

## Terms of reference and conduct of the inquiry

### Terms of reference

1. On 26 April 2007, the ORR sent to the CC the following reference:
  1. ORR, in exercise of its powers under section 131 of the Enterprise Act 2002 and having had regard, in particular, to its statutory duties under section 4 of the Railways Act 1993 (RA93), hereby makes a reference to the Competition Commission for an investigation into the leasing of rolling stock for franchised passenger services and the supply of related maintenance services (the reference goods and services) in Great Britain.
  2. ORR has reasonable grounds for suspecting that a feature or a combination of features of the markets in which the reference goods and services are supplied prevent, restrict or distort competition in connection with the supply of the reference goods and services in Great Britain, being part of the United Kingdom.
  3. For the purposes of this reference:
    - “franchised passenger services” has the same meaning as in section 23 of RA93; and
    - “related maintenance services” means the provision of services for the maintenance of leased rolling stock vehicles by a lessor (whether or not through a subcontractor), including, but not limited to, refurbishment and the overhaul or replacement of major components.

OFFICE OF RAIL REGULATION  
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### Conduct of the investigation

2. This appendix provides a more detailed explanation of the conduct of the investigation up to the publication of the CC’s provisional findings.

3. After receiving the reference from the ORR we gathered evidence from main and third parties, held hearings with 14 interested parties and undertook site visits to the offices of each of the three ROSCOs and train maintenance depots. We published an Issues Statement on 17 August 2007, based on the evidence received during this period. Following the publication of our Issues Statement, we held hearings with each of the main parties (the ROSCOs and the fourth lessor of rolling stock, Voyager Leasing) and held a further five hearings with third parties. Following the publication of Emerging Thinking on 19 December 2007 we held hearings with each of the ROSCOs and the DfT.
4. During the course of the investigation we received a number of submissions from the main parties, including main submissions, responses to the Issues Statement and responses to Emerging Thinking. We also received numerous submissions from third parties, including the DfT, TOCs and train manufacturers. Non-sensitive versions of the evidence provided to us can be found on the CC website.
5. The evidence from the submissions we received was supplemented by a large amount of additional information and data which we requested from parties. This included replies to the market and financial questionnaires sent at the start of the inquiry to the main parties, which were supplemented by additional questions covering a range of issues. We also received evidence from the ROSCOs in the form of internal papers.
6. Questionnaires were also sent to third parties, including the TOCs, Open Access Operators, potential entrants (such as financial organizations), Network Rail, rolling stock manufacturers and rail freight companies. Additional information was also received from the DfT, Transport Scotland, Transport Wales and TfL.

7. Using the information gathered we were able to compile detailed datasets on all the passenger rolling stock, the movement of rolling stock between franchises, changes in vehicle numbers over time, the terms of the leases such as the proposed and agreed rentals, and additional investment in the rolling stock. We also compiled details of the different rolling stock considered by the TOCs and put forward in the franchise bids, the details of new rolling stock introduced and the bids to finance the new rolling stock.
  
8. Our Emerging Thinking document was published on 19 December 2007 along with eight working papers on the following topics, which can be found on our website:
  - capacity;
  - competitive analysis;
  - customer behaviour;
  - entry;
  - industry background;
  - maintenance;
  - risk; and
  - substitutability.
  
9. We would like to thank all of those who have assisted with our investigation so far.
  
10. A copy of this provisional findings report has been placed on the CC website.