House of Commons
Transport Committee

Thameslink rolling stock procurement

Eleventh Report of Session 2010–12

Volume I: Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/transcom

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The Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Transport and its Associate Public Bodies.

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Mark Egan (Clerk), Jessica Montgomery (Second Clerk), David Davies (Committee Specialist), Tony Catinella (Senior Committee Assistant), Edward Faulkner (Committee Assistant), Stewart McIlvenna (Committee Support Assistant), Clare Nelson (LSE postgraduate researcher) and Hannah Pearce (Media Officer).

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Summary

In this report we scrutinise the issues raised by the Thameslink rolling stock procurement because of the controversy raised by the Government’s decision to select Siemens rather than Bombardier as the preferred bidder for the contract and the implications for future procurements.

Bombardier owns the UK’s only train design and manufacturing facility, at Derby. Although Siemens will create new jobs in the UK if it wins the contract, Bombardier may reconsider its position at Derby as a result of losing out and this could also affect the domestic supply chain. As well as the consequences for jobs and skills, the Government is concerned that the loss of a UK train design facility is likely to have long term adverse implications for the cost of the railway, because of the specific design requirements of British trains.

Rolling stock procurement is characterised by periods of feast and famine: the current era is one of famine. There is evidence that this adds significantly to the cost of procurement. Although it may not be feasible or desirable to smooth out completely peaks and troughs in procurement there is scope for the Government to ensure that there is a steadier flow of opportunities to UK-based manufacturers and the supply chain. We recommend that the Government take steps to achieve this and, in the meantime, assist the UK train building sector in finding opportunities for work before the next major train procurement projects come along.

We are not in a position to assess whether or not the Government’s decision to choose Siemens was arrived at correctly, on the basis of the criteria in the original invitation to tender, as the bids are confidential. If the Government proceeds to sign a contract with Siemens we recommend that it publish the reasons for favouring Siemens over Bombardier and the difference in the cost of the two bids. We think that it would be in the public interest for the procurement process to be independently reviewed and we have written to the Comptroller and Auditor General to ask him to undertake this work and to report to Parliament before summer 2012.

There would now appear to be few defenders of the previous Government’s decision to exclude socio-economic criteria from the Thameslink procurement and we note that it would not have been possible for the terms of the contract to have been amended, following the change of Government in May 2010, without starting the procurement afresh with a new invitation to tender. We fully support the Government’s intention to have a “sharper focus on the UK’s strategic interest” in major public procurements and call for more information to be published about the work being undertaken on this. We hope that this new approach to procurement does not come too late for the Bombardier plant in Derby.

It is hard to escape the conclusion that Siemens’ A+ credit rating made a significant contribution to its success in winning the Thameslink procurement. We are concerned that bundling train manufacture and financing together in procurement exercises will skew the market towards larger multinational firms, possibly at the expense of excellence in train
design and domestic manufacturing. We recommend that the Government work with the railway industry to establish how train manufacturers can create finance partnerships which offer good value to the taxpayer whilst promoting long-term best value.
1 Introduction

1. On 16 June 2011 the Department for Transport (DfT) announced that Siemens plc and XL Trains had been awarded preferred bidder status in relation to the procurement of new rolling stock for the Thameslink programme. Bombardier Transportation were the unsuccessful firm in the competition but were named as reserve bidder. Bombardier owns the UK’s last remaining train manufacturing facility, at Derby, and the DfT’s decision generated a storm of protest, particularly from Derbyshire MPs, business interests and trades unions. The firm announced 1,400 redundancies in July and concerns were raised about Bombardier’s future in the UK and the sustainability of the domestic supply chain. Derbyshire County Council said 13,500 supply chain jobs were at risk. The RMT, GMB and TSSA trades unions told us that the decision to award the Thameslink contract to Siemens “has placed in serious jeopardy the future of UK based train manufacturing”. Rt Hon Margaret Beckett, MP for Derby South, said “the rejection of the bid and the handling—and costs—of the procurement process has caused [Bombardier] to review and reconsider its place in the UK”.

