

Review of the Rolling Stock Transparency Order 2009

Consultation – provisional findings of our review

08 August 2025



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Executive summary

This document summarises the Office of Rail and Road's ('ORR's') review of the Transparency Order that was put in place by the Competition Commission ('CC') in the franchised passenger rolling stock leasing market in 2009. We outline our provisional findings on market developments and industry compliance since our previous review in 2020. In doing so we take account of recent legislation and forward-looking considerations, including the implications of ongoing industry reform.

ORR does not have powers to vary or revoke the Transparency Order or to vary, supersede or release parties from the Undertakings that were entered into following the CC's market investigation. These powers are reserved to the CC's successor body, the Competition and Markets Authority ('CMA'). ORR's role is to advise the CMA on possible courses of action based on our review of the market and industry engagement.

Chapter 2 of this document sets out our provisional findings which relate to observed market outcomes from 2020 to date. We argue that this evidence alone suggests little change of circumstances to the market over that period.

In later chapters we consider the Transparency Order in the light of the legislative changes since 2020 which have resulted from ongoing industry reform. At a minimum, industry reform has strong implications for the wording of the Transparency Order, which is deeply rooted in the historic rail passenger franchising system. Industry reform also signals substantive changes to the market that have already begun but whose full impact will not be realised for some time. The ending of franchises and the future consolidation of DfT-contracted train operations under a single (public sector) owner is a notable outcome from rail reform with a potential bearing on future leasing transactions – in particular, the potential for greater buyer power than has existed previously.

We conclude that the arguments for the continuation of the Transparency Order are finely balanced and invite stakeholder feedback through our consultation questions below.

Compliance with the Order

- 1) Do you agree that, as set out in Chapter 2 of this document, that there have been no important issues with compliance with the Transparency Order over the period since our 2020 review?

Changes to the market

- 2) Do you agree with our assessment of market outcomes since our 2020 review as set out in Chapter 2 of this document?
- 3) Please provide your feedback on the extent to which the changes from rail reform should be considered far-reaching and foreseeable enough to constitute a change of circumstances from the perspective of the Transparency Order.

Options for recommendations to the CMA

- 4) Do you agree with ORR's provisional conclusion that it would not be appropriate for us to follow Option 1 as set out in Chapter 4, i.e. to recommend that the CMA vary the Order so as to require the publication of more information on the grounds of sufficiency?
- 5) Do you consider that it would be appropriate for ORR to recommend that the Transparency Order can be revoked, i.e. to pursue Option 2 from Chapter 4 of this document?
- 6) If you responded negatively to Question (5) above, do you consider that it would be appropriate for ORR to recommend that the CMA updates the wording contained within the Order, i.e. to pursue Option 3 in Chapter 4?
- 7) Do you have any further comments on the matters considered within this consultation?

Following consideration of consultation responses and any further evidence on market outcomes or the forward look, we will conclude our review before the end of the year. This will involve us making a recommendation to the CMA. Possible outcomes, in addition to retaining the Transparency Order in its current form, include recommendations of:

- Varying the Transparency Order so as to require more information from leasing companies (which we consider unlikely);
- Revocation of the Transparency Order; and
- A change to the terms of the Transparency Order to bring it up to date with market developments (but otherwise substantively unchanged in the information requirements mandated).

1. Introduction

- 1.1 Rolling stock costs account for a significant proportion of the total costs of the GB railway. ORR's [Rail Industry Finance](#) report shows that GB franchised train operators incurred some £3.3bn p.a. in rolling stock related expenditure during 2023/24, this total including both capital and non-capital charges. At the time of the CC's investigation the leasing of passenger rolling stock was dominated by three incumbent firms, though the market has since seen a growth in the number of players, as we explain later in this document.
- 1.2 The Transparency Order was put in place by the CC in the franchised passenger rolling stock leasing market in 2009.¹ In this document we outline our provisional findings on market developments and industry compliance since [our previous review in 2020](#).

Background – key events leading up to our previous reviews

- 1.3 A key feature of [the privatisation of the passenger railways in Great Britain \('GB'\)](#) was an industry structure, whereby:
- Infrastructure Management was originally transferred to Railtrack, a private company responsible for tracks, signals, and major stations. After Railtrack went into administration in 2001, its responsibilities were taken over by Network Rail, now a public sector body.
 - Passenger services were delivered by means of a franchising system. Franchises had a typical duration of seven years, while the usable life of passenger rolling stock is typically 30 years or more. It was therefore necessary to have a means by which Train Operating Companies ('TOCs') operating passenger franchises were able to lease trains to deliver their franchise commitments, without taking ownership of them for their full life spans.
 - Three rolling stock leasing companies (the 'initial ROSCOs') were created for the purpose of competing to lease trains to TOCs. These ROSCOs were Angel Trains Limited, Porterbrook Leasing Company Limited, and Eversholt

¹ The CC's remedies were initially proposed in its *Rolling Stock Leasing* report in April 2009. The CC accepted undertakings from the initial ROSCOs in July 2009 and subsequently issued a Transparency Order that came into effect on 22 February 2010

Leasing. All the initial ROSCOs remain leading players as of today, though since privatisation they have seen considerable change in terms of ownership and branding.

- 1.4 In June 2006, following the first round of franchise awards post-privatisation, ORR received a submission from the Department for Transport ('DfT'). The submission asked ORR to look at whether there was a lack of competition in the market arising from structural and behavioural features.
- 1.5 ORR carried out a market study to investigate these concerns, and in 2007 referred the franchised passenger rolling stock leasing market to the CC. The CC undertook [a market investigation](#), which concluded in 2009. The CC found that there were a number of factors impacting choice and competition in the market, including:
- 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 TOCs; and,
 - reduced incentives for TOCs to negotiate with leasing companies.
- 1.6 The CC imposed a package of remedies which included a requirement on current and future leasing companies to provide TOCs 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 remedy was implemented through the 'Transparency Order'.
- 1.7 The CC also required the initial ROSCOs to amend their Codes of Practice to remove non-discrimination requirements. The initial ROSCOs all offered voluntary undertakings to this effect ('Undertakings'). This remedy only applied to the three initial ROSCOs. Further, the CC made recommendations to the DfT. These recommendations included introducing franchise terms of 12-15 years or longer; taking account of the benefits of alternative rolling stock beyond the franchise term and across other franchises; and the stipulation of franchise specifications to allow bidders to access a wider choice of rolling stock.

ORR's role

- 1.8 The CC made the Transparency Order, using its powers under the Enterprise Act 2002 (the “**Act**”) in order to remedy, mitigate or prevent the adverse effect on competition, as specified in its report.²
- 1.9 ORR is responsible for monitoring the operation of the Transparency Order and ensuring compliance with it.³ The scope of the Transparency Order is not limited to the initial ROSCOs. ORR is also responsible for monitoring and ensuring compliance with the Undertakings by the initial ROSCOs.⁴ Both the Transparency Order and the Undertakings give ORR powers to require information from relevant parties.⁵
- 1.10 ORR does not have powers to vary or revoke the Transparency Order or to vary, supersede or release parties from the Undertakings. These powers are reserved to the CMA. ORR's role is to advise the CMA on possible courses of action based on our review of the market and industry engagement.
- 1.11 The CMA has a statutory duty to keep under review undertakings and orders made under the Act. To discharge this duty, the CMA must from time to time consider whether by reason of any change of circumstances an order is no longer appropriate and needs to be varied or revoked.
- 1.12 Our review aims to assist the CMA in discharging this duty. Responsibility for deciding on variation or termination of the Transparency Order lies with the CMA. We discuss the substantive test in considering modifications of the Transparency Order later in this chapter. Following any recommendation by ORR, the CMA will consider what action, if any, should be taken.

Previous reviews

- 1.13 In 2015, we carried out [a review](#) of compliance with the remedies and the overall market outlook. Our 2015 review was limited in scope, in part due to the small number of new leases that had been entered into since the CC's remedies came into force in 2010. ORR's findings were that the Transparency Order had, in at least most cases, been complied with and been broadly successful. Views on the

² The Transparency Order was made in accordance with section 138 of the Act and in exercise of the powers conferred on the CC by sections 161, 164 and Schedule 8 of the Act

³ Under Part 4 of the Transparency Order

⁴ Under paragraph 8.2 of the Undertakings

⁵ See articles 6.1, 8.2 and 9.1 of the Undertakings and paragraphs 8 and 9 of the Transparency Order

extent of changes in the market since the CC's review, were mixed, with no clear theme emerging.

- 1.14 In 2020 we published the results of our second review ([the '2020 review'](#)) at the end of which we concluded that we should not advise the CMA that it undertake further work to consider removing or varying the Transparency Order. We reached this conclusion based on market evidence and stakeholder submissions at the time, finding that the changes to the market which had occurred since 2009 were collectively not sufficient to constitute a change of circumstances that invalidated retention of the Transparency Order in its original form.

