ASLEF Response to the Department for Future of Franchising Document – April 2010

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems. The union has 130 years experience of the railways.

2. ASLEF hereby gives notice that it intends to launch an employee led co-operative bid for the East Coast Mainline franchise once the next specification has been issued. The union believes that a railway should exist to provide a public service for passengers and not to generate profits for shareholders. Further details will be announced in due course but we intend to demonstrate in our response to this consultation that the current franchising system presents near insurmountable hurdles to an employee backed bid.

3. While the union's policy is full renationalisation of the railway we recognise that the industry is where it is in 2010. A return to the past is unlikely to happen. As such our response will present a critique of the industry as

currently structured including the franchising system's failings and we will offer our comments on how the present arrangements can be improved with reference to our planned employee bid.

4. The union would point out that in less than 15 years the UK government's rail policy has evolved from a tendency to distance itself from an increasingly irrelevant and expensive anachronism to a commitment to fund and expand a critical part of the country's social and economic infrastructure. This is a view shared across the country's political parties.

5. As the union representing more than 1500 train drivers on the East Coast, Greater Anglia and Essex Thameside franchises ASLEF is disappointed not to be formally consulted as part of the recent consultation process. The Department for Transport should surely acknowledge that trade unions have views on the running of franchises which are as important and valid as those of passengers or train operating companies. We would urge the DfT to review this position for future consultations.

<u>The current franchising system</u>

6. To use a much utilised phrase within the prevailing policy lexicon ASLEF does not believe that the current franchising system is 'fit for purpose.' The rail franchising system in operation in 2010 is an entirely different entity

from that administered by the Office of Passenger Rail Franchising (OPRAF) as determined by the 1993 Railways Act or the subsequent regime run by the Strategic Rail Authority (SRA).

7. Under OPRAF franchising was, in fact, a relatively simple system in which the Department for Transport determined services, costs and premiums. The SRA established by the 2000 Transport Act complicated the system considerably with a process of expressions of interest, an indicative bid created by army of advisors and an abundance of documents following which shortlisted bidders were invited to submit the whole thing again as a 'best and final offer'. In short, franchising had become a very expensive business.

8. Following the abolition of the SRA in 2004 and franchise procurement being determined by the DfT the system has become infinitely more labyrinthine and expensive with the practical result that the only organisations capable of bidding are multinational bus companies or overseas state railways who can demonstrate in minute detail their experience of railway administration. Entrants to the industry can only come in through open access channels, which themselves erode the value to the taxpayer of franchises.

9. The Department for Transport's introduction of the European Foundation for Quality Management (EFQM) framework for assessing bids was intended to bring a more rational and scientific approach to the current two stage process of expressions of interest - now the accreditation questionnaire (AQ) - and the final short-listing. Our view as a union is that it has, in fact, created an out of control monster.

10. The union's contention is that the costs and complexities of the current franchising system, particularly the EFQM written and RADAR analysed AQ, do not make it a level playing field for bidders. It has become an exclusive oligarchy open only to corporate interests with the deepest of pockets.

Franchise Length

11. ASLEF notes research on franchises by KPMG which found that 'our comparative analysis of UK train operating companies (TOCs) has provided no conclusive evidence of the impact of contract length on performance across the sample of operators that were studied'. It also suggests that longer term franchises might lead to 'increased financial risk' affecting the agreement because bidders cannot foresee changes in economic circumstances. Nonetheless should the DfT recommend longer franchise we would advocate robust breakpoints to ensure that TOCs are

meeting their obligations although we would caution against the inevitable additional costs associated with this.

Franchise Specification and Delivery

12. ASLEF is concerned that the accreditation questionnaire stipulates a requirement to have substantial experience of running passenger transport operations. Surely the DfT would acknowledge that the staff who run rail franchises have 'passenger transport experience.' Will the DfT review the accreditation questionnaire criteria in terms of passenger transport experience for the purposes of an employee bid for the franchise?

13. The union's lack of 'passenger transport experience' as determined by the DfT also means that an employee bid will not contain the requisite corporate safety policy or occupational health and safety policy. We would argue that ASLEF has been at the forefront of developing health and safety policy on the railway with the union instigating competency development plans, for instance on most franchises to ensure driver safety is properly scrutinised. Why should a lack of 'health and safety standing' as determined by the DfT preclude an employee bid for the franchise?

Encouraging Innovation and Investment

14. ASLEF appreciates that the franchise specification has been designed in an attempt to give security to taxpayers although we believe the raising of the bar in this regard has, in fact, blocked innovation. The accreditation questionnaire requires detailed information on bidders' balance sheets in order to demonstrate their viability as a business entity. However the union has to ask how robust this process is when, in the last three years, both GNER and National Express have been able to minimise financial liabilities following defaulting on their franchise obligations.