2. The DfT has been urged to reverse its decision, if necessary by terminating the current procurement exercise and starting afresh. There have been suggestions that the legal basis for the procurement is incorrect and that Siemens should be disqualified because of corruption allegations relating to the firm’s parent company, Siemens AG. The invitation to tender, published in 2008 by the previous Government, has been criticised for including a financing element, which may have proved advantageous to Siemens, whose parent company is a bank. It has also been criticised for not including socio-economic factors.

3. We decided to scrutinise issues raised by the Thameslink rolling stock procurement because of the controversy raised by the DfT’s decision and the implications for future procurements. The tender documents submitted to the DfT by Siemens and Bombardier are commercially confidential and we have not had access to them. Therefore, we are not able to reach our own view on whether or not, within the framework of the procurement process started in 2008, the Government’s decision to select Siemens was arrived at correctly. Instead we have sought to examine and make recommendations about wider issues for rolling stock procurement raised by this episode.

4. We heard oral evidence from Siemens, Bombardier, the then Secretary of State, Rt Hon Philip Hammond MP, and a number of other interested parties on 7 September: we are grateful to our witnesses and for the written evidence we received. We also raised the Thameslink rolling stock procurement process with the new Secretary of State, Rt Hon Justine Greening MP, when she gave oral evidence on 18 October. We acknowledge the
assistance we have received from our specialist advisers on rail, Richard Goldson and Bob Linnard.

**The Thameslink programme**

5. Thameslink is a through rail service from Bedford to Brighton, crossing London from north to south. Services began in 1988 and almost immediately proposals for expansion were drawn up. Originally known as Thameslink 2000, the expansion programme has had a chequered history and is now due for completion in 2018. As well as major infrastructure improvements, including the rebuilding of London Bridge station, and a considerably expanded route, the programme includes procurement of “a new generation of electric commuter trains” which will provide for longer, more frequent trains on the Thameslink network from the end of 2018. The introduction of new rolling stock will enable existing Thameslink trains to be cascaded to other parts of the network, providing “the supply of trains for the electrification proposals for the north west of England and the Thames Valley routes”.9

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8 Ev 20.
9 Ibid.
2 UK rolling stock market

Who procures rolling stock?

6. Rolling stock procurement is complicated because the cost of the trains cannot usually be recouped within a train operating company’s franchise period. Stock is typically bought by a leasing firm (known as a ROSCO) and then leased to the operator. The DfT influences this process in two ways: firstly, by including provision for increased services in a train operating franchise, it effectively starts the procurement process and, secondly, it can give undertakings to ROSCOs that rolling stock will continue to be utilised beyond the life of a specific train operating franchise, so that leasing is feasible.

7. Exceptionally, the DfT can lead the procurement process. This was done for Thameslink because:

- the new trains will be introduced across three existing franchises (Thameslink, Southern and Southeastern) and the DfT felt it was “the only party capable of providing overall control and direction” to the firms;
- the new trains will be delivered after the three existing franchises are due to end; and
- the existing franchises had not been let with a requirement to procure a large number of new trains.

8. First Capital Connect (FCC), the current holder of the Thameslink franchise, has been closely involved with the procurement process. It will become the contractor for the rolling stock when the contract is awarded and in 2013 when the new Thameslink franchise is let the new franchisee will take over the contract. Network Rail has also been closely involved with the procurement, to ensure that the new trains blend with the requirements of the overall Thameslink programme.

Building trains

9. Train building is a global business. The Railway Industry Association told us that “none of the headquarters of the train builders is located in this country, and the same is true of many of their subsystems suppliers”. Bombardier Transportation, for example, is a subsidiary of a Canadian firm, Bombardier Inc, and has over 34,000 employees servicing vehicles in 36 countries. Siemens’ parent company, Siemens AG, employs over 400,000 people across the world, 16,000 of whom work in the UK. Train manufacturing facilities

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10 The other example of the DfT leading the procurement process is the Intercity Express Programme, see Ev 19 and also 43.
11 Ev 21.
12 Ibid.
13 Ev 51, paragraph 15.
14 Ev 39.
15 Siemens at a glance, Siemens AG Annual Report and Accounts 2010 and Ev 32.
are to a large extent assembly plants, putting together components manufactured elsewhere. The then Secretary of State pointed out:16

Some of the key components for the Bombardier Thameslink train would have come from other countries. The bogies for Bombardier’s trains built in Derby are built in Germany and delivered to the Derby plant. The body panels, as far as I am aware, are not manufactured there.