Key events since our 2020 review

- 1.15 Our previous review relied principally on evidence which dated back to 2019 or earlier. Several external events have since had important implications for the rolling stock market.

COVID-19 pandemic

- 1.16 At the time of our previous review the Covid-19 pandemic ('the pandemic') was in its early stages and although we anticipated that there could be long-term implications for the industry, the scale and nature of these were unknown.
- 1.17 The pandemic caused a significant drop in the usage of passenger services and, thereafter, a shift in demand from shorter commuting to longer leisure journeys. ORR's [statistics for passenger rail usage January - March 2025](#) show that, while the total number of passenger journeys and passenger kilometres have now broadly returned to pre-pandemic levels, total passenger revenue, particularly when adjusted for inflation, remains below pre-pandemic levels. Doubt about the trajectory of future demand has created some uncertainty and caution in the market, resulting in some decisions on rolling stock being delayed until there is greater certainty.

Rail reform

- 1.18 In May 2021 [the final report and 'Plan for Rail'](#) resulting from the Williams-Shapps Review announced the then Government's intention to re-integrate track and train operators. Since then a number of franchises have been taken into public ownership, initially under the pre-existing [DfT Operator of Last Resort scheme](#) and subsequently a newly created state-owned company, [DfT Operator](#) (DFTO).
- 1.19 The Government elected in July 2024 is also committed to reforms intended to deliver a more integrated, accountable, and passenger-focused railway system.

Central to these reforms is establishment of Great British Railways (GBR), a single ‘directing mind’ bringing together responsibility for the rail network itself and for the publicly-owned passenger services that run on it.

- 1.20 [A Bill on public ownership of the railways](#) was one of the first pieces of legislation introduced into Parliament by the new UK Government following the July 2024 general election. The legislative foundation for nationalisation was set with the introduction of the Passenger Railway Services (Public Ownership) Act 2024 (‘the 2024 Act’), which received Royal Assent in November 2024, enabled the government to [begin transferring TOCs into public ownership under DFTO](#) in advance of the establishment of GBR. The first TOC to transfer in this way was South Western Railway in May 2025, followed by c2c in July 2025, with others expected to follow soon including [Greater Anglia](#) in October 2025 and West Midlands Trains in February 2026.

Procurement Act 2023

- 1.21 [The Procurement Act 2023](#) (PA23) came in to force in February 2025, shortly before our review of the Transparency Order commenced and therefore too recently for its impact to be seen in the evidence we have collected. We discuss the limited evidence that stakeholders were able to provide us with in Chapter 3 of this document.
- 1.22 The primary purpose of the PA23 is to make public sector procurement more flexible and transparent. One of the ways it seeks to do this is by requiring buyers to publish tender notices with detailed tender specifications which could include the requirement for bidders (e.g. leasing companies) to provide the same information as required by the Transparency Order. PA23 therefore does not replace or supersede the Transparency Order but could potentially have similar effects. However, PA23 only applies to public-sector organisations, meaning that those TOCs which have yet to be taken into public ownership are not currently subject to it.

Purpose and scope of our review

- 1.23 The purpose of our review is to determine whether there has been a change of circumstances in the market which has been sufficient to alleviate the competition problems identified by the CC in 2009, such that the remedies imposed by the Transparency Order would no longer be appropriate, or alternatively should be varied to ensure that they remain effective. In this document we use the term ‘change of circumstances’ to refer to a degree of change that meets a threshold corresponding to the one set out in the CMA’s guidance for variation and

termination of undertakings and orders ([CMA11](#)). Later this year the CMA will issue a consultation on revised draft markets guidance, which will include the existing CMA11.

- 1.24 Important changes for the market context come from changes in legislation which have been made and partly implemented since 2020. The impact of these changes has not yet been tested through rounds of transactions in the rolling stock leasing market. These legislative changes result from the government's ongoing rail reform programme. The approach that we have taken in this review is that changes of this nature should be interpreted as constituting a change of circumstances provided that their impact will be sufficiently far-reaching and foreseeable.
- 1.25 We also consider whether leasing companies have been compliant with the Transparency Order.
- 1.26 During our review, a small number of stakeholders raised wider issues, including a perceived need for a long-term rolling stock strategy, but these issues remain out of scope of our review, meaning that we have not commented on them further.

Our approach

- 1.27 Unless otherwise stated, all definitions used in this consultation document are contained in the Transparency Order.
- 1.28 As with our 2020 review, our work to assess whether the competition issues identified by the CC in 2009 are still apparent today centred on four core themes, in line with the issues originally identified by the CC as summarised earlier in this chapter:
- **Franchising policy** – the impact that the wider TOC contracting framework and other DfT policy has on market outcomes;
 - **Barriers to entry** – the factors, if any, that restrict entry into the market for leasing passenger rolling stock;
 - **Choice and availability** – the availability of alternative rolling stock from which TOCs can choose when bidding for a franchise.⁶ The CC found this to be a key determinant of the franchised TOCs' ability to negotiate with leasing companies on prices and terms; and

⁶ This includes Direct Awards and franchise extensions determined by DfT.

- **Incentives** – The incentives on leasing companies to effectively compete, and on TOCs to effectively negotiate.

- 1.29 The events of the past five years saw an end to the traditional franchising system and meant that there has been little 'business as usual' activity in this market for our review to build an evidence base upon. We have also had to make a judgement of the future impact on this market from ongoing industry reform, despite uncertainty surrounding specific aspects of rail reform and its implications for the rolling stock market.
- 1.30 We have engaged closely with the CMA throughout our review and with other key stakeholders including funders.
- 1.31 We received written responses to our request for information from 15 stakeholders including:
- Nine owners of rolling stock; and
 - Nine train operating companies.
- 1.32 Almost all stakeholders told us that their ability to engage with our review had been compromised to some degree by factors including a lack of market activity since our last review and uncertainty about the specific arrangements that will apply following rail reform.

2. Testing for a change of circumstances – market outcomes since our 2020 review

Introduction

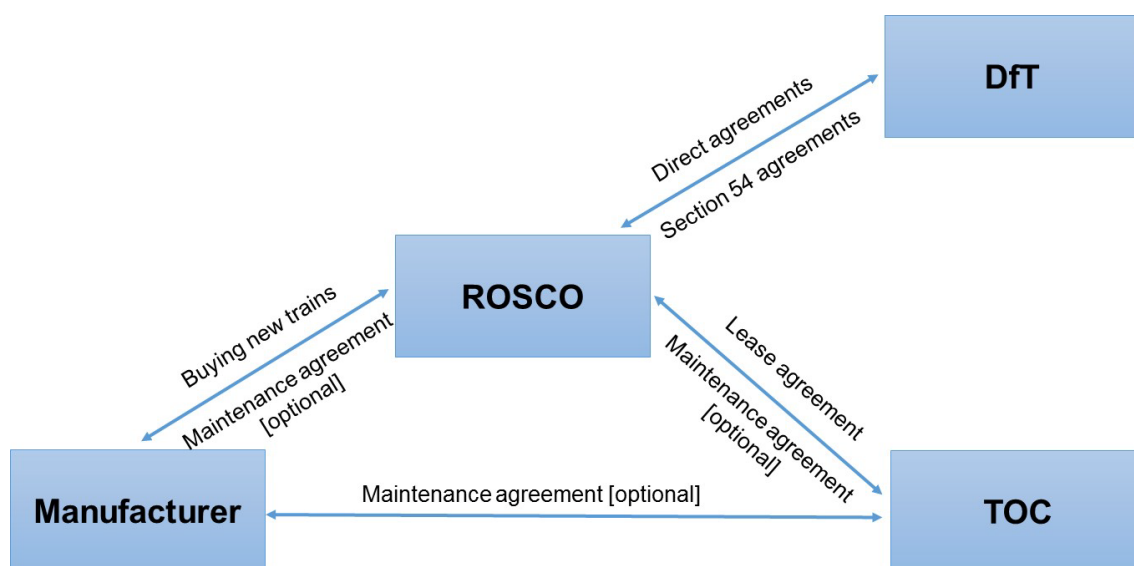
- 2.1 This chapter sets out our provisional findings on market outcomes from 2020 to date, with reference to the competition issues identified by the CC in its original investigation and our assessment of the extent to which these have been alleviated.

