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COMPETITION AND MARKETS AUTHORITY
CIVIL ENGINEERING IN RAIL AND ROAD MARKET STUDY
RESPONSE TO CMA INVITATION TO COMMENT

FM CONWAY LIMITED

17 JULY 2025

INTRODUCTION

This response to the CMA's invitation to comment on its 17 June 2025 statement of scope outlining the matters it intends to examine in its market study into civil engineering in rail and road is submitted on behalf of FM Conway Limited ("**FMC**").

FMC is a highway infrastructure contracting company active predominantly in England. Our activities include the production and supply of asphalt and bitumen products that are used and applied in the road sector, as well as operating road surfacing teams throughout England applying both conventional and specialist material applications in both highway and commercial environments.

QUESTIONS

1 Do you agree with our articulation of the characteristics of a well-functioning market as set out in paragraph 1.11? If not, what could be changed and why?

Generally, we agree with the CMA's characteristics of a well-functioning market.

Typically, we have found that the most successful procurements and subsequent contracts arise from a more collaborative and partnering arrangement with all stakeholders which requires a "term type" relationship. By contrast, in our experience overly prescriptive models can stifle innovation and efficiency. We find that short term / single project relationships are not conducive to investment in people, plant, equipment or innovation nor do they deliver effective trusting relationships between client, client's consultant(s) and contractor or any community type relationships.

We also think it important, as the CMA recognises in paragraphs 1.13 and 2.2, that client authorities or joint bodies will have the greatest ability to influence the characteristics of these markets for the better. To ensure the effectiveness of the market, there needs to be clear, consistent and unambiguous tendering processes to maximise accessibility of contracts across the whole industry and ensure engagement between the client and potential suppliers from pre-tender through to service delivery with accurate specification / service outcomes.

It would be useful for the CMA to assess whether there should be greater emphasis on standardisation of procurement processes (in a manner appropriate for both the public

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and private sectors) as there are currently ***over 150 Highway Authorities in England alone***, and there should be some adjacent / regional merged efficiencies. This would make the process of bidding more straightforward, reduce supplier costs and efforts in responding, and allow for lessons learnt to be utilised. We do recognise in doing so there should not be a subsequent detrimental impact on innovation and/or more advanced recycling within the sector, as well as offer flexibility to contracting clients in a way to streamline processes (as set out in our responses to question 5(a)).

We would also make the following more specific points:

- **Planning and regulatory processes (1.11(c)):** Planning delays incur significant additional costs not only for delivery of projects but for investment in industrial activities. In our view, the impact of current delays associated with live infrastructure projects disincentives market participation. Together with the nature of the planning process in the UK, this may reduce future investment into UK Plc.
- **Predictable and shorter timescales for delivery (1.11(d)):** Protocols around permitting and network access associated with public sector contracts are a feature which prevents projects being completed quicker. The CMA may wish to assess whether restrictions on delivery should be removed to drive more flexibility on certain road types / times of the day, as this would give more programme flexibility and cost reduction.
- **Best value projects (1.11(e)):** How 'best value' is assessed will often be dictated by the procurement model for a particular project. We consider that to achieve 'best value' it is key that risks are shared between the contracting client and contractors, driving longer-term effective asset management: short-termism adds to reactive management through potholes and patching while effective asset management modelling drives more planned interventions. In our experience, most risks tend to sit with the contractor; however, greater openness from clients to understand the risks associated with projects would allow for better-informed decisions and ultimately more efficient / effective infrastructure.

2 **Do you agree with our proposed scope (both the product and geographic scope) and themes for this market study, as set out in Section 3. If not, what areas would you suggest we include, exclude or prioritise, and why?**

Generally, we agree with the proposed scope, but do consider that the CMA's focus appears to be heavily weighted towards substantial projects.

In our view, it would be helpful for the CMA to place greater emphasis on effective asset management of infrastructure. Adopting a more holistic whole life cost approach rather than a short-term 'fix approach' (which in FMC's view most frequently represents the current approach of tendering clients) would generate substantial long-term benefits. This approach should be utilised both for existing infrastructure (through periodic assessments and monitoring) and future infrastructure (through better planning at the outset of a project, together with periodic assessments and monitoring during its

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life cycle). While this focus would likely require greater upfront investment it would generate long-term benefits through cost reduction over the lifecycle of a project and better customer outcomes. In simple terms, a 'Spend to Save' approach. This should include assessing improvements in asset management by national and local authorities in planning works at the correct time of year for application – National Highways have seen asset life reduced by years when Client annual budgeting and road space drive works to winter, rather than March to November.