In his view, the “key element” of the Bombardier factory at Derby is that it includes the UK’s “only train design capability which “is the key to Bombardier’s future in the UK”.17

10. Japanese firm Hitachi has agreed to open a train assembly plant in County Durham as part of the contract to design and build new inter-city trains. Mr Hammond said that once this happened:18

   The key to making that a sustained fixture of the UK economy will be eventually persuading them to tap into the UK’s undoubted expertise in train engineering and design to establish a design centre in the UK as well.

11. The Minister’s vision of competition between at least two UK-based train design facilities is not only based on the desirability of attracting inward investment. British train designs are specific to this country because the structure gauge is smaller in Great Britain, which means that standard-sized continental designs will not fit inside British bridges and tunnels, and platform height is different, being higher in Great Britain, so that door-stepping requirements are different. Mr Hammond said:19

   The product required for delivery to the UK is always a UK-specific product … if there was not a UK-based competitor, the industry might find it more difficult to get good value for money when it is ordering relatively small quantities of a UK-specific product.

This argument suggests that the loss of a UK train design facility is likely to have long term adverse implications for the cost of the railway, which is already regarded as too high, on top of immediate implications for jobs and skills.

**Rolling stock procurement since privatisation**

12. The Government told us that “since privatisation in 1996 over 5,500 new carriages have been ordered by UK train franchise operators which represents around 50% of the current UK passenger fleet”.20 Bombardier, Siemens, Hitachi and Alstom have been the main bidders for this work, with Bombardier being the most successful in recent years.21 Bombardier said it had fared better in competitions run by franchisees compared to those

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16 Q114.
17 Ibid.
18 Ibid.
19 Q115.
20 Ev 19.
21 See Ev 34 and 41.
run by the DfT. Chris Williamson MP said the DfT’s failure to award a train contract to Bombardier was evidence of a “bizarre and deep-seated prejudice within the DfT against Bombardier”. Mr Hammond dismissed this as an “extraordinary” suggestion.

13. Rolling stock procurement has been strongly cyclical, with large variations in the numbers of orders placed from year to year. The Railway Industry Association said that in the three years during the period of privatisation no orders for new rolling stock were placed, leading to the loss of “at least 10,000 jobs”. This was followed by a boom period when new franchisees refreshed their fleets, particularly as slam-door trains were phased out. More recently there has been a return to famine: it is now over 900 days since the last rolling stock order was placed. The Railway Industry Association said that this volatility was difficult for train builders and their suppliers to plan for and added “roughly 20%” to the cost of rolling stock in the UK. Siemens said that “continuous production [of rolling stock] would be more efficient” but it would be “difficult, if not impossible, to achieve this ideal at the domestic level, when there are a limited number of orders and the prospect of three to six suppliers bidding competitively for them”. It identified advantages of the current approach to rolling stock procurement in terms of encouraging competition and innovation.

14. Mr Hammond told us that he “took on board the feast and famine point, absolutely” and said:

We are looking at the requirements of the network over the next few years and looking to see what we can do to make that procurement pipeline more attractive for the supply chain across the board.

His successor, Justine Greening MP, told us that there were “opportunities on the near horizon for bids” for which Bombardier could compete. These include the procurement of rolling stock for Crossrail, for which Bombardier is a pre-qualified bidder. Mr Hammond said he did not accept that Bombardier’s failure to secure the Thameslink contract meant it could not compete strongly for the Crossrail contract. The RMT pointed out that another option would be to review service level agreements with train operators to see if amendments are required to enable additional rolling stock to be ordered.