How the market works

The post privatisation, pre-2020, model

- 2.2 Almost all of the rolling stock used in franchised passenger services has been historically owned by leasing companies and leased to TOCs. Lease lengths were historically set to match the length of TOC [franchise](#) terms.
- 2.3 When bidding to win a franchise, TOCs and owner groups would approach leasing companies for quotations to lease rolling stock and might also approach a manufacturer(s) directly.
- 2.4 Under the franchising model, the DfT would specify in the franchise ITT the services that a TOC was expected to deliver. ITT specifications would include requirements that the rolling stock was required to meet, as well as the minimum number of services, minimum capacity, stopping patterns and journey times (usually in the form of Service Level Commitments).
- 2.5 Franchise bidders would need to consider whether:
- there was suitable rolling stock off-lease which could be used;
 - there was rolling stock deployed elsewhere on another franchise which is expected to come off lease during the relevant period and could be cascaded to the franchise; or
 - it was commercially viable to purchase new rolling stock.

- 2.6 The suitability of rolling stock depends on many considerations including route requirements; for example, a route may require trains to fit through small tunnels or to meet certain speed requirements on long distance routes.
- 2.7 Following the issuance of the ITT, TOCs and leasing companies would refine their requirements and offers. The TOC which won the franchise would enter a contract with the leasing company (and, where appropriate, the manufacturer).
- 2.8 The DfT has direct agreements with each of the leasing companies to ensure that it can step in and take over the running of a franchise, and therefore responsibility for its rolling stock, should a franchise fail. The DfT also has the power to offer Section 54 guarantees, under the Railways Act 1993, to ensure that vehicles are re-leased from the end of the current lease period through to the expiry of the Section 54 undertaking on substantially the same terms as the initial lease.
- 2.9 The diagram below illustrates the traditional relationships between different participants in the market for the leasing of franchised passenger rolling stock.



Changes since our 2020 review

- 2.10 As described in Chapter 1, TOCs began to be taken into public ownership initially because of emergency recovery measures put in place to keep the railway running through the pandemic in 2020, and more latterly through the Government's incremental withdrawal of franchises as part of rail reform. Consequently, the procurement model we described above and in our 2020 review is undergoing significant change.

Procurement model

- 2.11 It remains the case that most rolling stock is owned and leased by private-sector leasing companies, with the process to date in many respects closely resembling the one that was introduced at privatisation. The Government has indicated that it does not intend to change this fundamental structure.

Government involvement

- 2.12 Most stakeholders told us that the level of Government involvement in specifying rolling stock requirements and negotiating finance has been high and overall rising over a long period of time, initially through prescriptive requirements in the ITT as described above, and latterly as franchises have been taken into public ownership. That said, in the latter case one TOC described its recent experience of running a procurement exercise as providing it with a degree of autonomy from government, ultimately enabling better alignment with passenger's needs.
- 2.13 One TOC observed the Government's efforts to promote the continued use of fleets that might otherwise be withdrawn by transferring them to other operators.

Lease length

- 2.14 During the period immediately following the pandemic, some decisions on lease extensions were delayed as DfT took over the operation of TOCs under the emergency measures schemes. Leasing companies told us this created a number of challenges including with securing capital investments on rolling stock (e.g. for engine upgrades) and with transferring rolling stock between operators. However, more recently they have started to see the return of longer leases. Leasing companies have also noted a willingness by Government to enter into leases that continue beyond the end of the TOC contract which has been beneficial when securing investments.
- 2.15 Some TOCs also observed and welcomed the lengthening of lease durations. Longer leases reduce TOC exposure to the risk of lease and maintenance costs increasing after initial terms.

The application of the Transparency Order

- 2.16 The Transparency Order applies when a leasing company makes an Indicative Offer. An Indicative Offer is a written indication of the level of rent for which a leasing company would be prepared in principle to lease existing Rolling Stock: (a) of a defined quantity; (b) of a defined specification; and (c) for a defined duration of

time to a Potential Lessee⁷ for it to provide franchise passenger rail services in GB. 'Rolling stock' is defined within the Transparency Order as, "...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."

- 2.17 The requirements of the Transparency Order are that the leasing company provides the TOC with a set list of information on the particulars of the rolling stock, capital rent, non-capital rent, maintenance, investment, and modifications to the rolling stock.⁸ It was intended that the provision of this information to TOCs by all leasing companies that provide an Indicative Offer would help TOCs to compare lease rental offers and to challenge leasing companies more effectively over lease rental terms.

Compliance with the Transparency Order

- 2.18 Our review did not find any material concerns relating to compliance with the terms of the Transparency Order.
- 2.19 Those TOCs that had completed a rolling stock procurement exercise and who engaged with this review told us that they did not experience any significant difficulties obtaining the information specified by the Transparency Order.

Franchising policy

The original concerns

- 2.20 The CC found that the interaction between the franchising system and the leasing of rolling stock for franchised passenger services determined many aspects of the structure of the market.
- 2.21 The CC found that detailed specific service requirements laid down in franchise ITTs practically limited the rolling stock options available to TOCs. It found that in some cases, ITTs would expressly or implicitly indicate a requirement for new rolling stock to be deployed, for example, to increase capacity or because it was necessary to replace life-expired rolling stock.
- 2.22 In the paragraphs below we consider the impact of the DfT's approach to procuring passenger services on the rolling stock market.

⁷ As defined in Section 2.1 of the Transparency Order

⁸ See articles, 5, 6, 7, 10 and Schedules 1- 7 of the Transparency Order

Changes observed in the market

Changes prior to 2020

- 2.23 Our 2020 review described the impact of a series of [relatively modest changes](#) to franchising policy which had taken place between 2009 and 2020. Stakeholders told us that these changes had amongst other things, helped drive increased procurement of new rolling stock over this period.
- 2.24 During our 2020 review, Owing Groups told us that franchise ITTs continued to be very prescriptive. Our review found that this level of specificity could limit innovation, and impact on the level of choice available to TOCs when bidding for franchises. For example, requirements on timing could act to prevent cascaded or new stock from being a viable option, while requirements on quality or for features could rule out existing stock as an option given high refurbishment costs.

Changes since 2020

- 2.25 The period since our 2020 review has been characterised by the increasing use of Passenger Service Contracts (PSCs) and greater Government involvement in rolling stock procurement. Whereas historically TOCs had greater involvement in commercial decisions, PSCs have transferred responsibility (and risk) to government.
- 2.26 In the opinion of one private-sector TOC, this has reduced opportunities for innovation and the flexibility to respond to local market conditions. However, another TOC which has already been taken into public ownership reported having greater involvement since becoming publicly owned. It is clear that the period covered by this review was one of flux, which may continue to some extent in the near- to medium-term.

Impact of changes on the original concerns

- 2.27 The GB rail franchising system in its traditional form effectively ended in 2020 before being formally abolished by the Passenger Services (Public Ownership) Act in 2024. To date, however, the roles of the leasing companies, TOCs, and DfT have remained largely unchanged in some important respects. As explained later in this chapter, the extent to which TOCs have been incentivised and empowered to make rolling stock decisions on economic grounds has if anything been lower since 2020 than was historically the case. As such it is difficult for us to conclude in our provisional findings that market outcomes to date suggest a change of circumstances to this aspect of the CC's original concerns.

Barriers to entry

The original concerns

- 2.28 In 2009, almost all passenger rolling stock in GB was owned by the three initial ROSCOs (now Eversholt Rail, Porterbrook, and Angel Trains) who had been formed at privatisation. Only one other rolling stock lessor existed, namely Voyager Leasing Limited, which was set up to lease a new fleet of Voyager trains but did not undertake further leasing activities. Voyager's fleets were subsequently bought by Beacon Rail.
- 2.29 Whilst the CC found that, "... *there is active rivalry between ROSCOs in the provision of new rolling stock at first lease...*" (see para 5.58), its final report noted the existence of barriers to entry into the market, whether entering with new or used rolling stock. Factors cited by the CC included scale economies; portfolio risk diversification; and experience of managing residual value risk.

Changes observed in the market

- 2.30 Our 2020 review found that, since 2009, there had been significant entry into the market, notably via the purchase of new rolling stock, suggesting a lowering of entry barriers over time.
- 2.31 At the time of our 2020 review, leasing companies told us that new entrants had in the years prior to that review been attracted by low interest rates and favourable exchange rates (both of which lower the cost of financing new rolling stock) and the perceived stability of trains as investments.
- 2.32 The leasing companies which have entered since 2009 sit on a spectrum ranging from 'full' competitors (which own and lease multiple fleets, which may consist of a mix of new and used rolling stock) to smaller competitors (which own a single fleet, and may be constrained from participating in further leasing opportunities by long-term contracts). The new owners of rolling stock since 2009 include:
- Rock Rail, which signed its first leasing deal in 2016;
 - Beacon Rail Leasing, which was formed when Mitsubishi UFJ Financial Group acquired Allco Finance Group's European rolling stock leasing business and rebranded it as Beacon Rail in January 2009;
 - SMBC Leasing – Angel Trains in 2024 acquired a 50% share in SMBC Leasing's UK rail rolling stock portfolio;

- Corelink Rail Infrastructure; founded in 2017;
- Agility Trains, Formed in June 2008 as a consortium to bid for the DfT's Intercity Express Programme; and
- Cross London Trains, founded in 2011 to procure and lease rolling stock for the Thameslink franchise.

