



Philip Willcox Esq  
Office of Rail Regulation  
1 Kemble Street  
London  
WC2B 4AN

19<sup>th</sup> October 2012

Dear Philip

**Eversholt Rail's response to ORR's consultation on Approach to Transparency July 2012**

This letter represents the response of Eversholt Rail (UK) Limited ('ERUK') to the consultation paper on Transparency. In particular, we respond specifically to your paragraph #3.45, regarding the effectiveness of the transparency remedies put in place by the Competition Commission ('CC') following its investigation of the rolling stock owning companies ('ROSCOs'), and your stated intent to review by end of the business year.

Our main observation is that the effectiveness of the existing Transparency Order ('TO') on the creation of a competitive rolling stock market is less significant compared with CC's other remedies and is of only limited usefulness for our customers.

The CC concluded that a package of five specific remedies would be effective and proportionate in correcting those features of the system which it felt prevented, restricted or distorted competition in the rolling stock market.

These measures have since been introduced and are operating, we believe, to produce effective rolling stock competition within the recent rounds of franchising competitions in the manner that CC had contemplated (acknowledging that the current rounds of franchising competitions have been recently paused).

The four measures which we think have had most effect are these:

- the introduction of longer franchise terms between 12 – 15 years, or longer (eg the Inter-City West Coast, Essex Thameside and Great Western Franchise specifications);
- the taking account of alternative used and new rolling stock beyond the franchise term and across other franchises through cascades (ditto);

- the specifying of invitations to tender ('ITT') that allow choice of rolling stock through less prescription (eg Essex Thameside and non-IEP component of Great Western Franchise);
- a requirement for ROSCOs to remove the non-discrimination requirements from their Codes of Practice (completed and acknowledged by ORR).

By comparison, the fifth measure, the introduction of a Transparency Obligation, is less relevant because the growth of a genuinely competitive market has been achieved by the initiatives taken by the ROSCOs themselves supported by the changes implemented following the CC's report.

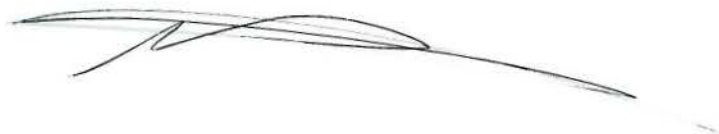
As a result, the Transparency Order is arguably a second or third order contributory factor in driving competition into the market, as other more natural and effective market pressures and mechanisms emerge.

We accept that our contention is based on initial experiences and bidder feedback, and has not been tested to completion since the franchising competition process has been paused. The proof will be in the 'final pudding'.

Importantly, we have also received feedback from bidders which suggests that they rarely use the full range of disclosures provided for through the Transparency Obligation, in particular the vast majority of historical contract documentation. Our opinion is that bidders are positioning and bidding forwards and a retrospective look at the detail of the past bears little significance. The most important parameters relate to the offer lease prices, modifications and options in line with bidders' own rolling stock strategies, technical, cost, risk and maintenance information – specific information which enables bidders to determine rolling stock utility and value in line with their own franchise bid submissions.

I hope this feedback is helpful in shaping how you plan to take forward your approach to transparency generally across the industry and, specifically, as it relates to the rolling stock market.

Yours sincerely



Mary Kenny  
Chief Executive Officer