC. Advance fares are popular, having seen significant sales growth from 7.3% of all tickets in 2003-4 to 17.7% of all tickets in 2012-13. This reflects passengers' priorities; generally the fare is the most important factor that passengers consider when purchasing tickets<sup>57</sup>.

2.25 Flexibility for passengers around the time of travel is also important. For example, AnyTime tickets that allow passengers to travel on any time or day of travel and that can be used on any train account for about 13% of all tickets sold. Passengers' take-up of inter-available fares is discussed in further detail in Box 4.

2.26 Passengers therefore choose different tickets based on their needs and are willing to pay different amounts for those different ticket types. This suggests

<sup>57</sup> BDRG Report, Chapter 3. It found that price was over three times more important to passengers than the next most important factor of time flexibility.

that variety in ticket flexibility, between TOCs, routes and times of validity, is valuable to consumers.

2.27 Indeed, our research indicates that passengers would, in fact, like more choice of ticket and product types. Our qualitative research revealed that passengers value different ticket types and would particularly welcome types of season tickets not currently available, such as part-time Season tickets (e.g. three days a week), off-peak Season tickets or weekday-only Season tickets. They were also interested in carnet tickets, whereby passengers buy in advance a bundle of tickets (often 6, 10 or 12) that can be used on any train and any time<sup>58</sup>. These are only currently available from eight TOC services on certain routes or from certain stations<sup>59</sup>. This reflects the reasonably high number of passengers who don't need to travel by rail every day and/or aren't working a typical '9am to 5pm' day<sup>60</sup>.

2.28 Indeed, some of the choices that passengers appear to value are only available from specific TOCs or on particular services. For example, CrossCountry Trains is the only TOC offering Advance fares for purchase on the day of travel<sup>61</sup>. This is despite the fact that it has proved to be popular with its passengers and that it has been revenue generative<sup>62</sup>. Furthermore, where TOCs have introduced new network-wide products, such as the Two Together railcard, it has proved very popular<sup>63</sup>.

2.29 Many stakeholders recognise the importance of having a range of products that meet passengers' different needs, though views tend to differ around whether the pace of development has been quick enough<sup>64</sup>. Others, however, highlight

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<sup>58</sup> This is complemented by separate research undertaken by Transport Focus into possible products for commuters. It found that 43% of all commuters would be likely to use carnet tickets, and less frequent commuters would be more likely to use them; see [here](#).

<sup>59</sup> TOCs offering carnet tickets include Chiltern Railways, East Midlands Trains, First Hull Trains, First ScotRail, Grand Central, National Express East Anglia, Virgin East Coast Trains, and Virgin Trains.

<sup>60</sup> For example, in our quantitative passenger survey, 41% of passengers who described themselves as commuters travelling to/from a regular place of work/education were doing so only three days per week.

<sup>61</sup> Typically, Advance fares are only sold up to midnight the day before travel.

<sup>62</sup> This has been demonstrated in research undertaken by Transport Focus on behalf of the DfT (see [here](#)) that suggests that Advance fares for purchase on the day "*may have a small effect in increasing number of rail journeys... and encourage some passengers to spread their journeys... so aid(ing) capacity management*". CrossCountry Trains' own passenger research suggests that, broadly, one-third of respondents would not have travelled had the product not been available to them, and two-thirds said they either had, or would in the future, change their travel behaviour in light of it being available. Furthermore, CrossCountry Trains say that sales data indicate that 1,000 passengers per day buy this product.

<sup>63</sup> For example, over 216, 000 Two Together railcards were sold in 2014/15.

<sup>64</sup> For example, in its response to our February 2014 Call for Evidence, Campaign for Better Transport suggested there would be benefit from having new railcards; part-time season tickets; 'Pay the Difference' systems or tickets (that would enable passengers with an Advance fare, who want to travel on a different train than the one their ticket is valid for, to pay only the difference in price, rather than

that a wider choice of products may overly complicate ticketing, making it confusing for passengers<sup>65</sup>.

**2.30 As such, and to meet passengers' different needs, we note the importance of passengers being able, as they currently can, to choose from a range of fares. While passengers often perceive the current choice to be complex, this shouldn't lead to a need to limit the number of products available for sale. Rather, research suggests passengers would benefit from having a wider choice, such as more flexible ticketing (e.g. part-time Season ticket and carnet tickets) and ancillary products (such as a financial product to spread passenger's cost of a season ticket).** To help address passengers' concerns about the complexity of fares, we note that retailers can play a role in helping them to choose the right ticket and in making the terms and conditions as accessible as possible; industry's Code of Practice on retail information is relevant to this also.

#### **Box 4: Passengers' take-up of inter-available and through fares**

- Inter-available fares allow passengers to choose the TOC they travel with and the route they travel. For example, a passenger with an inter-available ticket travelling from London to Birmingham (usually marked with an 'any permitted' code), could choose to travel on services with Chiltern Railways (from London Marylebone) or with London Midlands or Virgin (from London Euston).
- Passengers can also travel on a through ticket that allows them to travel across the network using a single ticket, bought from a single point for a single journey using different trains.
- Inter-available fares provide passengers with more flexibility over the time they travel (and, by default, over the TOC they travel with). Our research found that flexibility was the second most important factor in choosing which ticket to buy, after price<sup>66</sup>.

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purchase a new ticket); and Advance tickets that can be purchased on the day. It also suggests that TOCs could consider rolling-out further carnet tickets. However, in its response to our September 2014 consultation, East Coast Trains suggest, "*(o)n a rail product front the pace and level of developments have generally been appropriate*", citing the introduction of its 'mix and match singles' structure, discounts aimed at the car market and the "Scottish Executive product".

<sup>65</sup> For example, in its response to our February 2014 Call for Evidence, West Yorkshire PTE highlighted the tension between having additional choice and having a ticketing system that is simple, understood and transparent.

<sup>66</sup> BDRC Continental Report, Chapter 4.

- Where passengers have a choice over a TOC-specific fare or an inter-available fare, take-up of the latter does not appear insignificant. Inter-available fares accounted for 37.5% of passenger receipts in 2013/14<sup>67</sup>; see Figure 5.
- This varies by TOC and journey purpose: passengers' preference for inter-available travel is greater on regional and commuter services (accounting for 41% of passenger receipts), compared with long-distance routes (which accounted for only 32% of passenger receipts).
- Passengers would be prepared to pay more for a fully flexible ticket than one valid only at specified times of travel and would pay more for a fully flexible ticket than one valid only for a specified TOC, reflecting the perceived value of having flexibility over time of travel<sup>68</sup>.
- Passengers value the option to buy through tickets. They would be prepared to pay less for having to use separate tickets for a multi-leg journey<sup>69</sup>.

**Figure 5: Passenger take-up of inter-available fares (excluding TfL and PTEG travel), 2013/14**



Source: LENNON / ORR

<sup>67</sup> This represented a decrease of three per cent since 2008/09. Furthermore, in 2012/13, a maximum of 17% of train journeys were inter-available, involving at least one change of train. (This is based on station usage data on entry and exit). See Annex G that explains our methodology for quantifying passengers' uptake of inter-available fare, which includes a fuller discussion of the limitations of our analysis to measure passengers' take-up of inter-available fares.

<sup>68</sup> BDRC Continental Report, Chapter 4.

<sup>69</sup> BDRC Continental Report, Chapter 4. Note that the concept of through ticket in this context refers to passengers' ability to have one ticket for a point-to-point journey (even where it involves more than one leg), rather than a change in the terms and conditions of that fare(s). As such, we are not referring to split ticketing or testing passengers' appetite for this. This is discussed further in the BDRC Continental Report.

## Passengers' opportunities to find different / cheaper fares

- 2.31 Like-for-like fares (i.e. relating to the TOC, the time of travel etc) are broadly the same price across retailers and sales channels<sup>70</sup>.
- 2.32 Our research found that many passengers do not know that retailers sell fares at broadly equal prices across sales channel and often expect that their search costs should be rewarded by a cheaper price. Further, their expectations, gained from experience of other sectors (such as aviation, energy and telecoms) that products bought online are typically cheaper are not matched in rail.
- 2.33 Therefore, unlike many sectors and contrary to passengers' expectations, the price of fares and products are broadly the same across sales channels and retailers. **This prevents the cost of different sales channels from being properly reflected in the price of fares and, by limiting retailers' incentives to compete and to innovate in attracting passengers, may hold back changes that could improve retailing, to the benefit of passengers. However, it may also reduce passengers' perceived confusion about fares and enable all passengers (including those who don't have access to the internet) to pay the same as others.** We discuss this further in Chapter 3 and Chapter 4, in the context of possible longer-term remedies.

### Questions for Chapter 2

**Q2:** Do you agree with our emerging findings with respect to passengers' ticket buying experiences regarding their choice / ability of a) retailer/sales channel; b) how they buy tickets; c) their ticket format; d) the range of tickets; and e) opportunities to find cheaper prices?

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<sup>70</sup> The exception to this is some TOC discounted fares made available exclusively through their own sales channels. This is discussed in Chapter 4.

## 3. The industry regime for TOCs and possible remedies to promote effective competition

### Summary

While ticket retailing is a competitive activity, we consider that some elements of the industry regime for ticket selling limit TOCs' incentives to compete. In particular, we consider that TOCs could be better incentivised to compete in the creation of new products by improving the industry process for introducing new products to the market. As a possible longer-term measure, we also note that consideration could be given to allowing prices to differ by sales channel so that passengers could benefit from using lower cost sales channels and innovations that TOCs and other retailers may choose to develop. We note that some of the proposed remedies discussed in Chapter 3 could stimulate competition across the market.

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### Introduction

- 3.1 As discussed in Chapter 1, ticket retailing is a competitive activity, with TOCs and third party retailers competing with each other to sell tickets. In particular, they compete in offering passengers:
- Information on journeys and ticketing. For example, retailers compete to provide journey planning information. They also compete in how they display information so that passengers find it accessible and understandable, particularly with respect to TVMs and websites;
  - Different fares and new products. TOCs can offer passengers a range of tickets to meet their different needs (as discussed in Chapter 2). In addition to Season, Peak, Off-Peak (including Super Off-Peak), and Advance tickets, TOCs may also offer types of products, such as carnet tickets and special and promotional fares;
  - Different prices and/or ancillary products. For example, some retailers offer a discount on certain tickets bought online. Some TOCs also provide Season ticket holders with discounted fares for friends and family and some retailers offer passengers nectar points and/or have a loyalty scheme for regular passengers;
  - Different ticket formats that better meet different passengers' expectations and/or behaviour; and

- Travel management services in the business market, whereby TMCs and some TOCs compete to arrange a client's travel, to deliver corporate travel management policies and to consolidate billing.

3.2 Drawing on the responses to our February 2014 Call for Evidence and our September 2014 consultation, in this Chapter we set out our emerging findings regarding the extent to which the industry regime for ticket selling promotes competition between TOCs to the benefit of passengers. For each issue, we also suggest some ways in which competition among TOCs could be improved upon. We note that some of the proposed remedies discussed in this Chapter could stimulate competition across the market. A fuller assessment of the options is set out in the draft impact assessment for this Chapter; see Annex C.

## TOCs' ability to offer new fares and products

- 3.3 In rail, TOCs determine what fares may be created on their services and the price of these<sup>71</sup>. They also determine the range of products for their own services.
- 3.4 As discussed in Chapter 2, our emerging findings suggest that passengers want and would benefit from having more choice over ticket and product types, particularly more flexible ones such as part-time Season tickets (e.g. three days a week, Off-Peak season tickets or weekday-only season tickets) and carnet tickets.
- 3.5 In normal market conditions, we would expect competitive effects to encourage suppliers to bring forward such products to meet their customers' changing demands. However, this does not appear to be always the case in rail retailing. This is likely to reflect the wider franchising framework in which TOCs operate (that also influences the behaviour of Open Access Operators) and the particular industry processes that TOCs are subject to when introducing a new product. We consider each of these in turn.

### *Impact of franchising framework on TOCs' ability to introduce new fares and products*

- 3.6 Most TOCs operate under franchise agreements. This impacts their ability and incentives to offer new fares and products and, in turn, impacts Open Access Operators' incentives to offer new products.

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<sup>71</sup> With respect to inter-available fares, the lead TOC (usually the TOC that earns the most revenue on that flow) is required to create (and therefore set the price of) these fares on the relevant route. As such, the other TOC(s) operating on that flow (known as secondary TOC(s)) are obligated to accept that fare. The lead TOC may also create lower-priced fares through promotional (time-limited) fares (including Advance fares).



- 3.7 Through the bidding process and as part of its efforts to win the relevant franchise, potential TOCs are incentivised to compete to offer new products and fares. Indeed, many TOCs are selling products that were identified as beneficial to passengers. For example, as part of the franchise process for Essex Thameside and ScotRail, the successful franchisees committed to offering passengers carnet tickets. The former also agreed to offer flexible season tickets.
- 3.8 Commitments arising through the franchise process may also have an impact on Open Access Operators' incentives to introduce new products and fares (and vice versa). For example, Grand Central offers a book of 10 tickets that, it says, offers savings of 25% or more off standard ticket prices, available for both adults and children. First Hull Trains also offers a book of 10 tickets for business passengers that, it says, offers savings of up to 50%<sup>72</sup>. Open Access Operators offering such products may also encourage competing TOCs to offer similar products<sup>73</sup>.
- 3.9 However, within the franchise period, there may be fewer incentives to introduce new fares and products. Where it's not an explicit franchise requirement to offer carnets, TOCs have tended to withdraw them, possibly reflecting the fact that they do not consider them to be profitable, at least within the limitations and timescales of their franchise agreement<sup>74</sup>.
- 3.10 Furthermore, franchise agreements typically set out what the level of the relevant TOC's regulated fares may be (with regulated fares accounting for about 45% of all fares) and are also likely to have risk-sharing mechanisms<sup>75</sup>. They are also likely to influence TOCs' incentives in how and what to sell, including their incentives to introduce new fares and products.
- 3.11 With respect to the nature of competition among TOCs, therefore, it would appear that the bidding process under the franchising framework plays an important role in determining what TOCs offer, and whether they have an incentive to offer alternative, innovative ticketing products to passengers.

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<sup>72</sup> See [here](#) and [here](#), respectively, for further information about Grand Central and First Hull Trains' carnet tickets.

<sup>73</sup> For example, Virgin East Coast, which competes with Open Access Operators on some of its services, offers carnet tickets to business passengers available through its website; see [here](#) for further information.

<sup>74</sup> An exception to this is Southern's 'flexiseason', currently offered on a trial basis for certain flows, which provides passengers with 'cash back' based on the price of a weekly season ticket for those who travel no more than three times a week<sup>74</sup>.

<sup>75</sup> Risk-sharing mechanisms are designed to reduce the TOC's exposure to unanticipated changes in its revenue and/or costs. They include revenue sharing mechanism where the government and the TOC share the additional revenue earned over a particular target, often over the course of the entire franchise period. The presence of these mechanisms is likely to influence a TOC's retailing strategy.

Further, Open Access Operators will both respond to the ticketing products specified in franchises and those that TOCs choose to offer, and will provide a useful competitive stimulus to franchise TOCs by providing alternative ticketing products and fares that meet passengers' changing demands. **This highlights the important role the franchising bidding process plays in influencing the types of fares and ticketing products that are available. However, it may also suggest that further consideration could be given to how to encourage TOCs to introduce new products within the period of their franchise agreement.** This could be facilitated through, for example, encouraging TOCs to introduce new products mid franchise through a re-opening of the agreement, where appropriate.

- 3.12 Furthermore, there appears to be particular challenges associated with introducing new, more flexible products on inter-available fares. For example, there is no scope to buy carnet tickets that allow passengers to travel on more than one TOC on an inter-available or through journey. This is likely to reflect TOCs' limited incentives to innovate on shared flows, given that they share earnings from these fares (which reflect only the *likely* number of passengers they carry rather than the actual number). Furthermore, we note the limitations of using franchise agreements as a way to ensure TOCs introduce fares and products on an inter-available basis, given that franchise agreements start and end at different times. **This highlights the importance of separate initiatives, such as the DfT's recent commitment to trial flexible ticketing and single-leg pricing.**

#### *Impact of industry processes*

- 3.13 Any new product that a TOC wishes to sell must be created in accordance with the TSA. If the RSP considers that the product may not be consistent with the TSA, it will not allow its introduction and, instead, refers it back to the TOC who may then seek views from the DfT. As part of this process, the relevant TOC may consult with other TOCs about that fare or product<sup>76</sup>. The reasoning behind this process is to provide TOCs with a right to be informed about the introduction of a competing TOC's product and, where necessary, to object to the product if the relevant TOC has concerns that it will adversely impact its own revenue. Indeed, we note that the current arrangements were put in place with the objective of reducing the scope for individual TOCs to impact other TOCs (and their projected revenue)<sup>77</sup>. This reflects the nature of the franchising framework, where its requirements and expected revenues are highly specified.

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<sup>76</sup> TSA, Clause 4-25.

<sup>77</sup> For example, a resolution needs 85% of votes cast to be in favour of it for it to pass.

- 3.14 As an example, in 2011, CrossCountry Trains sought to introduce Advance fares that could be sold up to 10 minutes before the train's departure on its long-distance services. Because the product was considered to be inconsistent with the TSA, however, CrossCountry Trains required the support from all other TOCs to enable it to introduce it. Some TOCs were concerned that introducing the product would adversely impact their revenue projections, however. This gave rise to a lengthy process before CrossCountry Trains could introduce the product on a permanent basis, involving discussions at two separate TOC governance bodies, a 10-month inter-TOC consultation period, an 18-month trial with the product introduced as a temporary fare, two sets of passenger research, and formal agreement from the Secretary of State. The product was only eventually introduced as a permanent fare in January 2015, some four years after CrossCountry Trains first sought to introduce it.
- 3.15 We recognise the importance of TOCs being able to make representations on initiatives that are likely to affect their own revenue (reflecting the need to mitigate risk within the period of the franchise). However, it also appears to undermine the scope for competition among TOCs. Indeed, we note the suggestion from within industry that TOCs may be disinclined from introducing new products given the resources and time it took CrossCountry Trains.
- 3.16 To address this issue, and to ensure that the industry regime does not limit the scope for competition among TOCs, **we suggest that governments and TOCs improve the process through which TOCs introduce new products.** This could include, for example:
- Accelerating the process in which TOCs can introduce products (such as a maximum period of time in which TOCs can consider other TOCs' products);
  - Streamlining the governance process that oversees the introduction of new products, such that there is greater coordination between the relevant TOC governance bodies who manage the decision-making process. We note, for example, that CrossCountry Trains needed to seek views from two separate TOC governance bodies despite being made-up of the same representatives;
  - Exploring the merits of a change in the relevant voting rights relating to the introduction of new products; and

- Introducing the relevant product on a pilot basis at an early stage of the process, to allow TOCs to better understand the impact of the relevant product<sup>78</sup>.

## TOCs' ability to differentiate the ticket buying experience

- 3.17 As noted above, TOCs compete to attract customers by offering a ticket buying experience that best meets their needs. This includes the way information on journeys and tickets is presented and the way passengers ultimately make the purchase. This is particularly the case for websites (where passengers have an easily-accessible choice of different retailer). It is also the case, though to a lesser extent, for TVMs (reflecting the fact that passengers may have some choice over which TVMs to use (particularly at larger stations) and/or which station ticket offices to visit to buy their ticket).
- 3.18 However, while TOCs compete in the functionality of their websites and TVMs, and of the customer service at station ticket offices, their retailing systems are heavily determined by the design and functionality of the relevant ticket issuing systems (TIS) machines that enable retailers to access and sell all fares<sup>79</sup>. Reflecting third party retailers' need to have a TIS machine to sell tickets, we note this issue is also relevant to them in the design of their websites (including for TMCs in the design of their booking systems)<sup>80</sup>.
- 3.19 With respect to the TIS machines, a retailer can choose to design its own TIS or to procure one from a TIS supplier. Currently, however, there are a limited number of mobile (for TVMs) and web (for websites) TIS suppliers<sup>81</sup>. Some stakeholders have expressed concern that there is limited competition among TIS suppliers, which impacts on the degree of innovation that might otherwise arise from the incentives provided by rivalry among firms<sup>82</sup>. TIS suppliers, in turn, say they are very much influenced by what they can offer given the need for their machines to be compatible with (often heavily specified) industry rules relating to, for example, accreditation. They are also limited by the design of

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<sup>78</sup> We note, however, the uncertainty associated with introducing products on a pilot basis without any assurance of its longer-term future, given the necessary investments required.

<sup>79</sup> TIS machines also interface with shared IT systems and centrally-owned data to ensure that sales data and revenue allocation is captured appropriately.

<sup>80</sup> This is also relevant to the very small number of third party retailers who own / operate TVMs. Furthermore, we note some third party retailers also own their own TIS and act as suppliers to TOCs and other third party retailers in the supply of TISs.

<sup>81</sup> The current TIS suppliers are Assertis, ATOS, Evolvi, Raileasy, Silverrail, and The Trainline.

<sup>82</sup> For example, in its response to the September 2014 consultation, ATOC notes that it has "concerns about the efficiency of the TIS supply market".

shared IT systems and industry-owned data which, it has been suggested, are both out-dated.

3.20 This suggests, therefore, that there is some tension between TOCs' ability (and, in turn, third party retailers' ability) to compete in how they sell their fares. This is because individual retailer's systems are heavily influenced by the design of the shared IT systems and industry-owned data, which are determined as part of TOCs collaborating together.

3.21 We have not, during the course of this Review, looked at the TIS supply market in detail. However, we note TOCs' collective efforts (through ATOC) to work with TIS suppliers to provide them with more clarity about what TOCs will want from future TIS design(s). This has included, for example, the production of ATOC guidelines and an ATOC-hosted workshop with TIS suppliers. We understand that this is to provide predictability to TIS suppliers and to manage costs. However, in doing this, **we consider that TOCs should ensure they do not suppress the potential for innovation arising from individual retailers, who would otherwise compete by virtue of differentiation in the way they sell tickets.**

3.22 As discussed further in Chapter 5, and where TOCs consider a need to work with the TIS supply community in their development, we also note the importance of involving third party retailers and others. More widely, we also note the role a longer-term strategy for ticketing could play in the development of TIS machines. The development of a longer-term strategy for ticketing is discussed further in Chapter 5.