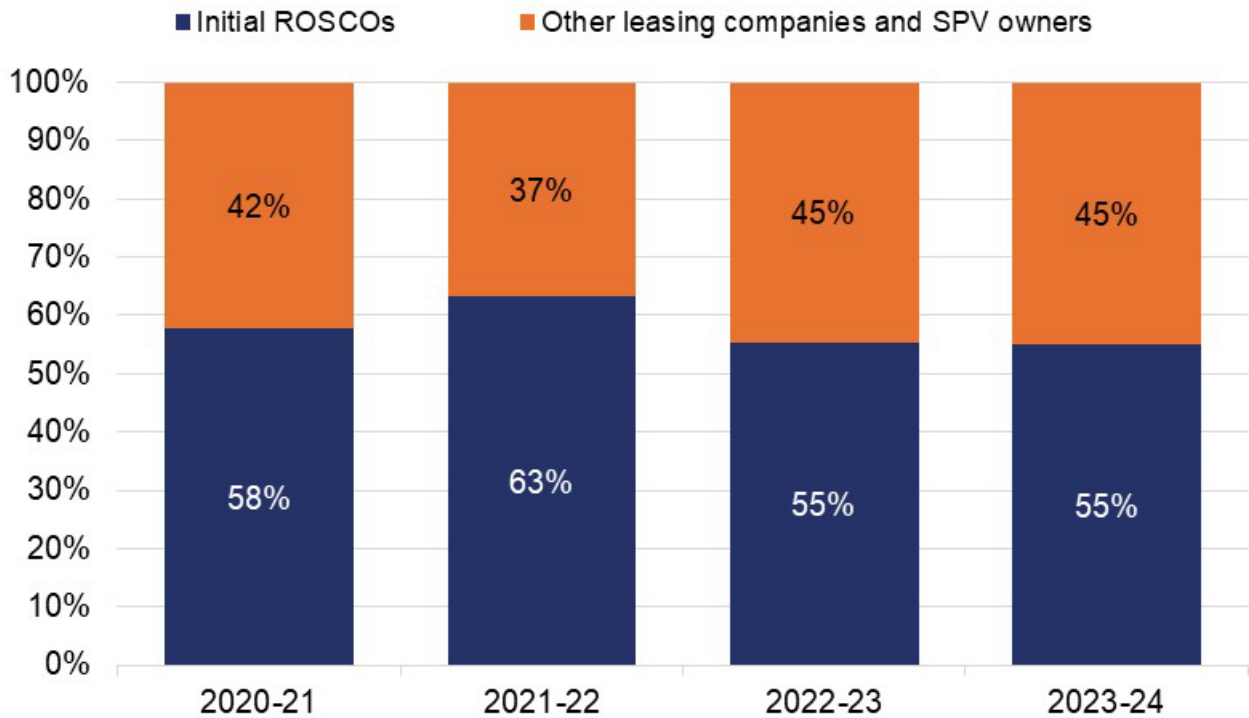
2.33 Agility Trains and Cross London Trains were set up as Special Purpose Vehicles to deliver set projects tendered for by the DfT. Agility Trains' rolling stock is guaranteed by the DfT for use on the Great Western and East Coast Mainlines for 27.5 years, while Cross London Trains' stock is guaranteed for 20 years on Thameslink. These rolling stock lessors are not likely to compete in the wider market in the short- to medium-term, although in our 2020 review the initial ROSCOs told us that their impact was already being felt through a reduction in the number of potential franchise awards available to bid for.

2.34 The period since our 2020 review has, as summarised earlier, been one of exceptional circumstances for the rail industry and hence relatively little 'business as usual' activity. On a macroeconomic level, interest rates from mid-2022 rose quite steeply from the very low levels that had prevailed since the aftermath of the Global Financial Crisis of the mid-to-late 2000s (in 2008 to 2009). Information supplied to us by DfT showed that very little newbuild stock has been ordered by 'franchised' passenger operators (within the meaning of the Transparency Order) in the period since our 2020 review. The only example being the 100 class 897 vehicles ordered for initial use on LNER.

2.35 Figure 2.1 below, compiled from data collected as part of our [Rail Industry Finance](#) reporting and from SMBC and Cross London Trains' information provided in their responses to this review, compares the annual revenues earned by the owners of franchised passenger rolling stock. We have included data for Agility Trains in these totals since, whilst Agility Trains is not a leasing company in the traditional sense⁹, the service it provides does represent an alternative to the traditional leasing model.

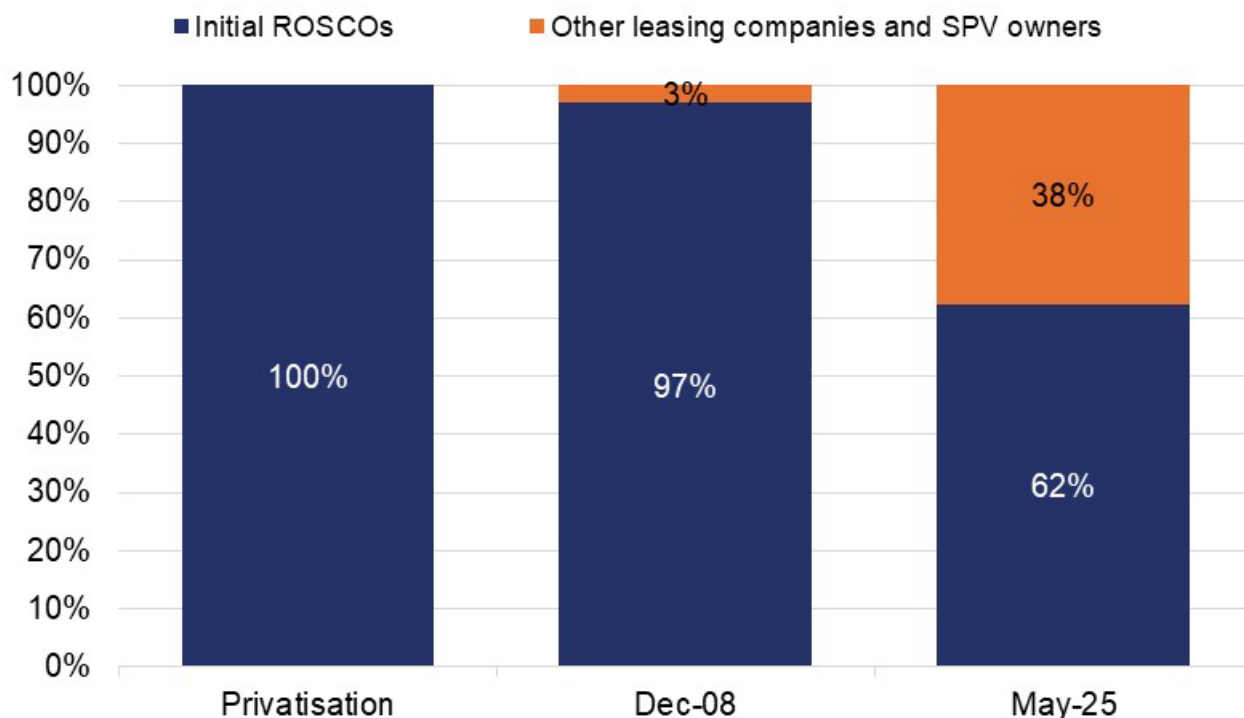
⁹ This model operates under a Train Service Provision Agreement whereby Agility Trains is paid based on train availability, with the DfT guaranteeing asset usage for a set period.

Figure 2.1 Shares of total revenue in passenger rolling stock



- 2.36 Figure 2.1 shows that, on a total revenue basis, the combined share of the three initial ROSCOs has since 2020-21 remained well below 100%, falling from around 58% in 2020-21 to around 55% in 2023-24. These figures do not reflect the acquisition by Angel Trains of a 50% stake in SMBC leasing in March 2024 as described earlier in this chapter, but our finding above (of a falling aggregate revenue share for the initial ROSCOs) would hold following any adjustment for this.
- 2.37 Figure 2.2 below provides equivalent figures over a much longer timeframe, calculated on the basis of number of vehicles owned, rather than revenues. We took the data in Figure 2.2 from a combination of the CC's final report and leasing companies' submissions to this review.

Figure 2.2 Shares of total passenger vehicles



2.38 Figure 2.2 shows a very significant fall in the initial ROSCOs' share of the ownership of all franchised passenger vehicles over time, having fallen from 100% at privatisation to 97% at the time of the CC's investigation, to 62% in May 2025.

