

## THE ROLLING STOCK LEASING MARKET INVESTIGATION ORDER 2009

### Notice of making of Order

1. On 26 April 2007, the Office of Rail Regulation (ORR), in exercise of its powers under [section 131](#) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC), for investigation and report, the leasing of rolling stock for franchised passenger services (the rolling stock leasing market) and the supply of related maintenance services in Great Britain.
2. The CC investigated the matters referred to it in accordance with [section 131](#) of the Act and concluded, in accordance with [section 134\(1\)](#), that there were features of the rolling stock leasing market, either alone or in combination, which prevent, restrict or distort competition within the relevant market, and in accordance with [section 134\(2\)](#) that an adverse effect on competition existed.
3. The CC published its report entitled *Rolling Stock Leasing market investigation* on 7 April 2009 (the report).
4. The CC identified a number of features which either individually or in combination prevent, restrict or distort competition in connection with the leasing of rolling stock for franchised passenger services in Great Britain. These features were categorized into five separate groups: (1) there is a shortage of alternative rolling stock solutions available to the Train Operating Companies (TOCs) when bidding for franchises; (2) the interaction between the franchising system and the leasing of rolling stock for franchised passenger services determines many aspects of the structure of the market; (3) the Rolling Stock Companies (ROSCOs) in many cases have weakened incentives to compete on lease rentals of used rolling stock; (4) barriers to entry into the market(s) for the leasing of rolling stock to franchised passenger services, whether entering with new, or particularly used, rolling stock are high; and (5) a TOC's incentive to negotiate with a ROSCO over lease rentals is limited.
5. The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and considered, in accordance with [section 134\(4\)](#) of the Act, whether action should be taken by it, or whether it should recommend the taking of action by others, for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or the detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition.
6. The CC consulted on a range of possible actions in a Remedies Notice published on 7 August 2008. In the report the CC considered that the following package of remedies would be effective and proportionate in remedying the features of the market identified in paragraph 4 above as having a detrimental effect on competition:
  - (a) a recommendation to the franchising authorities that, wherever consistent with their functions and objectives, they should introduce franchise terms of 12 to 15 years or longer, so as to provide greater incentives and ability for TOCs to consider a wider variety of rolling stock including new rolling stock;
  - (b) a recommendation to the franchising authorities that, wherever consistent with their functions and objectives, they should take account of the benefits of alternative used and new rolling stock over periods beyond the franchise term

and across other franchises. This would increase the incentives and ability for TOCs to consider alternative rolling stock;

- (c) a recommendation to the franchising authorities to ensure that, wherever consistent with their functions and objectives, franchise invitations to tender are specified in such a way that franchise bidders are allowed a choice of rolling stock: this recommendation would encourage TOCs to consider and propose alternative rolling stock;
  - (d) a requirement that ROSCOs amend their Codes of Practice to remove non-discrimination requirements, creating greater incentives for TOCs to exercise choice and negotiate with ROSCOs; and
  - (e) a requirement that rolling stock lessors provide TOCs with a set list of information when making any offer to lease incumbent or alternative used rolling stock to operate on franchised passenger services, which would enhance TOCs' ability to exercise choice and negotiate with rolling stock lessors.
7. The CC implemented the remedy set out in paragraph 6(d) above by accepting Undertakings from Porterbrook Leasing Company Limited, Angel Trains Limited and HSBC Rail (UK) Limited on 10 July 2009.
  8. The CC indicated in the report that it intended to implement the remedy set out in paragraph 6(e) above by making an Order.
  9. On 20 October 2009, in accordance with paragraph 2 of [Schedule 10](#) to the Act, the CC published the Notice of intention to make an Order and the draft Order on the CC website, and invited written representations from any person or persons by 30 November 2009.
  10. The CC has considered all the representations it has received. In light of those representations the CC has made some modifications to the draft Order. The CC does not consider the modifications to be material in any respect and has decided, in accordance with paragraph 5 of [Schedule 10](#) of the Act, that the Order, as modified, does not require any further consultation.
  11. The CC now gives notice of the making of the attached Order. The Order is made in accordance with [section 138](#) and in exercise of the powers conferred by [sections 161](#) and [164](#) and [Schedule 8](#) to the Act. It is made for the purpose of remedying, mitigating or preventing the adverse effect on competition and for the purpose of remedying, mitigating or preventing any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effect on competition specified in the report.
  12. The Order will come into force on 22 February 2010.