15. Clearly new hurdles need to be erected to protect the public and ensure the franchise holder takes some genuine risk. In the case of National Express, the Special Purpose Vehicle corporate structure allowed the parent group to avoid liabilities of its subsidiary. A system has to be designed whereby risk is substantially transferred to the franchisee rather than the can't-lose-financially of the existing cap and collar revenue protection arrangements.

16. The 2006 East Coast franchise accreditation questionnaire, for instance, stated that '70-80% of the total score available is awarded for demonstrating a proven track record of service delivery and financial

management.' The union would also ask how a bidder with no record of service delivery or financial management can enter the process. Surely this is anti-competitive?

17. ASLEF would ask why so much emphasis is given to demonstrating what has proved to be questionable financial probity when other matters such as human resources, stakeholder relations, sustainability or industrial relations to name but a few issues are of little significance in terms of the total score available.

18. In fact, the stakeholder engagement plan all bidders are required to complete carries virtually no weight when it comes to the final assessment of eligibility. ASLEF would argue that deliverability should be assessed on the basis of those bids which make a clear case for innovation rather than those which simply say they will run what already exists.

19. Indeed the successful franchisee will prevail in terms of both the financial and the deliverability assessment. The deliverability assessment is judged on the capability of the bidder to run franchise operations and human resources. ASLEF would contend that the capability to run the franchise already exists; the franchise, thanks to the staff, already runs itself. So the question is why should bidders prove they can run something which already runs?

20. Likewise the health and safety case for the franchise already exists. It is inherited by the successful bidder. The franchising system is fundamentally flawed in that bidders spend millions of pounds on safety plans and operational plans when they already exist. ASLEF furthermore believes that the real test of bids should be on the question of timetabling. Again the base case timetable runs itself. Bidders should be judged on the enhancements and dynamism they bring to the service.

21. Will the DfT therefore reconfigure the awarding of points towards the total score for overall assessment of franchise bidders to ensure more broadly based and innovative criteria are used?

22. ASLEF's employee-led bid will be unable to meet the '3 years' results of targets, trends, comparators and causes with sufficient scope to demonstrate your capabilities' specification. Such a provision once again demonstrates that the criteria for bidding in skewed in favour of a very few elite organisations.

<u>Changes during the life of a franchise</u>

23. ASLEF is extremely concerned that the document proposes that train companies should be given a financial incentive to cut train services. The

union strongly objects to this idea and believes that such a provision could encourage companies to run down or cut socially necessary services which don’t make much money, but which people rely on. This would have a very serious impact on rail passengers. We would urge you to think again about this proposal and to give unions, passengers and other stakeholders the chance to comment on 'The Future of Rail Franchising' in a formal consultation.

Revenue Protection

24. ASLEF believes that revenue protection payments to future franchises must be radically reformed and should not continue along the lines of the current model. One of the supposed purposes of rail privatisation at the outset was to increase the efficiency of services as a result of the financial and commercial risks undertaken by the winner of the franchise. The idea was that the service had to run well or the company would lose revenue leading to financial loss. However these basic rules of the market do not apply to the railway as currently constituted. Franchises who do not meet their revenue targets are eligible for tax payer subsidy. Typically, if revenue falls below 94% of the target, the tax payer provides 80% of the shortfall. This means that the public subsidise failure and the incentive for running a good service simply disappears.

25. The revenue protection arrangements also have a negative impact on industrial relations. A consequence is that there is little incentive for a company to promote positive union dialogue when they can claim lost revenue from strike action back from the taxpayer. This scenario subverts the natural order of industrial relations make it entirely and absurdly possible for a franchise to make a profit as a result of strike action. During a strike period, a company can save money through the lower costs of not running services and lower wages whilst claiming for the loss of ticket sales. ASLEF would be greatly concerned for there to be a collapse in industrial relations prior to the Olympics, for example, where the provision of good services is essential. Surely risk must be on the side of those who make profit and not the taxpayer.

Conclusion

26. ASLEF restates its intention to launch an employee led co-operative bid for the East Coast mainline franchise. The purpose of our bid is to provide a passenger focused alternative to the shareholder value imperative which underpins the current system.

27. As outlined above we don't believe the current franchising system delivers anything like the correct balance of risk between private and public; the fall out from National Express on the East Coast shows the

balance lies with the latter. It also demonstrates that however rigorous the assessment of bidders' balance is intended to be it has failed the taxpayer twice in three years on the East Coast mainline.

28. To deliver for taxpayers and rail industry employees, the franchising system needs to be dramatically overhauled, with a broader approach to assessment including industrial relations and wider stakeholder engagement.

Keith Norman
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