2.39 Overall, it is clear that while recent years have in many respects seen a market hiatus, the impact of the significant new entry which we observed in our 2020 review has continued to be felt in the market. A high proportion of vehicles are now supplied by alternatives to the three initial ROSCOs. Overall, it appears that, the barriers to becoming a rolling stock leasing company are not insurmountably high and may well be lower than at the time of the CC's 2009 report.

Impact of changes on the original concerns

2.40 The significance of the entry described above for price, particularly in the long term, and for choice at re-lease as discussed later in this chapter, is not certain. Even in 2009 the CC had found a degree of rivalry between leasing companies in the provision of new rolling stock at first lease. A number of conditions need to be satisfied for newbuild stock to provide a meaningful competitive constraint on existing stock at re-lease.

2.41 Newbuild is often not a viable alternative to existing stock from a TOC perspective, due to factors including the costs and timescales associated with procurement,

together with the role played by government. In the light of the evidence presented in this chapter our provisional finding is therefore that, while entry barriers to being a rolling stock leasing company are not insurmountable, the improvements that the market has seen in this area may not in isolation be sufficient to alleviate the CC's original concerns.

Choice and availability

The original concerns

- 2.42 In 2009, the CC found that there was at the time a shortage of alternative rolling stock available to TOCs at the point of franchise renewal because few viable alternatives to the incumbent stock existed.
- 2.43 While it found the market to supply new rolling stock to be effectively competitive, the CC found that new rolling stock rarely acted as a competitive constraint in the market because it was only appropriate for certain franchises (depending on DfT's franchise specifications) and, in most cases, was deemed commercially unviable. The CC also found that, in some instances, DfT had expressed unwillingness to meet the higher lease rental costs of new rolling stock, so that this ruled out the possibility of bidding based on introducing new rolling stock.

Changes observed in the market

- 2.44 Our 2020 review found that where TOCs do have flexibility to consider alternative options to the incumbent rolling stock, it is rare for them to look beyond newbuild alternatives to existing stock, which is either surplus or in use on another franchise. This is because of factors including the points below. The dialogue that we held with stakeholders during this review suggested no significant improvements in these areas:

- **The bespoke nature of rolling stock**, which as originally found by the CC arises because of the technical and operational requirements of the route and the specifications in the franchise ITT;
- **Logistical issues**, which have historically been exacerbated by changes to passenger contract awards and delays to the delivery of new rolling stock; and
- **The limited availability of off-lease rolling stock**. During our 2020 review, leasing companies told us that storage for long periods is rarely viable; since stored vehicles can deteriorate very quickly and ideally need to be re-leased within a few months of coming off lease. Leasing companies noted that

unless rolling stock coming off lease has a guaranteed future use, it may be scrapped rather than stored due to the high costs involved. This will naturally limit the quantity of rolling stock which is off lease at any given time.

- 2.45 Our 2025 review did not uncover any discernible change to the dynamic described in our 2020 review, in which TOCs told us that in many cases, incumbent rolling stock is still the only option. This can be particularly likely to be true where rolling stock is needed for a relatively short time period, including as a result of a direct award.
- 2.46 Data supplied to us by TOCs for the purpose of this review suggested that the period since our last review had seen relatively few instances in which TOCs had been able to actively choose between competing fleets at re-lease. On average across different lease lengths, TOCs considered alternative fleets in around 22% of all transactions. The key reasons behind this lack of choice, in addition to demand-side issues driven by the changing nature of passenger contract awards, appeared to echo the issues originally identified by the CC in 2009.
- 2.47 There remains very little off-lease rolling stock. Data we collected from the three initial ROSCOs showed, as of June 2025, a total of 403 off-lease vehicles (i.e. around 2.7% of the total GB fleet) is owned by these companies. Many of these vehicles were approaching life expiry. Our data showed a total off-lease surplus of only 53 vehicles (i.e. around 0.4% of the total fleet) when only vehicles built after 1994 are considered. This small surplus comprised a roughly equal number of regional and commuter Electrical and Diesel Multiple Units. Our focus on the three initial ROSCOs omits some other stock owned outside these companies including by Beacon Rail, but during our review it appeared to be common ground between all stakeholders that there is very little stock off lease.
- 2.48 As noted under our discussion of entry barriers above, there have been very few completed newbuild orders since our 2020 review. The single order of 100 vehicles since our 2020 review represents a small fraction of the orders that would, assuming a smooth profile of orders, be required to maintain the fleet at its current level. While recognising the cyclical nature of rolling stock procurement and the atypical market conditions seen since 2020, this remains a low level of orders. With a national fleet of over 15,000 vehicles and assuming an asset life of 30 years, we would on average expect to see circa 517 new vehicles ordered per year.

Impact of changes on the original concerns

- 2.49 Our 2020 review found, relative to the conditions prevailing at the time of the CC's review, a degree of improvement in the choice of rolling stock available to TOCs. This improvement was largely the result of the TOC owner groups bidding for full-term franchises being able to more frequently factor in newbuild rolling stock as an alternative to incumbent fleets. This ability had arisen from factors including a favourable macroeconomic environment and changes in franchise policy.
- 2.50 Our preliminary view is that we have not seen real evidence of further improvements to choice and availability beyond that seen in 2020. The data on the degree of choice available to TOCs is pertinent here.

Incentives

The original concerns

- 2.51 The CC's 2009 analysis included a full discussion of ROSCO and TOC incentives:
- The CC found that the strength of ROSCO incentives to compete with rivals for train operators' business varied across negotiations, being affected by key factors such as the risk of rolling stock going off-lease; the availability of alternative ROSCOs' fleets at the time of franchise bidding; and the regulatory framework.
 - TOCs' incentives to obtain the most favourable terms from lessors were dampened by the way in which ROSCOs applied the non-discrimination clauses contained within their Codes of Practice. TOCs had told the CC that, as far as they managed to negotiate any reductions in rentals with ROSCOs, these would then be offered to rival TOCs such that they were not able to gain any competitive advantage in winning the franchise bid.

Changes observed in the market and any impact of these changes

- 2.52 As described in our 2020 review, the non-discrimination condition in the initial ROSCOs' Codes of Practice was removed following the CC's review. The motive behind this change was that it would increase TOCs' incentives to exercise choice and to negotiate with the ROSCOs. In 2020 we found that the impact of this change on outcomes had been modest, due in large part to the frequent inability of TOCs to credibly threaten to use alternative rolling stock. TOCs' ability to effectively negotiate with leasing companies remains largely case-specific, being lowest in the case of the largest and most route-specific fleets.

- 2.53 Our current review has not found any evidence of changes to leasing company or TOC incentives that suggest a change of circumstances since our 2020 review. The reasons for this provisional finding go largely together with the lack of choice summarised in the previous section. Leasing companies face weakened incentives to compete on price in instances where TOCs have little choice over fleets. Since our 2020 review, because of the post-pandemic changes to the market, TOCs have in many cases faced less cost risk and have had shorter time horizons.

Evidence on pricing and profitability

The original concerns

- 2.54 The CC's final report included various strands of analysis concerning leasing company pricing and profitability, notably:
- The CC carried out an econometric analysis of the relationship between competition and changes in capital rentals. The CC used this analysis to conclude that, *"...evidence indicates that competition between ROSCOs can bring downward pressure on prices... where... [a] viable alternative to ROSCOs' fleets [is] available..."*.
 - The CC's findings placed limited weight on profitability analysis. This approach resulted from methodological challenges including asset valuation. The CC's final report said that, *"Given the difficulties in conducting a profitability analysis in the context of this industry... we conclude that, in this industry and at this time, profitability results, however derived, do not provide a reliable means of demonstrating whether returns are or are not in excess of the cost of capital. As profitability analysis is just one indicator of the extent of competition, in this case we therefore place relatively more weight on other aspects of our competitive assessment."*

