

Competition and Markets Authority (CMA) – Civil Engineering in Rail and Road Market Study

Transport Scotland feedback on published Interim Report

28 January 2026

Introduction

- 1.1. Transport Scotland is an agency of the Scottish Government, with the purpose of delivering the Scottish Government’s vision for transport which is set out in the National Transport Strategy 2. This states “Our vision is for a sustainable, inclusive, safe and accessible transport system helping deliver a healthier, fairer and more prosperous Scotland for communities, businesses and visitors.”.
- 1.2. The Competition and Markets Authority (CMA) published their Market Study interim report on 17 December 2025. The CMA requested responses on this interim report by 28 January 2026. Transport Scotland have reviewed this interim report and this document represents feedback on the emerging findings and possible remedies. Further feedback has been provided in meetings with the CMA throughout January 2026.

Feedback - Potential Interventions

- 2.1. Transport Scotland has not identified any significant objections to potential interventions outlined in the interim report, and notes that the CMA intends to develop and refine these recommendations and interventions further during the remainder of the study period.
- 2.2. It is noted that the emerging recommendations are not dissimilar to recently published industry papers (such as the recommendations set out within ‘Constructing the Gold Standard – An Independent Review of Public Section Construction Frameworks’ in 2021), and that the real difficulty in improvements to the market will be in the practical implementation of these recommendations. To assist the CMA with focusing on this challenge during the final stages of the market study, Transport Scotland have provided feedback below relating to barriers to some of the provisional interventions set out in the interim report.

Interim Report Recommendation – Pipeline Certainty

Comment

- 2.3. Transport Scotland notes and agrees with the characterisation of pipeline uncertainty challenges within the interim report (3.2 and 3.3).

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- 2.4. It is noted that the interim report recognises the limitations that current short-term funding models can impose on public sector pipelines, despite efforts by governments to improve pipeline visibility. This funding challenge is a key barrier that requires to be overcome in order to deliver meaningful changes to pipeline information available to the market.
- 2.5. It is noted that the interim report recommends a consolidated UK-wide project pipeline as a potential option (Table 4.1), with the new NISTA Infrastructure Pipeline being expanded to cover all planned road and rail projects in the UK. It should be noted that NISTA does not oversee Scottish public sector spend, and any governance limitations associated with this should be fully considered by the CMA to ensure that all four nations can benefit appropriately from any emerging recommendations.

Interim Report Recommendation – Credible long-term funding

Comment

- 2.6. Transport Scotland notes and agrees with the characterisation of the impacts that a lack of credible long-term funding can have on the Civil Engineering market, both from a supply and demand perspective.
- 2.7. It is noted that the recommendation to extend multi-year capital funding settlements to all road and rail procuring authorities and activity sets out the benefits of this approach within the interim paper, but also acknowledges that specific actions relating to funding mechanisms would be for government(s) to determine. This is a significant barrier to the implementation of this recommendation, and without more targeted engagement with government the remedy option is not likely to be achieved (this recommendation is well covered in studies, guidance and reports but cannot be implemented in practice without meaningful change to funding mechanisms relating to political cycles in government).

Interim Report Recommendation – Cross-authority joint procurement and pooling of capacity

Comment

- 2.8. Transport Scotland notes and agrees with the overall characterisation of challenges that procuring authorities face in the current market set out within the interim report.
- 2.9. Transport Scotland welcomes the concept of pooling of capacity to create centres of excellence within areas such as commercial, legal and engineering, but recognises that significant difficulties would require to be overcome in order to successfully implement this (such as but not limited to individual authority resourcing challenges, conflicts of interest, funding mechanisms, variable role requirements and differing processes).
- 2.10. Transport Scotland welcomes the concept of cross-authority joint procurement where appropriate, and would flag current approaches such as the Scottish Government Civil Engineering Framework and Dynamic Purchasing System as opportunities which are being explored and implemented within this area. It is considered that this recommendation closely relates to the pipeline and funding issues explored within the interim report.