## TOCs' ability to differentiate by sales channels

3.23 As discussed in Chapter 2, like-for-like fares are typically the same across retailers and sales channels<sup>83</sup>. This may reduce the scope for passenger confusion and reduce the need for consumers to 'shop around' for the best price, which may be difficult if they have (or perceive themselves to have) a low

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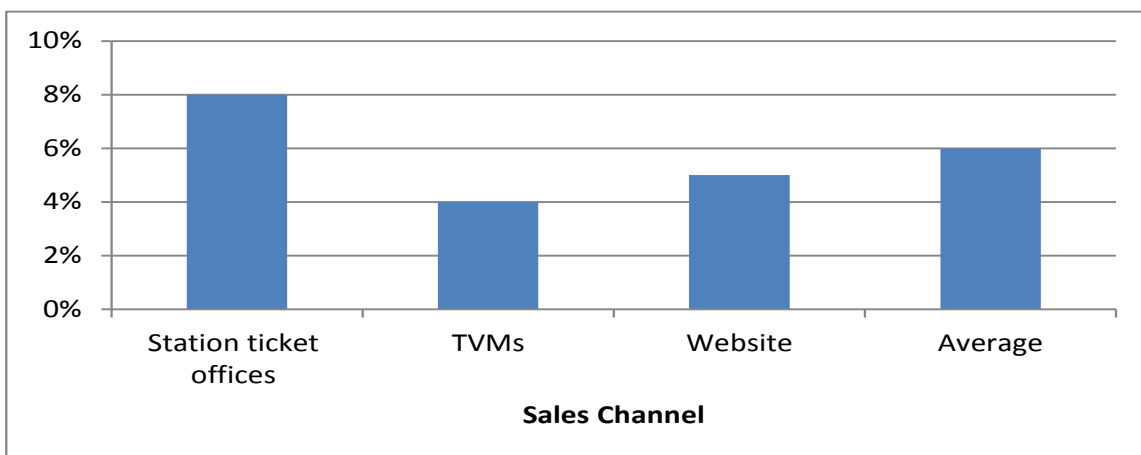
<sup>83</sup> This may be because TOCs understand that they are not permitted to vary the price of equivalent fares through different sales channels under the terms of the TSA and their franchise or because they are not incentivised to do so. As noted in our September 2014 consultation document, TSA Chapter 6-10(3) states that, with respect to non-fixed priced products and non-excess fares, "*The amount that may be charged to any Purchaser of any Rail Product... is at the discretion of the Operator which Sells that Rail Product*". This may suggest that, for non-temporary fares, the price must be uniform across sales channels. Furthermore, TOCs appear to consider that they are not allowed to charge different prices for equivalent fares according to the sales channel. For example, First Group (in its response to our February 2014 Call for Evidence) suggested that it would like the ability to charge different prices through different sales channels to reflect the relative cost of sale (arguing that its inability to do so is a significant constrain on the market).

understanding of rail fares. It also provides protection for passengers who can't access sales channels that offer cheaper prices, for example the internet.

3.24 However, some TOCs offer discounted fares exclusively through their own sales channels, typically on a temporary basis (see Table 5 in Chapter 4). This is comparable to other sectors where consumers can typically access the same product at different prices through different sales channels (and retailers). This may reflect the fact that many passengers assume that different retailers have different prices and/or will sell the same ticket at different prices, suggesting a low level of awareness that fares are typically available at the same price through all retailers<sup>84</sup>.

3.25 Having uniform prices across sales channels and retailers is typically indicative of a lack of effective retail competition. Over time, and in a dynamically-competitive market where there are incentives to offer new products and drive down costs, we would expect to see some variations in price, reflecting different ticketing services on offer to customers for the same ticket types. For example, if prices were allowed vary by sales channel, the lower cost of online sales could be reflected through price reductions, whilst greater flexibility might support ticket sales in more convenient locations or formats<sup>85</sup>.

**Figure 6: TOCs' estimated cost of sale by sales channel<sup>86</sup>**



Source: ATOC

<sup>84</sup> BDRG Continental Report, Chapter 5. In our quantitative survey, 19% of passengers disagree that third party retailers made available all the possible tickets for every journey at the same price, and a further 24% said they did not know if this was the case.

<sup>85</sup> As an analogy with ticket formats, we note that TfL tailors the price of its fares depending on the ticket format, with passengers accessing cheaper fares bought on the Oyster smartcard compared with those bought on paper tickets.

<sup>86</sup> See our September 2014 consultation for further information on TOCs' estimated cost of sale by sales channel.

- 3.26 To address this, **we consider there to be merits in considering whether TOCs (and third party retailers) should reflect the different costs of sale in the final price of a passenger's fare.** This could introduce more competition between retail sales channels (and, correspondingly, between retailers). This would reflect the practices in many other sectors, where passengers can (and expect to be able to) access different prices through different sales channels, (typically a cheaper price by buying online). In doing this, this option could allow TOCs to create and offer prices to the market that excludes the cost of retail and to offer them to all other TOCs and third party retailers.
- 3.27 However, consideration would also need to be given to the impact of diluting price parity across sales channels. In particular, it would require further consideration about requisite consumer protection (particularly for less regular passengers who prefer buying face-to-face and/or passengers who don't have access to the internet). Consideration would also need to be given to ensure that passengers are, more generally, better informed about rail pricing and the best ways to buy tickets.
- 3.28 Consideration would also need to be given to how this would affect third party retailers and intra-TOC selling, particularly around determining what price the ticket would need to be settled at through the central industry systems. As such, we propose that, for now, further consideration could be given to this option. We are not suggesting that industry practices are immediately changed to allow for differential pricing by sales channel.

## Questions for Chapter 3

**Q3:** What are your views on our emerging findings that TOCs' incentives to introduce new fares and products are somewhat limited? What are your views on our suggestions around DfT's role and, more specifically, the role of franchising? What are your views on our proposed recommendations that improvements be made to the industry processes to make it easier for TOCs to introduce new fares or products? Specifically, do you agree this should be taken forward now, as a matter for TOCs and governments?

**Q4:** What are your views on the role TIS machines play in enabling TOCs to differentiate the way they sell tickets to passengers? What are your views on the appropriate response, in particular around the balance between providing the TIS market with more direction about the design of the TIS machines and in facilitating choice?

**Q5:** What are your views on the possibility that the price of (permanent) fares could vary by sales channel? What are the merits of considering this further at this stage?



## 4. The industry regime for third party retailers and possible remedies to promote effective competition

### Summary

Third party retailers play an important role in expanding the market and putting competitive pressure on TOCs to improve their offering, including by innovating. However, there are currently some limits in passengers' choice of retailers (and, correspondingly, the innovation passengers enjoy). To address this, we consider that industry could take forward a set of nearer-term measures to improve its governance regime to better take account of other parties' views in the retail market, including third party retailers. We also note the possible longer-term remedy around providing for a wholesale price that could provide for greater scope for third party retailers to compete.

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### Introduction

4.1 In this Chapter, we consider the extent to which the industry regime for ticket selling promotes the competitive role of third party retailers to the benefit of passengers.

### Third party retailing in ticket selling

#### *Role of third party retailers*

- 4.2 Third party retailers include online third party retailers (who sell tickets online and by phone, usually direct to passengers); TMCs (who sell rail fares to businesses, often delivering travel management policies and consolidated billing); and travel agents and tour operators (who sell rail fares, often as a wider package that includes hotels and/or flights).
- 4.3 Third party retailers sell tickets on behalf of TOCs, who (broadly) determine the price of the fare and the range of fares available on their services<sup>87</sup>. As such, third party retailers typically compete not on the price of the fare but on the quality and the choice provided by their retail services. For example, third party retailers compete on the way the information is presented and the way the customer is navigated through the sale (for example, through the retailer's

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<sup>87</sup> As discussed further in our September 2014 consultation, retailers selling on behalf of a TOC (including third party retailers) may charge a different price to the one created by the relevant TOC, but must settle at the full price through the industry systems.

website and App). Third party retailers also compete on customer services, such as handling complaints and managing refunds and compensation. They may also compete on the ticket format (though are necessarily constrained by the format the relevant TOC(s) choose to offer and/or accept).

- 4.4 Third party retailers, therefore, can play an important role in delivering benefits to passengers, even in the absence of price competition. For example, they provide greater choice to passengers by increasing the number of retailers/sales channels available and, as such, facilitate a wider variety of ways to present fare and journey information and, in turn, to buy a ticket. Similarly, they can help empower consumers by way of better or alternative information provision, for example through different website designs and marketing strategies. They have also led many of the innovations in ticketing; for example, they were the first to introduce mobile Apps to buy tickets.
- 4.5 Third party retailers also appear to benefit the market in other ways. By promoting rail transport they appear to expand the market to the benefit of wider industry<sup>88</sup>. By virtue of increased competition, they also put pressure on TOCs to improve their own services. See Annex H for a further discussion regarding the role of third party retailers in the rail retail market.
- 4.6 For these reasons, we consider that competition between third party retailers and TOCs and competition among third party retailers is important. In this Chapter, we discuss the nature of third party retailing; outline the likely issues associated with the industry regime for third party retailing that may inhibit competition to the detriment of passengers; and propose possible remedies to address the issues that we have identified.

#### *Structure of the third party retailing market*

- 4.7 Third party retailers play an important role in the market for ticket selling, accounting for a sizable proportion of all revenue and customers. However, a more detailed consideration of the third party retailing market highlights some areas of potential concern:
- Regarding the size of the market, third party retailers account for over 17% of gross receipts. Notwithstanding the limitations in comparing rail with other sectors, the overall market size of third party retailers appears similar

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<sup>88</sup> Industry research suggests that third party retailers' marketing generates increased revenue that benefits the entire industry, potentially with a return of investment of around £12 for every £1 spent by certain third party retailers. See Annex H for further details.

to aviation<sup>89</sup> but lower than energy (where 31% of all switches are made through a price comparison website)<sup>90</sup>. As illustrated in Figure 2, this varies significantly by sector type, however. Third party retailers have a much lower presence in the commuter/regional markets compared with the longer-distance market<sup>91</sup>;

- There are a relatively small number of third party retailers. In the online third party market, there are only five parties, with the leading online third party retailer accounting for over 90% of the market and three other parties, together, accounting for less than three per cent. Similarly, in the TMC market, the top ten parties, who account for around three per cent of all TMCs, hold 81% of market revenue. Compared with some other sectors, the number of third party retailers in the B2C market appears low<sup>92</sup>; and
- Regarding growth in the market, the market share of third party retailers continues to grow, increasing from nearly 10% in 2003/04 to 17% in 2014/15<sup>93</sup>. However, the rate of increase has slowed in more recent years, and has not kept pace with the wider rate of growth of third party retailers in other sectors<sup>94</sup>. Furthermore, there does not appear to be significant new entry. Rather, the trend is for market consolidation, particularly in the travel management market where the number of travel management companies has declined twofold between 2004/05 and 2013/14 (despite total revenue increasing 250% in the same period, partly reflecting growth in the rail market). In the online third party retailer market, the most recent party to enter the market did so in 2012<sup>95</sup>.

4.8 When selling tickets, third party retailers are subject to particular rules and practices, which we refer to as the third party retailers' industry regime. The current structure of the third party retailing market may suggest that the industry regime for third party retailers is not working as effectively as it could be.

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<sup>89</sup> Our analysis suggests that third party retailers may account for between 10-15% of all bookings. This is highly indicative, however. It is based on publically-available information about the UK air travel market; see, for example, [here](#) and [here](#).

<sup>90</sup> Source: Ofgem.

<sup>91</sup> Furthermore, reflecting the fact that third party retailers sell more longer-distance tickets that are of higher value, they account for nearly six per cent of all ticket issued in 2013/14 (source: LENNON).

<sup>92</sup> For example, there are 12 accredited switching sites for domestic energy customers; see [here](#).

<sup>93</sup> See Figure 1.

<sup>94</sup> For example, while the proportion of domestic customers who used a Price Comparison Website for switching their energy supplier increased by 15% between 2011 and 2014, the revenue share of third party retailers in rail increased by (only) 10%, from 15% to 16% during the same period.

<sup>95</sup> However, we note that some parties have begun to sell as white label retailers, using a third party retailer's licence under a bilateral arrangement. Furthermore, we note that ATOC is in on-going discussions with prospective third party retailers.

4.9 As such, and drawing on our February 2014 Call for Evidence and our September 2014 consultation and the responses to it, we set out below our emerging findings regarding the issues with the industry regime for third party retailers (i.e. the extent it may be inhibiting competition to the benefit of passengers). For each issue, we also seek to identify a potential remedy (or remedies) and provide an initial assessment of how it may address the issue. A fuller assessment of all the proposed remedies is set out in the draft impact assessment for this Chapter; see Annex D.

## **Incentives on potential third party retailers to enter and to expand in the market for ticket selling**

4.10 Third party retailers are subject to certain requirements and costs in entering and expanding (or exiting) the market for ticket selling. We are concerned that they give rise to three particular issues, discussed in turn below.

*The entry requirements for third party retailers are determined by TOCs, which may give rise to (real or perceived) conflicts of interest*

4.11 TOCs determine who may enter the market for ticket selling. For example, TOCs decide who should be granted a licence to enable them to sell tickets<sup>96</sup>. They also determine whose TIS should be accredited and (with ATOC and other TMCs) determine which TMCs are eligible to participate in the ATOC industry insurance scheme<sup>97</sup>.

4.12 Such industry rules have the objective of ensuring that new parties wishing to sell tickets are reputable, thus protecting passengers and other retailers. Furthermore, guidance by way of formal requirements may provide certainty for parties who are considering whether to enter the market. However, we are concerned that the rules around entry could give rise to (real or perceived) conflicts of interest because the entry requirements are set by TOCs who compete with third party retailers to sell tickets (in the downstream market).

4.13 Drawing on stakeholders' views and the experiences of other sectors, we have not identified any obvious problems with the particular entry requirements and are therefore not proposing a change to them, at least not at this stage. However, we are concerned that the current way the rules are set creates (real

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<sup>96</sup> Decisions on who should be granted a licence are taken by TOCs through the ATOC Commercial Board. Alternatively, under schedule 26 of the TSA, a TOC may allow a third party retailer to use its licence to sell rail tickets. This is a bilateral arrangement, often at a geographically local level.

<sup>97</sup> The ATOC industry insurance scheme is provided as an alternative to bonding and is open to TMCs and travel agents. TOCs, working with

or perceived) conflicts of interest which may deter parties from entering the market.

- 4.14 This appears to be a material issue for a wide range of stakeholders, particularly third party retailers<sup>98</sup>. Referring to the licensing regime, Transport Focus says it means that third party retailers are “*effectively controlled by their erstwhile competition, the TOCs (via ATOC)*”. Indeed, ATOC and some TOCs acknowledge the scope for conflicts of interests given its “*quasi-regulatory role*” in granting licences while competing with third party retailers<sup>99</sup>.
- 4.15 One option to address this would be for **the industry regime affecting third party retailers to be overseen by an independent body**. This independent body would oversee, for example, significant changes to the licence requirements on potential third party retailers or significant changes to the bonding requirements. It could, for example, review and comment on the methodology applied to changes to licence requirements and take a monitoring role over the decision-making process. We are not making recommendations on the identity of the independent body but invite views on a number of options, including the DfT (with Transport Scotland having a role in Scotland); ORR; Transport Focus; or an independent industry expert (such as an independent consultancy).
- 4.16 Independent oversight of the entry requirements on third party retailers may address concerns around (real or perceived) conflicts of interest, thus making the industry regime (and thus the market) more attractive for new and existing retailers. The cost of the option is not modest, though this is likely to be dependent on the body chosen.
- 4.17 An alternative and/or complementary option to address this issue could be to provide a role for an independent member to sit on the relevant TOC decision-making groups (e.g. the Commercial Board, the Ticketing and Settlement Scheme council). He/she could be independent of the TOC community but could, to provide insight and challenge to TOC decision-making, have a consumer and/or regulatory and/or transport background. This could help address the risk of (real or perceived) conflicts of interest, given the independent nature of the member. However, reflecting the composition of the

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<sup>98</sup> Five stakeholders raised this as an issue in response to both our February 2014 Call for Evidence and our September 2014 consultation. We note that similar issues have arisen in comparable markets. For example, with respect to payment systems (which the larger banks own but smaller banks and users need to access), the Payment System Regulator argued that conflicts of interest arose with having relevant bank directors on the decision-making boards for payment systems. The PSR suggested that this adversely impacts competition and innovation (i.e. the development of new payment services and the speed at which they’re brought to the market) and whether the developments are in the interests of service users; see [here](#).

<sup>99</sup> ATOC response to our September 2014 consultation.

group (eight TOC owning group representatives, plus ATOC officials) and the fact that he/she would have no voting rights (with limited resources), it may be difficult for him/her to have an effective voice. This could be addressed, in part, through increased transparency of decision-making (for example, by making public the minutes of meeting that includes the views of the independent member).

#### *The unpredictability of costs and commission*

- 4.18 TOCs, in overseeing the third party retailer arrangements, determine much of third party retailers' costs and commission (see Figure 7 and Figure 8, and Annex I for further details on the costs of shared IT systems and shared industry data)<sup>100</sup>.
- 4.19 The way some of these are decided lacks transparency and a clear rationale, with third party retailers appearing to have limited access to the reasons for any change. For example, there is no publically available information about the standard cost of a licence or the on-going costs of using shared IT systems and industry owned data. There is also no public and pre-determined methodology for determining the level of commission<sup>101</sup>. Furthermore, while the principles for determining what third party retailers are required to pay is set in advance, the actual level are determined and charge on an *ex post* basis. While this is broadly cost-reflective, it may also give rise to some unpredictability about its likely cost.
- 4.20 Furthermore, third party retailers have limited influence – and no formal role – over the level of the costs. This also appears to be an issue for other parties, such as TIS suppliers, who lack a formal role over decisions that may give rise to additional costs, such as a change to the accreditation rules.
- 4.21 However, we note that TOCs (through ATOC) consult with third party retailers about changes to the commission rates (at least six months prior to any change), and about changes to the cost allocation principles (generally at least

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<sup>100</sup> The cost allocation mechanisms are set out in the third party licence.

<sup>101</sup> Commission is determined as a proportion of the price of the fare (rather than on a per transaction basis) and varies by sales channel and type of third party retailer. See Annex E, September 2014 consultation document. ATOC says that it considers a range of factors when determining changes. These include the commission in other parts of the travel market; the cost of sale through different sales channels; the average transaction value to which commission rates apply; the ability of retailers to earn other remuneration through fees or ancillary income; and the extent to which third party retailers are adding value, in particular supporting growth and market expansion. See ATOC response to the September 2014 consultation.

a year before any change). Furthermore, TOCs (though ATOC) has recently agreed to keep the current rates until at least 2019<sup>102</sup>.

4.22 Overall, however, we are concerned that the current arrangements with determining costs and commission may create uncertainty and unpredictability for third party retailers (and other industry parties). This may deter entry, as well as lead to exit. As per the discussion above relating to the entry requirements being determined by TOCs, this may be exacerbated by (real or perceived) conflicts of interest given that costs and remuneration are set by TOCs who also compete in the downstream market for retail<sup>103</sup>. This appears to be a material issue for a wide range of stakeholders, particularly in the confidential responses we have received<sup>104</sup>.

4.23 With respect to the actual costs of entry and the commission levels, we have not received evidence to suggest that they are set at a level that excludes any third party retailer from entering the market to sell tickets, or that they are otherwise unreasonable for larger third party retailers (see Box 5). We are not, therefore, proposing remedies that seek to alter the level of these costs or remuneration (though see below some proposed remedies to address the entry costs for smaller retailers). However, we are concerned that the lack of transparency around how they are determined may create a perception that they are difficult to predict, which could dampen incentives to enter the market.

4.24 To address this, we recommend that there is increased **transparency around third party retailers' costs and commission**, including how costs and commission levels are calculated; what factors will give rise to a change; the likely frequency of change; and the associated processes for making change (e.g. notification periods, rights to challenge). This could be achieved by:

- **Further guidance to the market through provision of guidelines.** We welcome ATOC's efforts in working with potential and existing third party retailers to help them understand the industry regime<sup>105</sup>, but consider that it could go further (for example, regarding the likely costs third party

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<sup>102</sup> ATOC has also implemented a three years' notice of any change to commission rates to the licences of some online third party retailers, and is exploring the idea of doing this with TMCs also.

<sup>103</sup> This risk is likely to be countered somewhat by the fact that TOCs' and third party retailers' incentives are aligned in wanting to sell as many tickets as possible. The strategy of some TOCs is to rely on third party retailers as a way to sell more tickets to more passengers.

<sup>104</sup> This was also raised by Transport Focus in its response to our February 2014 Call for Evidence. It suggested that having commission levels at five per cent make it, "*hard to even cover costs – hence, presumably, the booking fee that is levied*".

<sup>105</sup> For example, ATOC fields initial enquiries from prospective retailers and makes some information about the application process available on its website ([www.atoctravelagents.org](http://www.atoctravelagents.org)). In the case of third party investor licensees (the usual licence for online third party retailers), we understand that ATOC typically meets with the prospective retailer multiple times. RSP provides guidelines on TIS accreditation (available [here](#)) and ATOC provides guidance on bonding (available [here](#)).

retailers face relating to licensing and the costs of using shared IT systems and industry data). This is likely to be a relatively low-cost option for improving the transparency of potential third party retailers' costs of entering the market;

- There is a **formal obligation on the relevant TOC governance bodies to consult on proposed changes to third party retailers' costs and remuneration**. Consultation could also enable more effective collaboration among all industry parties relating to the development of shared IT systems, for example (see Chapter 5). We suggest that the consultation process should provide an explanation of the need for change, identify potential options for change and provide sufficient lead-in times for parties to comment and respond, as necessary; and
- **Consideration is given to allowing all third party retailers, and others affected by the industry regime, a mechanism to appeal changes**. Currently, only online third party retailers (i.e. those holding a third party investor licence) can raise a dispute, to be dealt with by an independent arbitrator<sup>106</sup>. Under this proposed remedy, therefore, TMCs and other non-TOC parties affected by the industry regime (such as TIS suppliers or App developers) could also be allowed to raise a dispute, providing such parties with more influence (and thus predictability). However, there is a risk that this option is perceived to be ineffective and expensive<sup>107</sup>.

4.25 In addition, an independent body overseeing the third party retailer (as recommended above in the context of the entry requirements on third party retailers) could play a role in relation to TOC-determined commission and costs.

4.26 Taken together, these recommendations may provide more predictability for third party retailers than what exists currently, and could be implemented in an effective and relatively low-cost way.

4.27 There are alternative and/or additional options that could address this issue, including:

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<sup>106</sup> Under this process, clause 42 of the third party investor licence says that if resolution of an issue is not reached within 20 business days, the dispute shall be dealt with by way of arbitration. Each party is required to provide written notice to the other that it wishes to proceed with arbitration. ATOC is then required to approach the Chartered Institute of Arbitrators asking them to provide a list of appropriate arbitrators to arbitrate on the Dispute and thereupon ATOC and the Agent shall both seek to agree the selection of an arbitrator from the list. TOCs also have scope to raise a dispute through the ATOC Dispute Resolution provision (TSA, Chapter 3-22).

<sup>107</sup> For example, despite concerns having been raised by some online third party retailers about some TOC decisions, we note that there is no record of a dispute having been raised through an independent arbitrator in the last five years.



- TOCs (through ATOC) could provide a justification for third party commission arrangements, alongside the already-published remuneration structure. This could be published on ATOC's website. We consider that this option could provide increased transparency to existing (and potential) third party retailers around the rationale for commission levels. However, it is arguable whether it would go far enough, especially given that the justification is already in the public domain; and/or
- ATOC could host a periodic meeting (for example, annually) with existing independent parties (e.g. the DfT, ORR, Transport Focus) to discuss developments in the rules and practices for third party retailers. We consider that this proposal could provide an oversight / challenge function to such bodies, and it may help address concerns around (real or perceived) conflicts of interest. However, in isolation, it is difficult to see whether such an option would address the issue, where necessary.