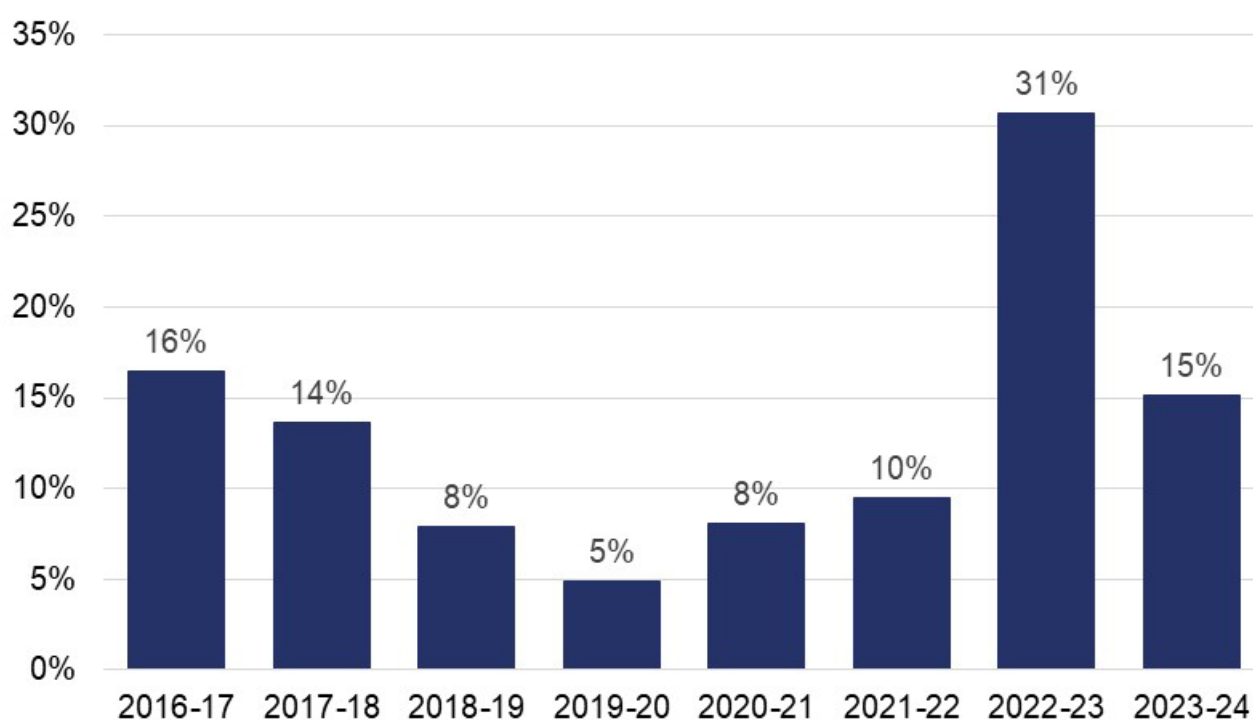
Changes observed in the market and any impact of these changes

- 2.55 A full review of leasing company pricing or profitability would fall outside the scope of a time-limited remedies review such as this one. During this review we did, however, carry out a high-level analysis of evidence on recent trends in these metrics.
- 2.56 Drawing primarily on information from our Rail Industry Finance publication, we calculated, on an annual basis, the aggregate profit (EBIT) margin for the initial ROSCOs over the period since 2016/17. We found ROSCO margins for individual years exhibited considerable instability, leading us to present the information in Figure 2.3 below as an aggregate profit margin summed across the three initial

ROSCOs. We limited our analysis to these companies because they are the longest established players who were the focus of the CC's original review, and all have been through many re-lease events.

- 2.57 Figure 2.3 shows the aggregate profit margins of the three initial ROSCOs varying between 5% and 31% between 2016-17 and 2023-24. Over this period there is no clear time trend that would be suggestive of a change of circumstances. As part of this review we asked leasing companies to supply us with data on any differences between the margins earned on new stock and at re-lease but received a limited response which did not enable us to find any clear evidence of a difference either way.

Figure 2.3 Profit (EBIT) Margin – using cost and revenue data aggregated across the three initial ROSCOs



- 2.58 The analysis of pricing in these markets is complicated by a range of factors including the treatment of maintenance costs and charges. During this review we asked leasing companies and TOCs to provide us with evidence on any changes from previous levels of (capital and non-capital) rents that had followed lease renegotiations which had taken place since our 2020 review. We found that, where lease negotiations had taken place, total lease rentals across all lessors fell by an average of around 10% over the period that we considered. It was difficult for us to

interpret this pattern given the challenges referred to above and the wide range in variation that we observed across leasing companies and fleets.

- 2.59 We additionally attempted to use this evidence to explain changes in lease rentals via regression analysis, with reference to variables including lease length; the value of any midlife investment; and the identity of the lessor (specifically whether stock was leased by a privately or publicly owned TOC). Our regression analysis did not find any clear relationship between these variables.
- 2.60 Overall, the evidence on pricing and profitability does not provide conclusive evidence of a change of circumstances.

Summary

- 2.61 At the time of our 2020 review the market had already seen some important changes since the imposition of the Transparency Order, notably in the form of entry and expansion by new players at the expense of the initial ROSCOs. In this review we have seen that the foothold gained by new players as of 2020 has not only been retained but has increased. This suggests that the presence of new financiers and procurement models beyond the initial ROSCOs seems set to persist for the foreseeable future and remains consistent with reduced entry barriers.
- 2.62 Our 2020 review concluded that the original concerns identified by the CC had not been fully alleviated by market developments since 2009. The interaction between the franchising system and leasing of rolling stock continued to determine many aspects of the market and TOCs' choice was at the time still heavily influenced by DfT's franchising policy and ITT specifications. In 2020 we also found that the availability of alternatives to existing stock remained limited by factors such as limitations on the type of rolling stock which can be used on a franchise, the timing of franchise competitions, and the difficulties with storing rolling stock for long periods.
- 2.63 Our provisional finding from our review of recent years' evidence is that market outcomes since our 2020 review and to date collectively do not provide evidence of a change of circumstances beyond that seen in 2020, even though previously identified trends (such as new entry and survivorship of new entrants) have continued.
- 2.64 However, such a finding may be unsurprising given the hiatus to normal market activity caused by the aftermath from the pandemic, making a forward-looking

analysis essential to understanding the ongoing case for the Transparency Order. Such an analysis is the focus of the next chapter.

3. Testing for a change of circumstances – rail reform

Introduction

Our approach

- 3.1 As noted in Chapter 1, since 2020 the GB rail industry has seen key changes in legislation which have not yet been fully implemented, and whose impact has not yet been tested through rounds of transactions in the rolling stock leasing market. In this review we have taken the approach that changes of this nature should be interpreted as constituting a change of circumstances provided that their impact will be sufficiently far-reaching and is sufficiently foreseeable.

Public ownership of train operations

- 3.2 Even prior to the 2024 Act, the GB rail system had already seen several instances of the public ownership of train operations under the privatised model. An early example of such state intervention came in 2009, when National Express East Coast handed back its franchise, leading to the creation of [East Coast](#), a publicly run operator that managed services on the East Coast Main Line until 2015. The line was re-privatised in 2015 under Virgin Trains East Coast, until the launch of London North Eastern Railway (LNER) in 2018, under the newly formed DfT Operator of Last Resort (OLR).
- 3.3 The OLR model became increasingly important after 2018, when the DfT created [DfT OLR Holdings Ltd](#) (later renamed DFTO) to act as the legal entity for taking over failing TOCs. Between 2018 and 2023, four major operators were transferred to public control through DFTO via this model: LNER (2018); Northern Trains (2020); and, in the wake of the pandemic, Southeastern (2021) and TransPennine Express (2023). These companies were taken into Government ownership but retained the branding and operational structures of private TOCs.
- 3.4 Three additional operators were taken under public control by devolved governments through the OLR model: Transport for Wales (TfW) Rail to the Welsh Government (2021) and both ScotRail (2022) and Caledonian Sleeper (2023) to the Scottish Government, through Scottish Rail Holdings (as an arm's length holding company). Meanwhile, the rest of the network operated under Direct Award Contracts, where private companies managed services on behalf of the DfT, which retained control over fares, timetables, and revenue.

- 3.5 The Government intends for all remaining TOCs contracted to the DfT to be brought into public ownership on a staggered basis. The 2024 Act enabled the government to [begin transferring TOCs into public ownership under DFTO](#). Further legislation is expected which will formally establish GBR.
- 3.6 The consolidation of train operations which started with DfT OLR Holdings and has continued under DFTO has stronger potential to change the leasing market than does the vertical integration of track and train within GBR. This is because under the franchise model, the lessee-side of the market was very fragmented (20 TOCs were originally set up as British Rail subsidiaries in April 1994, with, following franchise changes, mergers, and rebranding, the CC identifying 17 distinct TOCs at the time of its 2019 enquiry), whereas DFTO currently has [six TOCs](#) under its control and will continue to absorb DfT-contracted TOCs in England over the coming months and years as contracts expire. This consolidation has the clear potential to increase lessee buyer-power.

Vertical integration between train and track

- 3.7 The integration of train and track operations under Great British Railways (GBR) is a central feature of the UK's rail reform agenda. GBR's formation does not currently include plans to nationalise or consolidate rolling stock ownership.
- 3.8 GBR's centralised role could, however, influence rolling stock strategy indirectly.
¹⁰A large vertically integrated body overseeing both infrastructure and service planning introduces potential for more efficient fleet standardisation and better alignment of rolling stock with route needs, which may in the longer term have implications for the balance of power between lessees and lessors.

