



OFFICE OF RAIL REGULATION

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Consultees

Dear Sir or Madam,

### **Market Study Prioritisation Criteria: Consultation**

1. We say in our three-year Corporate Strategy 2005-2009 that we see the development of competition between private sector providers of rail services and equipment as being an important means of improving efficiency and delivery over the medium to long term. We have a number of responsibilities under both competition and sector specific legislation<sup>1</sup> to keep the supply of railway services under review and we indicate that we intend to do so by way of a rolling programme of market studies. This programme has remained a priority in our business plans for 2006-07 and 2007-08.
2. Our Annual Report for 2006-07 reports on our completion of a full market study of the leasing of rolling stock for franchised passenger services initiated by a submission made by the Department for Transport in June 2006. It also reports on the completion of a short primarily desk-based review of the market for the provision of rail liability insurance. Our findings on this are included within our consultation 'Insurance Review', November 2006.
3. In the light of this experience and a request<sup>2</sup> for more explanation of what would trigger a Phase 1 study<sup>3</sup> we have now developed the following set of criteria for the selection of future market studies, on which we are now asking for your views. We are also asking for your suggestions for markets to review that you think fulfil our prioritisation criteria.

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<sup>1</sup> The Enterprise Act 2002, The Railways Act 1993 and The Railways Infrastructure (Access and Management) Regulations 2005

<sup>2</sup> From a respondent to our August 2005 consultation on our approach to reviewing markets

<sup>3</sup> We included paragraph 3.3 in our publication entitled ORR's approach to reviewing markets (at: <http://www.rail-reg.gov.uk/upload/pdf/282.pdf>) in light of that response. These criteria build on that.

## **Our proposed prioritisation criteria**

4. We are committed to conducting studies where they are likely to be most effective, setting the programme at the heart of our work to achieve our strategic aims. We therefore intend to score markets against the menu of criteria set out below.

- (a) The scale and significance of the possible problems (measured, for example, by market size or value or by the size of the potential detriment) and their contribution to whole industry costs, or significance to productivity and economic growth.
- (b) The extent to which studying this market adds value to our other business priorities.
- (c) The level of stakeholder (including public) concern about this market.
- (d) The extent to which studying this market presents us with an opportunity to influence external policy.
- (e) The extent to which knowledge of the market would progress our responsibilities to keep the supply of railway services under review and to fulfil our monitoring role under EU-driven legislation.

5. For example, we have prioritised some work this business year on reviewing the factors relevant to our consideration of complaints regarding excessive pricing by train operating companies in a franchising context. We considered that this was an area worthy of early review given the level of public concern about recent rises in train fares.

6. As noted above, these criteria build on paragraph 3.3 of our guidance document: ORR's approach to reviewing markets (at: <http://www.rail-reg.gov.uk/upload/pdf/282.pdf>). It therefore bears repeating that we may also be prompted to enter Phase 1 of the review process as a result of factors such as:

- receipt of a "super-complaint" (within the terms of the Enterprise Act 2002);
- information acquired in the course of performing our Competition Act 1998, or wider regulatory functions; and/or
- evidence from general enquiries and complaints to us.

## **Our approach to reviewing markets: outcomes**

7. Our published guidance document sets out our approach to reviewing markets. It sets out a number of potential outcomes to our reviews including the possibility of a reference to the Competition Commission under section 131 of the Enterprise Act 2002 or

the acceptance of undertakings in lieu. It does not follow, however, that the objective of any individual review will only be to determine whether we should exercise our powers under competition legislation.

8. As explained above, our responsibility to monitor the supply of railway services arises under both sector specific and competition legislation. We consider that an understanding of how railway markets work including whether there are restrictions, regulatory or otherwise, to the achievement of efficient, innovative and value for money market outcomes sits at the heart of our regulatory agenda. An understanding of markets will facilitate and inform our focused and effective approach to both economic and competition regulation.

9. Phase 1 studies generally are completed within one to two months, make use of information already in the public domain and do not involve external parties. They can be seen as preparatory to more detailed reviews, may reveal nothing of particular note and may be closed at the end of the initial period. Although the merits or disbenefits of doing so will vary by case, it is not our intention to routinely publish these preparatory findings. We will, however, publish the findings of more detailed reviews.

### **Next steps**

10. We intend to apply these criteria to prioritise markets for review from now on. Also, where we publishing the findings of reviews we will include the reasons for carrying out the review, demonstrating how we have applied our criteria.

11. We invite your comments on the criteria above, together with suggestions for markets to review. It would be helpful if you explain why you think we should prioritise suggested markets with reference to our criteria.

12. Please send your responses in electronic format (or if not possible, in hard-copy format) by **Monday 13 August 2007** to Chris Dodds at [chris.dodds@orr.gsi.gov.uk](mailto:chris.dodds@orr.gsi.gov.uk):

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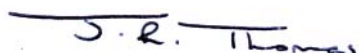
E-mail: [chris.dodds@orr.gsi.gov.uk](mailto:chris.dodds@orr.gsi.gov.uk)  
Phone: 020 7282 2144

13. Please contact Chris Dodds if you want to discuss any points we have raised in this letter.

14. In your response, you should make it clear if you want us to keep all or part of your response confidential. Otherwise it is expected that it will be made available in our library and on our website and may quote from it. If you want us to keep your response confidential, please provide a statement summarising your response (leaving out the confidential information) that we can treat as a non-confidential response. We may also publish your name in future documents or on our website, unless you tell us that you do not want us to do so.

15. You can find copies of this document in our library and on our website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)).

Yours sincerely

A handwritten signature in black ink that reads "J.R. Thomas". The signature is written in a cursive style with a horizontal line above the first part of the name.

**John Thomas**