## Box 5: The level of third party retailers' commission

As discussed above, concerns have also been raised about the actual level of commission. Some stakeholders, particularly some third party retailers, suggest that the commission is too low, putting increased pressure on them to charge a (high) booking fee to cover the cost of sale. Indeed, our analysis suggests that online third party retailers break-even if customers pay with a debit card, but must charge a booking fee if consumers pay with a credit card. Figure 7 and Figure 8 below provide a highly illustrative example of possible costs and commission; note that this does not reflect the (somewhat discretionary) costs of marketing and investment in new technology<sup>108</sup>.

TOCs (through ATOC) say the current commission levels are reasonable, reflecting the need to ensure a fair balance between driving costs down while supporting third party retailers' volume and revenue growth. In considering commission levels in other sectors, we note that they are highly variable (ranging from 0 to 18%)<sup>109</sup>.

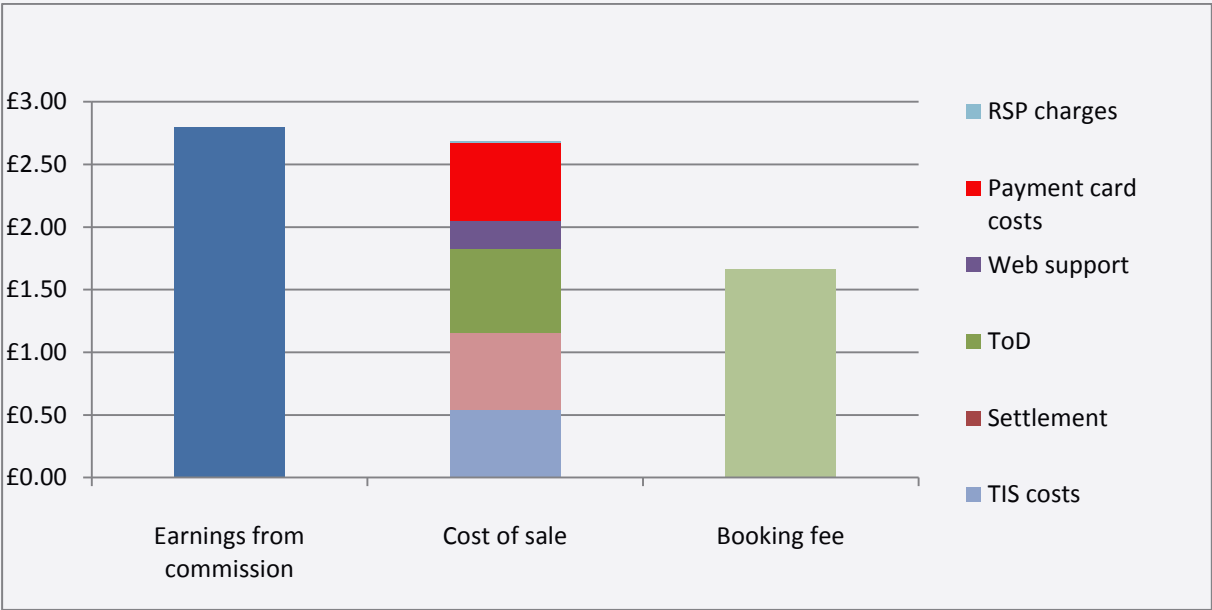
<sup>108</sup> This information was compiled based on information provided to ORR by some online third party retailers. The figures represent averages across the parties which provided the data. All costs are marginal and inclusive of TIS costs which are presented as costs of leasing, rather than costs of building own TIS system. Web support costs broadly refer to the costs associated with operating and maintaining IT systems, and corresponding customer service.

<sup>109</sup> We have drawn on CEPA's comparative analysis and LEK's ATOC-commissioned work. Comparative sectors included aviation, car hire, coach, energy packages, hotels, mobile phones, and theatre tickets. Comparative rail sectors include France, Germany, the Netherlands, and the US.

**Figure 7: Illustrative example of average costs and commission for online third party retailer based on average transaction value of £56 with customer paying with debit card**



**Figure 8: Illustrative example of average of average costs and commission for online third party retailer based on average transaction value of £56 with customer paying with credit card**



Source: ORR

*The cost of procuring technology appears high for smaller retailers, which may deter market entry*

- 4.28 In selling rail fares, third party retailers are usually obliged to sell the full range of fares ('anywhere to anywhere') on behalf of all TOCs. To ensure they can access the full range of fares and that, in turn, they can appropriately apportion revenue to the relevant TOC(s), they are required to have accredited TIS machines. A retailer can choose to develop its own TIS, with some stakeholders suggesting it costs around £500k (though this can vary). Alternatively, a potential third party retailer can use another retailer's TIS machine along with an Application Programming Interface (API) that reflects the particular retailer's name and/or brand. There are no standard costs associated with developing and/or procuring TIS machines given the various options for doing so (with each being the subject of negotiated outcomes).
- 4.29 We are concerned that smaller retailers (such as newsagents, PayPoint and PayZone outlets, post offices, and/or local community interest companies) may be deterred from entering the market for ticket selling due to the obligations to have an accredited TIS, owing to the need to sell a full range of fares on behalf of all TOCs. This has been highlighted as a concern by some stakeholders<sup>110</sup>. This is likely to have an adverse impact on passengers, particularly given their apparent willingness and openness to using such outlets (see Box 3).
- 4.30 To address this, **we suggest that industry (including TOCs, governments, PTEG, and other stakeholders) explore ways in which the barriers smaller retailers face could be reduced.** This could include relaxing the obligations around impartial retailing (of selling a full range of fares 'from anywhere to anywhere') so that smaller, local retailers would be allowed to sell a more limited range of fares. For example, smaller retailers who sell face-to-face (e.g. newsagents) could be allowed to sell only the most popular fares in that area (e.g. top 10 AnyTime and Off-Peak fares). This could, in turn, mitigate the need for smaller-scale retailers to have and make use of TIS machines to sell tickets. In time, it could also mitigate the need for station ticket offices to remain open for as long as they do, given the fact that it would allow passengers to buy tickets from neighbouring retail outlets<sup>111</sup>.
- 4.31 We note that the industry regime currently allows for smaller retailers to partner with TOCs in the selling of a limited range of fares. However, this relies on a third party retailer establishing a bilateral arrangement with a TOC, usually on a

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<sup>110</sup> For example, in its response to our February 2014 Call for Evidence, Travelwatch NorthWest said that it has had reports about barriers on Information Centres wishing to sell rail tickets. Travelwatch NorthWest cites, "*the excessive costs of purchasing the necessary hardware and constantly having to purchase updates and new machinery*".

<sup>111</sup> The opening hours of station ticket offices, and any change to them, is a matter for the DfT. We note that enabling smaller, existing retailers to sell rail tickets at stations could enable combined station ticketing and retail facilities, as is popular in continental Europe. This is also discussed in the McNulty report on rail value for money; see [here](#).

geographical basis. There may be a risk that this is necessarily on a small, local scale and third party retailer does not survive on a change of franchise.

- 4.32 We invite the industry to consider the arrangements TfL and some PTEs have with smaller retailers (such as the arrangements that allow ticket issuing machines to be leased rather than purchased outright) to explore whether elements of these arrangements could be adapted to the national railway.

## Scope for third party retailers to compete

- 4.33 As discussed above, in selling tickets on behalf of TOCs, third party retailers do not typically compete on price, but rather on the quality and choice provided by their retail services.
- 4.34 There is no wholesale market in which retailers can purchase rail fares from the producer (in this case, the TOC carrying the passenger) and re-sell them to passengers, potentially earning a profit or incurring a loss depending on passengers' demand and willingness. Rather, TOCs determine the price of the fare and the range of fares (i.e. Advance, Off-Peak) available on their services, including the price of the Advance fare at any one time<sup>112</sup>. This feature of the retail market appears to give rise to three particular issues, addressed in turn below.

### *Access to all fares/products*

- 4.35 Third party retailers do not have access to all TOC fares. For example, they have no access to sell carnet tickets and Season tickets<sup>113</sup>.
- 4.36 However, ATOC is undertaking a pilot to allow two third party retailers to sell Season tickets on a trial basis; see Box 6. Previous to this, some TOCs said that, at least with respect to Season tickets, they needed to sell the ticket direct to the passenger to enable them to have a direct relationship with him/her. They also said that such passengers were more likely to have particular needs that TOCs were best-placed to meet (e.g. in the event that the passenger changed his/her address, the TOC would need to administer the necessary changes to the Season ticket).
- 4.37 We consider that it is beneficial to passengers to be able to buy their chosen fare from as wide a range of retailers as possible. As such, by limiting third party retailers' access to certain fares it, in turn, limits passengers' choice of where

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<sup>112</sup> Advance fares have different prices depending on when the rail fare is purchased, which usually increases closer to the time of departure.

<sup>113</sup> Also, they are unable to sell certain railcards (e.g. Disabled Person's railcard and HM Forces railcard).

they can buy rail fares. It also requires passengers to be protected against making incorrect assumptions about the range of tickets available for sale at each retail outlet<sup>114</sup>.

- 4.38 Over the longer-term, it may also limit passengers' choice of retailer/sales channel if this practice undermines third party retailers' position in the market to such an extent that they exit the market. This has been raised as a significant concern by a range of stakeholders, including third party retailers<sup>115</sup>.
- 4.39 Given the likely benefits to passengers, we support, in principle, the idea that TOCs make all their products available to other TOCs and third party retailers. **Using the experience of the ATOC's pilot regarding Season tickets, we suggest, therefore, that industry explore further how TOCs and third party retailers could be enabled to sell all products, including the impact on passengers**, for example in managing passengers' after-sales issues (e.g. in administering compensation owed to the passenger in the event of a delayed train).

## Box 6: ATOC's trial to allow third party retailers sell Season tickets

Traditionally, third party retailers have not been allowed access to Season tickets (though some third party retailers, in their role as white-label retailers and outside of the ATOC third party licence, sell them on behalf of TOCs and some TOCs sell them on behalf of other TOCs).

Considering there may be scope for market expansion, in summer 2014, TOCs committed to running a pilot to allow some third party retailers sell Season tickets on a trial basis. The purpose of the trial was to understand better passengers' appetite for buying Season tickets through third party retailers and to test how well third party retailers could undertake after-sales service and information exchange between the passenger and the relevant TOC (in the event of engineering work on the passenger's services, for example).

Following an open tender exercise conducted by ATOC, two third party retailers were granted permission to sell Season tickets: The Trainline and Evolvi (which will work with TMCs to enable them to sell Season tickets, mainly in the business travel market). The pilot began in May 2015, with the two third party retailers now beginning

<sup>114</sup> However, as our research noted, only 60% of passengers thought that third party retailers made available all the possible tickets for every journey; see BRDR Report, Chapter 5.

<sup>115</sup> This has been raised through confidential discussions.

to sell Season tickets. The trial is scheduled to run for 12 months, which is designed to provide enough time to test the retailers' performance across a range of functions, including the high demand renewal period in December/January.

Subject to successful completion of the trial, the TOCs plan to extend the retailing of Season tickets to other third parties from spring 2016.

*Third party retailers have limited ability to discount fares*

**Table 5: Summary of TOCs' current discounts, by sales channel<sup>116</sup>**

TOC	Market	Discount type	Sales channel
Abellio Greater Anglia	Leisure and Commuter	Duo Tickets. When two adults travel together the second person gets 50% off. Carnet tickets offered 1/3 off all fares for groups of 3-9	Online, call centre, station ticket office
Arriva Trains Wales	Leisure and commuter	Saving of 33% when customer bulk buys 12 Advance fares. These are then saved and activated prior to the journey	Mobile only
c2c	Leisure	Save a third when buying a group ticket, for 3-9 people	Abellio, London Overground
East Midlands Train	Commuter	10 East Midlands Trains Perks Tickets to travel anywhere on the East Midlands Trains network for £15 return in Standard Class or £30 return in First Class	Online
First Great Western	Leisure	GroupSave allows three to nine people to travel off-peak with a 34% discount off the adult fare.	Online, call centre
Northern	Leisure	Two adults can save 25% on the total cost of a return journey, based on two AnyTime or Off-Peak day return	Online, station ticket office
Southeastern	Leisure	'Kids for a quid' with a valid adult ticket, up to 4 children can travel for £1	Online, station ticket office
Southern	Leisure	Up to four children aged 5 to 15 years may travel off-peak for £2 each when accompanied by an Adult with a valid ticket	Online, station ticket office
South West Trains	Leisure	Groups of 3-9 people can save 34%	Online, call centre, station ticket office
ScotRail	Commuter Leisure	Smartcard customers buying season tickets get a third off single and return tickets for the holder and three adults travelling together  GroupSave, save 30% on group tickets. Kids Go Free, up to two kids can travel free with an adult ticket	Online, call centre
Virgin Trains East Coast	Leisure	Blanket discount for the channel/ticket type – currently 2% off all advance fares	Online only

Source: ORR

<sup>116</sup> Accessed early June 2015.

- 4.40 As illustrated in Table 5, some TOCs provide discounted fares, usually only available through their own sales channels (particularly their own websites). Cheaper fares (or products) are likely to expand the market and (at least in the short-term) enable passengers to travel more cheaply and/or with more flexibility. Some TOCs who offer such products say it enables them to be more efficient (by offering a lower price to encourage passengers to use cheaper sales channel (i.e. online and/or own channels, thus foregoing the need to pay commission to the retailing TOC or third party retailers). They also say it enables them to form a direct relationship with the customer and respond to demands within the market.
- 4.41 Some third party retailers also offer some discounts or incentive offers, such as cash-back on the customer's next purchase and loyalty schemes (such as nectar points). However, third party retailers cannot access the fare at the discounted price the TOC creates and make it available to passengers. Furthermore, they appear to have a limited ability to offer similar discounts to those that a TOC is offering: were a third party retailer to discount a fare, it must 'settle' it at the full price through industry systems (reflecting its requirement to ensure TOCs don't incur a loss on their fares). However, as illustrated in Figure 7 and Figure 8 and given the level of costs and commission they're subject to (as set by the TOCs), third party retailers' margins appear relatively low, minimising their scope to discount.
- 4.42 As such, we are concerned that third party retailers are unable to match the scale of these discounts and/or are unable to access the discounts offered by TOCs. This may undermine their market position over time, which could eventually limit passengers' choice if this practice encouraged third party retailers to exit the market. However, there could be a concern that, by making discounted products available to all retailers (including third party retailer), it could discourage TOCs from creating these discounted fares. While the suggestion of a 'net pricing' approach may address this issue in the longer-term, **we welcome views on whether a 'net pricing' approach could, in the near-term, be explored for TOC discounted fares.** Under this approach, TOCs could set the price of these fares in such a way that excludes (its' and others') cost of sale, enabling all retailers to compete on its retail margin for these particular products. Encouraging greater access to promotional products may give rise to more passengers buying them and, in turn, more passengers travelling by rail, thus benefitting the relevant TOC and the whole market.

*Third party retailers can't create new fares*

- 4.43 Third party retailers do not create new fares themselves. Rather, the price of the fare is determined by the relevant TOC, with third party retailers accessing the

same price that the relevant (or carrying) TOC offers direct to passengers. This is unlike many other sectors that are characterised by having distinct (wholesale) markets that are separate from the retail market<sup>117</sup>. It is also unlike some rail markets in continental Europe, such as Sweden; See Box 7.

## Box 7: Retail rail prices in Sweden

Net pricing approach currently operates in the Swedish rail market. In Sweden, publically-owned SJ is the largest TOC, which competes with four Open Access Operators in the three main long-distance routes within the Stockholm-Goteborg-Malmo triangle.

In Sweden and under the net pricing approach, all retailers use the same wholesale or 'net price' of the ticket (i.e. the 'price' of carrying a passenger), on top of which they impose a margin. This margin, together with the net price, forms a retail price charged to passengers.

Therefore, competition among retailers is based on discounting the retail margin. Retailers are free to differentiate their margins by sales channel. As a result the prices vary by sales channels: a 7% margin is applied to online purchases; a margin of between 7-12% to tickets bought from the shops (the so-called 7/11 shops and kiosks); and a margin between 10-12% applies to sales made by phone. Prices also vary by retailer, with some retailers, when selling tickets on their own website, not charging a margin at all in order to attract customers to lower prices.

In practice, retail margins in Sweden appear to have remained at similar level across all retailers. This is a result of 'follow the leader' approach to margin setting, as suggested by some stakeholders.

4.44 TOCs' control over the price and range of fares available may be inhibiting third party retailers' scope to compete. This may be a problem given the role third party retailers play in providing additional choice to passengers and in providing a competitive pressure on TOCs to improve their services<sup>118</sup>. Indeed, CEPA

<sup>117</sup> This was highlighted by CEPA in its comparative analysis of rail with other sectors. It noted, in particular, the structure of the aviation, energy and mobile telephony markets.

<sup>118</sup> TOCs' control over the price and range of products available may be exacerbated by the lack of transparency over the constitute elements of TOCs' prices, particularly for non-regulated fares. This appears to give rise to suspicions among some stakeholders about the appropriate level of commission. For example, in confidential discussions, some stakeholders have queried whether TOCs set the commission rate at such a level that third party retailers must charge a booking fee (or make a loss on the sale).



found that in other sectors, third party retailers are able to construct distinctive offers at distinctive prices in competition with the basis (or existing) suppliers. In this context, it also observes that the consumer in the comparator markets has a wider range of options for basic supply than in rail.

- 4.45 To address this and as a possible longer-term remedy, **consideration could be given to the need for more separation between the wholesale market and the retail market in rail.** For example, TOCs could create a ‘net price’ for each fare to cover the cost of carrying a passenger (plus its return) which it could then make available to all other retailers. In turn, all retailers could compete on the cost of sale (or the retail margin), meaning the commission TOCs (for intra-TOC retailing) and third party retailers receive and the booking fee (where applicable) become one and the same thing (i.e. the retail margin).
- 4.46 The advantage of this option is that it could give rise to greater scope for third party retailers (and TOCs) to compete in selling each other tickets, to the benefit of passengers. Reflecting this, it could also drive down the cost of sale<sup>119</sup>. Furthermore, it could remove the need for industry-wide commission setting processes, reflecting the fact that retailers would compete on the level of remuneration for ticket selling.
- 4.47 However, these options appear to have some (possibly significant) limitations that would require further consideration. It would, for example, require further consideration about how passengers could be protected through change, given this would move the sector away from price parity across retailers and sales channels (impartial retailing). Secondly, this option could require oversight by an independent body to assess and to monitor the net price. This reflects, in part, the likely difficulty with defining the ‘net price’, as TOCs’ cost of carrying a passenger is close to zero<sup>120</sup>. This could make the option difficult to implement and/or give rise to additional regulation<sup>121</sup>.

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<sup>119</sup> This could be up to four per cent (i.e. the estimated maximum differential in the cost of sale between sales channels) or more (depending on retailers’ efficiencies).

<sup>120</sup> This is because a high proportion of TOCs’ costs, in running train services, are fixed (e.g. procuring rolling stock, procuring access to the network). Reflecting the commitments of a timetable service (and franchising), a train service would operate if there was no passengers on board. As such, the marginal cost of carrying a passenger is minimal.

<sup>121</sup> Furthermore, it could impact on TOCs’ revenue and, through the franchising framework, on the level of government subsidy. If TOCs lose revenues from rail fares (on behalf of, for example, third party retailers), this is likely to be reflected in an increase in government subsidy which eventually translates (even if slightly) into increased cost for passengers.

## Questions for Chapter 4

**Q6:** What are your views regarding our emerging findings on the incentives potential and existing retailers face in entering and expanding in the market? Specifically, what are your views around having an independent body overseeing the third party retailers' arrangements, including the identity of the body; on having greater transparency of retailers' likely costs and remuneration; on having a formal obligation on the relevant TOC governance bodies to consult on significant changes to the industry regime; and on having an appeal mechanism to enable a third party retailers raise a dispute?

**Q7:** What are your views around the ways that industry could reduce the barriers smaller retailers face in selling rail tickets?

**Q8:** What are your views regarding our emerging findings that there could be increased scope for third party retailers to compete in selling tickets? Specifically, what are your views that all retailers should have access to all fares and products? What are your views on retailers' ability to discount fares, and to what extent should other retailers have access to these discounted products (at the cheaper price)? What are your views around third party retailers' inability to create new fares and products, and do you consider further consideration could be given to options that provide for a net pricing (or something similar)?

## 5. The extent to which industry arrangements facilitate effective collaboration between retailers while supporting competition

### Summary

While TOCs work well together, the slow pace of innovation (for example, in the development of shared IT systems and in the ticket format of shared flows) suggests there is room for improvement. This is important given the value passengers currently attach to an integrated network. As such, and recognising that all TOCs operate under different, specified and time-limited franchises, we consider that there is a greater role for governments to work across industry in leading the development of a longer-term strategy for ticketing. In addition, we consider that innovation-funding bodies could put emphasis on how to encourage TOCs and others to collaborate. We also consider there would be value in providing a role for non-TOC parties through formal working groups. Longer-term, we note there may be a role for relaxing the obligations around having a fully integrated, national network, particularly in the longer-distance market.

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### Introduction

5.1 In this Chapter, we consider the extent to which current industry arrangements facilitate effective collaboration between retailers while supporting competition and innovation.

## Collaboration among TOCs to facilitate a national, integrated network

### *Current collaboration*

5.2 As discussed in Chapter 2, passengers make use of inter-available tickets (that allow them to travel via any route and with any TOC) and through tickets (that allow passengers to travel across the network and to buy a ticket from a single point for a single journey using different trains). Passengers also enjoy impartial retailing, whereby through certain points of sale, they may buy a ticket from any TOC or third party retailer for any journey.

5.3 These arrangements reflect the obligations on retailers, imposed at the time of privatisation, to create and sell tickets in such a way that facilitates the benefits of a national, integrated network. They give rise to the need for TOCs to collaborate, specifically:

- The development of shared IT systems: Shared IT systems and industry-owned data include the National Reservation System (NRS, which all retailers use to allow passengers to book a seat on a train); the Ticket on Departure (ToD) system to enable passengers to collect pre-purchased tickets at a station; and the ORCATS system that retailers use to allocate revenue given inter-available and through fares and impartial retailing<sup>122</sup>. The design of these systems (and the way they develop over time) affect the functionality of TVMs and websites, as well as the retailing systems used by staff at station ticket offices; and
- The ticket format on shared products or flows (i.e. inter-available and through tickets): TOCs and third party retailers need to ensure that for inter-available fares, the ticket formats used by passengers are recognised by all TOCs on those flows. They also need to be recognised by Network Rail if the origin and/or destination station is a Network Rail-managed station and/or TfL manages the station.

5.4 To help retailers facilitate these obligations, TOCs have developed governance arrangements. For example, there are a number of organisations that bring together TOCs, such as the RDG, ATOC, RSP, and NRE. There are also regulations and industry arrangements set out in the TSA<sup>123</sup>.

#### *The impact of collaboration on innovation*

5.5 Under the current industry regime, industry must work together to facilitate an integrated, national network. As discussed in Chapter 2, passengers make use of, and appear to benefit from, this collaboration, for example in having ticket formats for inter-available and through tickets and in using better-functioning TVMs and websites that benefit from modern shared IT systems.