*(signed)*

DIANA GUY

*Group Chairman*  
Competition Commission  
22 December 2009

**THE ROLLING STOCK LEASING MARKET INVESTIGATION ORDER 2009**

**Contents**

	<i>Page</i>
Background.....	2
PART 1 General Citation and commencement and interpretation.....	3
1. Citation and commencement.....	3
2. General interpretation, index of defined expressions etc.....	3
3. Delegated powers of direction.....	6
PART 2 Information Requirements.....	6
4. Obligation to obtain and give details of the Proposed Lease.....	6
5. Information to be given.....	7
6. Obligation to give an estimate of the Short-Term Lease Premium.....	9
PART 3 Provision of Lease Agreement.....	9
7. Obligation to give a copy of the existing Lease Agreement.....	9
PART 4 Supply of information and submission of reports on compliance to the ORR.....	11
8. Supply of information to the ORR.....	11
9. Provision of compliance statements to the ORR and auditing of compliance by an approved body.....	11
PART 5 Additional compliance obligations to Potential Lessee.....	12
10. Additional compliance obligations.....	12
Schedule 1 The particulars of a Rolling Stock Item.....	14
Schedule 2 Details of Heavy Maintenance.....	15
Schedule 3 Details of Modification.....	16
Schedule 4 Description of the Capital Rent.....	17
Schedule 5 Description of the Non-Capital Rent.....	18
Schedule 6 Description of Maintenance Reserve Charge.....	19
Schedule 7 Formula for calculating Short-Term Lease Premium.....	20
Schedule 8 Template Compliance Statement.....	21

## Background

1. On 26 April 2007, the Office of Rail Regulation (ORR), in exercise of its power under [section 131](#) of the Enterprise Act 2002 (the Act), referred the leasing of rolling stock for franchised passenger services (the rolling stock leasing market) and the supply of related maintenance services in Great Britain to the Competition Commission (CC) for investigation and report.
2. On 7 April 2009 the CC published its report entitled *Rolling Stock Leasing market investigation* (the report). The report contained the decision that there were adverse effects on competition.
3. On 30 October 2009 the CC gave notice of its intention to make this order in accordance with paragraph 2 of [Schedule 10](#) to the Act as applied by [section 165](#) of the Act.
4. The CC makes this Order in performance of its duty under [section 138](#) of the Act and in exercise of the powers it has in [sections 161](#) and [164](#) and [Schedule 8](#) to the Act, for the purpose of remedying, mitigating or preventing the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition specified in the report.

## PART 1

### General

#### Citation and commencement and interpretation

##### 1. Citation and commencement

- 1.1 This Order may be cited as 'The Rolling Stock Leasing Market Investigation Order 2009'.
- 1.2 This Order shall come into force on 22 February 2010.

##### 2. General interpretation, index of defined expressions etc

- 2.1 In this Order (including each of the schedules):

<b>Act</b>	means the Enterprise Act 2002.
<b>Capital Rent</b>	means the monetary amount that the Potential Lessee will pay the ROSCO under the Proposed Lease for the lease of the Specified Rolling Stock for the Term as described in accordance with <a href="#">Schedule 4</a> . This amount excludes any Non-Capital Rent and any Maintenance Reserve Charge.
<b>CC</b>	means the Competition Commission.
<b>Durable Medium</b>	means paper or any instrument or media which enables the recipient to store information in a way accessible for future reference and which allows the unchanged reproduction of the information stored.
<b>Franchise Agreement</b>	means 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.
<b>Franchise Term</b>	means the length in time of the Franchise Agreement.
<b>Heavy Maintenance</b>	means all Maintenance identified or defined as heavy maintenance and/or heavy repair in the Proposed Lease. If no such term or definition is used in the Proposed Lease, it is the category or categories of Maintenance (however so defined) that would commonly be considered in the rolling stock industry to fall within the definition of heavy maintenance and/or heavy repair.
<b>Indicative Offer</b>	means a written indication of the level of rent for which a ROSCO would be prepared in principle to lease Rolling Stock: (a) of a defined quantity; (b) of a defined specification; and (c) for a defined duration of time, to a Potential Lessee for use by the Potential Lessee to enable it to provide passenger rail services in Great Britain under a Franchise Agreement. This does not include the offer by a train operating company to sub-

lease Rolling Stock that is subject to a lease agreement between that train operating company and a ROSCO. For the avoidance of doubt, a written indication of a different level of rent, and/or a different quantity, and/or a different specification, and/or a different period of time a ROSCO would be prepared in principle to lease Rolling Stock to a Potential Lessee that follows from and may in some way be connected to an Indicative Offer already made is nevertheless a separate Indicative Offer for the purposes of this Order.

