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Dear Competition Team

### **The leasing of rolling stock for franchised passenger services**

Passenger Focus welcomes the opportunity to comment on the above document.

Our original submission to ORR set out our concerns with the existing rolling stock market and the impact this had on passengers, not least in terms of contributing to overcrowding and higher fares. We queried whether these failings were down to inefficiencies within the existing market or one of the market structure itself being fundamentally flawed.

Hence, we agree with and welcome the decision to refer the issue to the Competition Commission. This will, we recognise, create some uncertainty in the market in the short term but we believe that the advantages of the investigation – if only in terms of providing long-term certainty – will outweigh these. We would, though, ask that steps be taken to ensure that the investigation be completed as quickly as possible.

Many of the specific questions asked by ORR are of a technical nature and are things on which Passenger Focus would not comment. We have tried to limit our answers below to those areas which have a direct bearing on passengers' interests.

**Q1** *Do you agree with our view that the technical and operational characteristics of rolling stock within Great Britain, have a negative impact on the interchangeability of different types of rolling stock?*

Yes. Technical differences – e.g. in power supply – clearly mean that some units can only be used in certain areas. This must limit opportunities for interchange.

**Q2** *Do you agree with our view that the absence of new entry in these markets arises from a number of factors including the relatively competitive nature of the leasing of new build stock?*



Yes. We broadly agree with conclusions in the report. The absence of joiners and leavers suggests the market is insufficiently competitive otherwise we would expect more movement in and out of the market.

Q3 *Do you agree with our view that the limited availability of a pool of surplus stock of viable existing vehicles frequently limits the choice faced by TOCs at franchise renewal?*

We believe that the limited availability of a pool of surplus stock must limit choice faced by TOCs at franchise renewal. We do not, though, have any evidence as to the extent to which it is limited. A limited pool of stock also restricts the ability of TOCs to react to changes in passenger demand – for instance, short-leases designed to address seasonal overcrowding or to cover breakdowns/mechanical failures.

Q4 *Do you agree with our view that switching costs play a role in the decisions made by TOCs as to whether to remain with the incumbent stock?*

The view of the ORR suggests that the advantages of switching are insufficient to promote switching.

Q5 *Do you agree with our view that, in many cases, the DfT's ITT for a franchise in practice limits bidders' choice to the incumbent stock?*

We feel that it is possible that a tightly specified ITT could have an impact on the degree of choice available to bidders – though to what extent we are unable to comment.

However, it is important that the wider role/remit behind an ITT specification is taken into account. For instance, the specification gives passengers an indication of what they can expect from the franchise so – in that sense - the more detail the greater the transparency. Passenger Focus argued in its submission to the House of Common's Transport Committee investigation into passenger rail franchising that it is both right and proper that passengers be given a clear set of targets and expectations against which they can hold the train company to account.

There may also be benefits to passengers arising from a tight specification. For instance the use of a Section 54 undertaking allowed the order for the new Desiro trains to be placed for the South West Trains franchise – with all the subsequent benefits for passengers – well in advance of the new franchise starting.

Q6 *Do you agree with our view that the commercial case for new build stock (without specific Government backing or direction) is generally not sufficiently compelling to enable new build stock to constrain the price of the existing/incumbent fleet?*

Passenger Focus does not have access to the costs/benefits in order to assess the commercial case. However, there may be a financial case to build new stock depending on what price you put on meeting capacity and flexibility.



**Q7** *Do you agree with our view that franchise duration has an impact on the attractiveness of new build as an option, with the long-lead times for bringing new stock onto the network being a factor in this?*

There was a consensus view among passengers in research commissioned by the RPC (Rail Passengers Council: Putting passengers at the heart of rail services, March 2004) that fewer, but bigger, franchises would make for a more streamlined and responsive structure. It was also argued that there is a need for longer franchises - currently many train companies have businesses 'on loan' for only seven years, which hampers a longer-term view and innovation.

However, any move towards longer franchises must be accompanied by an effective programme of franchise reviews in order to guard against the potential complacency inherent in any long-term contract; and ensure that there is continuing improvement throughout the entire life of the franchise, not just at the beginning.

**Q8** *Do you agree with our view that the DfT's focus on deliverability favours existing or even incumbent stock?*

Passenger Focus believes that it is right and proper that DfT focuses on deliverability when assessing franchise bids. Research commissioned by Passenger Focus consistently places reliability/performance as the most important attribute for passengers. Notwithstanding recent improvements we believe that there is still room for improvement.

We accept, however, that there is a delicate balance between deliverability and innovation.

**Q9** *Do you agree with our view that the limited use of short-term leases and call options has an impact on market outcomes?*

A bigger pool of rolling stock with greater inter-operability in terms of where it could run and standardisation of design could help to promote the benefits of competition and enable TOCs to be more responsive to demand.

**Q10** *Do you agree with our view that the central role played by the DfT in the procurement of new-build stock restricts competition between new-build and old stock?*

Passenger Focus believes there is a role for DfT in the procurement process. We have, for instance, already mentioned the potential use for Section 54 undertakings. Another example is the role being played by DfT in the HST2 replacement process. By co-ordinating the order DfT is able to ensure a standardisation in design that will make it easier to redeploy rolling stock at a later date without the need for potentially costly modifications.



Q11 *Do you agree with our view that TOCs have limited incentive to negotiate on the capital element of the leasing charge?*

Yes.

Q12 *Do you agree with our views on the profitability of the ROSCOs?*

Passenger Focus does not have sufficient evidence to comment

Q13 *Do you agree with our views on the problems associated with maintenance contract terms?*

Passenger Focus is of the view that in principle bundling maintenance with financing makes it more difficult to see the true costs of each and unbundling may well have a cost advantage. Would it be preferable to have separated leasing and maintenance arrangements?

Q14 *Do you agree with our initial thoughts on the remedies that are potentially available to the CC?*

Passenger Focus agrees with the broad assessment of the market based and behavioural remedies. However, we note that some of the market remedies have wider implications for franchising strategy per se rather than just the issue of rolling stock and it is important that they are reviewed within this wider context. Passenger Focus welcomes the opportunity to participate in such a debate.

It is also important to consider that having a fairly fixed amount of rolling stock can create an inflexible market. To decrease the impacts on passengers it may be more useful to have more available rolling stock to reduce the inflexibility.

Yours sincerely

Rachel King

**Policy and Research Advisor**