5.6 However, the need to collaborate appears to slow the pace of change that could bring further benefits to passengers, in particular in the introduction of new products and in the development of existing technology. For example:

- The functionality of TVMs (and to a lesser extent websites) is not keeping pace with innovations in other sectors and with passengers' expectations. As shown in Chapter 2, in other industries the booking systems appear to work better for passengers in terms of ease and simplicity of the customer experience; and

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<sup>122</sup> There is no absolute requirement to settle tickets through shared IT systems but industry practice and the way these systems were developed advocates in favour of settling via ORCATS. This is discussed in detail in Chapter 3 and Annex G of the September 2014 consultation document.

<sup>123</sup> This is discussed further in Chapter 3 of our September 2014 consultation.

- With respect to ticket formats, some TOCs appear to be more innovative than others. Indeed, despite inter-available fares accounting for over a third of passenger receipts, only four TOCs have developed mutually-recognisable m-tickets and e-tickets on inter-available fares (see Table 3). Furthermore, where TOCs allow passengers to use smartcards on inter-available fares, this has mostly been through the use of Oyster/Contactless payment cards in the South East (see Box 8). This means that the traditional orange credit-card sized paper ticket remains the most popular ticket format on shared fares/flows.

5.7 The central design of the shared IT systems means that any potential changes or suggested improvements require TOC collaboration. For example, the design of the (shared) fares database determines how fares are displayed to passengers; the design of the centrally-owned ToD function determines how passengers collect their tickets at stations; and the design of the NRS determines how passengers reserve seats.

5.8 The fact that there is scope for improvements which are currently not being delivered suggests that the industry regime for industry collaboration may not be working as effectively as it could be. As such, and drawing on our February 2014 Call for Evidence and our September 2014 consultation and the responses to it, we set out below how the industry regime may be inhibiting collaboration which could benefit passengers. For each issue, we identify a potential remedy (or remedies) and provide an initial assessment of how it may address the issue. A fuller assessment of all the options is set out in the draft impact assessment for this Chapter; see Annex E.

## **Box 8: Case study on collaboration to introduce smart ticketing in Greater London**

### ***Extension of Oyster in London***

In January 2010, Oyster smart ticketing was extended from the TfL network to rail in Greater London.

This was some seven years after Oyster was first introduced on TfL's network, and required the efforts of TfL and the TOCs operating in Greater London. Despite there being passenger and political support to extend Oyster card to the Greater London rail network, TfL and TOCs needed to resolve issues relating to:

- How to install and operate Oyster equipment, including the cost of this and who would pay;
- How the Oyster extension permit approach should work (whereby TOCs previously required passengers who were traveling beyond the validity of their travel-card on national rail services to have a permit; this requirement lasted just over a year); and
- What impact the Pay As You Go system might have on revenue.

However, the extension of the Oyster scheme to rail in Greater London appears to benefit both passengers and industry, with research suggesting that journey numbers rose by nearly 7% following its introduction<sup>124</sup>.

### ***Smart ticketing in the South East (SEFT)***

Reflecting the limited ability and/or incentives on TOCs to collaborate to introduce smart ticketing on an inter-available basis, the DfT is working with TOCs, TfL and Transport Focus to provide for new or upgraded smart ticketing equipment at 300 rail stations in the South East of England.

The SEFT programme has already delivered the Southern London travel-card that provides commuters with a single smartcard for journeys into and around London. However, it has suffered some delays in the introduction of further products, mainly relating to decisions on the requisite design of the shared systems and which products to prioritise. This highlights the difficulties with TOCs collaborating to introduce inter-available products, even where there is government support.

## **TOCs have limited incentives to collaborate with each other in the development of shared systems and shared ticket formats**

5.9 TOCs own the shared IT systems and industry data feeds, most of which are managed by RSP. They appear to do this cost-efficiently. It costs TOCs and third party retailers around £25m last year, representing around 0.04% of the average £5 rail fare. This appears to compare favourably to the aviation sector, where the costs of using one of the integrated systems amounts to around 3%

<sup>124</sup> This allows for seasonal variation and controls for network-wide year-on-year growth in demand; see [here](#) for further information. Furthermore, after further allowing for the estimated increase in demand from the newly extended East London Line, the PAYG extension was estimated to have increased demand on London rail services by 4% to 5%. Continuing growth in PAYG usage on national rail since then indicates that the impact on demand may be up to 10%, worth around £100m per year.

of the average \$300 airline ticket price<sup>125</sup>. See Annex I for a further discussion on shared industry costs.

5.10 However, while direct costs are low, the development of shared IT systems and industry-owned data appears slow. This, in turn, gives rise to delays in developments to more innovative ticket formats and the technology for ticket buying. Contributory factors to this are likely to be:

- TOCs differ, often operating in different markets and/or serving passengers with different journey purposes. This means that their commercial strategies will also differ (stimulated by revenues from passenger journeys), which may give rise to inconsistent views about how systems should develop or the priority of what systems should be improved;
- Franchises run to different timescales and over different time periods which makes it difficult for TOCs to commit investment to ticketing innovations where the pay-back period is likely to exceed the duration of a franchise period. Furthermore, risk sharing mechanisms (that could require TOCs to pay-back any revenue earned over a certain level) are also likely to reduce TOCs' incentives to innovate (or to collaborate to innovate)<sup>126</sup>; and
- There are limited obligations on TOCs to work together to develop more innovative ticketing. While TOCs' franchise agreements often set out specific requirements on how they should innovate, only more recent franchise agreements in the South East have obliged TOCs to collaborate to develop smart ticketing (see Box 8)<sup>127</sup>.

5.11 However, there is evidence that where TOCs have the impetus to do so, they will work together to development improvements. For example,

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<sup>125</sup> As discussed further in the CEPA comparative analysis, the cost of booking an air fare through a Global Distribution System (which brings together fares from different airlines) is between \$7.50 and \$17.50 (per round trip). While not directly comparable, the GDS does provide a comparable service to the shared IT systems and industry-owned data by providing for integrated travel across different airlines.

<sup>126</sup> This issue is recognised by a number of stakeholders. For example, ATOC say that "*the relatively short terms, prescriptive natures and increasingly demanding financial requirements (for instance, payment of premia to government) within franchise agreements constrain such investment and the innovation it funds*" (ATOC response to our September 2014 consultation). Arriva UK Trains, Chiltern and TravelWatch NorthWest also raise this point.

<sup>127</sup> Outside of the South East, other TOCs have been required under their franchise to introduce more innovative ticketing, but only on their own flows and fares. This may reflect the limitations of using the franchise agreements as a way to facilitate innovation, as discussed in Chapter 3.

- Working through TOCs, RSP is undertaking a programme of work to modernise its central systems over the next five to six years;
- TOCs worked with TfL in the extension of the Oyster smartcard in London (see Box 8) and, more recently, the provision to pay by contactless payment cards;
- PTEs have led in the retail of multi-modal fares, which include a rail element. The most common portfolio of tickets allowing use of rail in PTE areas consists of a multi-modal ticket and a rail only product, both available on all rail services for periods from one day to a year. The multi-modal products involve inter-operator agreements and are usually governed by panels representing the participating operators, with day-to-day management by the PTE. The rail only products are usually managed by a lead TOC but are often promoted alongside the multi-modal products by the PTE<sup>128</sup>; and
- TOCs in the north of England are undertaking a pilot of inter-available (or inter-operable) m-tickets since September 2014. This has been the result of a partnership between TOCs, The Trainline and ATOC. While m-tickets have already been made available for a number of journeys, they have only been available for use on a specific TOC. Under this pilot, m-tickets are valid for travel on all TOCs in the pilot areas, regardless of which TOC/retailer app they have been bought through<sup>129</sup>.

5.12 Many stakeholders have highlighted the issue with TOCs lacking sufficient incentives to collaborate to develop ticketing<sup>130</sup>.

5.13 We do not consider that the issue relates solely to the need for TOCs to work together to facilitate an integrated, national network. Rather, the obligation to facilitate a network provides for a governance framework by which TOCs can come together to discuss initiatives that need to be introduced by way of joint working. Furthermore, and as discussed in Chapter 4, we consider that passengers benefit from and make use of an integrated network, particularly for local journeys in conurbations.

5.14 To address the problems associated with there being limited incentives on TOCs to collaborate with each other, we suggest that:

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<sup>128</sup> Steer Davies Gleave, 'Research on PTE Tickets', 2011 and 2012.

<sup>129</sup> For further information, see [here](#).

<sup>130</sup> For example, in responses the February 2014 Call for Evidence, Arriva UK Trains said franchising means TOCs need to "*jump together*" to innovate. It also says that, too often, few TOCs have been able to justify investments in RSP systems as they are close to the end of their franchise terms.



- **There is increased emphasis through innovation funding of the need to support an integrated ticketing system, particularly in local conurbations.** As illustrated in Box 9, there is a range of existing innovation funding mechanisms available that TOCs and third parties can seek to access to support innovation. We note TOCs' efforts (including through its work with ATOC) to consider how innovation in retailing could be supported. Notwithstanding the importance of TOC-specific innovation, going forward, we would also note the importance of funding to support integrated ticketing, for example by encouraging a TOC to work with neighbouring TOCs to promote integrated travel on a new ticket format or by encouraging the development of some of the shared IT systems. This appears to be particularly important given that passengers using more innovation ticketing formats often assumed that the ticket format would work in the same way as the orange credit card-sized paper ticket<sup>131</sup>; and
- **Governments, working with TOCs, should continue to build consensus around the strategy for future ticketing.** We note the recommendations of the cross-industry developed 2012 Rail Technical Strategy to, for example, provide for integrated travel information and to make data available in a usable form so that access to information, tickets and best prices could be improved and simplified<sup>132</sup>. We consider that governments could build on this to help develop that longer-term strategy. In doing so, we note the importance of working with representatives from across industry, including third party retailers, passenger representative groups, and technology suppliers, (suggesting ways below that this could be facilitated).

**5.15 Longer-term, we note that there may be merit in relaxing the obligations on TOCs to create and to sell inter-available fares on all routes.** While passengers benefit from the flexibility provided by inter-available fares, our analysis suggests that passenger take-up of this type of fare is at least 10% lower for longer-distance, inter-city travel<sup>133</sup>. Relaxing the obligation to create inter-available fares could, therefore, mitigate the need for them to rely on shared IT systems for some services and/or products. This could enable retailers to develop their own, competing systems which could, in turn,

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<sup>131</sup> In other words, where there are assumptions about flexibility in terms of time, inter-availability by TOC and validity across a number of possible routes, passengers often carry these through to other ticket types as well. See the BDRC Continental Report, Chapter 4.

<sup>132</sup> See [here](#) for further information.

<sup>133</sup> See Annex G for further details. We consider that passengers' take-up of inter-available fares on longer-distance routes could be considerably lower. However, this is difficult to estimate given that the LENNON system does not currently capture fares made on multi-modal tickets. Furthermore, we note that passenger take-up of 'any permitted' fares (i.e. inter-available) between larger cities does not appear particularly high.

encourage them to tailor the way they sell tickets to what they consider passengers want. By doing so, it could mitigate the need for such extensive TOC collaboration and provide increased incentives for innovation to be delivered through competition and normal response to market forces.

5.16 However, there is a risk that relaxing the obligations on retailers to facilitate integrated network-wide ticketing could give rise to (perceived) additional complexity for passengers. As such, consideration would need to be given to requisite passenger protection. Furthermore, we note the likely difficulties with identifying particular geographical areas (i.e. zones) or flows where TOCs would be required to facilitate integrated retailing, and where they wouldn't. Nevertheless, TOCs and other retailers could continue to offer travel on an inter-available basis if they consider there to be passenger demand.

## Box 9: Innovation funding in rail

Innovation funding mechanisms are available to TOCs and third party retailers. The three more significant ones are:

- As part of the new tendering process for rail franchises, bidders are required to have an innovation strategy (the first of which was introduced in the Inter-City East Coast franchise). The pilot stage of the fund will enable the TOC to recoup up to 1% of its revenue for the purposes of innovation that align with the Rail Technical Strategy. Where possible, a franchisee will commit innovation funds approximately 60:40 (+/-10%) between local and national schemes;
- For existing franchisees, the Train Operator Competition 2015 (TOC'15) offers up to £6m to co-fund innovative proposals to address certain TOC challenges. This is managed by Future Railway. While it suggests a range of projects that may be candidates for funding, the emphasis is on the TOCs to propose their own projects; and
- TOC'16, to be introduced in 2016, will provide for 100% of funding, though will be designed to address specific challenges that Future Railway (working with stakeholders) identify<sup>134</sup>.

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<sup>134</sup> We note that other funding is available for innovation purposes, including public funding (e.g. TSB/RSSB joint research and development funding); joint public and private funding (e.g. innovation in Control Period 5 to support cross-industry projects; and private funding (e.g. TOC own investment).

## Box 10: Upgrade of the Ticket on Departure function

In bringing together data on fares, routing and timetables and by allowing access to the ToD system, the Rail Journey Information System (RJIS) provides an important service to retailers to enable them to sell tickets.

Between 2011 and 2014, TOCs undertook a programme of work to modernise the RJIS. This involved the establishment of a Project Board made up of retail and commercial managers from across the TOC owning groups.

A non-TOC party has suggested that the upgrade of the RJIS withdrew previously-existing functionality (including the ability for customers to collect tickets by simply inserting the card used to make payment into the machine), arguing it was a missed opportunity to improve passengers' use of the ToD system. It suggests that improvements could have included, for example:

- Making collection references easier to read and commit to short term, by chunking the number, for example ABC 123 instead of A1B2C3;
- Allowing passengers who have forgotten their collection reference number to use their name and/or postcode to collect tickets; and
- Letting passengers choose between printing their ticket at home or collecting it through the ToD system at the station up until the moment of travel.

It has also been highlighted that, reflecting their sale of Advance fares, third party retailers are particularly large users (and funders) of the ToD system. However, despite this, they had only limited involvement, and at a late stage, in the upgrade.

## The role of third parties

5.17 TOCs have limited incentives, and no obligations, to collaborate with other parties, including with third party retailers. We are concerned that this gives rise to a risk that shared IT systems and centrally-owned data (which heavily influences the way in which retailers sell tickets) are developed in line with the needs of TOCs, and without fuller consideration of other retailers or other parties (e.g. App developers). See Box 10 regarding the recent development of the ToD system as a possible example of where this risk has arisen.

- 5.18 This is likely to be a particular issue given that third party retailers have been innovative where they can be (in, for example, in selling tickets online (in 1999) and in offering a choice of Apps to sell tickets) and have encouraged TOCs, in turn, to be innovative. Indeed some third parties have expressed frustration over the pace of innovation. This may be exacerbated by the lack of any formal obligations on TOCs – either working individually or as part of ATOC or RSP – to consider the needs of other system users or passenger representative groups.
- 5.19 **To address this, TOCs should establish formal working groups, made up of other parties such as passenger representative groups, third party retailers, technology providers and (potentially) sector experts<sup>135</sup>, to inform the development of the industry regime.** The working groups could also be used as a formal means for TOCs to update non-TOC parties on wider developments<sup>136</sup>. It could build on and formalise, for example, the approach TOCs are currently taking with the TMC community, whereby they have established an *ad hoc* working group to discuss issues pertaining to the TMCs and to help develop a longer-term strategy for TMCs. The establishment of formal working groups could also complement the proposed remedies that TOCs consult on changes to the development of the industry regime.
- 5.20 Furthermore, and as noted above, we suggest that governments seek to involve third party retailers and other industry participants about the longer-term strategy for ticketing, recognising the role that non-TOC parties can play in bringing forward innovation. Together, this could ensure better representation of others (including (but not limited to) third party retailers, passengers and technology providers) is heard.
- 5.21 As an alternative and/or additional option, consideration could be given to allowing those who contribute to the direct costs of shared IT systems (such as third party retailers) to vote. Under this option, online third party providers could be provided with voting rights (comparable to their earnings) that enable them to participate in the decision-making relating to the arrangements that affect them (for example, the development of a shared IT system) by the relevant TOC governance groups. In addition and/or an alternative, a duty to collaborate could be introduced in the franchising agreements.

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<sup>135</sup> For example, Ofgem's panel responsible for considering changes to the electricity balancing arrangements is made up of a wide range of representatives, including those from industry (e.g. network owners, trading parties); consumer representatives; and an 'industry expert' from an independent consultancy firm.

<sup>136</sup> We note the Competition Commission's recommendation in the local bus services market investigation that suggested that passengers be given greater representation at governance boards; see [here](#).

## Questions for Chapter 5

**Q9:** Do you agree with our emerging findings that TOCs have limited incentives to collaborate with each other in the development of shared systems? To what extent do you consider that having increased emphasis through innovation funding mechanisms of the role of an integrated, national network (and thus the role of shared IT systems) could address the issues? To what extent do you consider that a strategy, led by government with input from across industry, on future ticketing can play a role?

**Q10:** What are your views on the merits, as a possible longer-term option, to consider relaxing the obligations on TOCs to facilitate a fully integrated, national network?

**Q11:** What are your views on the role of third parties (including third party retailers, passenger representatives and technology providers) in the development of shared IT systems? To what extent could formal working groups address the issue?

# Annex A: List of consultation questions

## Chapter 1

1. Do you agree with our description of the features of the market for ticket selling?

## Chapter 2

2. Do you agree with our emerging findings with respect to passengers' ticket buying experiences regarding their choice / ability of a) retailer/sales channel; b) how they buy tickets; c) their ticket format; d) the range of tickets; and e) opportunities to find cheaper prices?

## Chapter 3

3. What are your views on our emerging findings that TOCs' incentives to introduce new fares and products are somewhat limited? What are your views on our suggestions around DfT's role and, more specifically, the role of franchising? What are your views on our proposed recommendations that improvements be made to the industry processes to make it easier for TOCs to introduce new fares or products? Specifically, do you agree this should be taken forward now, as a matter for TOCs and governments?
4. What are your views on the role TIS machines play in enabling TOCs to differentiate the way they sell tickets to passengers? What are your views on the appropriate response, in particular around the balance between providing the TIS market with more direction about the design of the TIS machines and in facilitating choice?
5. What are your views on the possibility that the price of (permanent) fares could vary by sales channel? What are the merits of considering this further at this stage?

## Chapter 4

6. What are your views regarding our emerging findings on the incentives potential and existing retailers face in entering and expanding in the market? Specifically, what are your views around having an independent body overseeing the third party retailers' arrangements, including the identity of the body; on having greater transparency of retailers' likely costs and remuneration; on having a formal obligation on the relevant TOC governance bodies to consult on significant changes to the industry regime; and on having an appeal mechanism to enable a third party retailers raise a dispute?

7. What are your views around the ways that industry could reduce the barriers smaller retailers face in selling rail tickets?
8. What are your views regarding our emerging findings that there could be increased scope for third party retailers to compete in selling tickets? Specifically, what are your views that all retailers should have access to all fares and products? What are your views on retailers' ability to discount fares, and to what extent should other retailers have access to these discounted products (at the cheaper price)? What are your views around third party retailers' inability to create new fares and products, and do you consider further consideration could be given to options that provide for a net pricing (or something similar)?

## **Chapter 5**

9. Do you agree with our emerging findings that TOCs have limited incentives to collaborate with each other in the development of shared systems? To what extent do you consider that having increased emphasis through innovation funding mechanisms of the role of an integrated, national network (and thus the role of shared IT systems) could address the issues? To what extent do you consider that a strategy, led by governments with input from across industry, on future ticketing can play a role?
10. What are your views on the merits, as a possible longer-term option, to consider relaxing the obligations on TOCs to facilitate a fully integrated, national network?
11. What are your views on the role of third parties (including third party retailers, passenger representatives and technology providers) in the development of shared IT systems? To what extent could formal working groups address the issue?

# Annex B: Summary of non-confidential responses to the September 2014 consultation

## *Introduction*

1. We received 28 non-confidential responses to the September Retail Market Review consultation; see Appendix 1 for a full list.
2. In general all respondents thought that our approach to the Review was sensible and covered the key trends and issues in ticket retailing. Respondents highlighted a number of aspects of the current retail arrangements, in particular:
  - a. Stakeholders say that **innovation** has been an area of slow movement, apart from where there hasn't been a need for industry-wide collaboration;
  - b. In relation to **impartiality**, stakeholders generally say it is good in principle but that it drives cost and complexity;
  - c. **Split ticketing** is a contentious issue among stakeholders. Some say that the risks to passengers are minimal and that, if walk-up fares were cheaper, passengers would not have to look for cheaper split tickets. On the other hand, many TOCs endorse ATOC's concerns that split ticketing is a distortion of the market, which will impact industry finances and the level of taxpayer support required by the industry;
  - d. In relation to **inter-available fares**, some stakeholders say that they are important as they offer flexibility and choice. However, many stakeholders also say they drive down standards and the scope for innovation;
  - e. According to many of the TOCs, the regulation around **ticket office opening hours** increases costs and weakens the business case for new customer services. Conversely, there are many stakeholders who regard ticket offices as a valued service which, they say, cannot be matched by ticket vending machines; and
  - f. Whilst they offer the benefits of centralised control and co-ordination, the current **governance arrangements** are criticised by some TOCs and consumer representative groups, particularly in regards to ATOC setting the commission rates for third party retailers.

## *Description of the retail market for tickets*

3. In response to our question on how well we've described the retail market for tickets, stakeholders are generally happy but they have highlighted some areas and trends that, they say, we have missed or underplayed. For example, ATOC argue that the consultation understates the growth in the rail market since privatisation and the changes in sales channels, saying these changes and growth in passenger numbers are indicators that the market is working. Some<sup>137</sup> respondents say that the consultation misses out on the differences in buying behaviour among market sector. Arriva UK Trains (AUKT), East Coast and Transport for London say that the consultation underplays the case for smartcards, both in regards to their demand and their benefits.

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<sup>137</sup> East Coast, London TravelWatch, Transport for Scotland



4. Though this wasn't a major theme of their response, seven respondents<sup>138</sup> highlight material inaccuracies or additions to the way we've described industry practices and the regulatory arrangements around ticket selling. For example, ATOC and c2c say that it is wrong to say that TOCs have developed the rules as many were developed at privatisation and were subject to approval by the DfT. ATOC, c2c and Keolis point out that providing accurate information to passengers and impartial retailing should not be confused. They say that the former stems from consumer law, while the latter is a TSA regulation to ensure one TOC does not favour selling its own tickets over another TOC.
5. In the consultation we state that, "retailers do not have to offer the same prices as other retailers or through every channel". ATOC and c2c dispute this and say that because all retailers must settle at the full price with RSP, there is very limited incentive for retailers to vary the price of a ticket set by a different carrier.

### ***Innovation***

6. The views around the level and pace of innovation and change in rail retailing were mixed. Two<sup>139</sup> respondents say that the pace of change in rail retailing has been slower than other markets and some respondents<sup>140</sup> attribute this slow pace to the regulatory framework. ATOC suggest that the number of retailers and the limited technology in the market makes it difficult to introduce new products. Some<sup>141</sup> argue that the industry has been innovative and successful in introducing new products where there hasn't been a need for industry-wide collaboration. Two stakeholders<sup>142</sup> say that credit card sized tickets are likely to remain the only national interoperable standard for rail tickets for some time.

### ***Insights from other sectors***

7. With regard to insights from other sectors on passenger behaviour, market share and sales channels, ATOC point to research carried out by LEK Consulting (on its behalf) that suggests rail in Great Britain, compared with rail and air in other markets in other developed countries, is more competitive. Keolis says that customer expectations are to a large extent driven by their experiences elsewhere.

