Rail

Partners

Rail Partners' response to the Office of Rail and Road's consultation on *Summary guidance on rail open access applications*

About Rail Partners

Rail Partners represents private passenger train operating company owning groups and freight operating companies – providing policy and advocacy functions on their behalf. We also provide technical services to train operating companies in both the public and private sectors. This submission is on behalf of our owning group members.

Introduction

Rail Partners supports the steps taken by the Office of Rail and Road (ORR) to develop its new *Summary guidance on rail open access applications*. This new guidance will provide further clarity to existing and prospective open access operators, reflecting feedback that Rail Partners, owning groups, and open access operators have shared with ORR, including through the cross-industry open access summit facilitated by Rail Partners in November 2023.

However, refining guidance is only one part of the framework required for open access to succeed, and consideration needs to be given to wider issues if passengers, communities, and local economies are to yield the benefits of open access passenger operations.

Open access operators deliver significant benefits for passengers

Although open access operators only provide a small proportion of passenger services, they bring significant benefits to passengers, communities, and the wider economy.

- **Open access connects underserved communities -** Open access operators have a proven track record in developing new journey opportunities for passengers. For example, in communities such as Beverley, Cottingham, Halifax, Hartlepool and Howden, only open access operators offer direct services to London.
- **On-rail competition encourages lower fares -** ORR's monitoring of open access over recent years has observed evidence of fares competition on the East Coast Main Line (ECML),where several open access operators compete with state-owned LNER, with open access operator Lumo offering fares a third cheaper on some routes compared to LNER.[1] Additional evidence from Europe shows that fares decreased by an average of 28% on routes where on-rail competition was introduced to the market.[2]
- **Open access innovates to improve the customer offer -** Open access operators have delivered innovative services to attract customers. For instance, recognising that travellers value the certainty of being able to book their travel early, Grand Central extended the booking period beyond the industry standard of 12 weeks, allowing customers to book tickets up to 26 weeks in advance.
- **On-rail competition drives growth across an entire route -** Since the pandemic, passenger numbers in the long-distance market have recovered faster for operators on the ECML (including state-owned LNER) where there is on-rail competition, than for operators on comparable routes. Open access operators Hull Trains and Grand Central have also achieved the largest recoveries in passenger volumes of all operators nationwide when compared to pre-pandemic levels.[3]
- **Open access helps to drive modal shift and other wider benefits -** These new journeys help support economic growth and modal shift on long-distance routes. For example, the market share of rail (compared to air travel)

[1] Office of Rail and Road (2022). *Monitoring the impact of, and response to, open access: 2022 update*.
[2] European Commission (2024). *Study on passenger and freight rail transport services' prices for final customers*.
[3] Office of Rail and Road (2024). *Monitoring open access: 2024 update*.

between London and Edinburgh grew from 35% in 2019 to 57% in 2022, partly driven by the introduction of additional services by Lumo.[4]

Open access operators deliver these benefits without any direct subsidy from taxpayers, and government is not exposed to any of the commercial risk associated with these services. Open access operators pay charges that cover the wear and tear costs they create on the network, and contribute towards the wider fixed costs of the network through the infrastructure cost charge.

Given these benefits, and that the new government has stated that there will be an ongoing role for passenger open access operators under its reform plans, it is vital that the right conditions are created for open access to continue growing and thriving for the benefit of local economies and passengers.

Open access operators continue to face challenges to growth

Despite the potential for open access to grow and deliver further benefits across the railway, prospective open access operators and those operators expanding services continue to face barriers.

It remains difficult to identify available capacity on the network, despite Network Rail's expectation that traffic will be 12% lower during Control Period 7 when compared to pre-Covid levels. Network Rail can be overly conservative in its assessments, so it is important that ORR continues to hold it to account for making best use of available capacity. This should include, but is not limited to, ensuring that Network Rail provides transparent information on available network capacity as part of its Network Statement.

The time and resource required to create a business case, engage with Network Rail to find access, submit an application to ORR, and provide additional information remains long and costly – putting off prospective entrants or those seeking to expand services. ORR's guidance suggests allowing a 12-week period for their review of an open access application. However, in practice the overall process for applying for access can take much longer, given the challenges of identifying capacity during the pre-application process, which ultimately makes it harder for ORR to review an application that does not have collective 'buy-in'. This can make the process of launching new operations or services unattractive when applicants are expected to put significant capital and resource at risk.

There are currently a number of applications for new or expanded open access services which have been submitted to ORR for its consideration. It is important that these applications are assessed in a timely manner to ensure that the benefits of those services can be realised for passengers, local communities, and the wider economy.

More broadly, the ongoing uncertainty around rail reform and the role of open access under a new model risks undermining market confidence – particularly given the long lead times associated with developing a new open access proposition. While there are positive signals about the role open access can play within a reformed system, it remains unclear how Great British Railways (GBR) will be set up to encourage the growth of passenger open access.

