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22 February 2010

To: addressees attached

The Competition Commission's transparency Order

1. The Competition Commission (CC) published its [report](#) titled *Rolling Stock Leasing market investigation* on 7 April 2009. Following on from this the CC's transparency [Order](#) (the Order), published on 22 December 2009, comes into effect on 22 Feb 2010. I am writing to you to explain in broad terms how we, the Office of Rail Regulation (ORR), intend to monitor the order.
2. ORR is the independent safety and economic regulator for Britain's Railways. We enforce competition law in relation to the provision of services relating to the railways.
3. None of the content of this letter is intended to substitute for the Order or is legally binding. In the event of any conflict between this letter and the Order the latter takes precedent. This letter is based on the principles set out in the Order, its [explanatory note](#), and the CC's report. Its purpose is to:
 - a) describe our planned approach to monitoring the Order in general terms; and
 - b) provide initial views on certain parts of the Order where we think that further guidance for rolling stock leasing companies (ROSCOs) might be of assistance in ensuring compliance with the terms of the Order. These views come out of recent discussions that we have had with stakeholders. It is important to stress that our list of clarifications is not closed, and that we will add to it as necessary in the future as any new issues come to light.

How we will monitor the Order

4. We will generally assume that the Order is working well unless concerns are put to us by train operating companies (TOCs) and strongly encourage TOCs to make use of the

‘escalation process’ set out in Part 5 of the Order. We will undertake compliance audits by way of an approved independent body or bodies. ROSCOs should ensure that they have suitable internal recording systems in place so as to enable them to co-operate effectively with any such audit.

5. The frequency with which we will commission such audits, as with the level of scrutiny that we will apply to the market generally, will depend in part on the extent to which we are made aware of stakeholder concerns about the Order. We ask, therefore, that TOCs copy us in on, or otherwise make us aware of, any key correspondence that they have over concerns that a ROSCO has failed to comply with any requirement of the Order.

Points of clarification

6. In interpreting the Order we will in all cases bear in mind the fundamental objective of obtaining greater transparency to help address the adverse affect on competition (AEC) identified in the CC’s final report.

7. There is no scope for the requirement for any of the information requirements within the Order to be ‘waived’ by TOC customers in any circumstances.

8. This includes information that was originally produced by third parties other than the ROSCOs and/or that is already within the public domain. ROSCOs should use their best efforts to ensure that such information is accurate. ORR’s approach will be to ensure that any concerns raised around these or any other provisions of the Order are resolved in a way that is consistent with the transparency imperative highlighted above.

9. During the CC’s enquiry ROSCOs expressed a number of concerns around the release of confidential information to TOCs. It has been suggested to us that our monitoring role might therefore include the provision of guidelines to TOCs around their use of this data. We consider, however, that this issue is adequately addressed at paragraph 7.4 of the Order. We recommend that ROSCOs and TOCs embed the principles set out at this paragraph within their commercial agreements.

10. The following specific points relate to issues raised by ROSCOs following publication of the CC’s order.

- a) For the avoidance of doubt, the correct definition of a “short-term lease” is as specified at paragraph 6.3 (a) of the Order, rather than, for example, being set with reference to absolute length in terms of number of years. The need for TOCs to have transparency over short-term lease premia is no less present in longer franchises than in shorter ones.

- b) The Order applies to rolling stock as defined in Part 1 of the Order, i.e. *“any coach, locomotive, car, vehicle or similar type of unit that at the date of an Indicative Offer has operated or is currently operating on the railway network to enable the carriage of passengers in Great Britain”*. It does not, therefore, apply to rolling stock for which leases were entered into prior to 22 February 2010 but which have not yet operated on the railway network.

ORR contact details

11. Any questions from TOCs or ROSCOs about compliance issues should in the first instance be put in writing and sent by email to competition@orr.gsi.gov.uk. We will endeavour to respond promptly to these.
12. Annual compliance statements completed by ROSCOs should be sent in hard copy form, addressed to ORR's Chief Executive and copied to its Director of Legal Services. An electronic copy should be sent to the email address in the previous paragraph.
13. Should a ROSCO encounter any practical or technical difficulties with producing a compliance statement in accordance with the requirements of paragraph 9 of the Order we encourage them to raise such issues with us well in advance of the compliance date specified at paragraph 9.1 of the Order.

Yours sincerely

A handwritten signature in blue ink, appearing to read "J.R. Thomas".

John Thomas

Addressees

Rolling stock leasing companies:

- Louise Oddy, Angel
- Clive Thomas, Eversholt Rail
- Stephen McGurk, Porterbrook
- Jan Shiells, Voyager leasing

Train operators:

- Roger Cobbe, Arriva
- Allan Dare, Chiltern
- Karen Boswell, East Coast
- Paul Furze-Waddock, First Group
- Tom Smith, Govia
- Tom Clift, Grand Central
- Malcom Pheasey, National Express
- Andy West, Stagecoach
- Ron Temple, SERCO
- Andy Cross, Virgin

Bob Linnard, Department for Transport

Richard Davies, ATOC