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To: GB rail franchised TOCs and owner groups, ROSCOs, and funders

Dear Sirs

The Rolling Stock Leasing Market Investigation Order 2009

I am writing to you to offer the opportunity to provide the Office of Rail Regulation (**ORR**) with your views on the operation of the Rolling Stock Leasing Market Investigation Order 2009 (the **Order**) put in place by the Competition Commission (the **CC**) following its Rolling Stock Leasing market investigation.

Background

Passenger rolling stock represents both a key resource and a key cost to the rail industry (rolling stock charges totalled £1.5bn in 2012/13)¹. One of our five strategic objectives² is *to promote an increasingly dynamic and commercially sustainable sector*. Competition between the Rolling Stock Leasing Companies (**ROSCOs**) is therefore an important issue for us.

Following an initial reference made by ORR³, the CC published the findings of its Rolling Stock Leasing market investigation on 7 April 2009. The CC's investigation identified an 'adverse effect on competition' in the relevant markets, arising from key market features such as:

¹ See <http://orr.gov.uk/publications/reports/gb-rail-industry-financial-information-2012-13>.

² See <http://orr.gov.uk/about-orr/what-we-do/how-we-work/business-plan>.

³ See <http://orr.gov.uk/what-and-how-we-regulate/competition-and-consumers/market-studies/passenger-rolling-stock>.

- A shortage of alternative rolling stock available to Train Operating Companies (TOCs) when bidding for franchises;
- The interaction between the franchising system and leasing of rolling stock for franchised passenger services determines many aspects of the structure of the market; and,
- Weak TOC incentives to negotiate, arising from non-discrimination clauses in the ROSCOs' Codes of Practice.

In the light of this finding the CC devised a package of remedies, namely:

- Recommendations to government, including regarding longer franchise terms and ensuring franchise invitations to tender are issued in ways that maximise bidders' choice of rolling stock;
- Removing non-discrimination obligations within ROSCOs' Codes of Practice; and,
- Making an enforcement order (the Order), which required ROSCOs to provide TOCs with a set list of information, with a view to increasing the comparability of competing offers.

The CC's package of remedies came into force on 22 Feb 2010.⁴

Reviewing the operation of the Order

We committed to monitoring the Order at the time when it was published,⁵ and more recently in our 2014/15 business plan.⁶

The Order sets out formal mechanisms by which ORR may impose requirements on ROSCOs to supply it with information to facilitate the ORR monitoring and reviewing the operation of the Order. Furthermore, the Order requires ROSCOs, in specified

⁴ See <http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/rolling-stock-leasing-market-investigation>.

⁵ See <http://orr.gov.uk/news-and-media/press-releases/2010/regulator-to-monitor-transparency-of-rolling-stock-information>.

⁶ See <http://orr.gov.uk/about-orr/what-we-do/how-we-work/business-plan>.

circumstances, to submit compliance statements to ORR, over which the ORR may require the ROSCO to obtain an independent audit.

We are conscious of the need to minimise burdens on industry and make informed and evidence based decisions as to when to invoke formal powers of review. This is why we are providing an opportunity for stakeholders to provide information to us before we decide on appropriate next steps.

Information sought

In light of the above, we are interested in any representations or information that you may wish to provide both in relation to:

- The operation of the Order to date; and
- Any other important changes that have taken place since the Order came into force on 22 February 2010.

We envisage that our review of your responses will be completed by the end of March 2015. After this, we will consider what, if any, steps to take in light of the information gathered.

Respondents should be aware that the ORR may publish any documents or information it receives pursuant to this information gathering exercise, subject to any legal restrictions on such disclosure.

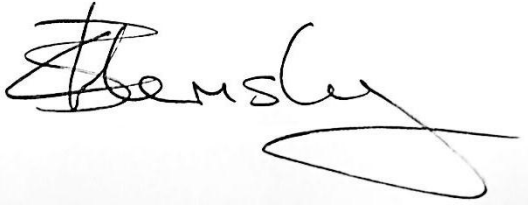
We would be grateful to receive your views and information held on this subject, in writing, by close **16 February 2015**. We have attached a list of questions for stakeholders at Annex A.

Next Steps

We will review the information and representations received during February and March 2015. If we consider that there may be compliance or efficacy issues, or identify other issues which may warrant further action, we may engage our formal review powers or take any other further steps that we deem appropriate. We would expect to communicate our findings to the industry by means of a public letter.

If you would like to meet with us in order to discuss this matter during the information gathering period, please contact us⁷ as soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read "Hemsley", with a large, sweeping flourish underneath.

Chris Hemsley

⁷ Email philip.willcox@orr.gsi.gov.uk.

Annex A – Questions for stakeholders

Please supply us with your overall views, wherever possible with reference to the available evidence, on ROSCOs' compliance with the Order that has been in effect since February 2010, and also on the combined effectiveness of the Order and the CC's other remedies. Please do so with reference to the status quo that existed prior to the CC's review.

We have suggested a list of specific questions for you to answer below, in addition to letting us know about any other considerations that you consider to be important.

Background

1. Please provide details of your exposure, as an organisation or individual, to the CC's remedies, i.e. the experience that puts you in a position to comment on their effectiveness.
2. Please provide any evidence that you have on how, if at all, the overall lease terms that TOCs have been able to obtain from ROSCOs have changed (e.g. become more or less favourable) since 2010, with reference to specific examples as appropriate.
3. Please explain how, if at all, you think that any factors other than CC's remedies (e.g. the introduction of new rolling stock, any changes to DfT's approach to procuring franchises, and so on) have impacted on the market since 2010.
4. Please provide any relevant evidence that you have on the costs to stakeholders of complying with the Order.

Removal of non-discrimination terms in ROSCO codes of practice

The ROSCOs' undertakings to remove non-discrimination terms are set out at <http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/rolling-stock-leasing-market-investigation>.

5. Please provide your overall views on the effectiveness of this measure.
6. Please state whether, since the removal of the non-discrimination obligations, you have engaged in activity (e.g. particular negotiations) that you would not have attempted had the non-discrimination obligations remained in place. Please describe these activities and explain what outcomes they led to in your view.

The Transparency Order

The CC's order can be viewed online at

<http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/rolling-stock-leasing-market-investigation>.

7. Please provide your overall views on the effectiveness and fitness-for-purpose of the Order and of whether the ROSCOs have been compliant with it.
8. Please provide any evidence that you have of how frequently the information supply necessitated by the Order has been used by franchised TOCs and would-be franchised TOCs. One way of responding to this request would be for TOCs to explain which of the activities that they have engaged in since 2010 and that would not have happened had the Order not been in place. Examples of such "activities" include making particular proposals to government for the use of rolling stock or entering into particular negotiations)
9. Please set out any important information that, in your view, the Order does not currently require ROSCOs to provide but that should be provided in order to enable you to properly assess the offers made to you by ROSCOs.