Stakeholder views on the impact of future changes

- 3.9 All the stakeholders who submitted responses to our review perceived a lack of certainty regarding the shape of the market in future. None of these stakeholders supplied us with any formal analysis of the impact of rail reform on their business. One leasing company quoted [the Secretary of State's December 2024 statement that there are "no plans to change the way rolling stock is leased"](#).
- 3.10 Some leasing companies argued that the impending transfer of DfT-contracted train operations to a single entity would obviate the need for the Transparency Order. This was argued on the grounds of, firstly, increased buyer power, and,

¹⁰ For example [A railway fit for Britain's future](#), February 2025, refers to GBR's potential role in "...maintenance and renewal of infrastructure and rolling stock...",

secondly, the degree of transparency that this consolidation would itself confer on the consolidated lessor, whose access to information and corporate memory would provide it with extensive knowledge of the operational characteristics of the GB fleet.

- 3.11 A further forward-looking issue on which we asked for stakeholder views was PA23. None of the stakeholders who responded to our request had yet gained any practical experience of running a procurement campaign under PA23 which entered into force immediately before the start of our review in February 2025. Some leasing companies argued that it had some potential to replace the Transparency Order because of the way that it will require buyers (of leasing services) to set out in a tender specification the information that bidders (i.e. prospective lessors) must supply.

The wording of the Transparency Order

- 3.12 The information requirements that are placed on leasing companies under the Transparency Order commence at the stage of the Indicative Offer (section 4 of Part 2 of the Transparency Order) as set out in Chapter 2.
- 3.13 The changes to the passenger operating model, past and future, as summarised earlier in this document raise the possibility that certain terms and definitions in the Transparency Order, as well as the obligations that flow from them may need review and potential modification.
- 3.14 A notable example relates to the concept of Potential Lessee, a concept that is defined within the Transparency Order by reference to a 'Franchise Agreement'. The Transparency Order defines a Franchise Agreement as, "...*an agreement between a train operating company and the Government under which the train operating company, among other things, agrees to provide services for the carriage of passengers by rail as defined in section 23(3) of the Railways Act.*"
- 3.15 This wording creates a risk that, the Transparency Order may in the future become unworkable. The full extent of this will become clear once GBR's corporate structure and model of operation have been fully established and the detail is known.

Future changes to market outcomes

- 3.16 The changes described in this chapter have the potential to have significant implications for rolling stock leasing. Within the next few years, all DfT-contracted

TOCs operating in England will have returned to public ownership, with consolidation under GBR scheduled for the short to medium term. Welsh and Scottish operations will fall under separate (public) ownership.

3.17 Returning to two of the key issues highlighted by the CC in 2009:

- Franchising policy
 - The long-term public ownership of train operations could put an end to the traditional mismatch between franchise length and rolling stock asset lives, with the public owner(s) of train operations potentially in a stronger position to weigh up the lifetime cost of alternative rolling stock options over long time frames. The impact of this aspect of public ownership on leasing is not straightforward, however - as noted by one stakeholder, *"...DfT/GBR should look to longer term leases in order to get cost efficiencies – which in turn makes a lease more akin to a finance lease, runs the risk of the capital cost of trains being on the government's balance sheet, and risks (a) suppressing new-build orders; and/or (b) the entire value proposition of the ROSCO model"*.; and
 - The concentration of operations behind a single owner should facilitate cascade planning, stock specificity and shortages notwithstanding.
- Incentives
 - A single lessee (for legacy DfT-contracted services) should in theory be in a much stronger position to exercise countervailing buyer power than was the case for individual TOCs under the legacy market structure. When TOCs operate independently, each negotiates separately with leasing companies for leasing trains, with their leverage often compromised if they need specific rolling stock types for specific routes or are under time pressure. GBR in the future should be able to act as a single, large-scale purchaser representing the entire publicly owned rail network. Such consolidation could enable it to negotiate bulk leasing agreements, standardise rolling stock specifications across regions, and potentially pit leasing companies against each other to secure better deals. The evidence of lowering entry barriers, as described in the previous chapter, could be helpful to GBR in this regard by providing it with leverage to use against the leasing companies.
 - Set against this, it is possible that the reduced role of the private sector will dampen TOC incentives to minimise costs, including rolling stock

costs. In 2009 the CC highlighted a lack of commercial incentives to reduce TOC costs.

- 3.18 The 2024 Act constitutes a very significant moment across many GB rail markets. But as of today, this impact is a potential one. As noted in stakeholder responses, there remains considerable uncertainty around critical aspects of the forward look. Whilst public ownership of all the TOCs is certain in the fairly near term, it is not certain that GBR will, at least in the short term, be a single super-lessor holding all the leases centrally. At least in the short to medium term, leases may for example be held by regional TOCs under centralised direction, in other words a model bearing many similarities to the status quo. Furthermore, some of the underlying features identified by the CC in 2009, including those relating to the interchangeability of rolling stock between routes, appear set to persist for the foreseeable future.
- 3.19 Returning to PA23, as noted above some stakeholders argued that it has the potential to replace the Transparency Order. In these provisional findings we are sceptical about such arguments, at least pending evidence of how PA23 operates in practice. PA23 is similar in many important respects to its predecessor the Utilities Contracts Regulations 2016 (which stakeholders did not characterise as duplicating the provisions of the Transparency Order) and its impact remains untested. It remains to be seen what level of information TOCs (and GBR) will be able to extract from the leasing companies under the auspices of PA23.

Summary

- 3.20 As discussed in the previous chapter, our provisional view is that market outcomes since our 2020 review and to date do not, on their own, definitively point towards there having been a change of circumstances in this market.
- 3.21 Industry reform, however, may point towards a degree of change which meets a 'change of circumstances' test.
- It is possible that, given the current wording of the Transparency Order the changes to the industry model, albeit fully materialising at a future point in time, may constitute a change in circumstances which has the potential to meet the substantive test for the CMA to consider modifications.
 - A further important question is whether the publication of the 2024 Act should be interpreted as constituting a change of circumstances on substantive grounds, given the way in which it has enabled the public ownership of train

operations and consolidation of DfT-contracted train operations into a single entity, DFTO.

- 3.22 There are challenges involved in carrying out a truly forward-looking assessment in a market such as this where far-reaching changes are already underway, but which are some way from completion. We therefore invite stakeholder views on the extent to which the 2024 Act and its implications for the consolidation of train operations and a shift in market power should be considered a change of circumstances (alone or in combination with other factors such as changes in shares of supply or other market outcomes) sufficient to recommend revocation of the Transparency Order.
- 3.23 The next chapter of this document summarises some of the key arguments around the options open to us.

4. Options for consultation

- 4.1 Any recommendation that we make to the CMA will be based on the change of circumstances test as set out in Chapter 1. This chapter sets out the principal options that are available to us, together with our provisional views on the merits of each given the discussion of changes in the market as summarised in the previous two chapters.

Option 1 – Variation of the Transparency Order on grounds of sufficiency

- 4.2 During this review, as in our 2020 review, many of the TOCs who engaged with us suggested changes to the Transparency Order which, in their view, would increase its efficacy.
- 4.3 The changes that were suggested during our review focused on increasing the transparency of the relationship between leasing company prices and costs, including the calculation of maintenance charges and short-term lease premia. TOCs further argued that leasing companies should provide additional information such as book values, non-capital rentals and maintenance reserve charges that would enable them to understand whole life costs in greater detail. These arguments reflect ongoing concerns which were to some extent considered by the CC in its original investigation.
- 4.4 Following a full review of ROSCOs' pricing arrangements and contracts, the CC concluded that TOCs were being provided with sufficient information to enable them to evaluate the relative costs of different maintenance arrangements. It also found that short-term lease premiums were not the decisive factor in many switching decisions, albeit they were a relevant consideration, and it was important that there was availability of a suitable short-term lease.
- 4.5 In relation to the maintenance charge, as explained in our 2020 review, responsibility for the maintenance of new trains increasingly sits with the manufacturers rather than the TOC (in part due to their employment of latest technology) which may render the maintenance charge less relevant over time.
- 4.6 A move towards more intrusive regulation in this market would also run contrary to the government's challenge to reduce the regulatory burden on firms in support of the economic growth milestones in its [Plan for Change](#).

- 4.7 As noted elsewhere in this document, the industry currently faces a potential shift in buyer power coupled with the potential for PA23 to improve procurement practices.
- 4.8 Given the arguments above, we offer a preliminary conclusion that it would not be appropriate for us to recommend that the CMA assess the case for varying the Transparency Order on grounds of sufficiency.