On a further holistic theme, we believe that there needs to be a clear focus on the circular economy for environmental reasons. This requires sustained significant capital investment in advanced recycling, rather than traditional virgin quarried materials. FMC believe that there is a need to invest in ever more advanced recycling and circular economy, requiring sustainable pipelines to make such long-term capital-intensive investments.

Finally, we agree with the CMA's inclusion of the planning and regulatory framework within scope. Within that topic, we would encourage the CMA to assess whether national permitting protocols could be amended to allow for improved production of all road schemes, works to commence quicker, and greater flexibility for suppliers, each of which would reduce costs and increase site activity.

3 What, if any, are the key differences in the markets for the supply of roads and railways across the 4 nations of the UK that should be reflected in our analysis?

FMC does not have sufficient experience in the road market in Scotland and Northern Ireland, or the rail sector generally, to provide input.

4 Please suggest any rail and road infrastructure projects across the UK that could be useful case studies to inform our market study. We are particularly interested in understanding where:

a) The project realised good outcomes in terms of cost, quality and innovation (including some explanation of the factors driving this in each area); or

FMC was engaged on the Smart Motorways Alliance's National Emergency Area Retrofit Programme. This project was delivered across England's entire strategic road network with extremely challenging timescales and major logistical challenges. The project was delivered on time and to budget. In our view, the success of the project was achieved by using an alliance procurement vehicle that sourced the full gambit of skills required (e.g. design, planning, construction, post-delivery, etc.) in one team working together with the client.

Works were allocated and risks apportioned to those best placed to deliver the desired outcomes rather than on a formulaic or "risk dumping" basis. As this was a national programme, both the commercial approach and delivery were carried out according to a programme rather than as individual schemes. Continuity of delivery was achieved

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wherever possible and lessons learnt during early stages of the process were carried forward across the duration of the programme.

We considered this to be one of the most refreshing and rewarding contracts we have been involved with due to this collaborative structure driving innovation, relationships and programme / budget predictability.

b) The project realised poor outcomes in terms of cost, quality and innovation (including some explanation of the factors driving this in each area); and/or

FMC is engaged under the Crown Commercial Service Construction Works and Associated Services Framework agreement, under which individual schemes are tendered for pieces of work to appointed suppliers.

In FMC's view the requirements to be appointed to the framework agreement under the procurement were overly onerous, with no subsequent guarantee of secured work once appointed. Furthermore, the lack of a visible pipeline and continuity of individual scheme tenders, together with the need for resource hungry secondary competition, makes this contracting model unattractive to many market participants. These factors make it difficult for contractors to make long term investments in people, plants and processes to improve future outcomes.

c) The project yielded important lessons that could inform improvements in the operation of the market.

See the Smart Motorways Alliance example described above. We believe that this project could provide the CMA with a useful case study of the opportunities for efficiency and innovation through early engagement and a collaborative contractual environment.

5 How does public procurement and contracting in the markets for the supply of roads and railways contribute to, or undermine, the characteristics of a well-functioning market? In your answer, please comment on:

a) Engagement between the procuring body and potential suppliers during the early stages of project design;

Early engagement at the appropriate level adds huge benefit to both procuring clients and contractors in the Bid/No Bid process. A clear understanding of the scope of deliverables, the client's asset management principles with medium / long-term budget, risk profile, and contracting models helps to ensure that the right suppliers are engaged at the early stages of procurement.

Early contractor involvement promotes innovation, the implementation of best practice and helps ensure programme and commercial certainty for both procuring clients and contractors.

However, we consider that there should be greater adaptability built into the procurement framework more generally. For example, an exhaustive procurement

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process is often too onerous and complex for certain short-term frameworks aligned to delivering purely highway surfacing activities. The procurement protocols apply equally to e.g. a short 4 year framework as e.g. a longer 21 year term contract, which we consider to often be unnecessary and ultimately resulting in delays as well as disproportionate bid costs for all involved.

b) The use of different types of procedures (e.g. open competition, frameworks);

c) The design of tenders, including the number and type of requirements and the use of quantitative (eg price) and qualitative evaluation criteria;

It is essential that the desired contract objectives are clearly defined by tendering clients, and that the procurement and evaluation models are intrinsically aligned to those objectives.

d) The approach to risk allocation across different parties; and

e) The use of contract mechanisms (eg insurance provisions) and pricing mechanisms (eg fixed price, cost plus).

Contract terms which inappropriately allocate risk (e.g. placing risks with a party who is not best placed to manage or mitigate them) will add cost to any procurement and could lead to reduced market participation. Pricing mechanisms should be appropriately aligned to the certainty of design maturity and the likelihood of change.