<b>Information Period</b>	means the period of time ending ten Working Days from the date of the Indicative Offer.
<b>Lease Agreement</b>	means the legal documents setting out the terms and conditions under which the ROSCO agrees to lease and the Lessee agrees to take a lease of the Rolling Stock. For the avoidance of doubt, this includes, without limitation, all agreements, schedules, supplements to agreements, side letters and other amendments or modifications to the agreement.
<b>Lessee</b>	means an enterprise leasing Rolling Stock to enable it to provide passenger rail services in Great Britain, whether pursuant to a Franchise Agreement or not.
<b>Light Maintenance</b>	means all Maintenance that is not Heavy Maintenance.
<b>Maintenance</b>	means the work carried out on Rolling Stock, including any examination of Rolling Stock to keep such Rolling Stock in a sufficiently functional condition to allow safe operation for passenger service.
<b>Maintenance Reserve</b>	means a fund held by a ROSCO in order to cover the future costs (including costs arising after the Term) of Heavy Maintenance on Specified Rolling Stock whenever a Potential Lessee takes contractual responsibility for Heavy Maintenance under a Proposed Lease.
<b>Maintenance Reserve Charge</b>	means the monetary amount that the Potential Lessee will pay into and contribute to the Maintenance Reserve in accordance with the terms of the Proposed Lease, as described in <a href="#">Schedule 6</a> .
<b>Modification</b>	means an intentional alteration of the Characteristics of the Rolling Stock that is not Heavy Maintenance and not Light Maintenance.
<b>Non-Capital Rent</b>	means the monetary amount that the Potential Lessee will pay to the ROSCO under the Proposed Lease for the provision of Heavy Maintenance (where the ROSCO has contractual responsibility for Heavy Maintenance under the Proposed Lease) on the Specified Rolling Stock for the Term as described in <a href="#">Schedule 5</a> .

<b>ORR</b>	means the Office of Rail Regulation established by Section 15 of the Railways and Transport Act 2003 or any successor body to the Office of Rail Regulation.
<b>Potential Lessee</b>	means an enterprise seeking to lease Rolling Stock to use in providing passenger rail services in Great Britain under a Franchise Agreement.
<b>Proposed Lease</b>	means the proposed Lease Agreement between a ROSCO and a Potential Lessee reflecting the terms of the Indicative Offer.
<b>Railways Act</b>	means the Railways Act 1993.
<b>Rolling Stock</b>	means 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.
<b>Rolling Stock Item</b>	means an item of Specified Rolling Stock with a unique Rolling Stock Number.
<b>Rolling Stock Number</b>	means, as applicable, the unit number, vehicle number, coach number or locomotive number, in each case as defined in the Rolling Stock Library System (or such other system that is agreed as industry standard in the future), given to Rolling Stock at the time of manufacture or following a Modification that makes it possible to distinguish such Rolling Stock from other Rolling Stock.
<b>ROSCO</b>	means an enterprise offering Rolling Stock for lease to a Potential Lessee.
<b>Specified Rolling Stock</b>	means all the Rolling Stock that will be leased under a Proposed Lease.
<b>Term</b>	means the length in time of the Proposed Lease (but does not include the length in time by which the Proposed Lease may be extended, through the exercise of an option contained in the Proposed Lease).
<b>Working Day</b>	means any day which is not: (a) Saturday, Sunday, Good Friday or Christmas Day; or (b) a day which is Bank Holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

2.2 In this Order, Characteristics of the Rolling Stock Item are the:

(a) features of the Rolling Stock Item relating to its:

- (i) power (which may include, without limitation, the traction type (ie diesel or electric); where diesel, the type and quantity of engines (including the manufacturer of the engine), power output and transmission systems and average fuel consumption; where electric, the required power supply (ie AC, DC or dual voltage), voltage and the average power consumption);

(ii) physical make-up (which may include, without limitation, the length, width, height and gauge, the axle load and description of any coupling compatibility with other Rolling Stock);

(iii) day-to-day operation (which may include, without limitation, the number of doors and their position on each vehicle, the number of seats and their configuration, the amount of floor space available for standing, and the number of toilets);and

(iv) performance (which may include, without limitation, the maximum speed, acceleration and braking capability and braking system); and

(b) any other features of the Rolling Stock Item (which may include, without limitation, the condition of the Rolling Stock if described in a recent condition survey; the in-cab radio system, existence of an air conditioning system, a passenger information system, CCTV and other passenger-enhancing facilities),

that a Potential Lessee would reasonably need to know to enable it to assess the Rolling Stock Item's ability to be used to provide passenger rail services under a Franchise Agreement (including without limitation to its ability to offer value for money).