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22 Ev 41.  
23 Ev w19 paragraph 35.  
24 Q110.  
25 Ev 51 paragraph 9.  
26 Ev w5 paragraph 10 and see Ev 51 figure 1.  
27 Ev 51 paragraphs 11-13. Also see Ev w1.  
28 Ev 35 paragraphs 9-11.  
29 Q114.  
30 Transport Committee, oral evidence on the work of the Department for Transport, 18 Oct 11, HC 1560-i, Q3 and Q5.  
31 Q117.  
32 Ev w12-13.
15. The Government plays a major role in rolling stock procurement, either by leading procurements or initiating and underpinning procurement by ROSCOs. This is unlikely to change significantly with the Government’s proposals for longer franchises because the lifespan of rolling stock will continue to exceed franchise durations. Although it may not be feasible or desirable to smooth out completely peaks and troughs in procurement there is scope for the DfT to ensure that there is a steadier flow of opportunities to UK-based manufacturers and the supply chain. Sir Roy McNulty's review of rail value for money also recognises this issue, recommending more effective procurement of rolling stock which “recognises the advantages of less volatile production flows”.33

16. Planning ahead to identify procurement opportunities and, working with operators, to manage timetables would help firms with their strategic planning and has the potential to cut costs without undermining the competitiveness of the procurement process. Network Rail has already taken steps in this direction by publishing a strategy for rolling stock procurement which analyses requirements for different parts of the network and for standardised forms of rolling stock. The Chancellor of the Exchequer’s autumn statement included reference to medium-term plans for Government procurement needs which will be published by April.34 We recommend that the Government clarify how it intends to use Network Rail’s passenger rolling stock RUS in ensuring that there is a steadier flow of procurements in future as well as clearer information to industry about the work which the DfT expects to initiate via operating firms or generate itself. We also recommend that the Government clarify whether the medium-term procurement plans mentioned in the Chancellor of the Exchequer’s autumn statement will include a plan for rolling stock. In the meantime, we would encourage the Government to assist the UK train building sector in finding opportunities for work before the next major train procurement projects are completed.


3 The Thameslink procurement

17. The procurement of around 1,200 train carriages for the Thameslink programme began in April 2008, when a pre-qualification notice was published. The invitation to tender was published in November 2008, with tenders submitted in June 2009. Three firms bid for the contract but Alstom was deselected in October 2009. The evaluation criteria, set out in the invitation to tender, required bidders to satisfy the department that they could “design, manufacture, maintain and finance a trains and depot solution” which would meet the project’s aims. Bids which achieved this were then evaluated according to best value for money “as determined by the whole life and whole industry cost model”.

18. As we have noted, the Siemens/XL Trains consortium was announced as preferred bidder in June 2011 and the Government was hoping to sign off a contract by the end of the year. This timetable has now slipped. Siemens said “we will create up to 2,000 new jobs in the UK” as a result of the decision, “including up to 600 highly skilled roles in the manufacture of train components”. Steve Scrimshaw, Managing Director, Rolling Stock, for Siemens plc confirmed that few existing jobs in the UK would have been lost if Siemens had not won the contract. The new trains are due to come into service from 2015 to 2017.

19. The main criticisms of the decision to award preferred bidder status to Siemens were:

- the invitation to tender, by focusing on best value for money, overlooked socio-economic factors. Several witnesses compared the UK unfavourably with France and Germany where, it was claimed, rolling stock contracts usually went to domestic manufacturers;
- by bundling train manufacture with financing the invitation to tender was biased towards Siemens because it has a better credit rating than Bombardier;
- the bogie design in the Siemens proposal is untested;
- the procurement was based on the wrong piece of secondary legislation and is thus invalid; and
- allegations of corruption relating to Siemens’ parent firm, Siemens AG, should have caused the DfT to strike out the Siemens bid.

We deal with each of these issues in turn.

35 Ev 22-23.
36 HC Deb 22 Nov 11, c262W.
37 Ev 38 paragraph 31.
38 Qq 58-64.
39 Ev 21.
**Socio-economic factors**

20. Under EU law, procurement can be based on price alone or on the broader basis of the ‘most economically advantageous tender’ (MEAT). The MEAT approach is the most frequently used in the EU\(^\text{40}\) and was the basis for the Thameslink procurement, although socio-economic factors were excluded from the invitation to tender.\(^\text{41}\) Several witnesses were critical of this omission. Unite, for example, said:\(^\text{42}\)

> The Government has stated that they believe that Siemens offered the best value for money yet when you take into consideration the taxation revenue which would have been generated by building the trains here, it becomes clear that it would be cheaper to manufacture the trains in the UK.

