

CRR-G-057

Guidance to the Economic Equilibrium Test Process

Prepared By	Approved By	Issued
NK	BH	1.0

1 Introduction

The Commission for Railway Regulation (**CRR**) is the designated regulatory body for the purposes of SI249 2015 and SI398 2020, which give effect to EU Directives 2012/34/EU, 2016/2370 and Commission Implementing Regulation 2018/1795. As such, one of its functions relates to the determination of whether the economic equilibrium of a Public Service Contract (**PSC**) is compromised by the exercise of the right of access to railway infrastructure by a Railway Undertaking (**RU**) who intends to operate a new rail passenger service.

A new rail passenger service, as defined in Art. 3 of Implementing Regulation 2018/1795, means a rail passenger service designed to be operated as a regular time-tabled service, that is either entirely new, or that implies a substantial modification of an existing rail passenger service, in particular in terms of increased frequencies of services or increased number of stops, and which is not provided under a **PSC**.

2 Background

Article 33 of SI398/2020 provides that the **CRR**, as the regulatory body, may determine that it is necessary to limit the right of access to new railway passenger services when one or more **PSC** cover the same route, or an alternative route, if the exercise of this right would compromise the economic equilibrium of a **PSC**. This determination will be based on an Economic Equilibrium Test (**EET**), an objective economic analysis with pre-determined criteria which are set out in this procedure.

3 Stage 1 – Notification

An applicant intending to operate a new rail passenger service will give notice of their intention to the **CRR**, the Essential Functions Body (**EFB**) and Iarnród Éireann Infrastructure Manager (**IE-IM**), no less than 18 months before the entry into force of the working timetable to which the request for capacity relates.

This notice should be sent electronically to regulation@crr.ie, using the standard form which is available on the website www.crr.ie. The information should cover a period of at least three to five years as far as possible, however, the **CRR** may, where appropriate, agree on a shorter period.

If the notification is incomplete, the **CRR** will inform the applicant that the notice cannot be taken into consideration and will give them the opportunity to complete it within a reasonable period of time, not exceeding ten working days, in accordance with Article 4 of Implementing Regulation 2018/1795.

Within 10 working days of receipt of the completed notification form, in accordance with Article 4 of Implementing Regulation 2018/1795, the **CRR** will

- i) Determine if the notification is in relation to a new rail passenger service as defined in Article 3 of Regulation 2018/1795.
- ii) Publish the standard notification on the **CRR** website www.crr.ie and their determination if it is a new rail passenger service.
- iii) Notify the National Transport Authority (**NTA**) and any **RU** performing a **PSC** on the route of the new rail passenger service or an alternative route.

4 Stage 2 – EET Request

Upon receipt of the notification of a new rail passenger service, if the **NTA**, **IÉ-IM**, **EFB** or **RU** providing a public service consider that the new service is likely to jeopardise the economic equilibrium of one or more **PSCs**, they may apply to the **CRR** for an **EET** to be completed.

The CRR will only carry out an EET when requested to do so by one of the above-mentioned parties.

This request for an **EET**, along with supporting documents, should be sent electronically to regulation@crr.ie, using the standard form which is available at www.crr.ie. Per Article 33 of SI398, this should be submitted within one month from the receipt by the **CRR** of the notice of the application for a new rail passenger service.

Where a new service has not been notified to the **CRR** in accordance with the rules set out above, the mentioned entities may submit a request for an **EET** to the **CRR** within a month of their being made aware of the proposed new rail passenger service.

The requesting entity must provide all the information and documentation per the standard form, to demonstrate that the new service is likely to jeopardise the economic equilibrium of the **PSC(s)**. In the event that the **CRR** considers that the information provided does not allow such an impact to be established, the **CRR** may request any additional information deemed necessary and set a timeline for its provision.

If the requesting entity does not provide full information, including evidence that the economic equilibrium would be compromised by the new service, within the timescales set by the **CRR**, the request shall be rejected.

