

## ORR's Response to the CMA Civil Engineering Market Study Interim Report

### This response

This response provides summary observations on the CMA's Interim Report in those instances where we have:

- evidence related to the four 'root causes' which the Interim Report identifies as providing persistent challenges; and
- information about recent or ongoing initiatives which align with the CMA's own suggestions for a way forward.

In this response we do not attempt to answer all 22 questions which are set out in the Interim Report. Rather, we focus on those areas where we have a particular perspective from our role as the sector regulator. We have highlighted those instances where we consider our response to have answered specific consultation questions set out in the interim report.

The specific CMA questions that we believe our response most closely corresponds to are as follows:

- *“Question 3: Are there specific procurement, policy or regulatory barriers that reduce innovation and/or scaling opportunities in the civil engineering market? What would make the most difference to firms' incentives to innovate, and public authorities' incentive and ability to encourage innovation?;...*
- *Question 5: To what extent do you agree early contractor involvement could be used more effectively, and how can this be facilitated?;...*
- *Question 8: Where is there greatest scope to improve the evaluation of non-price aspects of bids, such as quality? How can this be better supported and enabled?;...*
- *Question 10: What are the areas of regulation which are preventing opportunities for innovation and effective competition?; and...*
- *Question 18: To what extent do you agree that it would be beneficial for public authorities, such as groups of nearby local authorities, to: (i) jointly develop and share engineering expertise and commercial capabilities; (ii) coordinate or jointly conduct procurement; and (iii) enact comprehensive, standardised sharing of cost and performance data? How could this best be achieved?*

## **ORR's comments on CMA's interim findings**

We note the overall picture of the market, and the four root causes, set out in the CMA's interim findings. As the CMA states in its Interim Report, similar issues have been found in previous reviews. Going beyond the period which the CMA focused on, some of the same topics were also covered in previous rail industry by reviews such as [the 'Shaw Report' into the long-term shape and financing of Network Rail](#).<sup>1</sup> This indicates how challenging it can be to shift some of these market features and we therefore welcome the new perspectives the CMA is looking to bring.

### Pipeline uncertainty

The Interim Report describes how limited visibility and confidence in pipelines leads businesses to be risk averse, limit innovation and adopt short-term approaches. As identified within the Interim Report, the five-year funding cycles of Network Rail and National Highways provide important mitigation, although we note that forecasting inflation presents challenges, particularly when most of the income or funding for the regulated company is not index-linked. This can lead to pressures on financial performance and delivery as described in our [Annual efficiency and finance assessment of Network Rail 2025](#).

Historically, many rail contracts have been constrained by other cycles, such as franchise agreements, however following the government's rail reform programme, the move to a vertically integrated and publicly owned railway will help lessen these constraints.

### Procurement policy and procurement capacity

The Interim Report finds that good practice and guidance are not consistently used, and public authorities can be unduly risk averse. It also describes the challenges faced by public authorities when recruiting and retaining skilled staff in this area.

Both Network Rail and National Highways have made considerable investment in their procurement capabilities over recent years. Their widespread use of frameworks also provides a degree of certainty, at least for those suppliers who are included in these frameworks.

We have seen recent evidence of the impact of Network Rail's improved contractor strategy including engaging with contractors earlier. Improved contractor strategies delivered efficiency savings totalling £859m in Control Period 6 (2019-2024), as set out in our [Annual Efficiency and Finance Assessment of Network Rail 2024](#). We

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<sup>1</sup> When examining structural and organisational reforms in UK rail infrastructure, the Shaw Report identified systemic issues around long-term planning, funding stability and governance that closely mirror the CMA's current concerns about market dynamics and the barriers affecting the effective delivery of road and rail civil engineering projects.



anticipate that Network Rail's improved contractor strategies will deliver efficiency savings of a similar magnitude during CP7 (2024-29).

In Spring 2026 we will publish a review of National Highways' Procurement and Project Management capability, which underpinned our recent efficiency review of the company's plans for the third road period. We will share this with the CMA once available.

As part of our monitoring of Network Rail, we have undertaken a Targeted Assurance Review into Network Rail's Control Period 7 (CP7) Capital Delivery Operating and Delivery Models, which we expect to publish in February 2026. This review will encompass multiple aspects of Network Rail's CP7 frameworks.

We would be happy to discuss the findings of these further studies with the CMA once published.