2.3 Except where words and expressions are expressly defined, the Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

### **3. Delegated powers of direction**

3.1 The CC may give directions falling within paragraph 3.2 to:

(a) a person specified in the directions; or

(b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.

3.2 Directions fall within this paragraph if they are directions:

(a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or

(b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

3.3 In paragraph 3.2 above 'actions' includes steps to introduce and maintain arrangements to ensure any director, employee or agent of a ROSCO carries out, or secures compliance with, this Order.

3.4 The CC may vary or revoke any directions so given.

## **PART 2**

### **Information Requirements**

#### **4. Obligation to obtain and give details of the Proposed Lease**

4.1 Whenever a ROSCO makes an Indicative Offer, the ROSCO shall:



- (a) if it does not have in its possession, custody or control any of the information described in Article 5, use its best efforts to obtain such information without delay; and
  - (b) subject to paragraph 4.2, give the Potential Lessee the information described in Article 5:
    - (i) within the Information Period:
      - 1. if such information is in the ROSCO's possession, custody or control; or
      - 2. if the ROSCO would be able to obtain such information using its best efforts; or
    - (ii) within three Working Days of obtaining such information, if such information is not in the ROSCO's possession, custody or control and the ROSCO has been unable to obtain it during the Information Period using its best efforts.
- 4.2 The obligation in paragraph 4.1(b) shall not apply to the giving of the information following the making of an Indicative Offer, to the extent that:
- (a) the ROSCO has previously given the information to the Potential Lessee in connection with a different Indicative Offer; and
  - (b) the ROSCO notifies the Potential Lessee in writing which information contained in paragraph 4.1(b)(i) also applies to the current Indicative Offer.
- 4.3 If a ROSCO makes an Indicative Offer but does not give any or all of the items of information described in Article 5 within the Information Period, it shall, by the end of the Information Period, give the Potential Lessee a list of which item or items of information it has not given.
- 4.4 In this article, to 'give' information means the provision of that information in a Durable Medium.

## **5. Information to be given**

- 5.1 The information referred to in Article 4 is information about the terms under which the ROSCO proposes (at the date of giving the information) to lease the Rolling Stock identified in the Indicative Offer to the Potential Lessee under a Proposed Lease and comprises each of the items of information described in paragraph 5.2.
- 5.2 The items of information are:
- (a) the Specified Rolling Stock and the particulars of each Rolling Stock Item as detailed in [Schedule 1](#);
  - (b) the Heavy Maintenance that the ROSCO proposes will be carried out on each Rolling Stock Item and will commence during the Term, as described in [Schedule 2](#);
  - (c) any Modification proposed to be carried out on each Rolling Stock Item that will commence during the Term, as described in [Schedule 3](#). For the avoidance of doubt this may include a Modification that is proposed by the Potential Lessee;

- (d) the name of the entity that will have contractual responsibility under the Proposed Lease for:
  - (i) the Heavy Maintenance referred to in paragraph 5.2(b) of this article;
  - (ii) any Modification referred to in paragraph 5.2(c) of this article; and
  - (iii) the Light Maintenance;
- (e) where applicable, the estimated balance (whether positive or negative) of the Maintenance Reserve at the start of the Term;
- (f) where applicable, the estimated balance of the Maintenance Reserve at the end of the Term;
- (g) where applicable, details of how funds in the Maintenance Reserve may be released to the Potential Lessee during the Term;
- (h) details of the monetary amounts the Potential Lessee will pay the ROSCO comprising:
  - (i) the Capital Rent;
  - (ii) the Non-Capital Rent (where applicable);
  - (iii) the Maintenance Reserve Charge (where applicable); and
  - (iv) any other amounts not covered in paragraphs 5.2(h)(i) to 5.2(h)(iii) of this article together with a description of the basis for such amounts;
- (i) the Term; and
- (j) details of any other provisions that will form part of the Proposed Lease and that will have a significant effect on the level of the Capital Rent, which may include without limitation any provisions that:
  - (i) give the Potential Lessee an option to extend the Proposed Lease beyond the Term;
  - (ii) give the Potential Lessee or the ROSCO the right to terminate the Proposed Lease during the Term other than for a breach of the terms of the Proposed Lease;
  - (iii) give the Potential Lessee an option to return Rolling Stock to the ROSCO during the Term;
  - (iv) provide for specific penalties to be paid by the ROSCO to the Potential Lessee or by the Potential Lessee to the ROSCO (as applicable), where lease terms have not been fulfilled;
  - (v) provide a discount on the level of the Capital Rent on the basis of the Potential Lessee leasing other Rolling Stock from the ROSCO; and
  - (vi) provide for parent company guarantees or other credit support.