### ***Retailers' incentives***

8. In response to our question regarding the impact of retailers' incentives on the way they sell tickets, a number of TOCs<sup>143</sup> say they have different incentives compared with third party retailers. They argue that TOCs are primarily carriers with a general duty to their customers at all stages of their journey, while third party retailers are simply focused on selling tickets.

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138 c2c, GB Rail Ventures, IOSIS, Keolis

139 ATOC, AUKT

140 AUKT, ATOC, c2c, Cross Country, East Coast, Keolis

141 AUKT, c2c, East Coast, Passenger Focus

142 AUKT, c2c

143 AUKT, ATOC c2c, Chiltern, Cross Country

In light of this, they argue that it is essential that TOCs remain at the centre of the decision-making process for rail retail.

9. ATOC highlight that strong growth in sales over the past twenty years is an indication that the current framework has been successful in delivering the right incentives. However, a number of respondents<sup>144</sup> highlight that the franchising system does not provide sufficient incentives to TOCs as it does not allow them to gain a return on investments or to work together to modernise and develop new products.

### ***The impartiality obligation***

10. A number of stakeholders<sup>145</sup> consider the impartiality obligation to be a good principle that adds to the quality of service.
11. However, c2c and Passenger Focus said that the impartiality obligation increases retailing costs and complexity. Specifically, c2c point to the example that it predominately sells tickets from South Essex to London yet their retail systems and staff have to be able to sell all tickets from all stations.
12. Some respondents<sup>146</sup> consider it appropriate that ticket offices retail impartially but say that the definition of impartiality should be reviewed as it prevents differentiation by retail channel (or, in other words, channel specific fares).

### ***Split ticketing***

13. Many stakeholders<sup>147</sup> endorse ATOC's concerns that split ticketing means that journeys are being priced by fare anomalies and not by market drivers. They say that split ticketing is a distortion of the market, which will impact the industry's finances and the level of taxpayer support required by the industry.
14. However, Centro and West Midlands ITA say that the risks of split ticketing for passengers are minimal. Money Saving Expert says that the industry has created the risks attached to split ticketing and therefore, where the passenger is not at fault, the industry should protect the passenger against these risks. For example, where a passenger books a time-specific ticket and the journey requires a change and their first train runs late, then their second ticket should be valid for the next available train.
15. Some stakeholders<sup>148</sup> say that a 'price match promise' should exist so that the price of inter-available fares should not exceed the cost of split tickets on the same route.
16. BR Fares disagrees that split ticketing causes an undue burden on ticketing systems. It says it performs ticketing system calculations offline, except when checking an advance

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144 ATOC, AUKT, Chiltern, TravelWatch NorthWest

145 Passenger Focus, Transport for London, TravelWatch NorthWest, Transport for Scotland, ATOC

146 AUKT, (Cross Country in agreement through AUKT), Chiltern.

147 AUKT, Chiltern Railways, Cross Country, East Coast, First Group, Keolis

148 Centro and West Midlands ITA, Passenger Focus

fare, which demonstrates that this could be managed with little burden on systems. Money Saving Expert adds that the Rail Settlement Plan needs to upgrade its systems so there is no technological impact of split ticketing, rather than restricting its use and obstructing its development.

### ***Inter-available fares***

17. A number of respondents<sup>149</sup> argue that while inter-availability is important, there needs to be space for TOC innovation and different technologies to co-exist. Other respondents<sup>150</sup> have a firm view that the ability to purchase inter-available, through and walk-up fares is essential for customer flexibility and choice. c2c say that further consideration of these requirements should be undertaken as part of a wider review of network benefits. ATOC, c2c and East Coast also add that such a review should include impartiality.

### ***Ticket office opening hours and their impact***

18. Though not clear-cut, broadly, seven respondents were sceptical of the current approach to minimum opening hours for ticket offices<sup>151</sup>. ATOC say that schedule 17 (which obliges TOCs to have their ticket offices open for minimum hours) results in higher supply-side costs, giving rise to higher prices for consumers and weakening the business case for new consumer services (e.g. a more flexible service) and facilities. This is because, it says, the cost savings from varying supply-side capacity cannot be realised.

19. However, certain stakeholders<sup>152</sup> appear to take a firm view about the value of ticket offices. Passenger Focus says that ticket offices offer additional value and convenience for passengers in, for example, guiding them to the right ticket. Some respondents<sup>153</sup> discuss the limitations of TVMs and say that, until they are developed to meet passengers' needs, the rules around minimum ticket office opening hours need to be retained. In order to address some of these limitations, Passenger Focus say they would like to see the impartiality obligation extended to TVMs and websites.

### ***Charging fees***

20. The general argument from most third party retailers<sup>154</sup> is that they have to charge fees to be able to cover the cost of sale as they cannot do this from commission alone. TOCs<sup>155</sup>, on the other hand, say they receive higher commission rates to cover the cost of sale because they cannot charge fees.

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149 AUKT, Chiltern, CrossCountry (implicitly by agreement to AUKT response)

150 Centro and West Midlands ITA, Micheal Brooks, TravelWatch North West.

151 ATOC, AUKT, (CrossCountry in agreement through AUKT), c2c, East Coast, Fred Rogers, Grand Central.

152 Centro and West Midlands ITA, Passenger Focus, PTEG, RMT

153 Centro and West Midlands ITA, Graham M. Phillips, Passenger Focus, RMT

154 Redfern

155 ATOC, AUKT, East Coast

21. Some TOCs say that the regulatory constraints that prevent them from reflecting the differential costs of sales channels should be withdrawn, as it means that they cannot recoup their costs from all sales channels. Conversely, Passenger Focus and Transport for London say they are concerned that if TOCs were allowed to charge fees, passengers would pay more to travel than they currently do, potentially having a distortive effect on chosen sales channels.

### ***Industry governance arrangements***

22. Fourteen respondents<sup>156</sup> express their views on the current form of industry governance, though many tend to focus on the potential outcomes of the governance arrangements, rather than the governance arrangements themselves.

23. In regards to third party retailers, ATOC say that it and TOCs do “undertake a degree of consultation with third party retailers on key changes, such as commission” although they say this does cause tension. Passenger Focus criticises the current governance arrangements saying that third party retailers are effectively controlled by their competitors, the TOCs. AUKT say that because regulation sits in different places (e.g. the franchise, the TSA, industry governance processes and by ORR), they do not result in aligned objectives.

### ***Retail arrangements for third party retailers***

24. With respect to the arrangements for third party retailers in the market, some TOCs<sup>157</sup> recognise that third party retailers offer significant benefit to the rail market and help to expand it. However, there is criticism over the current arrangements for third party retailers. A number of third party retailers<sup>158</sup> say that they do not have access to all products, which, they say, gives TOCs an unfair advantage in retailing. ATOC, c2c and Keolis stress that third party retailers can earn additional remuneration through bilateral agreements with individual TOCs or owning groups.

### ***Industry rules (commission, accreditation)***

25. ATOC defends the costs of accreditation and says that they outweigh the risks of not having proper accreditation processes.

26. ATOC say 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 and retailer) that determines how much remuneration a retailer gets.

### ***Industry processes and systems***

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156 ATOC, AUKT, c2c, Centro and West Midlands ITA, Keolis, London TravelWatch, Passenger Focus, PTEG, RMT, TfL, TravelWatch NorthWest

157 ATOC, First Group, Govia, Keolis, Virgin

158 Redfern

27. In relation to the current form of industry processes and systems, some respondents<sup>159</sup> say that having central systems is important as they preserve the positive benefits of a fully integrated, national network. Passenger Focus also says there are good reasons for central processes, for example managing common products and controlling common terminology. Some TOCs<sup>160</sup> say that shared back and front office systems ultimately reduce costs and allow assets to be written-off over their life spans which are longer than franchise lengths.
28. PTEG say it would like to see much greater openness from TOCs in the disclosure of passenger demand information, and would like ORR to review this ownership of this data as part of the Retail Market Review.

### **Industry data**

29. Seven respondents<sup>161</sup> express support or acknowledge recent moves to open up access to industry data. These respondents also suggest that TOCs should maintain control of this data to ensure quality and appropriate use.
30. Four respondents<sup>162</sup> comment on the poor quality or complexity of existing data feeds. Four respondents<sup>163</sup> comment on the fact that not all data needed is yet available. For example, BR Fares note the absence of an electronic version of the National Routing Guide.

### **Other points**

31. Visit Britain says that the market is failing to deliver for the specific needs of overseas visitors.
32. On the potential options (and in the context of the governance arrangements and how they may affect third party retailers), ATOC outlines six alternatives to the current arrangements. These relate to involving third party retailers in certain industry decision-making arrangements; removing the collective arrangements between third party retailers and ATOC; retaining the collective arrangements but removing the central commission arrangements; appointing an independent body to set commission and commercial terms; retaining the arrangements but making them subject to an ORR review; and/or adopting a more managed approach through a competitive tender for awarding licences.
33. Most respondents agree that our approach to Stage Two of the Retail Market Review is sensible and want to see that our recommendations are backed by evidence. London TravelWatch says it wants to see a more pragmatic approach to Stage Two of the review, looking at practical implications for passengers. ATOC say they would like to see a vision of what excellence in British retailing would look like for all parties.

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159 ATOC, c2c, First Group, Keolis, TravelWatch Northwest

160 ATOC, c2c, East Coast, First Group, Keolis

161 AUKT, ATOC, BR Fares, c2c, Cross Country (by agreement with AUKT), London TravelWatch,

162 BR Fares, East Coast

163 BR Fares, Centro and West Midlands ITA, PTEG

## Appendix 1: List of non-confidential responses to the September 2014 consultation

No.	Organisation
1	ATOC
2	Arriva UK Trains (AUKT)
3	BR Fares
4	c2c
5	Centro and West Midlands ITA joint response
6	Chiltern
7	CrossCountry
8	East Coast
9	First Group
10	Fred Rogers
11	Global Travel Ventures
12	Govia
13	Grand Central
14	IOSIS
15	Keolis
16	London TravelWatch
17	Mike Brooks
18	Money Saving Expert
19	Passenger Focus
20	PTEG
21	Redfern
22	RMT
23	Stagecoach
24	TfL
25	Transport Scotland
26	Travel NorthWest
27	Virgin
28	Visit Britain

# Annex C: Draft impact assessment of proposed remedies to promote effective competition among TOCs (Chapter 3)

## *Issues and proposed remedies*

1. As discussed in Chapter 3, we consider that some elements of the industry regime for ticket selling limit TOCs' incentives to compete. For the purposes of this draft impact assessment, we focus on two particular issues and, in turn, suggest a proposed remedy for each:
  - a. TOCs could be better incentivised to compete in the creation of new products by improving the industry process for introducing new products to the market; and
  - b. As a possible longer-term measure, consideration could be given to having prices that differ by sales channel to encourage them to reflect cost saving in the price of the fare, earned when passengers buy through cheaper channels.
2. We note that some of the proposed remedies discussed in Chapter 3 could stimulate competition across the market.
3. This draft impact assessment does not consider *all* the options discussed in Chapter 3, or their variations (most notably, how to encourage TOCs to introduce new products within the period of their franchise agreement; the importance of separate initiatives to complement franchising (such as the DfT's recent commitments to trial flexible ticketing and single-leg pricing); and how TOCs should ensure, in working with TIS suppliers, that they do not suppress the potential for innovation arising from individual retailers). This reflects the fact that some of the options are existing policy and/or are less developed. Subject to stakeholders' views and where appropriate, we will, in time, develop those options, including subjecting them to a full impact assessment.

## **Objectives**

4. As discussed in Chapter 1, in the market for ticket selling, retailers compete with each other to sell tickets while, at the same time, they collaborate with each other to facilitate integrated, national retailing. An effective industry regime should provide an appropriate balance between each of these characteristics, so that passengers benefit from effective collaboration that is limited to the achievement of its objective for a national retailing ticketing system, while maintaining effective competition. Our approach to the Review reflects this, by assessing each remedy

against the extent to which the industry regime promotes both effective competition and collaboration.

### ***The 'do nothing' scenario***

5. The 'do nothing' scenario is used as the baseline against which costs and benefits of proposed remedies are assessed. In other words, the 'do nothing' option represents a case of maintaining the existing industry regime rules and practices, i.e. that the issues described above would continue to exist to the benefit/detriment of passengers and the wider market.

### ***Proposed remedies to address the issues, and their assessment***

#### **Proposed remedy A: TOCs could be better incentivised to compete in the creation of new products by improving the industry process for introducing new products to the market**

##### *Purpose*

6. TOCs are limited in their ability / incentive to offer new fares and products by, in part, the industry processes for introducing new products. This has led to a delay in the introduction of products. It also creates a risk that TOCs are discouraged from competing to create new products.

##### *Remedy description*

7. We propose that the process for introducing new products is improved upon. The way in which in which this could be done is discussed in Chapter 3.

##### *Implementation*

8. This could be implemented through a change to the TSA. It may also involve a change to the internal processes of the RSP (and, possibly, ATOC) and the DfT.

##### *Assessment*

9. The likely **benefits** of this option include:
  - a. More timely introduction of new products that are likely to benefit passengers (as discussed in Chapter 2 and 3 with respect to passengers' demand for certain products); and
  - b. More widely, improved incentives on TOCs to introduce new products that passengers benefit from.
10. With respect to the likely **costs**:



- a. Noting the design of the franchise framework, there is a risk that more speedy introduction of new products (for example, on a trial basis) may give rise to concerns among TOCs of possible revenue abstraction; and
- b. There is likely to be a direct cost associated with introducing a change in relevant processes. However, this is likely to be marginal (possibly around £6,500 for the purposes of both DfT and RSP resources<sup>164</sup>).

### *Conclusion*

11. This proposed remedy would appear to be a relatively cost-effective way of improving passengers' choice of fares and products.

### **Proposed remedy B: As a possible longer-term measure, consideration could be given to having more cost reflective pricing so that prices differ by TOCs' sales channel**

#### *Purpose*

12. This proposed remedy could encourage TOCs to better reflect cost saving in the price of the fare, gained when passengers buy through cheaper channels.

#### *Remedy description*

13. This remedy envisages that the price of like-for-like fares could differ by sales channel, to reflect the fact that the cost of sale is different depending on the channel through which it's bought; analysis from ATOC suggests that the difference could be between four and eight per cent.

#### *Implementation*

14. A change would be required in the TSA to clarify that TOCs can charge different prices for equivalent fares through different sales channels. Consideration would need to be given to whether the price of regulated fares would also vary by sales channel and, if so, how the franchise agreements may need to reflect that.

#### *Assessment*

15. The likely **benefits** of this option include:

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<sup>164</sup> Note this is highly indicative. It is calculated using typical public sector salary levels and our understanding of ORR staff time on particular issues (estimating how much time it currently costs us to undertake work that appears comparable). For the purposes of this figure, we have assumed it would take 26 days per decision, spread over staff at different levels of experience.

- a. It could give rise to greater efficiencies overall. If fares were available at cheaper prices through certain sales channels, it could induce passengers to use those sales channels. However, the efficiency impact of this proposed remedy is likely to be limited by other rules, such as those relating to the minimum opening hours of station ticket offices which, unless revisited, would still impact on the overall cost of sale;
- b. It could give rise to cheaper fares bought through cheaper cost of sale. This could encourage more passengers to travel by rail, potentially having a revenue generative impact; and
- c. It could match many passengers' expectations, often gained from other sectors, that their efforts in searching out cheaper fares or products were rewarded.

16. With respect to the likely **costs**:

- a. Allowing prices to vary by sales channels would dilute the price parity element of impartial retailing (reflecting the fact that the price of a fare would not be consistent across sales channels and retailers). This would require further consideration about requisite consumer protection as well as ensuring that consumers are better informed about rail pricing; and
- b. It could require some changes to be made to the shared IT systems to reflect different prices for equivalent fares or products, which would give rise to additional costs. Similarly, it would require the 'carrying' TOC to create multiple prices for equivalent prices so that third party retailers would access their own channel-specific fare.

*Conclusion*

17. In summary, this option could provide for more efficiency in retailing which could, in turn and over time, lead to cheaper fares for passengers. However, consideration would need to be given to requisite passenger protections, particularly any social policy considerations arising from passengers who have no or limited access to the internet and/or who need to / prefer to physically talk to someone when buying a ticket.

# Annex D: Draft impact assessment of proposed remedies to promote effective competition in the role of third party retailers (Chapter 4)

## *Issues and proposed remedies*

1. As discussed in Chapter 4, third party retailers appear to play an important role in delivering benefits to passengers, and the market in general. However, our analysis suggests that the industry regime for third party retailers may not be working as effectively as it could in promoting competition.
2. We have identified several issues which are discussed in detail in Chapter 4. To address them, we propose a range of remedies, namely:
  - a. Industry regime affecting third party retailers to be overseen by an independent body;
  - b. Increased transparency on the industry regime for third party retailers, including on third party retailers' costs and commission
  - c. Formal obligation on the relevant TOC governance bodies to consult on proposed changes to third party retailers' costs and commission;
  - d. All third party retailers and others affected by the industry regime to be allowed a mechanism to appeal changes;
  - e. Industry to explore ways in which the barriers smaller retailers face could be reduced;
  - f. Industry to explore further how TOCs and third party retailers could be enabled to sell all products, including what the impact of this is on passengers; and
  - g. As a possible longer-term remedy, consideration could be given to the need for more separation between the wholesale market and the retail market in rail.
3. Below, we assess each of these remedies against the 'do nothing' scenario.
4. As per the approach set out in Annex C, this draft impact assessment does not consider *all* the options discussed in Chapter 4, or their variations. For example, (reflecting the need for further consideration), it does not consider in detail the practice of TOCs discounting fares without making them available to other retailers. It also does not consider the idea that an independent member could sit on the relevant TOC decision-making groups (e.g. the Commercial Board); that ATOC could provide a justification for third party remuneration arrangements; and that ATOC could host a periodic meeting (for example, annually) with existing independent parties to discuss developments in the rules and practices for third party retailer arrangements. As above, and subject to stakeholders' views and where appropriate,

we will, in time, develop those options including subjecting them to a full impact assessment.

### **Objectives**

5. As discussed in Chapter 1 and in Annex C, we assess each remedy against the extent to which the industry regime promotes effective competition and facilitates effective collaboration.

### **The 'do nothing' scenario**

6. As noted in Annex C, the 'do nothing' scenario is used as the baseline against which costs and benefits of proposed remedies are assessed.

## **Proposed remedy A: Industry regime affecting third party retailers to be overseen by an independent body**

### *Purpose*

7. The purpose of this remedy is to address the fact that entry requirements for third party retailers are determined by TOCs only, which gives rise to a risk of (real or perceived) conflicts of interest.

### *Remedy description*

8. Under this remedy, the industry regime affecting third party retailers would be overseen by an independent body. The kind of matters that would fall to the independent body would be such matters as significant changes to the licence requirements on potential third party retailers and/or significant changes to the bonding requirements. It could also consider changes to the industry regime for existing third party retailers, such as a change to the proposed commission level or structure.
9. Under this option, the independent body would have two potential roles:
  - a. As the final arbitrator on matters that remain unresolved between the TOCs and third parties retailer, with referrals being able to be made by either side; and
  - b. An audit role where it could comment on the methodology applied to, for example, changes to licence requirements and/or undertake audits of TOCs' decision-making process.
10. We are recommending also that the body be given powers to effect change in order to create most benefit from the direct (resource) and indirect (transaction time of adding another body to the process) costs of establishing such a body.

11. The identity of the independent body could include, for example:

- a. The DfT. Under this option, the arrangements could work in a similar manner to the way that the DfT currently oversees changes to the TSA (including changes to the intra-TOC commission levels). The advantage of this option is that it could represent only a (relatively minor) change to the DfT's current role over the TSA, in particular the parts of the TSA that relate to retailing. It could also allow the DfT to consider changes to the third party retailer arrangements in the context of the wider regime (including franchising and the revenue implications, including on the taxpayers). However, the DfT may not be considered appropriately independent to consider the third party retailing arrangements given its franchise role. For example (reflecting the fact that certain retailing decisions have an impact on TOC revenue and, in turn, the level of public funding), the DfT provides voting advice to TOCs who are near the end of their franchise term on issues relating to intra-TOC issues;
- b. The ORR. The oversight could be provided in a similar way to some of ORR's existing functions, in particular our access appeal functions under the Railways Act where we have to balance our section 4 duties with sometimes conflicting interests. ORR is also independent of the franchise process and there would be no real or perceived conflict in its ability, therefore, to make decisions on retail matters. This independence, however, could also be seen as limiting ORR's ability to understand and, therefore, to properly reflect the way that retail decisions interact within complex rules around ticketing and settlement and, ultimately, the franchise. Criticism of this option may also arise from the fact that it would essentially create two regulatory bodies with oversight of the TSA. This could be considered as complicating the retailing landscape and could create issues of inconsistency for those who are bound by its rules;
- c. Transport Focus. As the independent watchdog for transport users, its objective is to get the best deal for passengers. As such, it could be well-placed to consider the industry regime for third party retailers and how any changes to it could impact passengers. However, it may also lack the necessary expertise in considering detailed retailing and commercial arrangements. It may also not be considered appropriately independent from the passenger interest; or
- d. An independent industry expert. An expert in rail and/or retailing issues could be provided with an oversight role, bringing in experiences from other sectors

and/or other parts of the rail market. Reflecting its role across industry, it is also likely to be genuinely independent<sup>165</sup>.

12. We note that, for all the bodies considered above, they may not necessarily be currently resourced to undertake this activity.

### *Implementation*

13. The scale of change required, and thus implementation of this remedy, is likely to depend on who the independent body is. At the very least, it is likely to require a change to the TSA.

### *Assessment*

14. Having an independent body oversee the industry regime for third party retailers could result in the following **benefits**:

- a. It could resolve the concerns around (real or perceived) conflicts of interest, thus encouraging new retailers to enter the market who, in turn, could offer alternative sales channels and new, ancillary products to the benefit of passengers; and
- b. It could resolve the concerns of some existing third party retailers that there are (real or perceived) conflicts of interest, strengthening their confidence in focusing on improving their offer to passengers through increased competition.

15. With respect to the likely **costs**:

- a. There is a risk that oversight by an independent body amounts (only) to a bureaucratic requirement, thereby lengthening the decision-making process without effecting any change. This is why we are recommending that the body be given powers to make binding decisions; and
- b. This proposed remedy would give rise to additional cost, though this is likely to depend on who the independent body is. With respect to on-going average staff costs, each review of TOCs' decision could cost around £4,000<sup>166</sup>. The

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<sup>165</sup> The industry expert could be appointed through a competitive tendering process. We note that, in the balancing and settlement arrangements for electricity suppliers, the governance arrangements are determined by a panel that includes a consumer representative (selected from Consumer Futures) and an independent consumer panel (from a consultancy firm); see [here](#).

<sup>166</sup> Note this is highly indicative. It is calculated using typical public sector salary levels and our understanding of ORR staff time on particular issues (estimating how much time it currently costs us to undertake work that appears comparable). For the purposes of this figure, we have assumed it would take 17 days per decision, spread over staff at different levels of experience. Staff costs are inclusive of national insurance and overheads etc.

cost is likely to be higher for a consultancy body, possibly around £7,000 per decision<sup>167</sup>. In addition, the independent body could incur some costs in establishing its role (e.g. staff training).