The Centre for Research on Socio-Cultural Change at Manchester University has argued that if “1,000 jobs could have been secured by Thameslink and other contracts … the tax receipt offset would be nearly £20 million per annum by 2012 and increasing each year with inflation and real wages”.\(^\text{43}\)

21. Professor Bovis of the University of Hull argued that the Government could have chosen to include a broader range of qualitative criteria in the invitation to tender. In his view, these could have included “employment, industrial policy, innovation, security of supplies, reliability of supplies, and even aesthetics … policy and law makers have a very wide remit—a non-exhaustive remit—to determine the award criteria of the contract”.\(^\text{44}\) Jonathan Faull, Director General for Internal Market and Services at the European Commission, explained that the MEAT approach “can be used … to encourage recourse to small and medium sized companies, subcontracting arrangements, but anything which indirectly … requires location origin in a particular country is obviously discriminatory”.\(^\text{45}\)

22. Bombardier said:\(^\text{46}\)

> Other EU countries such as France and Germany use [MEAT] to ensure that procurement decisions can safeguard a domestic industrial base in the long-term interests of the country. The DfT appears to have put multinational companies like ours, that invested in the UK, at a disadvantage in public procurements.

Some of the press reporting of the outcome of the Thameslink procurement suggested that other EU countries routinely award rolling stock contracts to domestic firms. Siemens argued that this was “misleading” and Mr Hammond pointed out that this perception was

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\(^{40}\) Ev 57 – the UK almost always uses the MEAT approach.

\(^{41}\) Ev 27 Annex 2. Q83.

\(^{42}\) Ev 47 paragraph 3.1.


\(^{44}\) Q12.

\(^{45}\) Q87.

\(^{46}\) Ev 45.
due to the fact that major firms such as Siemens and Bombardier had manufacturing plants in several countries.47

23. In the light of the outcome of the Thameslink procurement Mr Hammond and Vince Cable MP, the Secretary of State for Business, Innovation and Skills, wrote to the Prime Minister and asked for the Growth Review to “explore more fully the opportunities for us to take a strategic approach to large-scale public procurement” including whether the UK makes best use of EU procurement rules.48 Mr Hammond spoke in terms of achieving “long-term best value, looking at how to build and then support supply chains which ensure that you, the buyer, obtain the best long-term solution”.49 The Prime Minister agreed with this suggestion,50 and the Chancellor of the Exchequer’s autumn statement contained measures to improve procurement practices.51 We recommend that the Government explain how the measures announced in the Chancellor’s autumn statement to improve procurement practices will achieve a more strategic approach to large-scale procurement and publish an implementation timetable.

24. There would now appear to be few defenders of the previous Government’s decision to exclude socio-economic criteria from the Thameslink procurement. The DfT told us that:52

At no time during the bidding process or prior to the appointment of Siemens and XL Trains as the preferred bidder did any bidder raise concerns about the structure of the tender, the evaluation criteria being used, the requirement for bidders to provide all necessary funding or any other aspect of the procurement approach being adopted.

We note that it would not have been possible for the terms of the contract to have been amended, following the change of Government in May 2010, without starting the procurement afresh with a new invitation to tender. Looking ahead, we fully support the Government’s intention to have a “sharper focus on the UK’s strategic interest” in major public procurements.53 We hope that this new approach to procurement does not come too late for the Bombardier plant in Derby.

Financing the deal

25. An innovative aspect of the Thameslink procurement was the requirement for bids to combine train design and build with long-term maintenance and financing. In other words, the train builder was expected to own the rolling stock and lease it to the franchisee for 30 years. Although novel for rolling stock procurement, the DfT said this approach had been “used widely in the UK and across Europe in public procurements and has

47 Ev 36 paragraph 19 and Q95.
48 Ev 23 and letter from the Secretary of State for Transport and the Secretary of State for Business, Innovation and Skills to the Prime Minister, entitled Government Procurement and UK Industry, 23 June 2011.
49 Q105.
50 Ev 28.
52 Ev 22.
53 Ev 23.
successfully led to many companies with a wide range of credit ratings being involved in providing services to the public sector”. On this occasion the requirement to include finance “was essential as the department does not have the funds to purchase the trains and depots outright.”

