

Rail Delivery Group

Response to:

Options to refine the UK competition regime

**A consultation from Department for Business,
Innovation and Skills**

Date: June 2016

Rail Delivery Group Response:

Options to refine the UK competition regime

Name: Richard Evans
 Organisation: Rail Delivery Group
 Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy.

We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust.

This consultation response represents the views of our passenger operators.

Question 1:

In light of the fact that the CMA has been in operation for over 2 years, is the government right to consider changes to the way that the CMA panels and decision making processes work?

Yes

Question 2:

If yes, on which areas considered in this consultation should the government focus its intervention?

Refinements to the existing panel system	<input checked="" type="checkbox"/>
Streamlining of inquiry group role	<input type="checkbox"/>
Improving inquiry group accountability to the CMA Board	<input type="checkbox"/>
Improvements to the constitution of panels	<input type="checkbox"/>
Panel size and time commitment	<input type="checkbox"/>
Experience of panel members	<input checked="" type="checkbox"/>
Length of appointment	<input type="checkbox"/>

Question 3:

Do you have any further comments on the UK's approach to decision making in the market and merger investigations?

RDG recognises the important role the CMA plays in competition issues in the UK, specifically in transport.

RDG welcomes the proposals to reduce the burden on business through the measures set out in this consultation.

RDG supports the use of a broad range of skills on review panels, including a greater use of panel members with relevant sectoral experience, in particular secondees for market investigations.

Currently the Department for Transport's (DfT) rail franchise procurement timescales do not align with the CMA's mergers clearance process; this is a risk for both the government and bidders, particularly in the mobilisation period that needs to be managed.

RDG would encourage greater collaboration between CMA and DfT in the pre-award stage of rail franchises, to develop an agreed position on the basic nature of the franchise and the extent to which the franchise agreement restricts the franchisee's ability to flex its offering.

Rail franchises are highly regulated and time limited contracts which are subject to profit sharing and capping provisions. On expiry of the franchise the business transfers to the next franchisee by a strictly controlled process that does not permit increased commercial value of the enterprise to be captured by the exiting franchisee. RDG consequently believes that the winning of a franchise is not comparable to a normal merger in other sectors of the economy. RDG therefore believes that the current approach taken by the CMA in respect to new rail franchises should be reformed to take into account the nature of these contracts.

RDG would seek the provision of updated guidance on the CMA's analytical approach, in particular the use of filters. Thus, enabling our members the ability to assess and mitigate potential competition risks, as well as the wider impacts on long term assets held by transport Owning Groups. RDG have commissioned some work from Frontier Economics relating to these issues, which can be made available.

RDG proposes trilateral discussions between CMA, DfT and the Rail industry represented by RDG to discuss these issues further.

For enquiries regarding this consultation response, please contact:

Richard Evans
Head of Passenger Services Policy
richard.evans@raildeliverygroup.com

Rail Delivery Group
www.raildeliverygroup.com
2nd Floor, 200 Aldersgate Street
London EC1A 4HD