### *Conclusion*

16. In summary, therefore, we consider that providing a role for an independent body to oversee the industry regime may address the issue around (real or perceived) conflicts of interest for potential and existing third party retailers. Also, it would appear relatively cost-efficient, though this is likely to vary depending on who the relevant body is. However, without binding powers to effect change, there is a risk that this gives rise to additional bureaucracy without effecting change.

### **Proposed remedy B: Increased transparency on the industry regime for third party retailers, including on third party retailers' costs and commission**

#### *Purpose*

17. The purpose of this remedy is to address the risk that potential third party retailers' costs are not fully transparent, creating uncertainty and/or unpredictability for potential entrants (and possibly existing third party retailers).

#### *Remedy description*

18. This remedy proposes that TOCs (working under ATOC or the RSP, for example) share more information about third party retailers' costs and commission with the wider industry participants. Information could relate to, for example:

- a. How costs and commission levels are calculated;
- b. What are the potential factors that could or will give rise to a change;
- c. What is the likely frequency of change; and
- d. The associated processes for making change (e.g. the notification period and the right and process for challenge).

19. Through ATOC and/or RSP, TOCs could make the information available on the relevant ATOC website in a comparable way to how ATOC / RSP already provide some guidance regarding the application process for third party retailers and the accreditation process<sup>168</sup>. They could, for example, do this by producing a series of guidance documents or by creating one new, more comprehensive guidance document. They could also take steps to publicise them more effectively.

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<sup>167</sup> This is also highly indicative. It is based on ORR's understanding of independent consultants' day rates.

<sup>168</sup> See [here](#) and [here](#), for example.

## *Implementation*

20. We note (and welcome) TOCs' efforts, working through ATOC and RSP, to work with potential third party retailers to help them understand the industry regime for ticket selling. For example, we note that ATOC manages initial enquiries from prospective retailers and, in the case of potential third party retailers, will typically meet with them multiple times to talk them through the process and to understand more about their retailing proposition. We also note the existing guidance that is publically available on the application process and accreditation (as discussed above).
21. As such, this remedy could build on existing efforts so that TOCs, working through ATOC and RSP, share further information about the industry regime for third party retailers, in particular the costs (including how they're determined and the likely level of costs, including those relating to the costs of a licence) and the methodology for commission setting.

## *Assessment*

22. Increased transparency on the industry regime for third party retailers could result in the following **benefits**:
- a. It could build on efforts to date to help potential third party retailers understand the rail retail market. Increased clarity and better accessibility to the relevant information is likely to increase predictability of costs and remuneration. This in turn, could give rise to more third party retailers entering the market, giving rise to increased competitive effect, to the benefit of passengers; and
  - b. Having more public information about how costs and commission are determined enables greater public scrutiny of their appropriateness. Given the level of public (and passenger) funding in railways, this would appear important.
23. With respect to the **likely costs**:
- a. There is a risk that producing guidance amounts only to a bureaucratic process and doesn't serve to promote the transparency of the regime and, in turn, encourage more predictability of the regime; and
  - b. We expect that it could about £4,000 to produce and market a comprehensive guidance document<sup>169</sup>. This assumes that the current

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<sup>169</sup> Note this is highly indicative. As above, it is calculated using typical public sector salary levels and our understanding of ORR staff time on particular issues (estimating how much time it currently costs



industry regime (including the rules and practices) would not need to be altered; rather, this remedy involves bringing those current practices into one, easily accessible document or platform. Furthermore, and reflecting the fact that the current approach to determining third party retailers' costs does not (appear to) change frequently, we would expect that any guidance would only be updated sporadically.

### *Conclusion*

24. Notwithstanding the risk around increased bureaucracy without giving rise to discernible change, this option appears to be a relatively inexpensive way of improving the transparency of the industry regime for third party retailers. As such, it could encourage more parties to enter the market.

### **Proposed remedy C: There is a formal obligation on the relevant TOC governance bodies to consult on proposed changes to third party retailers' costs and commission (and other issues likely to be relevant to third party retailers and others)**

#### *Purpose*

25. The purpose of this remedy is to address the risk that potential third party retailers' costs and commission are not predictable. This relates to the fact that the way some costs are determined lack transparency and a clear rationale for how they're determined, with third party retailers appearing to have limited access to the reasons for any change. It also reflects third party retailers' limited influence over how the costs and commission are determined. This remedy could also seek to address the issues relating to the need for retailers and wider industry to collaborate in the development of the industry regime (as discussed in Chapter 5).

#### *Remedy description*

26. Under this remedy, there would be a formal requirement on TOCs to consult with parties affected by change to the industry regime, i.e. those issues that have an impact on a party's costs or revenue or an issue that impacts a party's commercial and retailing strategy. This could include, for example, changes to parties' cost contributions and/or changes/developments to shared IT systems and changes to the licence obligations on third party retailers.

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us to undertake work that appears comparable). For the purposes of this figure, we have assumed that producing guidance and marketing it would take 17 days, spread over staff at different levels of experience.

27. Consideration would need to be given to who would decide what issues would be consulted upon, or how.

28. Consultation could involve<sup>170</sup>:

- a. The relevant governance bodies (e.g. the ATOC Commercial Board, the Ticketing and Settlement Scheme Council) seeking views from interested parties (for example, non-TOC industry participants such as passenger representative groups and/or third party retailers) by publishing consultation documents or letters that notify parties of the potential for change and the options for change (including their likely costs and benefits);
- b. The relevant governance bodies engaging with interested parties in the form of bilateral meetings and/or wider meetings to share with them their thinking on the potential for change and the options for change (and their likely costs and benefits);
- c. The timeframe for consultation could vary between two and 12 weeks, depending on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issues)<sup>171</sup>;
- d. A minimum lead-in period (e.g. 90 days) before any changes could be made to allow interested parties to make representations<sup>172</sup>;
- e. To complement the consultation process, the governance bodies could publish minutes from each (or some) of the seven working groups<sup>173</sup> established to oversee the TSA schemes, for example the Commercial Board and the Ticketing and Settlement Scheme Council meetings. Minutes would be published on ATOC's website, and the rules around publishing the minutes could follow an agreed format<sup>174</sup>; and/or

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<sup>170</sup> In addition, we note that any consultation could follow the Consultation Principles set out by the Government in 2013 (available [here](#)). The key Consultation Principles are: i) to follow a range of timescales rather than defaulting to a 12-week period (especially where extensive engagement has occurred before); ii) to give more thought to how to engage with and use real discussion with affected parties; iii) to explain what responses have been received and how these have been used in formulating policy; and iv) consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy.

<sup>171</sup> UK Government Consultation Principles 2013.

<sup>172</sup> Consideration could also be given to how TOCs (working through ATOC and RSP) would need to demonstrate how they demonstrate that they have had due regard to stakeholders' representations, explaining why they were not taking account of particular views, for example.

<sup>173</sup> See Figure 6 in ORR September consultation document. These working groups are: Staff Scheme Council, London Scheme Council, NRE Scheme Council, Ticketing Information Scheme Limited (TISL), Commercial Board, Engineering Council, and Operations Scheme Council.

<sup>174</sup> For example, the publication of minutes could follow TfL's guidance as set out in "*The Openness of the Local Government Bodies Regulations 2014: Annex 1*", 2014. This says that: all papers and

- f. There would be an obligation on the relevant governance bodies to notify their decisions following any consultation, setting out its reasoning on its intended approach.

### *Implementation*

29. To implement this option, a change would be made to the TSA to require the relevant governance bodies (or schemes) to consult in a particular way<sup>175</sup>.

### *Assessment*

30. The **likely benefits** of an obligation on TOC decision-making groups to consult could include:

- a. It could ensure TOCs' decisions on the industry regime are made in a more transparent way, which would facilitate greater predictability about the likely level of costs and commission for potential third party retailers. As above, this could, in turn, make the rail retail market more attractive, encouraging more parties to enter the market to the benefit of passengers;
- b. For existing third party retailers, an obligation on TOCs to consult in their decision-making would enable their views to be considered more fully and formally, possibly to the benefit of the regime as a whole as it provides the opportunity to incorporate a broader range of interests as it develops over time. Furthermore, providing for a formal mechanism through which third party retailers could engage on the industry regime could mitigate concerns about (real or perceived) conflicts of interest; and
- c. For other parties (such as passenger representative groups and technology providers), an obligation on TOCs to consult could enable their views to be considered more fully and formally, possibly to the benefit of the overall industry regime similarly to the benefit outlined above.

31. With respect to the **likely costs** of an obligation on TOC decision-making groups:

- a. There is a risk that the consultation process becomes a bureaucratic requirement, without effecting any change. For example, the consultation process may not consider relevant issues that are material to third parties; any consultation document (and subsequent decision) may not be a fair reflection of the relevant analysis; and/or stakeholders' concerns may not

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minutes from the meetings are to be available online; draft minutes are to be made available to public as soon as possible; and the minutes should include the list of attendees and the agenda for the next meeting. See [here](#) for further information.

<sup>175</sup> This could be provided for under Chapter 15 of the TSA. In general, any change to the TSA requires the DfT's written approval.

be (fully) taken into account. These risks would need to be considered in the design of any obligation on the relevant governance bodies to consult, including imposing an obligation to publish a response to any consultation which identified the reasons for accepting or otherwise the input of third parties. Furthermore, there could be a role for an appeal mechanism to help ensure that any consultation process is robust (see remedy D);

- b. It would give rise to some additional cost for TOCs, in terms of staff costs (to prepare documents for publication) and time (given risk that the obligation to consult slows down the decision-making process). However, we note that ATOC and (some) TOCs say they already consult (including informally through bilateral meetings, for example) with interested parties on proposed changes. Therefore, the *additional* cost of doing it in a more transparent and formal manner is likely to be modest, possibly around £4,000<sup>176</sup> (excluding any cost of appeal, which is addressed below). It would also give rise to some additional cost on behalf of third parties, for example in producing a formal response to a consultation. We estimate this could cost each respondent around £700 in staff costs<sup>177</sup>.

### *Conclusion*

32. In summary, this remedy is likely to increase the transparency of TOC decision-making processes at the same time as allowing non-TOC parties to effectively have a say in TOC decision making, at a marginal cost to the industry. However, there is a risk that the option amounts to further bureaucracy, without effecting change. We have identified some measures such as the requirement to publish a response to the consultation process and to have an appeal route which could control for this; see below.

### **Proposed remedy D: All third party retailers and others affected by the industry regime to be allowed a mechanism to appeal changes**

#### *Purpose*

33. The purpose of this proposed remedy is to address the risk that potential third party retailers' costs and commission are not predictable. It reflects third party retailers' limited influence over how some of the costs and commission are determined, and the other changes to the industry regime (including changes to

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<sup>176</sup> Note this is highly indicative, and is calculated using the methodology discussed above. We assume that the cost of producing a consultation document and decision documents (including analysing formal responses) would amount to about 15 days.

<sup>177</sup> As above, this is highly indicative. It is likely to vary considerably by the issue and the organisation in question. For the purposes of this figure, we have assumed that each respondent would spend two days producing a response and attending one meeting, using two members of staff (one more junior than the other).

the shared IT systems). It also reflects other parties' limited influence over changes to the industry regime for ticket selling.

### *Remedy description*

18. Under this proposed remedy, all parties that consider themselves affected by TOC decisions relating to the design of the industry regime could raise a dispute through an independent appeal mechanism.

34. We note that, currently, online third party retailers and TOCs both have scope to raise a dispute: Online third party retailers (and/or ATOC) are able to raise a dispute about a decision affecting online third party retailers to an independent arbitrator; and TOCs are able to raise a dispute through the ATOC dispute resolution mechanism<sup>178</sup>.

35. As such, this proposed remedy could provide for a similar (or equivalent) independent appeal mechanism to parties affected by TOC decisions. Such parties could include, for example, TMCs; prospective third party retailers; TIS suppliers; App developers; other technology providers; and, possibly, passenger representative groups.

### *Implementation*

36. To provide a role for TMCs to raise a dispute, a change could be made to their licence. To provide a role for other non-TOC parties, consideration would need to be given to how this could be provided for (given that, in the absence of a licence, it would not be possible to bind the parties to adhere to the outcome of an independent appeal). For example, ATOC could informally agree to provide for an independent arbitrator.

### *Assessment*

37. This remedy could strengthen the voice of non-TOC parties to the benefit of the industry regime. The **likely benefits** could include:
- a. Increase the predictability of the industry regime for ticket selling for all third party retailers, in particular TMCs, making it more attractive to enter and expand; and
  - b. Improve TOC decision-making more generally. By widening the scope of who can raise a dispute, it provides improved 'checks and balances' on TOC decision-making which could, in turn, help encourage them to involve

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<sup>178</sup> This is provided for under the ATOC Dispute Resolution rules. A subset of this provision allows TOCs to raise a dispute relating (only) to income allocation.

all appropriate parties in the decision-making. This could, in turn, ensure the industry regime develops to the benefit of all parties.

38. With respect to the likely **costs**:

- a. There is a risk that the provision for an independent appeal mechanism is not an attractive option to resolve a dispute. In particular, we note that despite some online third party retailers having concerns about TOC decisions relating to the industry regime, there is no record of a dispute having been raised through an independent arbitrator in the last five years. This may be because the option is seen as expensive or ineffective. This would need to be considered carefully before extending the scope of any independent appeal mechanism to other parties; and
- b. There is a financial cost associated with raising a dispute with an independent arbitrator. There is also uncertainty around who would be liable for the cost (this may be determined by the arbitrator of the case or paid by a levy on both parties)<sup>179</sup>.

### *Conclusion*

39. In summary, this proposed remedy could strengthen the role of non-TOC parties in decisions relating to the industry regime. However, given the fact that there is limited take-up by online third party retailers, it is questionable whether it would be effective in addressing concerns held by some parties.

## **Proposed remedy E: Industry to explore ways in which the barriers smaller retailers face could be reduced**

### *Purpose*

40. The purpose of this proposed remedy is to enable a greater number of smaller retailers to enter and/or expand in the market for ticket selling.

### *Remedy description*

41. As discussed in Chapter 2, we consider that there is scope for smaller retailers to sell tickets, to the benefit of passengers, but we are concerned that they currently face some barriers that make the market unattractive to them.

42. Under this proposed remedy, therefore, we recommend that industry (including TOCs, governments, PTEG, and other stakeholders) explore in more detail what

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<sup>179</sup> We understand, for example, that previous cases involving TOCs have been perceived to be expensive.

the barriers that smaller retailers face in selling tickets and, in turn, seek to identify and take-forward initiatives to reduce or remove those barriers.

43. From our initial research, we suggest that industry could consider the impact of requiring third party retailers to sell a full range of fares ('from anywhere to anywhere'). This requirement gives rise to the need for third party retailers to have an accredited TIS machine to sell tickets so that the retailer (and/or its retailing system) is able to apportion appropriately the revenue from tickets sales to the different TOC(s). However, as discussed in Chapter 4, procuring a TIS machine and having it accredited appears expensive relative to smaller retail operations. As an alternative, and a means by which smaller retailers may not require a full TIS machine, smaller third party retailers could be allowed to sell a narrower range of fares. For instance, smaller retailers who sell face-to-face (e.g. newsagents) could be allowed to sell only the most popular fares in that area (e.g. top 10 AnyTime and Off-Peak fares).

#### *Implementation*

44. How this option could be implemented depends on any change that would be needed to the third party regime to reduce the possible barriers.
45. We consider that the TSA already enables this proposal to occur given that TOCs are permitted to sell a 'dedicated' range of fares (i.e. not on an impartial basis). As such, no change would be required to the TSA. However, some changes may need to be made to the relevant third party licence.
46. Alternatively, and depending on the scale of changes that would need to be made to the regime to enable a greater number of smaller retailers to enter the market, industry (in particularly TOCs) could consider the merits of introducing a new licence for these types of retailers.

#### *Assessment*

47. Reducing the barriers smaller retailers face could encourage a greater number of smaller retailers to enter the market. This could, in turn, give rise to the following **benefits**:
- a. As discussed in Chapter 2, having a greater number of smaller retailers could benefit passengers: our research suggested they were open to the idea of buying fares from smaller retailers, and analysis from other transport sectors and other sectors suggests that buying tickets through alternative sales channels, such as newsagents, is popular. This could reflect the convenience and flexibility of such retail outlets;

- b. It could provide for greater efficiencies in selling tickets as, over the medium or longer-term, it may mitigate the need to retain the existing opening hours of station ticket offices (that are typically a relatively expensive cost of sale) if passengers were able to physically buy their tickets at an outlet near the station (or even in the station). Furthermore, the additional cost of selling tickets for smaller retailers is likely to be marginal; and
- c. By providing a greater number of sales channels for rail tickets, it could make rail more attractive to passengers, expanding the market as a whole, benefitting industry and taxpayer. For example, we note research that suggests that online third party retailers have expanded the market as a whole.

48. With respect to the likely **costs**:

- a. Certain costs may arise from our suggestion that smaller retailers be enabled to sell a more limited range of fares. In particular, additional work could be required to ensure passengers are aware that certain smaller retailers sell only a more limited range of fares, in order to ensure that passenger protections are maintained. This is likely to require a package of measures including the appropriate training of retailers (by, for example, written guidance) and more mystery shopping exercises to ensure passengers are being sold tickets appropriately<sup>180</sup>;
- b. Having a greater number of smaller retailers selling tickets could reduce TOCs' revenue, given the need to pay commission for the sale of any tickets. This could, in turn, give rise to a greater need for public funding through the franchising agreement and/or a rise in the price of passengers' fares. However, the need for any additional public or passenger funding would very much depend on the extent to which smaller retailers would expand the market, making their impact revenue generative overall. We note, for example, research that suggests that online third party retailers have, overall, expanded the market to the benefit to the benefit of TOCs and taxpayers;
- c. Having a greater number of smaller retailers selling tickets would give rise to additional costs of procuring the necessary retailing system (even if not a fully accredited TIS) to enable the retailer to access and sell a range of

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<sup>180</sup> ATOC currently undertakes an annual mystery shopper survey to understand the extent to which retailers are meeting their obligations under consumer law and the TSA, in particular their obligations around accuracy and impartiality. Currently, the surveys are undertaken across station ticket offices, TVMs and TOC internet sites.



fares. It could also give rise to additional costs if the shared IT systems required altering or up-grading to account for this type of retailing; and

- d. Depending on the steps required to reduce the barriers on smaller retailers, this proposed remedy is likely to give rise to the need for additional resources on TOCs (through ATOC). This could cost between TOCs/ATOC £50-80k per year<sup>181</sup>.

### *Conclusion*

49. In summary, this remedy could encourage a greater number of smaller retailers to enter the market at local points of sale, potentially benefitting passengers, industry and taxpayers. However, if smaller retailers were to sell a limited range of fares, consideration would need to be given to requisite consumer protections around their assumptions about the fare range available from these retailers, which could rise to additional costs. Similarly there could be costs arising from new retail systems and lost revenue to TOCs through commission payments.

### **Proposed remedy F: Industry to explore further how TOCs and third party retailers could be enabled to sell all products, including what the impact of this is on passengers**

#### *Purpose*

50. The purpose of this proposed remedy is to ensure that passengers have as much choice as possible in where they can buy fares and what rail fares they can buy from their chosen retailer.

#### *Remedy description*

51. This proposed remedy encourages TOCs to consider making all of their fares and products (such as carnet tickets, group saver tickets and Season tickets) more easily and widely available to other TOCs, online third party retailers and TMCs. Under this scenario, the restrictions on other TOCs and third party retailers to access certain TOC products would be lifted, or at the very minimum, limited.

52. We consider that, in principle, TOCs should make all their products available to all third party retailers. However, we note that the feasibility of this proposed remedy is somewhat dependant on the outcome of ATOC's current pilot to allow two third party retailers to sell Season tickets on a trial basis, in particular whether they are able to effectively manage the end-to-end customer experience.

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<sup>181</sup> This is highly indicative. However, notwithstanding the fact that ATOC already commits resources to engaging with the third party retailer community, additional resources could be required to, for example, work with smaller retailers to understand the possible barriers; work with the TIS supply community to understand the scope for alternative systems; and work with TOCs to develop a new type of licence. This could amount to an additional member of staff.

## *Implementation*

53. This option could be implemented in an informal way, whereby TOCs agree to make their products available to all online third party retailers and TMCs. Alternatively, a change could be made to the TSA in order to create a formal obligation on TOCs to commit to providing fairer and easier access to their products. This could be monitored by an independent body overseeing the third party retailer arrangements, at least during the implementation phase.

## *Assessment*

54. The **likely benefits** this option could give rise to are:

- a. Providing for increased access to all TOC products through all retailers is likely to benefit passengers, by providing them with a wider range of retailers to use when buying their chosen product and being able to buy all products through their chosen retailer;
- b. By providing retailers with scope to sell more products, it may make the rail retail market more attractive to potential third party retailers and TOCs operating in that capacity. It could also widen the scope for ancillary and/or bundled products. For example, allowing third party retailers to sell Season tickets could lead to additional products being offered to consumers, for example the introduction of a financial product to spread the cost of the Season ticket. Having more third party retailers should benefit passengers; and
- c. It may give rise to greater efficiencies overall, if TOCs and third party retailers selling such products on behalf of the relevant TOC are more efficient and/or do a better job of encouraging passengers to use cheaper sales channels (for example, we note that research suggests that online third party retailers have been able to encourage more passengers to buy online compared with buying from a station ticket office).

55. With respect to the likely **costs**:

- a. Given the need to pay commission to TOCs and third party retailers selling such products on behalf of the relevant TOC, this could reduce that TOC's revenue. This could, in turn, give rise to a greater need for public funding through the franchising agreement and/or a rise in the price of passengers' fares. However, the need for any additional public or passenger funding would very much depend on the extent to which extending access of these products would expand the market, making the impact revenue generative overall;

- b. Given the increased role for third party retailers, there is a risk that passengers are confused about who they approach in the event there is an issue with their ticket (for example, if they lose their Season ticket). It is important that the retailer manages this appropriately; and
- c. There may be some additional costs associated with changing / upgrading the shared IT systems to allow all products to be sold by all retailers. Consideration may also need to be given to the need to reduce the risk of fraud (for example, by increased auditing).

### *Conclusion*

56. In summary, this remedy is likely to widen the choice of retailer and/or products, to the benefit of the passenger. It could also give rise to increased efficiencies and it could be revenue generative (especially if the introduction of ancillary products may make some rail fares more attractive). However, we note the uncertainties around additional costs and the need to consider passengers' end-to-end experience. As such, we recommend that industry consider this further, using the experience of the Season ticket pilot as further input.

**Proposed remedy G: As a longer-term proposed remedy, consideration could be given to the need for more separation between the wholesale market and the retail market in rail**

### *Purpose*

57. This proposed remedy would widen the scope for third party retailers (and TOCs) to compete with each other in the selling of tickets. This reflects the fact that retailers (including third party retailers and TOCs selling on behalf of a TOC) do not create fares, but rather accesses the same price of the fare that the 'carrying' TOC offer to passengers.

### *Remedy description*

58. One way to provide for increased separation in the wholesale and retail market could be through a 'net pricing' approach. Under this approach, TOCs would create a 'net price' to cover the cost of carrying a passenger which they would make available to all other retailers. In turn, all retailers would compete on the cost of sale (or the retail margin), meaning the commission TOCs (for intra-TOC retailing) and third party retailers receive and the booking fee (where applicable) become one and the same thing (i.e. the retail margin).