26. Criticism of this arrangement was widespread. One of the ROSCOs, Angel Trains, said that public-private partnerships in rail did not have a good track record and tended to be more costly because their bespoke nature makes them more risky prospects for private investors. Another ROSCO, Porterbrook, said “packaging the overall funding costs with the technical characteristics and the cost of the trains clouds the decision making process … the manufacturer with the best credit rating is always going to have a material bidding advantage depending upon the relative weighting of the procurement criteria.” Bombardier said funding costs “would have been lower if the Government arranged financing itself because it can borrow more cheaply than private companies”.

27. Derby MPs Chris Williamson and Margaret Beckett both argued that bundling train manufacture with financing advantaged Siemens. Mrs Beckett said “it has emerged that it may be the strength of Siemens’ balance sheet (it is now a bank) and financial engineering capacity which has been the decisive factor”. Professor Karel Williams of the Centre for Research on Socio-Cultural Change suggested that the difference in the credit ratings of the two firms could have been worth “anything like £500 million”.

28. Mr Scrimshaw emphasised that the procurement was “a lot more complex” than the debate about the credit ratings sometimes suggested. Mr Hammond said “it would be wrong to suggest that the difference in the credit rating between the companies and, thus, the difference in cost of long-term finance is likely to have been a determining factor” in the procurement. He argued that Bombardier needed to draw lessons about “the way they approach the overall package rather than just train building itself … focusing the supplier on the whole life cost of the train”. The Government has since indicated that the credit rating of bidders for the Crossrail rolling stock contract is not likely to be specifically scored.

29. It is hard to escape the conclusion that Siemens’ A+ credit rating made a significant contribution to its success in winning the Thameslink procurement. Omitting credit ratings from the evaluation criteria for future rolling stock procurements, beginning with Crossrail, is a sensible step. We have a wider concern, however, that bundling train manufacture and financing together in procurement exercises will skew the market.

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54 Ev 22.
55 Ev w1.
56 Ev w3.
57 Ev 45.
58 Ev w7 paragraph 14 and Ev w18 paragraph 18.
59 Q11.
60 Q46.
61 Q92.
62 Qq 108-9.
63 HC Deb, 18 Oct 11, c888w and HC 1560-i Q5.
towards larger multinational firms, possibly at the expense of excellence in train design and domestic manufacturing. We recommend that the Government work with the railway industry to establish how train manufacturers can create finance partnerships which offer good value to the taxpayer whilst promoting long-term best value.

The bogie

30. The Thameslink procurement required trains which can achieve “very exacting dwell time demands and thus deliver 24 trains per hour through the core central London Thameslink route” and “provide reductions in whole life and whole industry cost through a reduction in track damage and lower energy consumption”. This necessitated “a degree of design innovation”, particularly in relation the bogie (the framework which holds the wheels of the train).

31. Mr Williamson contrasted Bombardier’s lightweight bogie, which has been fully operational for several years, with Siemens’ bogie, which is still at the design stage:

It won’t be known if the Siemens bogie is reliable or safe until it has run on British lines. The Department for Transport would be taking a massive risk if they were to choose the Siemens bogie which is unproven and could lead to massive additional costs and delays.

Mrs Beckett observed that “a recent contract won by Siemens from Deutsche Bahn required them to use a Bombardier bogie because Siemens lacked a proven lightweight bogie”.

32. Mr Scrimshaw was confident that Siemens’ new bogie design would be ready in time to fulfil the Thameslink contract:

The bogies are being made right now, will be on test later on this year, beginning of next year, and they will accumulate a million miles of operational service in our dedicated test track at Wildenrath long before they arrive in the UK. As well as that, they will meet all of the necessary standards in the specification and all the necessary standards for bogies, so I do not think it is a risk.

Mr Hammond said that the DfT was “quite satisfied that both trains offered by Bombardier and Siemens were technically proficient and were deliverable”.