5.3 In this article a 'significant effect' means one that would tend to affect the decision of a Potential Lessee whether or not to enter into a Proposed Lease.

## **6. Obligation to give an estimate of the Short-Term Lease Premium**

- 6.1 Subject to paragraph 6.2, whenever a ROSCO makes an Indicative Offer for a short-term lease it shall within the Information Period give information to the Potential Lessee about the amount of any short-term lease premium.
- 6.2 Whenever an Act of Parliament prevents a ROSCO from offering a Proposed Lease with a Term having the same duration as the length of the Franchise Term, paragraph 6.1 shall not apply.
- 6.3 In this article:
- (a) a 'short-term lease' means a Proposed Lease that has a Term shorter than:
    - (i) the proposed Franchise Term in relation to a franchise that has not yet commenced; or
    - (ii) the remaining length of the Franchise Term in relation to a franchise that is currently in operation;
  - (b) a 'short-term lease premium' means a premium calculated in accordance with the formula set out in [Schedule 7](#) that a short-term lease attracts in comparison to a lease with the same duration as:
    - (i) the proposed Franchise Term for a franchise that has not yet commenced; or
    - (ii) the remaining length of the Franchise Term for a franchise that is currently in operation.
  - (c) to 'give' information means the provision of that information in a Durable Medium.

## **PART 3**

### **Provision of Lease Agreement**

## **7. Obligation to give a copy of the existing Lease Agreement**

- 7.1 Subject to paragraphs 7.2, 7.3 and 7.4, whenever a ROSCO makes an Indicative Offer to a Potential Lessee, the ROSCO shall within the Information Period give the Potential Lessee a copy of the existing Lease Agreement.
- 7.2 Before giving a copy of the existing Lease Agreement to the Potential Lessee in accordance with paragraph 7.1, the ROSCO may exclude the following classes of information:
- (a) guarantees or any other form of security granted by the Lessee;
  - (b) if the Lessee is a member of a corporate group, any guarantees or any other forms of security granted by any member of the corporate group on behalf of the Lessee;
  - (c) bank account details;
  - (d) signatures;

- (e) personal data; and
  - (f) information which if disclosed to a Potential Lessee would breach a legal requirement.
- 7.3 Whenever a ROSCO excludes information referred to in paragraph 7.2, it shall indicate in the copy of the existing Lease Agreement which it provides to the Potential Lessee where it has excluded information and specify which class of information each such exclusion falls within.
- 7.4 A Potential Lessee that is provided with a copy of the existing Lease Agreement from a ROSCO complying with paragraph 7.1 (and any agent or adviser of the Potential Lessee) shall not, without the prior written consent of that ROSCO:
- (a) use the information contained in the existing Lease Agreement for any purpose other than to assess the merits of the Indicative Offer; and
  - (b) disclose any of the information contained in the existing Lease Agreement to any person unless:
    - (i) disclosure is to the Potential Lessee's agents or advisers;
    - (ii) disclosure is required by law; or
    - (iii) any of the information has already been disclosed to the public (in circumstances that do not involve an unlawful act or omission by the Potential Lessee).
- 7.5 In this article:
- (a) 'corporate group' means a group of companies which are required by the Companies Act 2006 to file group accounts;
  - (b) 'excluding from disclosure' means obscuring from view or removing from the text of the existing Lease Agreement or not giving;
  - (c) 'existing Lease Agreement' means the Lease Agreement relevant to the Specified Rolling Stock at the date of the Indicative Offer, or if no such Lease Agreement remains in force, the most recent Lease Agreement;
  - (d) 'give' means the provision of the documents and/or information in a Durable Medium;
  - (e) 'legal requirement' means a requirement provided under a Statute and does not include any claims for commercial confidentiality under an agreement; and
  - (f) 'personal data' has the same meaning given to it in the Data Protection Act 1998 (as may be amended from time to time).

