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By email

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Dear Stakeholder

Review of the Rolling Stock Leasing Market Investigation Order 2009

This letter sets out our plans to carry out a review of the [Rolling Stock Leasing Market Investigation Order 2009](#) (‘the Transparency Order’). We aim to conduct this review over the remainder of this year.

As we explain below, the Transparency Order was last reviewed five years ago. With the market changes anticipated from rail reform it is important that we keep under review the effectiveness and proportionality of remedies that have now been in place for over 15 years.

Value for money for passengers and taxpayers is a key goal of the Government’s plans to reform the railway, as described in its consultation document titled [A railway fit for Britain's future](#). We are committed to supporting rail reform. An important part of this support is to adapt our priorities as required by industry changes, so we can support all users and funders of the network.

One of ORR’s duties is to promote competition in the provision of railway services for the benefit of users of railway services. Rolling stock accounts for a significant proportion of train operator expenditure. Value for money in this market is therefore of critical importance to passengers and taxpayers. The market also represents a key means by which the industry is able to attract private sector investment, with consequent benefits for UK jobs and skills. A well-functioning, competitive rolling stock leasing market will therefore not only deliver efficiency but also support long-term investment in modern, high-quality rolling stock, helping to drive the growth and sustainability of the railway.

Context

In 2009, the Competition Commission (‘CC’, a predecessor organisation of the Competition and Markets Authority, ‘CMA’) concluded a [market investigation](#) into the market for franchised passenger rolling stock. This investigation followed ORR’s reference to the CC for an investigation into the leasing of rolling stock for franchised passenger services and the supply of related maintenance services in Great Britain.

The CC's investigation found that there were a number of factors impacting choice and competition in the market, including: high barriers to entry; the direct, or indirect, specification of rolling stock in franchise Invitations to Tender ('ITTs') and the operation of the franchise system; a lack of choice and alternative rolling stock available to train operating companies; and reduced incentives for train operating companies to negotiate with Rolling Stock Leasing Companies ('ROSCOs').

In the light of these findings, the CC put in place a set of remedies which included requirements on current and future ROSCOs to provide train operators with a set list of information when making any lease rental offer for incumbent or alternative used rolling stock to operate on franchised passenger services. This requirement was implemented through the Transparency Order.

The Transparency Order applied only to:

- lease rentals of **used** rolling stock (i.e. not newly built stock or stock that has otherwise been newly introduced to the GB network); and
- the leasing of rolling stock to **franchised passenger services**, in other words to services run under a "*franchise agreement*", defined within the Order as, "*an agreement between a train operating company and the Government under which the train operating company... provide[s] services for the carriage of passengers by rail as defined in section 23(3) of the Railways Act.*".

This review

The purpose of our review will be twofold:

- Its primary focus will be to assess whether there has been a material change in the market such that the Transparency Order is no longer an appropriate obligation for ROSCOs, or alternatively whether it should be updated to ensure continued effectiveness.
- We will also collect evidence to verify whether ROSCOs have been compliant with the Transparency Order and the obligations set by the CC.

We will test for material change with reference to a combination of stakeholders' evidenced views and data on any recent changes in the ROSCOs' market shares, pricing, and profitability.

We committed to undertaking this review as part of [a similar exercise](#) that we concluded in April 2020. In the findings report of that review we said, "*...we would expect to undertake a review within five years... [of April 2020]*". Now is also a particularly relevant time to review this market given developments such as:

- in the aftermath of the pandemic, an increasing trend towards shorter contracts for private sector passenger operators (and hence ROSCOs), and the transfer of passenger operations to [DfT Operator Limited \(DFTO\)](#), formerly DfT OLR Holdings Limited (DOHL), coupled with the nationalisation of those operators; and

- a move towards a much greater concentration of train operations under Great British Railways (GBR). As stated in [A railway fit for Britain's future](#), “...GBR will leverage the best of both the public and private sectors, working in close partnership with private companies from freight and rolling stock to ticket retailing and the rail supply chain – to unlock benefits and drive growth...”

Our approach and next steps

Over the coming months:

- We will shortly meet with representatives of all key stakeholders who are the addressees of the Order or are, currently and or may be prospectively, impacted by the Order, namely:
 - ROSCOs;
 - Representatives of the public and private sector companies which currently run passenger services and have recent experience of lease negotiations with ROSCOs; and
 - Government and those involved with the creation of GBR.
- We are also preparing to send an information request to all interested parties.
- Following a period of analysis of our evidence base, we will reach conclusions and seek to consult by the end of the summer.
- Following the receipt of consultation responses, our intention is to publish our conclusions by the end of 2025.

Should our review find that there has been a material change in market conditions, we will consider appropriate recommendations to make to the CMA.

If you have any immediate questions, please get in touch by emailing competition@orr.gov.uk. We look forward to working with you over the year ahead.

Yours faithfully

Will Godfrey