Crucially, without the right safeguards, there is a risk that GBR as a public sector monopoly will be naturally incentivised to prioritise the interests of its own passenger services. Protections for non-GBR operators will be even more important, including a regulated access regime and retaining key elements of the current protections in *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* and the *Railways Act 1993*. These protections provide long-term certainty for operators, which is crucial for building a business case.

Within this challenging context, providing clarity and certainty to prospective open access applicants is a key enabler to any future growth in passenger open access services. That is why we broadly support ORR's work to clarify the

---

[4] First Group (2022). *Rail now preferred choice over air travel between Edinburgh and London as 1 million passengers pick Lumo.*

application process for open access operators through this draft guidance. We set out our detailed responses to ORR's consultation questions in the following sections.

Rail Partners' response to ORR's consultation on the draft guidance

1. *We have proposed a new routine approach to monetising the costs and benefits associated with open access in Chapter 3 of the draft guidance. What are your views on our proposed approach?*

Rail Partners supports ORR's proposal to monetise the wider costs and benefits associated with prospective open access operators. As explained in ORR's draft guidance, ORR considers all of its statutory duties when making decisions on open access applications. However, currently only some of these duties (most notably the impact on government funds) are monetised. ORR has proposed that it will monetise economic, social, and environmental benefits, as well as indirect tax transfers, in line with the Department for Transport's Transport Analysis Guidance (TAG) to give a better overall picture. Taking steps to monetise these benefits is a welcome step in the right direction, and TAG is a widely understood methodology that provides a consistent basis for assessing benefits.

Monetising these will help ORR's board take into consideration the wider benefits that open access operators can bring to the network. Recognising natural biases in decision making, there could be a risk today that quantified costs are given more weight than wider benefits which are only described qualitatively, but may nonetheless be substantial. Providing additional quantified information on wider costs and benefits to ORR's board will help inform more holistic decisions on open access applications - particularly in cases where the result of the not primarily abstractive (NPA) test is marginal.

A number of issues need to be considered, however, when monetising wider benefits. Firstly, ORR should ensure that this additional analysis does not lengthen the application process and minimises the resource and information burden on applicants. ORR has stated that it will use this information for cases where the NPA test is marginal. For small-scale applications (e.g. small amendments or additions to existing services), or where the results of the NPA test clearly show that an application either has a very strong or weak case for progressing, we would expect ORR to consider whether the administrative work associated with monetising benefits is necessary.

Secondly, while using TAG to quantify the benefits of open access will help ORR make more informed decisions in the interest of passengers and taxpayers, we also note that TAG can have some limitations. Open access has a proven track record of driving modal shift from more carbon intensive modes, but these benefits can be understated when forecasted through TAG which can focus on historic trends and underestimate behavioural changes when new transport services and connections become available. Although environmental benefits are considered in the appraisal analysis, and we recognise this does capture road decongestion well (through improved journey times for road users), the carbon benefits from modal shift to rail can be undervalued by TAG.

Furthermore, some of the wider economic benefits from new rail services (including job creation and Gross Value Added) can also be understated in TAG. As open access typically connects historically underserved communities, these benefits can be particularly transformative at a local level and help contribute to government objectives to reduce regional inequalities.

Research shows that the wider benefits of open access operators can be substantial. For example, Lumo recently commissioned Arup to undertake economic analysis of the past and future benefits of Lumo's services, valuing these at £470-740m between 2021-33.[5] These benefits are the result of £9-19m in passenger journey time savings, £21-43m in direct employment, £130-365m in mode shift benefits related to the environment, £125m related to reducing road congestion and accidents, and fare savings to Lumo's passengers of £185m. Similarly, Hull Trains have delivered an estimated £185-380m in monetised benefits since their launch c. 20 years ago.[6] Arup estimates this will increase to £325-700m in economic benefits through to 2032.

As ORR develops its detailed approach to monetising costs and benefits and begins to deploy TAG in practice, it should keep its methodologies under review and ensure that the full range of benefits are being captured. Where the benefits

---

[5] Arup (2024). *Lumo: Economic impacts study*.
[6] Arup (2024). *Hull Trains: The economic impacts of an open-access operator*.

of open access services are not wholly captured by TAG, ORR should continue to consider additional qualitative information to inform its decision.

2. *We have proposed removing the benchmarking stage of the NPA test. This is because the Passenger Demand Forecasting Handbook 5 introduced more robust ways to account for large changes in journey times. This change is reflected in Chapter 4 of the draft guidance. What are your views on our proposed approach?*

Rail Partners supports ORR's proposal to remove the benchmarking stage of the NPA test for larger open access applications, in favour of using other methodologies to adjust its forecasts of demand such as the elasticities introduced in Passenger Demand Forecasting Handbook 5 (PDFH 5) and gravity models. However, we note that benchmarking may still be of some use in calibrating those gravity models, and that benchmarking can be a useful methodology for assessing some types of smaller-scale applications. ORR should also consider the substantial body of evidence from Britain and Europe that open access services have a significant generative effect on demand, and we await the results of ORR's ongoing work to evaluate the evidence base on abstraction.