### *Implementation*

59. This remedy is likely to require changes to the TSA and/or the TOC's licence.

60. In addition, some institutional / systems changes may be required to enable all TOCs and third party retailers to have a 'price', offered to the market, for carrying a passenger. Independent oversight may be required to ensure parties comply with the arrangements.

#### *Assessment*

61. The **likely benefits** this option may give rise to are:

- a. It could increase the scope for third party retailers and TOCs to compete to sell tickets. For example, it could provide retailers (including third party retailers) with more flexibility around how they set the price of the fare or product (e.g. lower relative to other retailers to reflect a lower cost of sale, or higher to reflect additional ancillary services provided in addition to their tickets, such as ticket-linked information on their phones). Overall, this could lead to increased competition among retailers, to the benefit of passengers;
- b. By mitigating the need for industry-wide commission setting, it may also address the issues (discussed in Chapter 4) associated with the way the commission is set, including concerns by some parties that the commission rate is not set at the appropriate level; and
- c. In the same way as allowing the price of the fare to reflect the cost of sale, it could give rise to greater efficiencies overall, if more fares were sold through cheaper sales channels.

62. This proposed remedy would appear to have some (possibly significant) limitations that would require further consideration. Specifically, with respect to the likely **costs**:

- a. As discussed in Chapter 3 with respect to the option of prices differing by sales channels, it would dilute the price parity element of impartial retailing (reflecting the fact that the price of a fare would not be consistent across sales channels and retailers). This would require further consideration about requisite consumer protection as well as ensuring that passengers are better informed about rail pricing;
- b. It is difficult to predict, without further detailed analysis, what impact this would have on the price of fares overall which to some extent will depend on the level of retail competition that would arise. This in turn creates some unpredictability for franchise values and the future level of subsidy;

- c. It could require changes to be made to the shared IT systems, which would give rise to additional costs. Similarly, some institutional changes may be required to enable such fares to be created and settled between industry parties and the process for this;
- d. Determining the definition of 'net price' may be difficult to achieve, reflecting the fact that TOCs' cost of carrying a passenger is close to zero. This is because a high proportion of TOCs' costs, in running train services, are fixed (e.g. procuring rolling stock, procuring access to the network). Reflecting the commitments of a timetable service (and franchising), a train service would operate if there was no passengers on board. As such, the marginal cost of carrying a passenger is minimal. This could make this approach difficult to implement and/or give rise to additional regulation around how to define the 'net price'<sup>182</sup>;
- e. Notwithstanding the fact that the franchise process may guard against this, there is a risk that TOCs would release an artificially high carrying price to the market, enabling them to then compete 'unfairly, on the retail margin. This could make it difficult for other TOCs and third party retailers to compete effectively;
- f. In transitioning to an alternative pricing system, retailers are likely to incur additional costs (e.g. training staff, updating systems etc); and
- g. As reflected above and given some of the possible limitations of this option, there may be need for additional oversight by an independent body. This could give rise to additional costs.

### *Conclusion*

63. In summary, this proposed remedy would enable greater competition at the retail level, which could in turn lead to greater efficiencies and more choice for passengers. It would, for example, enable industry to move away from the current commission structure of remuneration. However, moving from the current fares structure would be complex and the cost impacts and likely benefits difficult to predict without further work in this area.

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<sup>182</sup> To address this consideration could be given to different cost measures, such as use of Long Run Incremental Cost (defined as the cost of a company producing one more 'unit' of a product).

# Annex E: Draft impact assessment of proposed remedies to facilitate collaboration between retailers, while supporting competition (Chapter 5)

## *Issues*

1. As discussed in Chapter 5, we consider there is room for improvement in the way retailers work together to facilitate an integrated, national network. For the purposes of this draft impact assessment (and reflecting their relative weight), we focus on four proposed remedies.
2. To address the fact that TOCs have limited incentives to collaborate with each other in the development of shared systems and shared ticket formats:
  - a. An increased emphasis through innovation funding mechanisms of the need to support an integrated ticketing system, particularly in local conurbations;
  - b. A greater role for governments to work with all parts of industry to help build consensus around the strategy for future ticketing; and
  - c. As a possible longer-term remedy, consideration to be given to relaxing the obligations to facilitate an integrated, national network across all TOCs and all routes.
3. To address the limited incentives and obligations on TOCs to collaborate with other parties in facilitating integrated, national retailing:
  - d. The establishment of formal working groups to inform the development of the industry regime.

## *Objectives*

4. As discussed in Chapter 1 and in Annex C, we assess each remedy against the extent to which the industry regime promotes effective competition and facilitates effective collaboration.

## *The 'do nothing' scenario*

5. As noted in Annex C, the 'do nothing' scenario is used as the baseline against which costs and benefits of proposed remedies are assessed.

## ***Proposed remedies to address the issues, and their assessment***

## **Proposed remedy A: Increased emphasis through innovation funding mechanisms of the need to support an integrated ticketing system, particularly in local conurbations**

### *Purpose*

6. The purpose of this remedy is to encourage TOCs to collaborate in the development of shared products and/or shared ticket formats, given the importance of an integrated network. Currently, and with some exceptions, innovations have tended to be TOC-specific or mandated by local transport authorities.

### *Remedy description*

7. Under this proposed remedy, bodies / panels awarding funding through innovation-funding mechanisms would put increased emphasis on the need to support an integrated ticketing system, particularly in local conurbations. As such, innovation funding mechanisms would consider (or continue to consider, given the efforts to date) projects that bring together TOCs and other parties to facilitate integrated ticketing (e.g. an innovative ticket format that works across neighbouring TOCs' flows).

### *Implementation*

8. Most of the existing innovation-funding mechanisms appear to already provide the scope for TOCs to partner with others (such as other TOCs, third party retailers, technology providers, and academics). As such, no specific implementation would be required.

### *Assessment*

9. The possible **benefits** of this option include:
  - a. By providing for specific financial (and often non-financial) support, it could address the lack of commercial incentives to collaborate and, in turn, encourage more cross-industry and cross-TOC collaboration. Depending on the particular initiative, this could facilitate innovation to the benefit of passengers, for example through use of a new ticket format on an inter-available basis; and
  - b. Depending on the innovation, it could be revenue generative to the benefit of the entire industry (noting, for example, the case of extending Oyster smartcard to the Greater London rail network).

10. The possible **costs** of this option include:

- a. It would result in other projects not receiving funding. This recommendation does not, however, mean that cross-industry projects receive priority, rather that appropriate weight is placed on the benefits of the delivery of network wide schemes that have the ability to impact on a greater number of passengers; and
- b. There may be a higher risk that the innovation is not delivered (to the detriment of passengers) given that cross-industry or cross-TOC projects are likely to have a higher risk of non-delivery, given the need for increased coordination.

### *Conclusions*

11. While this option is unlikely to address in full the issues around TOCs' limited incentives to collaborate, it may facilitate the promotion of innovations that require delivery on an integrated basis.

### **Proposed remedy B: A greater role for governments to work with all parts of industry to help build consensus around the strategy for future ticketing**

#### *Purpose*

12. This purpose of this remedy is to promote cross-TOC innovation, by helping to facilitate a common understanding of how ticketing may develop in the longer-term.

13. This could address the difficulties TOCs have in collaborating to innovate, as well as the difficulties TOCs may have in innovating on their own services during relatively short franchise periods. It provides a longer-term strategy that can be implemented overtime irrespective of individual franchise lengths.

#### *Remedy description*

14. This formalises the existing efforts of governments, TOCs and other parties to develop a longer-term strategy for ticketing. This could deliver, for example, a longer-term strategy (say 15-20 years hence) for ticketing so that TOCs and, importantly, other parties are brought into and work towards a longer-term vision. This would, in turn, inform the development of shared IT systems and industry-owned data.



## *Implementation*

15. It is unlikely that such an option would require any change to the TSA and/or the TOC franchise and/or licence. Rather, it could be undertaken under existing ATOC / RDG governance frameworks. However, in order to involve other parties (such as third party retailers, passenger representative groups and technology suppliers) so that their views are considered, formal working groups could be established.

## *Assessment*

16. The possible **benefits** of this option are:

- a. That, through developing a longer-term strategy for ticketing, it is easier for TOCs and other parties to collaborate in the development of ticketing. This could mean that passengers benefit from innovation on an integrated ticketing basis, or benefit from them more quickly than they would have if TOCs didn't collaborate;
- b. There are potential efficiency savings, given the scope for economies of scale of TOCs and other parties working together (for example, using common technology); and
- c. Depending on any innovation delivered, it could encourage more passengers to travel by rail, potentially making them revenue generative overall.

17. The possible **costs** are that:

- a. There is a risk that, reflecting the fact that different parties have different priorities, no single strategy can adequately reflect different parties' preferences. This could mean that the strategy is ineffective;
- b. There is a risk that an industry-wide strategy 'crowds out' competition between TOCs and other parties in their approaches to innovation, meaning that the end-result is sub-optimal; and
- c. There is a financial cost associated with parties' time and resources in the development of a strategy, particularly for non-TOC parties that don't currently engage on a formal basis with other parties. This could amount to, in total, around £40,000 per year for all parties engaging in the strategy<sup>183</sup>.

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<sup>183</sup> This is highly indicative. It assumes that 10 organisations are involved, meeting for 6 days per year and contributing to drafting and researching.

## *Conclusion*

18. This option could support more cross-industry collaboration to deliver innovation to the integrated, national network, in a relatively cost-efficient manner. However, there is a risk that it fails to deliver its objectives and could dampen other innovation arising from competition that exists both at the retail level and at franchise auction.

### **Proposed remedy L: Longer-term, there may be scope to consider relaxing the obligations to facilitate an integrated, national network across all TOCs and on all routes**

#### *Purpose*

19. Reflecting the challenges associated with retailers collaborating in the development of an industry regime to facilitate integrated retailing, there may be merit in considering whether TOCs and other retailers' obligations to facilitate an integrated, national network could be relaxed.

#### *Remedy description*

20. This option could remove the requirement on all TOCs to create and to sell inter-available fares for all routes. Instead, consideration could be given to requiring TOCs to create inter-available fares only where it's likely to be popular with passengers (and/or reflects their assumptions about the market). For example, our analysis suggests that passenger take-up of inter-available fares is less popular on long-distance and/or inter-city journeys and, as such, consideration could be given to whether TOCs *should* be required to create fares for these flows.

21. By reducing the need on retailers to use shared IT systems, it could enable them to develop their own, competing systems. This could, in turn, encourage them to tailor the way they sell tickets to what they consider passengers want.

22. This could complement the approach, often being promoted by local transport authorities, towards more zonal type fare systems within conurbations.

### *Implementation*

23. This may require a change in legislation, TOC licences and/or the TSA to implement. This is likely to take some time.

### *Assessment*

24. The possible **benefits** of this option are that:

- a. In relying more on their own systems, retailers have more incentives to develop their own systems, rather than using the shared systems. Given that shared systems heavily influence the way retailers sell tickets, this may lead to the development of alternative ways of ticket selling, and thus further choice, to the benefit of passengers; and
- b. It may give rise to some cost efficiencies, if increased competition in the systems supply market drives competition.

25. The possible **costs** of this options are that:

- a. As reflected in our passenger research<sup>184</sup>, passengers appear to benefit from inter-available ticketing, including by providing them with significant protections. As such, and in any more away from fully inter-available ticketing, consideration would need to be given to requisite passenger protections;
- b. In practice, it may be difficult to identify which flows / fares TOCs should be obliged to offer on an inter-available basis. The network is dynamic, with passenger trends changing over time; and
- c. There is a risk that, in creating incentives on retailers to develop their own systems, there is a duplication of costs. Furthermore, it is likely that some central systems would need to remain in place and, as such, issues may be creating with ensuring all parties' systems can interface appropriately.

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<sup>184</sup> Passengers' value of an integrated network is discussed in further detail in the BDRC Continental Report, Chapter 4.

## *Conclusion*

26. In summary, a relaxation of the obligation on TOCs to offer inter-available fares on all routes may mitigate the need for retailers to collaborate, thus promoting greater scope for competition to the benefit of passengers. However, there may be some significant limitations to this (in particular around requisite passengers' protections) and some difficulties in implementing this. As such, we are not proposing this is taken forward as a nearer-term remedy at this stage.

## **Proposed remedy M: Formal working groups could be established to inform the development of the industry regime**

### *Purpose*

27. The purpose of this proposed remedy is to ensure that non-TOC parties have an effective voice in the design of the industry regime, to mitigate the risk that it develops in line with the needs of TOCs only.

### *Remedy description*

28. TOCs have limited incentives, and no obligation, to collaborate with non-TOC parties in the development of the industry regime. We note that TOCs (working through ATOC) engage on a bilateral (but informal) basis with non-TOC parties (such as third party retailers and TIS suppliers), and they have established an *ad hoc* working group with the TMC community.

29. Building on this work to date, therefore, separate working groups made up of different industry representatives would be established, for example there could be different working groups to represent the interests of online third party retailers; TMCs; TVM suppliers; passenger representative groups; and/or App developers.

30. This could complement other options around the need for TOCs to consult with other parties in the development of the industry regime, and could be used to help develop a cross-industry strategy for ticketing (as discussed above).

### *Implementation*

31. A change could be made to the TSA to provide a formal role for such groups.

### *Assessment*

32. The **likely benefits** this option could give rise to are:

- a. Providing for increased representation of non-TOC parties may support a greater degree of collaboration in the interests of passengers. In particular,

it may ensure that the shared IT systems and industry-owned data develop in line with the needs and expectations of all parties, rather than just TOCs. This is important given the role that the shared IT systems play in determining the functionality of TVMs and websites. As such, this could lead to an improvement in passengers' buying experience; and

- a. By providing a formal role for non-TOC parties to engage in the development of the industry regime, it may mitigate concerns that some third party retailers (and other non-TOC parties) have about (real or perceived) conflicts of interest (as discussed in Chapter 4). This could, in turn, reduce the risks around predictability of costs and commission, making the market more attractive to new entrants, providing passengers with more choice in where and how to buy their ticket.

### 33. With respect to the likely **costs**:

- a. There is a risk that the formal groups amount only to a bureaucratic process and don't lead to effective change in improving the way all parties collaborate in the development of the regime. For the same reason, it may also fail to help in addressing issues around transparency of the decision-making process and risks of (real or perceived) conflicts of interest; and
- b. There is also a direct financial cost associated with establishing these formal groups. Resources would be required in the form of a secretariat and chair (which would depend on the number of attendees and the frequency of the meeting, but could amount to about £11,000 per year<sup>185</sup>). Resources would also be required from the attendees; this could amount to about £19,000 per year<sup>186</sup>.

### *Conclusion*

34. In summary, this remedy is likely to make the market more attractive to non-TOC parties, potentially encouraging them to enter the market to the benefit of passengers. It could also give rise to increased efficiencies and it could be revenue generative (especially if the introduction of ancillary products may make some rail fares more attractive). However, we note the uncertainties around additional costs and the need to consider passengers' end-to-end experience. As such, we suggest that industry consider this further, using the experience of the Season ticket pilot as further input.

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<sup>185</sup> Note this is highly indicative. It assumes that the secretariat would host four separate working groups, each meeting for a half day every three months, and would require staff with different levels of experience.

<sup>186</sup> This assumes that 15 organisations would attend the working group meetings, spending two days per year attending meetings and two days per year contributing to papers etc.



## Annex F: Innovation in other sectors

### *Introduction*

1. This Annex considers innovation in other transport ticketing systems in GB; in other transport ticketing systems outside of GB; and in other regulated retailing sectors (to the extent there are analogies). It considers innovation from the point of view of where passengers buy tickets (retailer/sales channel); how they buy tickets; the ticket format; the choice of tickets; and the opportunity to buy cheaper fares<sup>187</sup>.

### *Innovations in other transport ticketing systems in Great Britain*

2. Table 3 summarises ticketing innovations in national rail compared with other transport ticketing systems in Great Britain. Local transport in London, local rail services outside London, the bus sector, and the airline sector were considered as they provide examples of similar ticketing requirements, customer demands (of ticketing) and potential for innovations.
3. With respect to transport in London (TfL), ticketing innovations are illustrated by their date of introduction in Figure 9. The most significant innovations include the introduction of the Oyster smartcard (2003); provision of differential prices for paying by cash compared with other payment methods (2005); and roll-out of Oyster Pay As You Go on rail services in Greater London (2010; see Box 8).
4. With respect to the local rail services and bus services outside London, we found some examples of innovation that, while wide-spread, appear to be relatively limited in scope. For example, Arriva offers m-ticketing on all its bus services (in, for example, Bangor, Durham, Leicester, and Liverpool (with the exception of TfL and park and ride services<sup>188</sup>)); First Group offers m-ticketing on all its bus services (in, for example, Aberdeen, Bradford, Bristol, Essex, Leeds, and York<sup>189</sup>) and Lothian Buses offers m-ticketing in Edinburgh<sup>190</sup>.

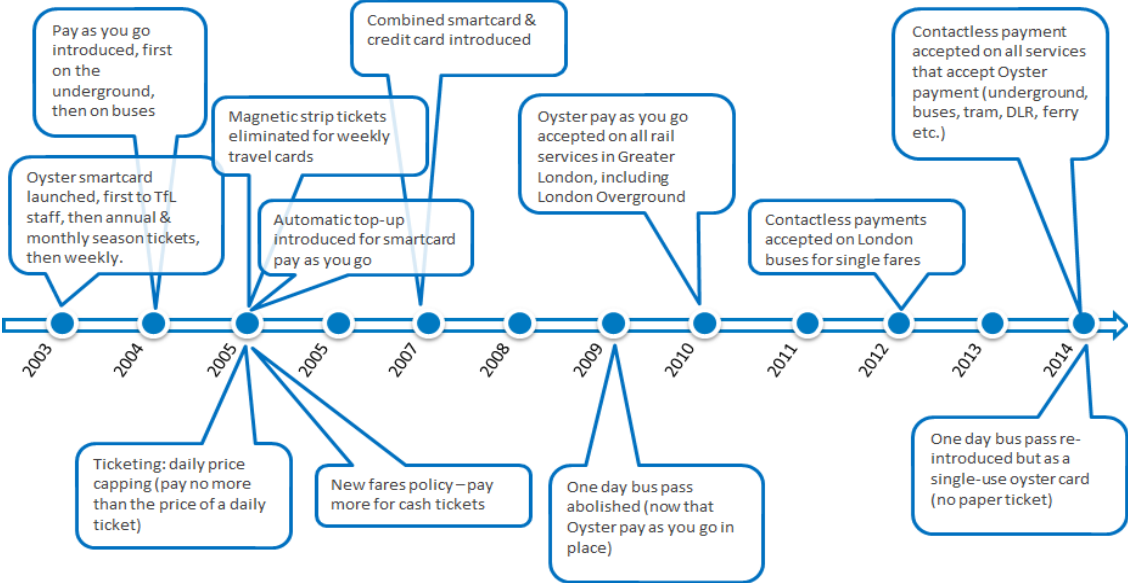
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<sup>187</sup> This Annex does not consider in detail why innovations may (or may not) have been brought forward (for example, because of a mandate from government). Equally, and reflecting the breath of possible innovations in other transport sectors in GB, in other transport ticketing systems outside of GB and in other regulated retailing sectors, this Annex does not seek to be definitive or entirely comprehensive. Rather, it is intended to provide an insight into other innovations to the extent it is relevant to the level of innovations in GB rail, both currently and in the future. Furthermore, and while we have focused on the areas where we consider the analogies with GB rail are most significant, we note that there may be good reasons why some innovations that have occurred elsewhere have not occurred in GB rail, for example, because of differences (or perceived differences) in customer demand for certain ticketing innovations (new ticket format, choice of retailer). In the main, relevant information was accessed on 30 April and 01 June 2015.

<sup>188</sup> See [here](#).

<sup>189</sup> See [here](#).

**Figure 9: Developments in TfL ticketing**



Source: ORR

- With respect to the aviation sector in Great Britain, many airlines (particularly low-cost airlines) have removed check-in desks in favour of print-at-home tickets.

*Innovations in other transport systems outside of Great Britain*

- With respect to rail systems outside of Great Britain, there are a number of interesting cases of innovation in ticketing that may be relevant to GB rail. For example, for SNCF services in France, passengers can buy and validate regional train tickets with near field communication smartphones; in Madrid, the metro system is trialling mobile ticketing via near field communication<sup>191</sup>; in New York City, passengers can also use contactless payment cards and mobile ticketing<sup>192</sup>; in Seoul, passengers’ ticket formats include contactless payment cards and key fobs; and in Toyko, tickets may be bought through a ticket machine and delivered wirelessly to mobile phones.
- With respect to the international aviation sector, Alaska Airlines uses finger-print technology to allow customers to access lounges<sup>193</sup>. Hong Kong Express offers smartcard payment for in-flight refreshments<sup>194</sup>. Similarly, JetBlue offers payment services (in this case, Apple Pay) for in-flight purchases. Air New

<sup>190</sup> See [here](#).  
<sup>191</sup> See [here](#).  
<sup>192</sup> For services operated by the Metropolitan Transportation Authority (MTA).  
<sup>193</sup> See [here](#).  
<sup>194</sup> See [here](#).



Zealand, Virgin America and Norwegian Air passengers are able to make orders on board with their smartphones<sup>195</sup>.

*Innovations in other regulated retailing sectors*

8. Some comparisons can also be made between rail and utilities, particularly with respect to the choice of retailer and sales channel. For example, in energy retailing, in addition to being able to purchase direct from a supplier (akin to a TOC) and from a third party retailer (acting as a price comparison website), customers can purchase energy contracts through 'white label' providers in supermarkets. In telecoms, customers have a wide choice of third party retailers operating physical sales channels on the high street.

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<sup>195</sup> See [here](#).

# Annex G: Further details on measuring passengers' take-up of inter-available fares

## *Introduction*

1. This note outlines the approach taken by ORR to estimate usage of an integrated network by TOCs (and their passengers), as measured by the percentage of TOC revenues from routes defined as inter-available.
2. Passenger take-up (which is very likely to be correlated to passengers' perceived value) of inter-available/through fares<sup>196</sup> and intra-TOC retailing is relevant because these features of an integrated, national network determine (to some extent) how TOCs and third party retailers sell tickets.

## *Background*

3. The analysis is based on Lennon data on TOCs' revenues from ticket sales as well as data on number of journeys made by passengers. The data was analysed at a route level before being aggregated to TOC level, and finally to the UK average<sup>197</sup>.
4. We recognise that the Lennon system was not necessarily designed to measure passenger take-up of integrated products / intra-TOC retailing; **as such, some of the analysis should be interpreted and read with caution.** Firstly, we use TOCs' revenues as a proxy for actual passenger behaviour (take-up) or preferences; this is obviously imperfect. Secondly, the analysis does not fully capture the geography of the network, as TOCs that cross over with other routes and/or have genuine on-rail competition will always have a higher share of inter-availability fares (rather than necessarily reflecting passengers' choice). Thirdly, about 2% of gross receipts (on average) are on tickets sold outside of Lennon, (e.g. multi-modal tickets, used mainly in conurbations). Furthermore, there is likely to be some historical anomalies within LENNON, reflecting the size of the fares database, the network geography and the changes over time.