Interim Report Recommendation – Greater standardisation of risk allocation

Comment

- 2.11. Transport Scotland notes the consideration of greater standardisation of risk allocation within the interim report, and would agree with the assumptions contained within the interim report that the appropriate form and degree of risk allocation will vary across projects to reflect that specific project. This is evident even between projects procured by the same contracting authority, with different projects having different constraints and requirements, impacting the optimal risk position. This is a recommendation that Transport Scotland would consider to be impractical to implement and it is noted that the CMA aim to focus on identifying any specific, actionable and feasible measures in this area prior to finalising the recommendation.

Feedback – Interim Report Questionnaire

Question 1: Do you consider that we should be more concerned with barriers to firms expanding rather than barriers to firms entering the civil engineering market in the first place? Are there other forms of barrier not mentioned in our analysis so far which are significant?

Answer: Please refer to Transport Scotland’s response to Q13 of the Market Study Information Request (response dated 15 August 2025), which provides evidence relating to barriers to entry, expansion and innovation. Transport Scotland considers that elements of this question may be better responded to by suppliers to the civil engineering market themselves.

Question 2: To what extent do you agree supply chain fragmentation contributes to poor outcomes? Besides pipeline uncertainty, what other factors drive civil engineering firms’ preference to use contractors rather than building their in-house capacity?

Answer: Please refer to Transport Scotland’s response to Q6 of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q12 of the Market Study Information Request (response dated 15 August 2025), which provide evidence relating to the use of subcontracting within the supply chain. Transport Scotland considers that elements of this question may be better responded to by suppliers to the civil engineering market themselves.

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?

Answer: Please refer to Transport Scotland’s response to Q7 of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q13 of the Market Study Information Request (response dated 15 August 2025), which provide evidence relating to procurement, policy and regulatory barriers. Transport Scotland considers that elements of this question may be better responded to by suppliers to the civil engineering market themselves.

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Question 4: For what type of projects is there greatest scope for the accuracy of upfront scoping and planning to be improved, to aid delivery on time and on budget? What would help to make upfront scoping and planning more accurate?

Answer: Please refer to Transport Scotland’s response to Q1, Q4 and Q9 of the Market Study Information Request (response dated 15 August 2025), as well as the template Procurement Strategy attachment, which provides evidence relating to Transport Scotland’s procurement strategy approach for different projects including the development of scope.

Transport Scotland considers that it is difficult to categorise a single project into a ‘type’ for this question, and various procurement and contract strategies are available for individual projects to design and plan a scope for that project.

Question 5: To what extent do you agree early contractor involvement could be used more effectively, and how can this be facilitated?

Answer: Please refer to Transport Scotland’s response to Q8 of the Market Study Questionnaire Response (response dated 17 July 2025) which provides evidence relating to procurement and contracting strategies, including early contractor involvement.

Question 6: To what extent do you agree that the design and use of procurement frameworks could be improved?

Answer: Please refer to Transport Scotland’s response to Q5(b) of the Market Study Questionnaire Response (response dated 17 July 2025) which provides evidence relating to the use of different types of procurement procedures, including the use of frameworks.

Question 7: How could open competition be made less resource intensive as a method of procurement?

Answer: Please refer to Transport Scotland’s response to Q5(b) of the Market Study Questionnaire Response (response dated 17 July 2025) which provides evidence relating to the use of different types of procurement procedures, including the use of open competition.

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?

Answer: Please refer to Transport Scotland’s response to Q5(c) of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q7 of the Market Study Information Request (response dated 15 August 2025) which provide evidence relating to the use of qualitative tender evaluation criteria.

Question 9: What factors are most likely to cause significant risks to be misallocated between the procuring body and supply chain, and within the supply chain? How could this be addressed?

Answer: Please refer to Transport Scotland’s response to Q5(d) of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q9(a) of the Market Study Information Request (response dated 15 August 2025) which provide evidence relating to the assessment and allocation of risk to different parties.