Given the centrality of the NPA test to ORR's decision making on open access applications, it is important that ORR's methodology best reflects the available evidence on the extent to which applicants will generate new demand. Benchmarking in the NPA test applies analysis of how previous open access services have impacted revenues, and uses this to refine the estimated revenue impact of the proposed new service. However, benchmarking comparisons may not be robust where there are substantial differences in the routes being proposed, or in the business model approach and target market of proposed services. We therefore agree with ORR's proposal that using the new elasticities introduced in PDFH 5, as well as direct demand forecasting methods such as gravity models, are more robust methods for assessing demand where an application includes significant changes. However, these gravity models need to be calibrated to an acceptable level of validity, and benchmarking may still be of some use in this process.

We also note that ORR may continue to use benchmarking for small-scale applications, such as for introducing an additional service, and we support the role benchmarking can have in assessing some smaller-scale applications. However, benchmarking may not be appropriate for evaluating every type of small-scale change. For instance, introducing an additional station stop into a service pattern may appear to be only a small change, but a comparative approach may not accurately capture how passenger behaviour changes in response to a completely new journey opportunity. We would welcome additional clarity on the thresholds at which ORR will consider an application to be 'small-scale', and ORR's guidance should expand further on which methodological approach it considers most suitable for assessing different types of applications.

More broadly, in considering the generative effect of new open access services, ORR should review the body of evidence from Britain and Europe that open access operators have generated significant new demand. For instance, the European Commission has recently published a report that shows open access leads to lower fares, cost savings to taxpayers, increased service frequency, and improved service quality (including improved amenities onboard, in stations, and new rolling stock).[7] This wider evidence could suggest that open access services are attracting more new passengers to rail (including from other, more polluting modes) and are more generative and less abstractive than is commonly believed.

Finally, we understand that ORR has commissioned work to review the evidence base on abstraction as committed to in its April 2024 report, *Assessing the costs and benefits of new open access services*. When available, ORR should publish the findings of that work to give industry clarity and confidence on the detailed analytical basis on which revenue generation/abstraction will be assessed.

3. *This draft guidance is intended to support new operators who are less familiar with ORR decision making. We therefore included additional explanations and signposting to our other guidance. What are your views on the*

---

[7] European Commission (2024). *Study on passenger and freight rail transport services' prices for final customers*.

explanations we have provided? Are there specific areas that need further clarification? Or areas that we have missed?

Rail Partners supports ORR's intent to provide clarity around the open access application process through its draft guidance. However, the guidance focusses mainly on the process following submission to ORR. In order to make this guidance even more useful for prospective open access operators, it would be helpful to expand the summary guidance to draw out additional key points on the pre-application process as well (including timelines and expectations of all parties), noting this can often be the main area of challenge for applicants.

Much of the work required to progress an open access application takes place before submission to ORR. Developing business cases, engaging with Network Rail, and the need to sometimes take applications forward without Network Rail's support can make applications a lengthy process. The lead times to introduce a new service are substantial, and analysis and decisions need to be made well in advance of the relevant timetable change. Prolonged application processes increase the start-up costs for new operators and can risk undermining the business case for a new service if delays securing approval push back the introduction of services. Uncertainty around the time and resource requirements of the application process can also itself be a deterrent to new entrants, particularly as they are putting significant capital and resources at risk.

ORR's other guidance, *Making an application (for track access)*, outlines the stages an application must go through before submitting formally to ORR. Without fully duplicating this separate guidance, it would be helpful to bring additional key points into this new summary guidance to supplement the information at the start of section 2. For instance, summarising how much time applicants should allow for each stage of the process and what information applicants will need to be able to provide, including the format that information should be provided in, (e.g. which version of MOIRA should be used in applications) would make the summary guidance a more useful 'one-stop shop' for applicants.

ORR could also explore further opportunities for simplification of its track access guidance, and these various documents will need to be kept under review – particularly in the context of rail reform which could lead to changes to the track access framework.

4. Do you have any further comments?

Longer access contracts would encourage investment

Longer track access contracts would significantly reduce risk for operators and encourage private sector investment, such as for new trains or improvements to stations. This is particularly important given services may not start for several years and may be loss-making at the start.

ORR publishes separate guidance on *Duration of track access agreements (framework agreements)*. ORR should keep its policy position under review, but could also consider incorporating elements of that document into this summary guidance, given it is a key issue for prospective and current open access operators.

Regulation under rail reform is important for open access

Although beyond the scope of this consultation, it is important that ORR's independent role in the track access framework is safeguarded in the future. We understand that the government proposes to retain open access in the future, and a fair and stable regulatory framework is a key enabler for future investment in open access passenger services.

While the new government's rail reform proposals are still being developed, it is possible that there will be changes to ORR's role and the legal framework for track access. If so, it will be necessary to update this (and other) guidance to ensure industry continues to have clarity on how the legal framework for track access works, ORR's role within the framework, and how ORR will make decisions on access applications.