## PART 4

### Supply of information and submission of reports on compliance to the ORR

#### 8. Supply of information to the ORR

- 8.1 Any person to whom this Order applies is required to provide to the ORR any information and documents the ORR reasonably requires for the purposes of enabling the ORR to monitor and review the operation of this Order or any provisions of this Order.
- 8.2 Any person to whom this Order applies may be required by the ORR to keep and produce those records specified in writing by the ORR that relate to the operation of any provisions of this Order.
- 8.3 Any person to whom this Order applies and whom the ORR reasonably believes to have information which may be relevant to the monitoring or review of the operation of any provisions of this Order may be required by the ORR to attend and provide such information in person.
- 8.4 Subject to [Part 9](#) of the Act, the ORR may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the ORR in the discharge of its functions under or in connection with this Order.

#### 9. Provision of compliance statements to the ORR and auditing of compliance by an approved body

- 9.1 A ROSCO shall submit to the ORR a compliance statement for each review period by 31 January in the calendar year following the review period.
- 9.2 Where the ORR so directs, following receipt of a compliance statement pursuant to paragraph 9.1, a ROSCO shall obtain an audit by an approved body of its compliance with the Order for each review period and shall submit such audit report to the ORR within 40 Working Days from the date of the direction from the ORR.
- 9.3 In this article:
- (a) an 'approved body' means any body or class of bodies approved by the ORR from time to time to carry out a review of a ROSCO's compliance with this Order in accordance with this article;
- (b) a 'compliance statement' means a statement produced by the ROSCO that describes and details a ROSCO's compliance with the Order covering a review period and in the form and with the content specified in the template statement set out in [Schedule 8](#); and
- (c) a 'review period' means a calendar year in which the ROSCO has made an Indicative Offer.

## PART 5

### Additional compliance obligations to Potential Lessee

#### 10. Additional compliance obligations

- 10.1 In the event a ROSCO receives notification in writing from a Potential Lessee that the Potential Lessee has concerns that the ROSCO has failed to comply with any requirement of this Order the ROSCO must:
- (a) acknowledge in writing receipt of the Potential Lessee's notification within two Working Days of receiving it; and
  - (b) provide a substantive response in writing to the Potential Lessee's notification within five Working Days of receiving it.
- 10.2 The notification from the Potential Lessee referred to in paragraph 10.1 means a notification with details of the alleged failure to comply, including where appropriate the specific information which the Potential Lessee claims has not been provided or not provided in full.
- 10.3 The response from the ROSCO referred to in paragraph 10.1(b) should:
- (a) address each of the concerns raised by the Potential Lessee in its written notification;
  - (b) include, where appropriate, a full and detailed explanation as to how the ROSCO considers it has complied with the requirements of this Order that the Potential Lessee in its written notification alleges the ROSCO has not complied with;
  - (c) include, where appropriate, an explanation of the steps the ROSCO is taking to address the concerns expressed by the Potential Lessee in its written notification;
  - (d) include, where appropriate, an explanation as to why those steps referred to in paragraph 10.3(c) are appropriate in the circumstances; and
  - (e) include any other information which the ROSCO considers is necessary or relevant to address the concerns raised by the Potential Lessee in its written notification.
- 10.4 In the event the Potential Lessee notifies the ROSCO in writing that it is not satisfied with the ROSCO's response the ROSCO must:
- (a) offer to meet with the Potential Lessee to discuss the Potential Lessee's concerns with the ROSCO's response;
  - (b) use its reasonable endeavours to ensure that that meeting takes place within five Working Days of receiving the Potential Lessee's notification;
  - (c) ensure that at least one of its Directors (or another senior official of equivalent standing) attends that meeting; and
  - (d) use its reasonable endeavours to address the Potential Lessee's concerns during that meeting or as soon as practicable thereafter.

10.5 For the avoidance of doubt, nothing in this Part 5 limits, suspends or defers any of the rights, duties and obligations contained in the Act.

Signed by authority of the CC

*(signed)*

DIANA GUY

Diana Guy  
*Group Chairman*  
Competition Commission  
22 December 2009

## Schedule 1

### The particulars of a Rolling Stock Item

1. The particulars of a Rolling Stock Item are:
  - (a) the Rolling Stock Number;
  - (b) the class of the Rolling Stock Item;
  - (c) the sub-class (if relevant) of the Rolling Stock Item;
  - (d) the year of manufacture of the Rolling Stock Item;
  - (e) the manufacturer of the Rolling Stock Item;
  - (f) the number of vehicles contained in the Rolling Stock Item;
  - (g) the routes on which the Rolling Stock Item has been, to the reasonable knowledge of the ROSCO, accepted to operate by Network Rail; and
  - (h) the Characteristics of the Rolling Stock Item.
  
