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9 July 2007

Our ref: CF098

Dear Chris,

### **South West Trains – off-peak fare rise**

Thank you for your letter of 29 May.

You will be aware from subsequent events and discussions that Passenger Focus remains concerned at the decision by South West Trains to raise some off peak fares by up to 20%.

Although you have explained why you will not be investigating the recent fare rises as breaches of the Competition Act we are still concerned to ensure that the Government's current and future fares policy has regard to the impact of such fares rises on potentially vulnerable and/or captive passengers. Passengers travelling for job interviews, hospital appointments, court appearances and the like do not have flexibility to chose when they travel; nor will those who travel for work – i.e. either business appointments or those who start work outside traditional 9-5 office hours. We believe such passengers have no real flexibility when it comes to the mode of travel – especially into central London where alternative modes take considerably longer than train or, if using a car, may incur congestion and parking charges.

We understand that ORR is undertaking a review, during the course of this summer and in the light of recent concerns, of the scope for Train Operators to increase fares to 'excessive' levels. This is something we welcome and we look forward to seeing the results.

We believe there is also a wider public policy element that must be addressed. Franchising gives TOCs what is in effect a monopoly over a given area or market and yet the franchising process does little to prevent the extent to which unregulated fares can be increased. Indeed, the drive to minimise franchise subsidy / maximise premiums could be seen to actually encourage TOCs to exploit this opportunity. From points made in your letter of 29 March it also appears that a TOC could increase off-peak fares up to the level of peak fares without it technically being considered as excessive under competition law irrespective of the actual



impact on passengers. In short, we believe there is a lack of effective consumer protection for passengers – something that is particularly relevant given current discussions surrounding the potential de-regulation of the Saver fare.

We are, of course, conscious that fares regulation is set and governed by the Department for Transport and subject to Government policy. This begs the question whether the franchising process, which seeks to minimise subsidy/maximise premiums at a TOC level to the benefit of the taxpayer, could ultimately lead to exploitation of the captive traveller. While fares regulation is clearly a matter for DfT, we would be interested to hear whether this has been an area of discussion between you and what, if anything, you have said to DfT.

I have copied this to Dr Mike Mitchell at DfT.

Yours sincerely

Colin Foxall CBE  
**Chairman**

**Bill Emery**  
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OFFICE OF RAIL REGULATION

*26* July 2007

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Passenger Focus  
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14 Pentonville Road  
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Dear *Colin*

### **South West Trains - off-peak fare rise**

Thank you for your letter of 9 July 2007 to which Chris has asked me to reply.

We have explained why we have concluded that the recent fare rises introduced by ATW and SWT do not represent breaches of the Competition Act. More generally we have explained in our published statement why even significant price increases may still fall below the very high test for excessive pricing under competition law. This is not an unwillingness on our part to apply competition law but an explanation as to why the evidence to date has not provided us with grounds to do so.

We understand that from the perspective of the passenger this will be difficult to understand given some of the significant increases in unregulated fares introduced recently. For this reason, and you refer to this in your letter, we are identifying the circumstances under which price increases might be found to be 'excessive' under competition law terms. The intention is to publish the factors which would make a finding of an abuse under competition law unlikely to manage expectations as to the scope for the application of the law. By elimination we will identify (at high level) the circumstances under which 'excessive' prices could arise. We are happy to share our work with you.

Leaving to one side, the likely narrow scope for the application of competition law, there remains the question as to whether the Department's policy on fares provides the appropriate level of protection for the consumer. We are aware of the recent press speculation, for example, about what will happen to fares in the future given the move toward franchises with decreased subsidy/increased premia.



We have raised these issues with the Department. We believe that it is important for the Department to set out clearly the objectives underpinning its current and proposed fares policy and to explain why it is in the wider public interest, taking into account the desired balance between the funding provided by tax payers and fare payers. I attach the letter I sent to Mike Mitchell and he has promised to respond now that the White Paper is published.

We remain committed to ensuring that the railway provides value for money for users and its funders. Central to this is the priority we give to ensuring that the industry continues to apply relentless downward pressure on costs whilst at the same time achieving continuing improvements in safety and performance. This downward pressure on costs should in turn reduce any upward pressure on prices.

I note that you have copied your letter to Mike Mitchell, I am also copying my response.

Yours sincerely

A handwritten signature in blue ink that reads 'Bill Emery'. The signature is written in a cursive style with a long, vertical tail on the 'y'.

**Bill Emery**

**Bill Emery**  
**Chief Executive**  
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29 May 2007

Dr Mike Mitchell  
Director General, Rail Group  
Department for Transport - Rail Group  
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Dear Mike

## **RECENT INCREASES IN RAIL FARES**

You will no doubt be aware of the current press interest in off-peak fare rises recently announced by South West Trains and Arriva Trains Wales. You may also be aware that Passenger Focus has made a complaint to us and TSSA has made a public announcement that it has made a complaint to the Office of Fair Trading (OFT) (although we understand from OFT that the TSSA complaint has not yet materialised). We have moreover received a number of other complaints which we are dealing with individually.

The complainants are characterising these off-peak fare rises as infringements under the Competition Act and are asking us to take action accordingly. On the basis of what we have seen so far we are of the view that although the fare rises are significant and unwelcome to passengers, the cases are insufficiently promising to justify opening an investigation under competition law. I attach the response that we intend to send to Passenger Focus. I also attach a statement, which we intend to put on our web-site, which has the objective of managing expectations about the application of competition law and what it can achieve in the context of current concerns. However, we do not rule out investigating in future whether fares are 'excessive' and we propose to keep the situation under review. At our next high level meeting, we would like to discuss with you possible future tensions which may exist between a franchising policy that seeks to minimise subsidy / maximise premia at a TOC level and competition law where investigations of excessive pricing would be at a flow by flow level.

At present, we state that the nature and extent of any impact on customers will be for a train operator to assess in developing its commercial strategy. However, we also indicate that should that commercial strategy be against the broader public interest it is for Government to consider as part of its fares policy. We advise Passenger Focus to take up any concerns it has about the impact of current fares policy with DfT.





We believe that Government should set out clearly the objectives underpinning its current and proposed fares policy and to explain why it is in the wider public interest, taking into account the desired balance between the funding provided by tax payers and fare payers. This is particularly important given your current policy intention to de-regulate saver fares and we would urge you to undertake a competition impact assessment of that proposal before you implement it. Inevitably this will attract significant press interest given recent experience of price rises where regulation does not exist.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Bill Emery'. The signature is written in a cursive style with a small dot at the end.

**Bill Emery**