Question 10: What are the areas of regulation which are preventing opportunities for innovation and effective competition?

Answer: Please refer to Transport Scotland’s response to Q7 of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q13 of the Market Study Information Request (response dated 15 August 2025) which provide evidence relating to regulatory barriers for innovation and competition.

Question 11: What are the areas of regulation which are preventing smaller suppliers from competing effectively (or from scaling up to be able to compete effectively)?

Answer: Please refer to Transport Scotland’s response to Q13 of the Market Study Information Request (response dated 15 August 2025) which provides evidence relating to regulatory barriers for innovation and competition.

Question 12: To what extent to do you agree there is excessive risk aversion in public authority decision making? Where risk

aversion is too high, what would help move it to more appropriate levels?

Answer: Please refer to Transport Scotland’s response to Q9(a) of the Market Study Information Request (response dated 15 August 2025) which provides evidence relating to the assessment of risk and how this is considered during the project lifecycle with the aim of ensuring fair risk allocation between the parties involved.

Question 13: How would you rank the relative importance of our proposed measures?

Answer: It is noted that the potential remedy measures included in the interim report are all closely interlinked and many measures interdependent. Whilst all proposed remedy options are important (and require further development and consideration from the CMA as part of the market study), it is considered that credible long-term funding is a key driver to positive impacts across many of the other remedy options, and without progress in this area then other recommendations are unlikely to succeed in practice.

Question 14: Are there alternative important measures that we do not mention?

Answer: From an initial review it appears that the interim report covers all key elements raised by Transport Scotland in previously submitted responses. It is noted that the CMA are now developing these identified areas further to produce final recommendations and a final report

Question 15: What would be the feasibility and impact of extending multi-year capital funding to public authorities currently operating on year-ahead budgets only?

Answer: Please refer to Transport Scotland’s response to Q7 of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q2 of the Market Study Information Request (response dated 15 August 2025), which provide evidence relating to the constraints that operating within an annual budget causes on forward planning.

Question 16: What information not currently available in published infrastructure pipelines would be most helpful for firms? How would this information change business decisions on resource allocation and/or investment?

Answer: Please refer to Transport Scotland’s response to Q3 of the Market Study Questionnaire Response (response dated 17 July 2025), and the response to Q2 of the Market Study Information Request (response dated 15 August 2025), which provide evidence relating to the limitations on the forward pipelines of work and how improvements could impact our procurements and the market.

Question 17: How could the commercial and engineering capabilities within procuring authorities be better utilised? What could be done to better support procuring authorities to develop, recruit and retain these specialist skills, expertise and leadership capacity?

Answer: Please refer to Transport Scotland’s response to Q1 of the Market Study Information Request (response dated 15 August 2025), which provides evidence relating the approach taken within the organisation to utilise staff with appropriate skills and expertise to manage procurements, and the response to Q2 which provides evidence on constraints including skills shortages.

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) to coordinate or jointly conduct procurement; and (iii) enact comprehensive, standardised sharing of cost and performance data? How could this best be achieved?

Answer: Please refer to the feedback provided above relating to cross-authority joint procurement and pooling of capacity set out within the interim report.

Question 19: What is preventing widespread adoption of procurement best practice? How could these barriers to adoption be overcome?

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Answer: Please refer to Transport Scotland’s response to Q2 of the Market Study Information Request (response dated 15 August 2025), which provides evidence relating to constraints relating to procurement best practice barriers.

Question 20: To what extent, and in what ways, is there scope for procurement processes to be made i) less complex and ii) more standardised across public authorities?

Answer: Please refer to Transport Scotland’s response to Q1 of the Market Study Information Request (response dated 15 August 2025), which provides evidence relating to procurement processes within Transport Scotland. Please also refer to the feedback provided above relating to cross-authority joint procurement and pooling of capacity set out within the interim report.