Our work in this area is pertinent to the CMA's **Question 5, on early contractor involvement**, because it demonstrates both the variable use of good practice by public authorities and the capability constraints they face, while also showing - through Network Rail and National Highways' improved procurement approaches and early contractor engagement strategies - that earlier and more structured involvement of contractors can materially improve project delivery and efficiency, indicating clear opportunities for systemwide improvement.

We also suggest that the CMA engages with Network Rail to obtain more information on its use of tools to evaluate Social Value and Whole Life Infrastructure Carbon. In our view, such information would be pertinent to the CMA's **Question 8, on non-price bid evaluation**, as an example of how more holistic assessments of quality and wider public value can be embedded into bid evaluation.

We have also undertaken previous reviews including:

- a [2022 review of Network Rail's contract management](#) which described both strengths and weaknesses in Network Rail's capabilities at that time; and
- a [2024 assessment of Network Rail's Capital Investment Capability Framework](#) found improved levels of maturity at a national level, across the major enhancement programme and the Regions, compared to a previous assessment in 2020. This review also made a series of recommendations for further improvements.

We have also considered the implications of the Procurement Act 2023 in some of our recent work. In our [review of the Rolling Stock Leasing Market Transparency Order](#), and based on the evidence we gathered from industry we concluded that it would be premature to draw conclusions given the limited number of public procurements that have so far been undertaken under this framework.

We are aware of a number of initiatives to benchmark cost efficiency and service delivery quality across local authorities in the highways industry. More information can be found at [nhtnetwork.org](https://nhtnetwork.org). We have also found regional benchmarking to be valuable in understanding Network Rail's cost performance. Our [Annual Cost Benchmarking Reports](#) have enabled us to recognise inconsistencies in regional expenditure identify scope for efficiencies. Such information is in our view pertinent to the CMA's **Question 18, on collaboration across authorities**, as an illustration of how collaboration, shared capabilities and comparative performance information can support more efficient, coordinated procurement and delivery across authorities.

### Regulatory barriers

We note that the CMA intends to explore the impact that regulatory barriers may be having on these markets.

Our programme of work to [reduce administrative burden and support economic growth](#) in line with the [New Approach from HM Treasury](#) includes two workstreams that will be of interest to the CMA. One is focused on [tackling the complexity and burden of regulation in rail](#). Another is a review of our [rail industry-facing service standards](#). Our [letter to Network Rail](#) on 17<sup>th</sup> December 2025 contains our most recent update on this programme.

As the combined safety and economic regulator for Britain's railway, we recently reviewed how the rail industry assesses the costs and benefits of safety initiatives, including the approach to ensuring compliance with industry standards and, where relevant, how they would go about deviating from a standard. We found that Network Rail has adopted a risk-based approach to challenging existing standards which it estimates will generate £156m of efficiency savings if realised. Further details of this work are available on [our website](#).

We are also currently reviewing the Railways and Other Guided Transport Systems (Safety) Regulations ([ROGS](#)) which contain requirements for assessments and evaluations of health and safety that some businesses working on the railway are required to comply with. The review will invite businesses to tell us about areas of the legislation that are not working well so that we can consider improving them. We are due to publish the findings of this review in June 2026.

Past ORR work has considered the impact of Infrastructure Managers' own standards in rail, for example:

- Our 2021 [Signalling Market Study](#) described the impact on competition of bespoke GB signalling principles and standards for would-be entrants' ability to develop signalling products for the GB market. We recommended changes to procurement policies that improve the standardisation of interfaces between products and encourage cooperation between suppliers which Network Rail implemented in its approach to the procurement of signalling frameworks for CP7. We are monitoring the effectiveness of these

interventions in facilitating entry to the market and driving cost efficiency in the supply of signalling systems.

- In January 2024 we carried out a [Targeted Assurance Review of technology adoption in Network Rail](#) which described some of the challenges faced by Network Rail that align with the CMAs findings. We recommended changes to communication, culture and lesson-learning processes to improve support for businesses offering new technology. These recommendations are in our view pertinent to two of the CMA's questions:
  - **Question 3, on innovation and scaling barriers** – we highlighted how cultural, procedural, and capability shortcomings can inhibit the adoption and scaling of new technologies; and
  - **Question 10, on regulatory barriers to competition** – we showed how existing processes and expectations used by Network Rail can unintentionally deter innovative suppliers and limit competitive challenge.

### **Next steps**

We look forward to continuing to engage with the CMA on this study and discussing how our programme of work complements yours in protecting the interest of passengers, users and funders, and drives economic growth.