17 July 2025

COMPETITION AND MARKETS AUTHORITY

CIVIL ENGINEERING IN RAIL AND ROAD MARKET STUDY

RESPONSE TO CMA INVITATION TO COMMENT FROM TAYLOR WOODROW

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 Taylor Woodrow.

Taylor Woodrow focusses on complex large-scale civil engineering challenges and associated services primarily as a Tier 1 supplier. Highway related civil infrastructure engineering historically formed a significant part of Taylor Woodrow's business. Our current highway improvement projects are with clients including National Highways, TfL and Devon and Essex County Councils. Taylor Woodrow's current projects focusing on the rail sector include a framework agreement with Network Rail; works on the Bletchley Depot for West Midlands Trains; and Stratford Station for TfL.

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?**

   Yes, we consider the characteristics set out in 1.11 do accurately reflect the attributes that would constitute a well-functioning civil engineering market. We agree with the CMA's recognition at paragraphs 1.13 and 2.2, that public bodies will have the most ability to influence changes in the following tendering characteristics:

   - (a) and (b) is primarily driven by customers procuring civil engineering;
   - (c) is primarily driven by government, regulatory authorities and planning bodies;
   - (d) is primarily driven by suppliers of civil engineering services; and

- (e) is a joint effort between all industry stakeholders.

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?**

Whilst we agree with the overall scope of the study, our concern is that seeking to cover the full project lifecycle could lead to diluting of findings or insufficient resources/time being available to thoroughly consider key issues. This could lead to recommendations that are overly broad and lack sufficient specificity to enable them to be effectively implemented.

In addition, asking the market to comment on multiple areas / characteristics across all the lifecycles could be a barrier to some businesses choosing to engage. Consideration could be given to limiting the scope of the study to those factors which more directly impact cost, time and quality performance.

Two examples being:

- **Procurement**: how suppliers are selected affects performance and outcomes in numerous ways, not least in terms of the key issue of early supplier input to schemes (ECI). In our experience, early supplier input has the greatest impact on reducing later build phase risks, best realises value engineering savings and allows most efficient delivery timescales thereby reducing indirect (prelims) costs. Selection of an appropriate procurement model is essential and focussing on better collaboration, driving innovation and consideration of alliancing and enterprise models is likely to deliver better overall outcomes.
- **Productivity**: identifying recurring barriers to productivity improvements being realised and how market confidence, surety of pipeline and long-term financial commitment can drive investment in productivity improvements.

Recommendation: The CMA may wish to consider limiting some areas of the scope to allow greater focus on specific key issues.

Whilst we recognise that historically, road and rail have been the most significant areas of government investment, going forward we expect the

dominant sector which would benefit the most from reform to be energy, specifically the UK's increase in electrification as part of National Grid's great grid upgrade programme to deliver 50MW by 2030, as part of our country's actions to address climate adaptation and resilience. The electricity transmission sector for example is seeing unprecedented levels of expansion, exceeding that seen in rail and road networks in recent years. Focussing purely on lessons learned from these sectors could lead to a focus on actions that are inappropriate to the emerging needs of the energy sector.

Recommendation: When considering case studies and lessons learned from rail and road, ensure that due cognisance is given to how these may apply to the growing energy sector requirements.

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?**

   Taylor Woodrow is predominantly focused on projects in England. We do not have any specific input to provide regarding differences between the four nations.

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**

      Taylor Woodrow was engaged on the [redacted] on an Early Contractor basis through the full project lifecycle (to deliver feasibility through concept, detailed design to build). This allowed us, as the contractor, a greater degree of autonomy than usual to shape the scope and end benefits, realising greater cost savings to the ultimately public purse.

   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**

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

Taylor Woodrow was involved in certain rail projects in the South East which suffered cost increases due to late design as a result of changes in scope and performance requirements and misalignment of stakeholder desired outcomes. The project was subject to a 'lessons learned' study, which Taylor Woodrow could share, subject to client approval.

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.**

We believe that in the UK there is an over-reliance on consultants. This is unique when compared the rest of Europe, especially at the early stages of the projects. This delegation to consultants is coupled with a lack of engagement by the consultants and clients at the early stage of a project with those who will ultimately be building the projects. This can lead to conservative design without challenge and the deferment of some higher risk design items to later contractor-led design phases, which could have been better dealt with, and the risks mitigated, at an earlier stage. This usually adds cost.

The mechanism for engaging with contractors at the early stage is key to success, since unless the early-stage suppliers have some form of commitment that they will be able to participate in the later stages of the project, they will be reluctant to hand over all relevant know-how, as retaining the know-how could give them a competitive edge in future procurement for later stages of the same project.

Recommendation: Study should consider the role of the design consultants during feasibility and concept design and their role in delivering value.

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

All forms of contracting procedures should be considered. This is because all have their merits when aligned with delivery requirements and how well the design is developed at the time of procuring. Of similar importance are the skills and experience of the procuring bodies to effectively manage the procurement functions.

Recommendation: Ensure alongside consideration of the contracting procedures, that the competence (knowledge, experience and training) of client procuring teams should be considered.

c. **the design of tenders, including the number and type of requirements and the use of quantitative (e.g. price) and qualitative evaluation criteria;**

Having to undertake significant design during a tender phase to derive a price is costly and wasteful and is a strong driver for declining to bid. However, having a level of design sufficient to price is essential if any certainty of outturn cost is to be derived. Therefore, selecting based on pricing alone is often also difficult, and suitable weight needs to be applied to qualitative assessment criteria.

