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Our Ref: Case 2020-24

Date: 27 July 2020

Mr Andrew Evans
Public Expenditure Classification Branch
HM Treasury
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Dear Mr Evans,

Notification of classification of Train Operating Companies under Emergency Measures Agreements

ONS has undertaken a classification assessment of Train Operating Companies (TOCs) under Emergency Measures Agreements (EMAs). Under the EMAs normal franchise mechanisms have been amended, transferring almost all revenue and cost risk to the government.

ONS assessed TOCs in the context of the internationally-agreed rules laid out in the European System of Accounts (ESA) 2010 and the accompanying Manual on Government Deficit and Debt (MGDD) 2019.

The assessment noted that,

- The EMAs place constraints on the capacity of the TOCs to raise funds: specifically, the EMAs prevent the TOCs from being able to borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person
- The main reason the train services continue to run is because it is government policy to ensure the continuation of these rail services. Some of the open-access operators not included within the EMA package have suspended services
- Almost all of the financial risks associated with rail transport are now borne by the government
- For the duration of the EMAs, without the permission of the Secretary of State for Transport TOCs cannot take key decisions that relate to their corporate policy such as increasing their workforce or reducing their workforce by more than 5%, or setting ticket prices lower than they were immediately before EMAs came into place

Having also noted that control over an institutional unit does not require interventions in its day-to-day business (see MGDD 2019 1.2.3.1, 24), the assessment concluded that public sector control of TOCs exists.

The assessment also reviewed the market status of TOCs, noting that,

- Public corporations often provide services that the market would not produce in the quantities or at the prices that would meet government policy, meaning they will respond to market forces differently from private corporations (see ESA 2010 20.21)
- TOCs are competing on the basis of price against other producers of transport, meaning revenue from ticket sales has been classified as market output (P.11)
- The payments received by TOCs from government have been classified as other subsidies on production (D.39)
- TOCs are institutional units that provide non-ancillary services to households, and have an incentive to adjust supply to undertake a viable profit-making activity (see ESA 2010 20.29)
- The EMAs take the form of amendments to franchise agreements that were awarded following an open tendering competition between suppliers of rail services. As each individual TOC is not the only supplier of rail services, and as they have acted in real and open competition with other producers, the quantitative market test must be carried out (see MGDD 2019 1.2.4.2, 50)
- The last available accounts for TOCs relate to the 2019/20 financial year (before the EMAs came into force) meaning they passed the quantitative market test. However, at the conclusion of the current financial year ONS will have to further review the market status of TOCs. In doing so, ONS will make a determination as to whether TOCs have passed the quantitative market test for financial year 2020/21, and whether they are expected to pass it for the next two years, as minor fluctuations or outcomes deemed to be one-off and exceptional cases do not necessarily result in a reclassification (see MGDD 2019 1.2.4.3, 55)

Therefore, TOCs have been classified to the public non-financial corporations subsector (S.11001) with effect from 1 April 2020, the date the EMAs came into force.

It may be helpful for me to point out that further classification assessments of TOCs may be carried out in the future if there are changes in their circumstances such as an amendment of the EMAs, or if they begin operating under new agreements or arrangements with the government.

The above conclusions have been approved by the Deputy National Statistician (Jonathan Athow) to whom the National Statistician has delegated decision-making on classifications.

I trust this provides sufficient explanation of the assessment. Please do get in touch if you have any questions or comments.

Yours sincerely,

David Beckett
Head of Economic Statistics Classifications