2. In this Schedule:
  - (a) the 'class' means the classification used to identify different types of Rolling Stock from other types of Rolling Stock. It is usually identified by the first two or three digits of the Rolling Stock Number;
  - (b) the 'manufacturer' means the name of the entity or entities that were responsible for manufacturing the Rolling Stock Item;
  - (c) 'Network Rail' means Network Rail Infrastructure Limited, a company incorporated in England and Wales with registered number 2904587 and includes any successors to all or any of its functions;
  - (d) the 'sub-class' means the classification used to identify sub-types of Rolling Stock within a class. It is usually identified by a number following the number identifying the class within the Rolling Stock Number;
  - (e) 'vehicle' means any of the locomotives, coaching stock or individual vehicles within a multiple unit or other vehicles to be leased; and
  - (f) the 'year of manufacture' means the year in which the manufacture of the Rolling Stock Item was completed.



## Schedule 2

### Details of Heavy Maintenance

Specify each period of time when Heavy Maintenance will be carried out on a Rolling Stock Item such that it would not be available for revenue-earning service, and for each such period provide:

1. A reasonable estimate of when the period of time will start, either on the basis of a date or the mileage of the Rolling Stock Item from the commencement of the Proposed Lease.
2. A reasonable estimate of the length of such period of time.
3. A description of the nature of the Heavy Maintenance that will be undertaken during such period of time, including either:
  - (a) the identification of the examination type and work that will be undertaken with reference to relevant extracts of any document setting out the vehicle overhaul instructions or specifications; or
  - (b) the details of:
    - (i) any examination of the Rolling Stock Item that will take place, including, where relevant:
      1. identification of the component or set of components of the Rolling Stock Item which will be examined; and
      2. the type of examination that will be carried out on such component or set of components; and
    - (ii) any work on the Rolling Stock Item that will take place, including, where relevant:
      1. identification of the component or set of components on which work will be carried out; and
      2. the type of work that will be carried out on such component or set of components.

## **Schedule 3**

### **Details of Modification**

Specify each period of time in which the Rolling Stock Item will be modified such that it would not be available for revenue-earning service, and for each such period provide:

1. A description of the Modification including how the Modification is intended to affect the Characteristics of the Rolling Stock Item.
2. An estimate of when the Modification will start, either on the basis of a date or, if its commencement is determined by some other event, an explanation of the timing of the other event.
3. An estimate of the length of time the Modification will cause the Rolling Stock Item to be out of service.
4. Whether the Modification is required to be carried out under the terms of the Proposed Lease.

## Schedule 4

### Description of the Capital Rent

The Capital Rent should be described in the following terms:

1. An explanation of how the monetary amount of Capital Rent will be quoted in the Proposed Lease, together with an explanation of the manner in which the Capital Rent will be paid by the Potential Lessee to the ROSCO under the Proposed Lease, which may include the following factors:
  - (a) the monetary amount that will be paid by the Potential Lessee to the ROSCO;
  - (b) an explanation of whether the Capital Rent will be made up of multiple payments throughout the Term;
  - (c) if there are to be multiple payments, a description of when such payments will be paid by the Potential Lessee to the ROSCO;
  - (d) for each monetary amount to be paid by the Potential Lessee to the ROSCO, a description of the Rolling Stock that each monetary amount covers; and
  - (e) if the Proposed Lease provides that the amount quoted may be adjusted during the Term, the reasons for such an adjustment, the basis for calculating the adjustment and the date/timing on which the adjusted amount will come into effect.
2. Any specific assumptions about the use of the Specified Rolling Stock that the Capital Rent in paragraph 1 is based upon, and if relevant the basis for calculating an adjustment to the amounts in paragraph 1 in the event that the Potential Lessee departs from its assumed use of the Specified Rolling Stock.
3. Where the ROSCO has contractual responsibility for a Modification, an explanation of whether, and if so how, the capital costs of the Modification are incorporated in the Capital Rent including:
  - (a) specifying whether the amount that will be accounted for as a result of the Modification will be either:
    - (i) fixed and set out in the Proposed Lease; or
    - (ii) variable depending on the eventual total capital cost of the Modification;
  - (b) specifying whether the Modification is to be rentalized by the ROSCO over the Term or for a period longer than the Term;
  - (c) if fixed (under paragraph 3(a)(i)), specify the total fixed amount that will be incorporated into the Capital Rent over the Term; and
  - (d) if variable (under paragraph 3(a)(ii)), specify:
    - (i) an estimate of the total capital cost of carrying out the Modification; and
    - (ii) the basis for calculating the total amount that will be incorporated into the Capital Rent.