Option 2 – Revocation of the Transparency Order

Stakeholder views

- 4.9 The views of leasing companies on the ongoing value of the Transparency Order were mixed. While some stakeholders, particularly the initial ROSCOs, argued that industry reform could mean that the Transparency Order was no longer necessary, there seemed to be a general agreement that the costs of compliance were low. One leasing company expressed concern that revocation of the Transparency Order could result in a general reduction in the transparency of the sector and it was in everyone's interest to have readily available information.
- 4.10 Submissions to our review from TOCs were also mixed, though TOCs in the main argued that availability of the information had a positive impact and removal of the Transparency Order would therefore be detrimental.
- 4.11 One TOC argued that:
- "...the Rolling Stock leasing companies (ROSCOs) still hold a significant commercial advantage in a number of scenarios. This remains a significant risk to our business and our ability to operate train services at a cost that is acceptable to the DfT / taxpayer....
 - The Order fundamentally helps, as it requires a level playing field in terms of understanding offers from ROSCOs. It also prevents the ROSCO from withholding key information to its own advantage. The removal of the order would be likely to strengthen the relative balance of negotiating power in the favour of the ROSCOs, which would be likely to reduce competition and increase costs....
 - Whilst the Order is not a panacea, removing it would be detrimental to our ability to secure good value for the taxpayer. In a market where the ROSCOs have a strong market position, and can generally command the terms that

they wish, the Order goes some way to ensuring consistency of information supply when entering into negotiations with ROSCOs.”

- 4.12 Another TOC argued that: *“The removal of the Order may result in ROSCOs continuing to provide the information, or the risk would be that they stop altogether, regardless, this would... strengthen the balance of negotiation power in favour of the ROSCOs. This would likely result in increased costs, less competition and leave lessees/operators at a commercial disadvantage”.*
- 4.13 Some TOCs noted the potential for future mitigation of the possible loss of the protection of the Transparency Order through PA23.

The principal arguments in favour of revocation

- 4.14 Working to a change of circumstances test as outlined above, the principal arguments in favour of revocation are:
- the potential for the 2024 Act to itself constitute a change of circumstances, by moving all the English TOCs under common (public) ownership, conferring greater buyer power and access to relevant information as set out above; and
 - the significant entry by new lessors (and alternative suppliers using other models), suggesting lowered entry barriers as set out in Chapter 2 of this document.
- 4.15 Additional relevant points are:
- The age of the Transparency Order – having come into effect in February 2010, it is now over 15 years old, arguably, in the absence of any sunset clause, leading to a presumption of revocation in the absence of clear contradictory evidence or arguments; and
 - The continued benefits of a formal requirement to provide information by means of the Transparency Order may now be relatively modest. A transparency remedy is inherently a light-touch remedy.
 - Information provided to us by leasing companies suggested that their direct costs of compliance with the Transparency Order are low. As such, a plausible likelihood is that with an established information provision format (for the last 15 years), a large and growing lessee in the form of DFTO and low compliance costs, leasing companies may be incentivised to continue providing the requisite information.

- Further, while the intended purpose of the Transparency Order is to help TOCs compare competing offers from leasing companies, competing offers are not always available. In other words, in situations where there is only one available option for leasing, the value of the Transparency Order may be limited to transparency in a very general sense.

The principal arguments against revocation

- 4.16 Revocation would mean that leasing companies were no longer required to provide the full range of information specified by the Transparency Order. At least some of this information (such as on pricing/terms and conditions) has the clear potential to be as useful even to a large, consolidated, lessor in the form of DFTO.
- 4.17 Returning to the change of circumstances test, key arguments against revocation include:
- relatively few observed changes to certain market outcomes, notably the level of choice available to TOCs in certain situations; and
 - the uncertain nature of the full timing and strength of the impact of the 2024 Act.
- 4.18 Leasing companies told us that the costs they incur because of compliance with the Transparency Order are relatively low, compliance now being fully integrated into their business practices and driving few incremental costs.
- 4.19 While we accept the suggestion made by some stakeholders that the provisions of PA23 could force information provision by lessors, as noted in Chapter 3 it is not certain that such information would necessarily match that required by the Transparency Order.

Option 3 – Variation of the Transparency Order on grounds of superseded legal provisions

- 4.20 As noted in the previous chapter, the current wording of the Transparency Order creates a risk that as currently worded it may in the future become unworkable.
- 4.21 We invite stakeholder feedback on whether this is an issue that we should ask the CMA to consider.

Option 4 – no changes to the Order

4.22 We would pursue this Option in the event that we were persuaded to reject all of Options 1-3 as listed above.

Our consultation

4.23 The next section of this document sets out a list of questions for consultation.

5. Invitation to comment

Questions for consultation

- 5.1 We welcome comments from interested parties on the provisional findings and the options outlined in the previous chapter by no later than **18 September 2025**.
- 5.2 In addition to general submissions, we particularly welcome responses on the following:

Compliance with the Order

- 1) Do you agree that, as set out in Chapter 2 of this document, that there have been no important issues with compliance with the Transparency Order over the period since our 2020 review?

Changes to the market

- 2) Do you agree with our assessment of market outcomes since our 2020 review as set out in Chapter 2 of this document?
- 3) Please provide your feedback on the extent to which the changes from rail reform should be considered far-reaching and foreseeable enough to constitute a change of circumstances from the perspective of the Transparency Order.

Options for recommendations to the CMA

- 4) Do you agree with ORR's provisional conclusion that it would not be appropriate for us to follow Option 1 as set out in Chapter 4, i.e. to recommend that the CMA vary the Order so as to require the publication of more information on the grounds of sufficiency?
- 5) Do you consider that it would be appropriate for ORR to recommend that the Transparency Order can be revoked, i.e. to pursue Option 2 from Chapter 4 of this document?
- 6) If you responded negatively to Question (5) above, do you consider that it would be appropriate for ORR to recommend that the CMA updates the wording contained within the Order, i.e. to pursue Option 3 in Chapter 4?
- 7) Do you have any further comments on the matters considered within this consultation?

Responding to this consultation

- 5.3 To respond to this invitation to comment, please email your submission to rollingstock2025@orr.gov.uk, or alternatively post it to us at 25 Cabot Square, London, E14 4QZ.
- 5.4 We may publish responses to this statement of scope in full or in summary as appropriate. In providing responses:
- please supply a brief summary of the interests or organisations you represent, where appropriate;
 - please indicate whether you are providing any material that you consider to be confidential and explain why this is the case. Please provide both a confidential and non-confidential redacted version of your response; and
 - if you are responding in an individual capacity (i.e. you are not representing a business), please indicate whether you wish for your response to be attributed to you by name or published anonymously.
- 5.5 Following consideration of the consultation responses we receive, we will publish a final decision by the end of the year.

Annex A: Market factsheet

A.1 This annex presents a summary of the key facts relating to the rolling stock used for government contracted Great Britain mainline passenger services.

Table A.1 Company profiles – rolling stock leasing companies

Leasing company	Ownership	Key passenger fleets	Key TOCs (passenger railway only)
Angel Trains	Owned by AMP Capital, PSP Investments, and other institutional investors	Class 390 Pendolino, Class 165/166, Class 180, Class 802	Avanti West Coast, TransPennine Trains, Chiltern Railways, Northern
Eversholt Rail	Owned by CK Hutchison Holdings (Hong Kong) and Cheung Kong Infrastructure	Class 395 Javelin, Class 321, Class 365, Class 802 (bi-mode)	Southeastern, Great Western Railway, ScotRail, East Midlands Railway
Porterbrook	Owned by a consortium including Alberta Investment Management Corp (AIMCo)	Class 170, Class 158, Class 319, Class 769 (bi-mode conversions)	East Midlands Railway, CrossCountry, Greater Anglia, ScotRail, Northern,
SMBC	Owned by SMBC Group and Sumitomo Mitsui Finance and Leasing	Class 345, 231, 756	TfW, TfL
Beacon Rail	Owned by IIFF Holding	Class 220, 221	CrossCountry, Avanti West Coast
Corelink Infrastructure	A joint venture between DWS and Infracapital	Class 730 EMU	West Midlands Trains
Rock Rail	Financed by institutional investors (e.g., Aviva, Standard Life)	New EMUs and bi-modes (e.g., Class 745, 755, 717, 701	Greater Anglia, Great Northern, South Western Railway

Table A.2 Company profiles – Special Purpose Vehicles

Leasing company	Ownership	Key passenger fleets	Key TOCs (passenger railway only)
Agility Trains	Owned by Hitachi Rail and AXA Real Estate Investment Managers and others.	Class 800 (EMU and bi-mode) and 801 (bi-mode)	LNER, Great Western Railway
Cross London Trains	Owned by Siemens Project Ventures, 3i Infrastructure and Innisfree	Class 700	Thameslink



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