6 To what extent do you think the structure of the industry contributes to, or undermines, the outcomes of a well-functioning market? In your response, please comment on:

a) Differences in the size and degree of specialism of different companies;

The structural make-up of the UK construction industry is varied, from large multinational players to small, specialised regional companies. In FMC's experience, procurement activities are not always tailored to reflect the scale, complexity and risk-weighted services being procured. Public sector procurement processes tend to be complex and resource intensive, often resulting in the exclusion of smaller, capable providers (who do not always have the capabilities to respond in the manner requested). Overly onerous procedures deter smaller companies from engaging in procurements where they could potentially provide the best service and add best value.

b) The tiered nature of the supply chain and use of subcontracting; and

The tiered nature of the UK supply chain likewise makes it essential that procurements are aligned to contract objectives to derive best value.

FMC prides itself in a high degree of self-performance with long-term skilled trained employees – the concept of the "gig economy" or local SMEs waiting for Public Highway clients to plan / programme is not a sustainable model in most geographies. Building and retaining the skills, investment, and real innovation needed to drive better

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life cycles with less costly reactive asset management requires effective and consistent relationships, not short-termism.

More complex schemes will inevitably benefit from the accessibility to a varied supply chain base where specialist sub-contractors can be employed to introduce innovation and drive best value. Many larger or major projects (typically let to Tier 1 suppliers) can be difficult to access for the wider market.

c) Financial arrangements, such as payment periods and the use of retentions.

Certain and prompt payments encourage market participation and client engagement. Poor payment practices can disproportionately affect relationships, and investments in people / plant / equipment and decisions on tendering, as highlighted above.

7 What, if any, are the significant procurement, planning or other regulatory barriers that inhibit the performance of this market? What could be changed and why?

Procurement: Overly complicated procurement and contract processes add cost and waste resources. Procurement models should be designed to reflect the length and complexity of the service being procured.

FMC also consider that procuring clients' commercial and quality assessments models are often inappropriate and do not align with contract objectives or the reality of the future contract, as procurement / consultants are used that are not part of past / future delivery.

FMC also consider that unrealistic or inaccurate contract values and timelines are frequently set. Contract values that are not aligned with procuring clients' expectations generate tensions from the outset of a project and can strain relationships with market participants.

Opportunity Pipeline: FMC consider that more could be done to provide advanced visibility of project pipelines and procurement timelines. This would allow market participants to better plan and prioritise their resources, thereby allowing better suited suppliers to bid for projects (providing procuring clients with better services and value for money).

Government Policy: The political cycle results in resources being diverted to short-term gains rather than on a more suitable asset-needs approach as well as stalling programmes. This approach results in poor customer outcomes, poor returns on investment and negative impacts on the supply chain. Where possible, decision-making on projects should be delegated by politicians after go/no-go decisions except in the event of material contract changes.

8 What are the opportunities for further innovation in the markets for the supply of roads and railways across the UK? If yes, what are the barriers to achieving these and how might they be overcome?

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FMC consider that opportunities for further innovation include, among others:

- Use of longer-term contracts to enable investment in people, plant and processes, and subsequent encouragement of innovation and generate efficiencies through learning and continuity over time.
- Effective and collaborative performance management consistent across the public sector would allow for greater market participant development and ultimately more innovative outcomes over the longer term. It could also enhance the circular economy via effective advanced recycling.
- Incentivisation mechanisms such as increased work allocation rewarding good performance could be introduced. Current contract arrangements make little or no provision for incentivisation against set objectives. Clients setting a clear direction of travel and having defined contract objectives and rewarding their supply chain for excellent performance against those objectives would drive innovation, productivity and ultimately improve customer outcomes.
- Making greater use of alliancing models (such as the Smart Motorways Alliance as described in our response to 4(a) above) with a proven track record of delivering to time and budget for complex infrastructure development. These alliancing models encourage innovation and generate efficiencies through bringing together the full gambit of skills required within one team.
- In Highways, we encourage the CMA to reflect on the impact of over 150 Highway Authorities each procuring products and services according to differing standards on: service functional lives; innovation; and the proportion of reactive vs planned works. There are adjacent Authorities where the County line is stark, with residents, local politicians and budget-holders seeing and feeling the difference in outcomes and performance – this can also be seen area to area, region to region for strategic Highway Authorities.
- We also invite the CMA to reflect on good practices today as well as what is needed for tomorrow: ever more recycling via ever more investment in effective circular economy is required; greater skilled personnel in the supply chains; effective asset management with greater digitalisation; the changing highway standards for vehicle types as they move from analogue to semi and fully autonomous digitally enabled forms; and the highway classification of local, major and strategic roads with historical legal duties for a "Highway" that was fit for the last Century.

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