## Schedule 5

### Description of the Non-Capital Rent

The amount of Non-Capital Rent should be described in the following terms:

1. An explanation of how the monetary amount of Non-Capital Rent will be quoted in the Proposed Lease together with an explanation of the manner in which the Non-Capital Rent will be paid by the Potential Lessee to the ROSCO during the Term, which may include the following factors:
  - (a) the monetary amount that will be paid by the Potential Lessee to the ROSCO;
  - (b) an explanation of whether the Non-Capital Rent will be made up of multiple payments throughout the Term;
  - (c) if there are to be multiple payments throughout the Term, a description of when such payments will be paid by the Potential Lessee to the ROSCO;
  - (d) for each monetary amount paid by the Potential Lessee to the ROSCO, a description of the Rolling Stock that each monetary amount covers; and
  - (e) if the Proposed Lease provides that the amount quoted may be adjusted during the Term, the reasons for such an adjustment, the basis for calculating the adjustment and the date/timing on which the adjusted amount will come into effect.
2. Any specific assumptions about the use of the Specified Rolling Stock that the Non-Capital Rent in paragraph 1 is based upon, and, if relevant, the basis for calculating an adjustment in the event that the Potential Lessee departs from its assumed use of the Specified Rolling Stock.

## Schedule 6

### Description of Maintenance Reserve Charge

The amount of any Maintenance Reserve Charge should be described in the following terms:

1. An explanation of how the monetary amount of the Maintenance Reserve Charge will be quoted in the Proposed Lease together with an explanation of the manner in which the Maintenance Reserve Charge will be paid by the Potential Lessee to the ROSCO during the Term, which may include the following factors:
  - (a) the monetary amount that will be paid by the Potential Lessee to the ROSCO;
  - (b) an explanation of whether the Maintenance Reserve Charge will be made up of multiple payments throughout the Term;
  - (c) if there are to be multiple payments throughout the Term, a description of when such payments will be paid by the Potential Lessee to the ROSCO;
  - (d) for each monetary amount paid by the Potential Lessee to the ROSCO, a description of the Rolling Stock which each monetary amount covers; and
  - (e) the frequency of any reviews of the Maintenance Reserve Charge to be carried out during the Term together with a clear description of the methodology for such reviews, including definition of which assumptions shall be treated as variable, the basis on which such assumptions shall be updated and how the revised Maintenance Reserve Charge shall be calculated.
2. Any specific assumptions about the use of the Specified Rolling Stock that the Maintenance Reserve Charge is based upon, and, if relevant, the basis for calculating an adjustment in the event that the Potential Lessee departs from its assumed use of the Specified Rolling Stock.

## Schedule 7

### Formula for calculating Short-Term Lease Premium

The short-term lease premium shall be expressed as a percentage of an estimated monthly Capital Rent for the Franchise Term and calculated using the following formula:

$$\text{short-term lease premium} = (A - B)/B \times 100$$

Where:

A = monthly Capital Rent for the short-term lease.

B = estimated monthly Capital Rent for the Franchise Term or remainder of the Franchise Term, as appropriate.

## Schedule 8

### Template Compliance Statement

#### Compliance Statement for *[insert ROSCO name]*

We, *[insert names]*, confirm on behalf of *[insert ROSCO name]* that during the calendar year 20XX]:

(a) *[insert ROSCO name]* has complied with The Rolling Stock Leasing Market Investigation Order 2009 (the Order).

(b) *[insert ROSCO name]*'s subsidiaries have also complied with the Order.

#### Indicative Offers

(c) During the review period *[insert ROSCO name]* made Indicative Offers to the Potential Lessees listed below:

<i>Date</i>	<i>Name of Potential Lessee</i>	<i>Type of Lease</i>
-------------	---------------------------------	----------------------

#### Information Requirements

(d) All Potential Lessees were provided with all the information required by the Order within the Information Period.

(e) All Potential Lessees were provided with an estimate of any short-term lease premium within the Information Period.

(f) All Potential Lessees were provided a copy of the existing Lease Agreements within the Information Period.

#### Interpretation

(g) Words used in this Compliance Statement have the meanings given by the Order.

**FOR AND ON BEHALF OF [NAME OF THE ROSCO]**

Signature: .....

Name: .....

Title: Managing Director

Date: .....

Signature: .....

Name: .....

Title: Non-Executive Director

Date: .....