5 Stage 3 – EET

The **CRR** will conduct its analysis mainly on the basis of the information provided by the requesting entity. The information provided will have to demonstrate that the new service will have a considerable negative impact on the economic equilibrium of the **PSC**.

Within one month of receipt of the [complete](#) request the **CRR**:

- May ask the entity requesting the **EET** to provide it with any additional information it deems necessary to be provided within a reasonable period of time set by the **CRR**. The **CRR** may request further information if it considers that the additional information received is not sufficient.
- Will ask the other relevant entities, (**NTA**, **IÉ-IM**, **EFB** and/or the **RU** performing the **PSC** to provide the information necessary to perform the test, to the extent that such information can reasonably be provided by the party concerned. Where the information provided is incomplete, the **CRR** may request further clarifications, setting reasonable deadlines.

The **CRR** will

- make an individual assessment of each case to assess whether the proposed route will create an economic imbalance in the **PSC**.
- focus on the economic impact of the proposed new route on the **PSC** as a whole, and not on individual routes operated under the contract, and will look at the entire duration of the contract.
- consider the economic equilibrium of a **PSC** to be compromised where the new rail passenger service would have a substantial negative impact on at least one of the following elements:
 - a) The profitability of services that the **RU** operates under the **PSC**
 - b) The net cost for the **NTA** awarding the **PSC**

To assess the net financial impact of the new rail passenger service on the **PSC**, the **CRR** will carry out an analysis of the costs and revenues, resulting from the operation of the services covered by the **PSC**, including the following elements:

- 1) Net Financial Impact of the new rail passenger service on the **PSC**.
 - a) Variation in costs incurred and revenues obtained by the **RU** performing the **PSC** (including any cost savings (e.g. in terms of non-replacement of end-of-life rolling stock or staff whose employment contract is expiring) and any benefits for the **RU** concerned as a result of the proposed new route.
 - b) Possible competitive responses by the **RU** performing the **PSC**
 - c) Impact on relevant investments by **RUs**, or by the **NTA**, (for example in rolling stock).
 - d) The value of any existing exclusive rights.
- 2) The **CRR** will also assess the benefits for users and social benefits
 - a) Net benefits to customers in the short and medium term.
 - b) The impact on the performance and quality of railway services.
 - c) The impact on timetable planning for railway services.

6 Stage 4 – Decision Issued

Under SI 398/2020, the **CRR** will give notice of its determination as soon as possible to the **NTA**, **IE-IM**, the **EFB**, the **RU** providing the public service and the **RU** requesting access, but not later than 6 weeks after receipt of information.

The notice will include

- the grounds for the **CRR**'s decision.
- the period within which a reconsideration of the **CRR**'s decision may be requested, which is within one month of the decision, by any of the above-mentioned bodies.
- the conditions under which a request for a reconsideration of its decision may be requested by any of the above-mentioned bodies.
- indicate possible changes to the service which would ensure that the conditions to grant the right of access are met, where it is determined that the economic equilibrium of a **PSC** would be compromised.

A non-confidential version of this notice will be published on the **CRR** website www.crr.ie.

7. Stage 5 - Representations and Appeals

A review of the **CRR**'s decision may be requested within one month of its decision by the **NTA**, **IE-IM**, the **EFB**, the **RU** performing the **PSC** or the **RU** seeking access. The request for review should be sent via email to regulation@crr.ie. This request for review must be accompanied by the same supporting documents as the initial request and include new elements of analysis to bring to the attention of the **CRR**.

8. Fee

The Implementing Regulation 2018/1795 allows the **CRR** to decide that a fee be paid for the **EET** by the entity requesting the test. The **CRR** do not intend, initially, to charge a fee for the carrying out of the test, but this may be reviewed based on experience in administering the test. If a fee is to be applied, the applicant will be advised of the fee on receipt of the application.