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<sup>196</sup> Note that, due to the limitations of the Lennon system, we are unable to distinguish between an inter-available fare (that allows passengers with flexibility over the TOC they travel with and the route by which they travel) and through ticket fares (that allow passengers to travel across the network and to buy a ticket from a single point for a single journey using different trains). In this way, the latter is a subset of the former.

<sup>197</sup> Note that, in this context, route refers to a specific origin, destination, product, and route combination, for example, a Standard Class Return between London and Birmingham (via High Wycombe).

5. This Annex is intended to complement the primary research undertaken by BDRC Continental on passengers' views on ticketing, including their views on the role of an integrated, national ticketing system.

### *Methodology*

6. The 2013/2014 Lennon data shows that whenever someone purchases a ticket, the corresponding revenue and journeys are allocated to one or more TOCs depending on the origin, destination, route, and ticket<sup>198</sup>.
7. We created an origin-destination ('OD') matrix which enabled us to identify the OD flows that are TOC-specific. For every route and ticket type combination, we identified which OD pairs were allocated the majority of revenue to an individual TOC, and on which OD pairs the revenue was allocated to more than one TOC. If the former was the case, this was defined as TOC-specific. If the latter, the route was labelled as inter-available (because the passengers taking the route had a journey choice between at least two TOCs).
8. For each TOC, TOC-specific and inter-available flows were defined and revenues from ticket sales were then aggregated to obtain two main figures per TOC, i.e. % revenue from flows defined as inter-available and % revenues from flows defined as TOC-specific.
9. Box 11 explains the "cut-off point" chosen to describe the routes which are TOC-specific.

## **Box 11: Choosing the right 'cut off point'**

To help identify a robust level of passengers' take-up of inter-available fares, we considered it inappropriate to assume that only if 100% of revenue was allocated to one TOC, the route should be defined as TOC-specific; this is because it resulted in an upward bias of the estimate. In practice, there are some routes where a TOC shares revenue with another TOC, but it's unlikely that passengers would make use of inter-availability on that flow.

As such, and considering that applying a lower cut-off point will minimise this overestimation issue, we consider that a conservative approach is to use a 95% cut-off point.

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<sup>198</sup> However, it is worth noting the limitations of this particular approach, namely that the revenue allocated to each TOC for carrying a passenger on an inter-available fare represents the *likely* proportion of passengers each TOC carries, rather than the actual number.

10. An alternative method to determine passengers' take-up of inter-availability could be based on the sale of Any Permitted tickets. However, under this approach, there appear to be many cases where only one TOC operates but, in practice, it sells a high proportion of Any Permitted tickets<sup>199</sup>. As such, this approach biases the estimates upwards; we therefore do not use it.

*Results using the revenue allocation method<sup>200</sup>*

11. When including TfL and PTE travel, our analysis suggests that passengers do travel on inter-available tickets and thus make use of this integrated aspect of the rail network. On average, 38% of TOC revenues came from journeys made on inter-available routes (at a 95% cut-off point, as described above). Although the results differ by TOC, for the majority of retailers this level is at least 30 per cent; see Figure 10. Further, this number seems to be broadly in line with estimates from some industry stakeholders we've discussed this with<sup>201</sup>.

12. Further, passengers' preference for inter-available tickets is greater on regional and commuter services than on long-distance routes. In 2013-14 around 41% of TOC revenues came from journeys made on London & South East/regional routes in comparison to 32% of TOC revenues from long-distance journeys.

13. The results of the analysis over time) show that the average percentage of TOC revenues from the inter-available routes has decreased by around 3% since 2008-09 for majority of the TOCs, and to a greater extent for London Overground and Open Access Operators such as Hull Trains and Grand Central (for which it has declined by 34%, 11% and 26% respectively); see Figure 10.

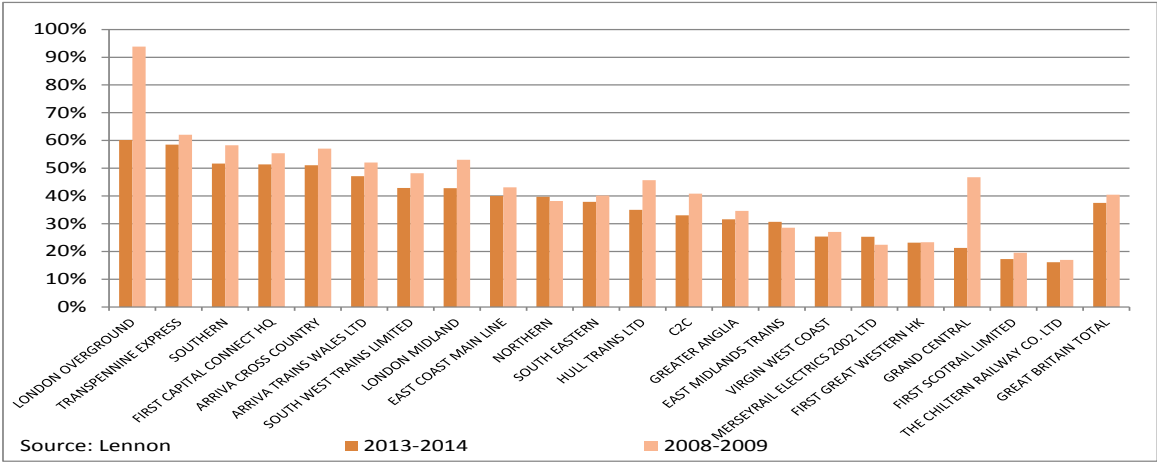
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<sup>199</sup> For example, c2c predominately sells tickets between south Essex and London for its own services (particularly given that c2c's network has relatively limited connectivity with other TOCs). However, over 90% of c2c's tickets are classed under Lennon as 'Any Permitted'.

<sup>200</sup> The team has also looked at the 2012-13 station usage data on entry and exit (where a single journey accounts for one entry and one exit). The aim of this exercise was to estimate the percentage of journeys which involved at least one change of a train, and it was calculated by dividing the number of interchanges over total number of journeys made. The results show that a maximum of 17% of train journeys in 2013-14 involved at least one change of train.

<sup>201</sup> Some stakeholders have estimated (based on their understanding of the network and passenger behaviour) that the proportion of TOC revenue from inter-available routes is around 30%.

**Figure 10: Proportion of TOC revenues from passenger journeys made on inter-available routes, comparison between 2008-09 and 2013-14**



Source: LENNON / ORR

14. However, when we exclude TfL and PTEs tickets from our analysis, it suggests that the take-up of inter-availability is significantly lower. In 2013-14, the average proportion of TOC revenues from journeys made on inter-available routes that excludes TfL was 27%<sup>202</sup>.

*Conclusion*

15. These results might suggest that the level of inter-availability across the entire network is lower for longer-distance inter-city travel (excluding TfL travel) than it is in the (zonal and inter-modal) network of London. With the rise of smartcards and other zonal products, the analysis might indeed indicate that those products (led by TfL) can facilitate inter-availability to a greater extent while TOC-specific journeys are likely to dominate the longer, inter-city routes.

<sup>202</sup> We note that stripping out PTE travel from the LENNON database does not have a significant difference on the take-up of inter-available fares. This is likely to be because PTEs’ multi-modal products (e.g. that combine rail with local bus or local metro) are, in most cases, not sold through the Lennon systems. In reality, the level of inter-available journeys made in local conurbations is likely to be much higher. For example, based on research to date, PTEG estimate that at least 46 million rail trips per year are being made using PTE zonal tickets in the six English metropolitan areas.

# Annex H: Further information on the role of third party retailers in the retail market

## *Introduction*

1. Third party retailers have a positive impact on the rail ticket retail market in a number of ways, both for passengers and for wider industry (including TOCs). However, the current way in which third party retailers contract with the industry has led to some challenges, which we describe along with the benefits below.
2. This Annex focuses on the role of online third party retailers (rather than TMCs). It sets out in more detail:
  - a. the impact of third party retailers on passengers;
  - b. the impact of third party retailers on industry; and
  - c. the impact of third party retailers on efficiency and innovation (given that these impact both passengers and wider industry).

## *Impact on passengers*

3. TOC are required to offer a full range of all TOC fares (impartial retailing). Therefore, even in the absence of third party retailers, consumers already have a reasonably wide range of retailers to choose from in buying tickets. However, our research suggests that passenger awareness of this is low, with third party retailers promoting their presence in the market to the extent that they have facilitated the exercise of choice by a broader range of consumers. For example:
  - a. Third party retailers provide **more choice to passengers** in where to buy their tickets. They also provide more choice to passengers in the way that fares and journey information is presented and how tickets are purchased. This may encourage passengers to ‘shop around’ to find the channel or retailer that best meets their needs, thereby empowering consumers to exercise choice. This should, in turn, result in increasing retailers’ service standards over time;
  - b. Similarly, third party retailers provide **alternative ways to provide information** to passengers to help them plan their journey. For example, third party retailers compete with TOCs to innovate in, for example, the introduction of Apps that provide journey planning information to passengers, including across different modes of transport<sup>203</sup>;

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<sup>203</sup> Similarly, some third party retailers also provide information and tips on travelling by rail. This includes general information that is applicable for most or all of the network, rather than being TOC-specific. For example, some provide information on travelling with a bicycle or a dog.

- c. Third party retailers are often **perceived to be ‘neutral’** and detached from TOCs (despite both TOCs and third party retailers being required to sell a full range of fares through their websites and, in the case of TOCs, also through their station ticket office). However, our research suggests that around 40% of respondents (incorrectly) believed that TOCs sell tickets for their own services only<sup>204</sup>. This suggests that third party retailers can (and do) provide a retail option for a significant proportion of passengers who would not necessarily consider using TOCs’ own websites; and
  - d. Some third party retailers offer passengers **different products**. For example, some offer split ticketing<sup>205</sup> and some offer bundled products and promotional deals<sup>206</sup>. More recently, some third party retailers (in competition with TOCs) offer loyalty-inducing benefits (such as nectar points) for money spent on rail tickets.
4. However, we note that the role of third party retailers may give rise to some challenges:
- a. Whilst there are rules preventing TOCs from charging additional fees, such as transaction or booking fees<sup>207</sup>, **most third party retailers charge a booking fee** (that, as some stakeholders point out, is necessary to meet their costs given the level of commission; see Chapter 4). Interestingly, our research suggests that while some customers of third party retailers feel that these fees are ‘cheeky’ and unfair, there was a general acceptance that booking charges are simply part of the process<sup>208</sup>. This may, however, be related to passengers’ lack of awareness that TOCs sell all fares in a comparable way to third party retailers<sup>209</sup>;
  - b. While there is a general perception amongst passengers that online purchases can usually be cheaper than buying in person (e.g. from a shop), in the rail sector, **third party retailers do not always sell the full range of products** because they do not have access to them. For example, they do not have access to Season tickets, carnet tickets and promotional

<sup>204</sup> BDRC Continental Report, Chapter 5.

<sup>205</sup> Split ticketing refers to the practice of buying two or more separate tickets for a journey, i.e. splitting a longer journey into a series of shorter journeys, to take advantage of potential savings resulting from the combined price of the individual legs being less than the price of the through ticket. For example, Raileasy, an online third party retailer, offers a split-ticketing journey planner service that can sell tickets which, it says, has saved its customers an average of 26% on ‘walk on’ fares since its launch; see [here](#) for further information. However, we note concerns from some (e.g. Transport Focus) that split ticketing may increase the complexity of the market.

<sup>206</sup> For example, some bundle rail and hotels, which can provide savings to passenger and reduce transaction costs.

<sup>207</sup> TOCs may charge for ticket delivery, but they must have at least one free delivery option.

<sup>208</sup> BDRC Continental Report, Chapter 5.

<sup>209</sup> BDRC Continental Report, Chapter 5.

fares, or to fares that TOCs make available exclusively through their own sales channel. This may give rise to confusion and/or undermine passengers' confidence that they're getting the best ticket for their needs;

- c. While consumer choice is generally viewed as a positive, there is an **argument to suggest that greater choice can lead to consumer confusion**<sup>210</sup>; having multiple retailers selling the same product may increase complexity, as consumers are unsure which retailer to use, what difference there is between them, and where to find the best ticket for their journey; and
- d. Some TOCs are concerned that third party retailers **can restrict access to customer data** that they would like to use, or need to use, in building a relationship with the passenger, for example to inform them of travel disruption, for targeted marketing and to tailor products to suit passenger needs.

#### *Impact on industry*

5. Third party retailers play a role in attracting passengers to travel by rail, the benefits of which are likely to be felt across industry:
  - a. Third party retailers may **attract a different type of passengers** that TOCs do not reach. This is because they tend to have a sizable marketing budget<sup>211</sup>, which is often national in focus (using television and online marketing)<sup>212</sup>. Indeed, industry research suggests that third party retailers' marketing generates increased revenue that benefits the entire industry, potentially with a return of investment of around £12 for every £1 spent<sup>213</sup>;
  - b. Our research suggests that passengers are often unaware of the TOC they are travelling with<sup>214</sup>. As such, and through its advertising, third party retailers may complement the regional/route focus of TOCs, and may be particularly effective at **serving passengers who are travelling on multi-**

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<sup>210</sup> For example, we note that, in other industries and in the context of enabling consumer confidence, authorities have explored the merit of reducing the number of products offered.

<sup>211</sup> Indeed, online third party retailers (i.e. holders of the third party investor licence) were, until last year, required to spend £1million per year on marketing and technical development.

<sup>212</sup> TOCs tend to adopt a more regional/route focus, the notable exception being some of the inter-city TOCs. Like some TOCs, some third party retailers also proactively approach the passenger about journeys they appear to make regularly. This could be in the form of a notification when Advance fares come on sale for a particular journey/date.

<sup>213</sup> This analysis was undertaken as part of a wider, confidential piece of industry research. Furthermore, we note research that suggests third party retailers' marketing spend is not constrained by changes in franchise and/or franchise timescales (which allows their level of marketing spend to be sustained year on year), whereas franchisees tend to reduce expenditure towards the franchise end date.

<sup>214</sup> BDRC Continental Report, Chapter 5.



**TOC journeys** (particularly given that passengers have a low level of awareness that all TOCs sell a full range of fares<sup>215</sup>); and

- c. Notwithstanding the practice among some TOCs, third party retailers tend to proactively promote rail as an option for day trips and events that can **generate additional demand**. For example, some third party retailers promote rail as an alternative to air travel on some flight comparison sites.
6. However, notwithstanding the benefits, we note there is a risk that third party retailers (and inter-TOC retailing) could, under some scenarios, give rise to a **greater need for public funding through the franchising agreement** and/or a rise in the price of passengers' fare, given that TOCs pay commission for third party retailers for selling their fares. However, the need for any additional public or passenger funding would very much depend on the extent to which third party retailers would expand the market (making their impact revenue generative overall) and any efficiencies arising from transferring the cost of sale to third party retailers (though the extent to which this can happen is likely to be limited due to the fixed costs associated with operating station ticket offices); and the role of third party retailers in reducing industry's overall cost of sale.

*Impact on efficiency and innovation, to the benefit of passengers and industry*

7. In competing for market share, third party retailers may drive efficiency and innovation across all retailers, including TOCs.
8. Third party retailers may lower the cost of retailing to the benefit of industry (and, in turn, passengers (if this feeds into lower fares)). With respect to the **costs of retailing**, third party retailers *may* have lower costs of sale compared with TOCs (for example, some third party retailers operate TOC websites as a white-label provider, suggesting that there are cost efficiencies to them operating websites rather than the TOCs themselves operating those websites). Furthermore, third party retailers may encourage passengers to buy their tickets online compared with using a station ticket office. Because selling tickets online is cheaper compared to some other sales channels, third party retailers may, overall, enable industry to lower their retail costs (particularly in the medium term if this enables TOCs to reduce the minimum opening hours of their station ticket offices).
9. As recognised by industry research, third party retailers may be more nimble and decisive compared with TOCs, perhaps by virtue of being outside the scope of the detailed industry framework. **This may enable them to invest in new technology and up-to-date web designs**, which TOCs can then learn from or make use of via the white-label site offerings. For example, we note that some

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<sup>215</sup> BDRC Continental Report, Chapter 5.

online third party retailer have worked with TOCs to introduce m-ticketing and e-ticketing.

10. Furthermore, third party retailers may **improve passengers' view of the rail market** as a whole. Research commissioned by Ofcom suggests that if trusted brands enter the market as third party retailers and become increasingly important, they can influence suppliers' decisions to the benefit of their customers<sup>216</sup>.

11. Some third party retailers, in particular, encourage passengers to buy tickets in advance of the day of travel (by comparing the price of Advance fares with AnyTime fares). This may help **support TOCs' strategy of encouraging passengers to book in advance** to help them manage demand and supply (within the constraints of any relevant franchise commitments).

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<sup>216</sup> See [here](#).

# Annex I: The financial costs of using shared IT systems and common industry owned data

1. TOCs own shared IT systems and industry data feeds, which they and third party retailers use in selling tickets. The purpose of these is, broadly, to facilitate integrated, national retailing of tickets. The different IT systems and industry data feeds, and their role, is discussed in detail in Chapter 3 and Annex G of the September 2014 consultation. The relevant shared IT systems and common industry-owned data include, for example:
  - a. Fares data, which is provided by TOCs that wish to make their fares available to others for sale;
  - b. Timetable data and routing guide (RG) data, which provides information and passenger train services and associated bus and shipping links;
  - c. NRS, to enable passengers to reserve a seat on a train;
  - d. The LENNON system, which retailers use to record actual sales figures for all flows, using a TIS; and
  - e. The ToD system, which enables passengers to collect their pre-purchased ticket at a station.
2. Most of these systems are owned by the TOCs, and most are managed by the RSP or NRE (with the exception of, typically, data feeds relating to real-time train movements which are owned by Network Rail).

## *Financial costs of using shared IT systems and common industry-owned data*

3. In 2014/2015, total costs of the systems managed by RSP and NRE are estimated to reach between £22.70m and £26.30m<sup>217</sup>.
4. In general, the direct costs of the systems appear relatively low. For example, assuming the systems cost £25m last year, this accounted for around 0.04% of the average £5 rail fare. Furthermore, this appears to compare favourably with the aviation sector, where the costs of using an integrated systems amount to around 3% of the average \$300 airline ticket price<sup>218</sup>.

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<sup>217</sup> The reason the RSP costs are given in upper and lower bounds is due to the fact that the costs data was provided on a budget basis and in some instances could not have been assigned to RSP only. For example, the way ATOC estimates staff indirect and staff contributions are labelled as both ATOC and RSP costs. These data could not have been separated and as such the team estimated minimum and maximum possible budget and third party contributions.

<sup>218</sup> As discussed further in the CEPA comparative analysis, the cost of booking an air fare through a Global Distribution System (which brings together fares from different airlines) is between \$7.50 and \$17.50 (per round trip). While not directly comparable, the GDS does provide a comparable service to the shared IT systems and industry-owned data by providing for integrated travel across different airlines.

**Table 6: Direct financial costs of shared IT systems and common industry owned data**

ATOC/RSP Costs	Costs for 2014/15	TOC Share of Costs	Third party retailer contribution <sup>219</sup>		
			TPIL & ISL Contribution	TMC & ITX Contribution	Total Third Party Contribution
Systems & Services	£21.9m	83.7% <sup>220</sup>	£3.21m	£0.36m	£3.57m
Staff, Overhead & Ancillary Costs	£3.5m	100%	£0.00m	£0.00m	£0.00m
Indirect Contributions from Third Parties			£0.85m	£1.65m	£2.50m
<b>Total ATOC/RSP Costs</b>	<b>£25.4m</b>	<b>Third Party Contributions Percentage of ATOC/RSP Costs</b>	<b>£4.06m</b>	<b>£2.01m</b>	<b>£6.07m</b>
			<b>16.0%</b>	<b>7.9%</b>	<b>23.9%</b>

Source: RSP

*Who pays for the shared IT systems and industry-owned data*

- In terms of the materiality of these costs, they appear to account for around 0.2% of TOCs' total annual income<sup>221</sup>. They also appear to be more material for third party retailers, particularly online third party retailers (though given the fact that some online third party retailers operate white label websites on behalf of TOCs, it is difficult to be definitive).
- With respect to determining who bears what costs, this is determined by TOCs (working under RSP; this is discussed in Chapter 4). It is based on a combination of revenue, use of the service/system and number of issues; see Table 7. While a little complicated, the cost recovery methodology for each service appears broadly reflective of use. However, this appears somewhat different for TMCs. They contribute to much less of the costs of shared IT systems and industry owned data, at least not directly. ATOC suggest that the TMCs' share of the RSP costs is reflected in lower commission rates.
- In addition to the direct costs that retailers pay to RSP/NRE, they also incur their own costs in making use of these systems, for example in compliance; system development; staff training to use RSP costs; and costs of delays to shared IT systems. While this is likely to vary by the retailers (and its activities and size), our analysis suggests that this is not material.

**Table 7: Contributions to shared IT systems, by retailer type**

<sup>219</sup> The TPIL licence is the Third Party Investor Licence (typically used by online third party retailers); the ISL licence is the International Sales Licence (a licence for third party retailers to sell GB rail tickets outside GB); the TMC Licence is for TMCs (i.e. travel management companies); and the ITX Licence is the Inclusive Tours Licence (a licence for tour operators who sell holiday packages that include rail fares).

<sup>220</sup> Note that this does not include ToD costs passed to TOCs by Third Party Retailers who provide them with 'white label' websites

<sup>221</sup> Based on RSP's contributions data provided by ATOC, and ORR's analysis of Lennon data.

RSP Systems & Services	TOC Share of Costs	TPIL & ISL Share of Costs	TMC & ITX Share of Costs
<b>Product Management Service (Fares &amp; TTIS)</b>	82%	18%	0%
<b>Product Management Service Amortisation</b>	82%	18%	0%
<b>NRS Operation</b>	85%	15%	0%
<b>NRS Amortisation</b>	98%	2%	0%
<b>Lennon Operation</b>	96%	4%	0%
<b>Lennon Amortisation</b>	96%	4%	0%
<b>Live Sales Management (ToD and DTD<sup>222</sup> and RG)</b>	27% <sup>223</sup>	60%	13%
<b>Live Sales Management Amortisation</b>	31% <sup>224</sup>	69%	0%
<b>Settlement Operation</b>	99%	1%	0%
<b>Settlement Amortisation</b>	95%	5%	0%
<b>Ticketing Contract Management</b>	100%	0%	0%
<b>Data Licence &amp; Feeds</b>	40% <sup>225</sup>	40%	20%
<b>Travel Agents Refund Service (ATOC Service)</b>	0%	2%	98%

Source: RSP

<sup>222</sup> DTD refers to data transformation and distribution service, used to manage and distribute other data feeds.

<sup>223</sup> This does not include white label TOC websites where costs are initially borne by the third party website provider before being passed to the relevant TOC.

<sup>224</sup> TOCs are not charged directly for this service but pick up some or all of this cost from their TIS supplier.

<sup>225</sup> TOCs are not charged directly for this service but pick up some or all of this cost from their TIS supplier.

Use of the name, the Office of Rail and Road, reflects the new highways monitor functions conferred on ORR by the Infrastructure Act 2015. Until this name change is confirmed by legislation, the Office of Rail Regulation will continue to be used in all documents, decisions and matters having legal effects or consequences.



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