Recommendation: The market study should objectively review best practice and lessons learned regarding the link between selection criteria and outturn performance to identify optimum balance between qualitative and quantitative tender-stage evaluation.

d. **the approach to risk allocation across different parties;**

Construction suppliers are usually far more attuned to levels of risk than contracting authorities and most suppliers will have strict governance requirements in terms of what level can be absorbed. Contract terms which place too much risk on a partner, particularly in early stages before a design is developed, risk the schemes being 'No Bid' and there being little or no market interest. This can be extremely difficult to regain, even when conditions are softened.

e. **and the use of contract mechanisms (e.g. insurance provisions)**

Contract mechanisms can often be overly burdensome (uncapped liabilities) or asking for provision (insurance) not available in the market. This inevitably leads to suppliers 'turning off' opportunities at an early stage if a potential client is seen as unreasonable and not worth negotiating with.

f. and pricing mechanisms (e.g. fixed price, cost plus).

The selection of the contracting mechanism should always be linked to how developed the design is and the associated risk profile. Too often a client will want a fixed price, where the design and/or scope of the project is not sufficiently clear, particularly where external third-party funders are involved. Either the market cannot offer this, or it will later lead to disputes on price.

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:

The structure of the UK construction industry can act to both enable (through specialisation of the supply chain, giving agility and flexibility) and undermine (through scale imbalance and risk transfer, lack of visibility through the tiered nature of delivery and poor financial practices) the outcomes of a well-functioning market.

a. differences in the size and degree of specialism of different companies.

The structural make-up of the UK construction industry clearly has an impact on delivery efficiency, including in terms of the high degree of fragmentation in the UK construction industry, as noted by the National Infrastructure Commission in its October 2024 report, "Cost drivers of major infrastructure projects in the UK".

Furthermore, there is a growing recognition amongst many industry players that the traditional approach of passing risk down the supply chain does not result in a sustainable market, as the companies at the foot of the supply chain are often ill equipped to carry such risks. It is therefore recommended that the review consider both the attributes

of the UK market and compares these attributes with those of other industries and countries.

b. the tiered nature of the supply chain and use of subcontracting; and

The tiered nature of UK supply chains does allow specialism to thrive with agility and flexibility, and in the best-run projects can increase efficiency. However, as touched on above, smaller specialist companies also often lack robustness to withstand market fluctuations which can lead to insolvency, especially if they are unable to absorb the levels of risk transferred down to them. Excessive tiering or "risk dumping" can reduce transparency, inflate costs, and weaken accountability.

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

Long payment terms and retentions are often still a feature of UK construction contracts. This can put a strain on cash flow which disproportionately impacts smaller and/or specialist businesses.

In our view, the market study should compare and contrast market conditions, subcontracting arrangements, and financial arrangements impacting delivery practices to those in other sectors and countries.

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?

Planning: In our view, planning rules remain the single biggest issue in terms of introducing unnecessary cost and time delays without commensurate improvements in outturn outcomes. Our hope is that the Planning and Infrastructure Bill will go a long way to addressing the often-cited issues around:

- inconsistent process requirements and decision making between public bodies;
- the ease of launching spurious legal challenges; and

- the need for front-end investigations (environment, ecological etc.), only for these to be repeated at later dates and often adding little in the way of actual protection measures when implemented.

Parliamentary Cycles: The Government Infrastructure Strategy is rightly set over a 10-year horizon. This recognises the need for continuity and commitment to drive market confidence over more than a single parliamentary term, whereas strategies set for single parliamentary terms create a stop / start nature to project delivery, introducing inefficiencies in the process, restricting contractors from investing in people, assets and R&D due to the limited sight of a pipeline.

Procurement: The chosen approach to procurement still acts a barrier to entry and adds unnecessary costs. Despite assets being the same or of a similar nature, different clients will often operate significantly different models to buy the same service leading to suppliers having to undertake multiple (expensive) tenders for similar clients without being able to realise synergies across those tenders.

Risk Transfer: Risk transfers, to lower tier organisations which cannot assume the risks, or to larger organisations which can absorb the risk financially but which require higher risk premiums, ultimately are unlikely to represent best value to the client. This is often seen by clients as overpricing. Greater use of collaborative contract forms could reduce risks or enable parties to agree measures for risk to be allocated to those parties best capable of absorbing and managing those risks, resulting in better delivery outcomes.

Funding: Lack of realistic budgets and funding often leads to the 'stop-start' nature of projects. In our view, this could be overcome through more realistic budgets at the outset, coupled with supply chain engagement to specify outcomes which both meet requirements (i.e. the business case) and remain within an affordability envelope. In such cases government should consider being a funder of last resort to ensure that projects which will still meet performance requirements but, for justifiable reasons, are over budget can still go ahead with their associated societal benefits.

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?**

   Areas of the construction industry which have been cited for many years as having the potential to improve productivity, reduce costs and increase quality include greater modular and offsite construction, greater use of digitisation such as digital twins and AI driven efficiency measures, and better use of the circular economy to meet Net Zero.

   Many of the issues discussed above are inextricably linked to why these measures have not been fully realised, including;

   - poor, non-collaborative **procurement** practices, stifling early engagement and promoting inappropriate risk transfer;
   - drawn-out **planning and consenting**, leading to projects becoming unviable;
   - lack of industry **skills development** as a result of an inability to plan and invest through lack of continuity of work; and
   - lost opportunities to improve productivity due to **inconsistent funding**. Fluctuating funding stifles investment and commitment to innovation.

Should the CMA wish to discuss any of the above points with Taylor Woodrow, please contact [redacted]