Other issues

33. Mr Williamson argued that Siemens had been “involved in several incidents of corruption in recent years” which “indicates that Siemens could be excluded as a bidder”
from the Thameslink process. The DfT said it had asked Siemens for “further information and assurances” as a result of which it was “satisfied ... that the individuals involved in the allegations were not and would not be involved in Siemens plc or any aspect of the Thameslink procurement exercise and consequently Siemens plc was not excluded”. We would expect the DfT to take a robust attitude to any further allegations of corruption involving Siemens, or any other firm it contracts with, and not to hold back from excluding firms from procurement exercises where there is sound evidence of corruption.

34. It has also been suggested that the procurement exercise has been based on the wrong statutory instrument (the Utilities Contracts Regulations 2006 rather than the Public Contracts Regulations 2006) and that this may invalidate the outcome. The DfT has defended its approach. This is a legal matter which, if challenged, should be decided in court.

Next steps

35. Unite argued that the invitation to tender provided for the Secretary of State to intervene in the procurement process, for example “to put in place provisions to ensure the security of supply and maintenance of these trains by having them manufactured and maintained in the UK”. However, the DfT said that it was not legally permissible for the minister to “vary the procedures or the basis of the competition in a way which altered the outcome of the competition” and this was confirmed by the European Commission.

36. Debate has therefore focused on whether the Government should conclude a contract with Siemens or start the process afresh with a new invitation to tender, which the European Commission confirmed would not be illegal. Bombardier argued that a re-tender need not take too long, “especially now that the specification is well defined and understood”. Mr Hammond, however, said that to avoid legal challenge it would be necessary to “re-scope our requirement from scratch” and that this would take “two to three years”. He explained the consequences delay of this length would have for the Thameslink project as a whole as well as for the cascade of rolling stock to other areas. His successor has subsequently confirmed that the Government intends to finalise its contractual negotiations with Siemens and has no intention of abandoning the current procurement and starting again.

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69 Ev w17-18 paragraphs 8 to 13.
70 Ev 28 annex 2.
71 Ev 26 annex 2.
72 Ev 47 paragraph 3.2.
73 Ev 27 annex 2 and Q83 and see Q26.
74 Qq 81-82.
75 Ev 45-46 and see Ev 42.
76 Qq100-3.
77 Q99.
78 HC 1560-i, Q4.
4 Conclusion

37. The Government’s decision to award the Thameslink rolling stock contract to Siemens rather than Bombardier has been controversial because it puts the UK’s last train design and manufacturing facility at risk and may also have serious consequences for the domestic supply chain. Furthermore, there is now widespread agreement that the criteria by which bids were judged were too narrowly drawn. We welcome the Government’s decision to focus more keenly on how UK firms can benefit from major public sector procurements, without infringing the EU’s legal framework. It should be noted, however, that this would not necessarily benefit Bombardier, not least because Siemens is also a major UK employer with links to the UK supply chain.79 We also note that there may be scope for Bombardier to support its Derby facility by moving work to the UK from its overseas plants.80

38. The Thameslink procurement has not yet concluded and it has not been possible to review the bids from Siemens and Bombardier and reach a view on the reasons for the Government’s decision. We think that it would be in the public interest for the procurement process to be independently reviewed and we have written to the Comptroller and Auditor General to ask him to undertake this work and to report to Parliament before summer 2012.81

39. If the Government proceeds to sign a contract with Siemens we recommend that it publish the reasons for favouring Siemens over Bombardier and the difference in the cost of the two bids.

40. The outcome of the Thameslink procurement was of enormous significance to the employees of Bombardier, to firms in the supply chain, and to the local economy in Derbyshire. However, there is a broader significance to the railways. The UK needs a domestic train design and manufacturing facility because of the bespoke requirements for UK rolling stock. Without such a facility, costs are likely to rise because foreign rolling stock cannot be imported straight onto the UK network. The railway can ill afford another source of unnecessary extra cost at a time when Sir Roy McNulty has argued that there is 30% more cost in the industry than there should be.82 How to squeeze cost out of the railway without pushing up fares still further is one of the biggest challenges currently facing the DfT and its response to McNulty has recently been delayed into 2012.83 The costs associated with rolling stock have to be analysed as part of a broader picture which includes factors such as franchising and the structure of the industry. We intend to scrutinise the Government’s response to McNulty and will return to the issue of rolling stock procurement in that inquiry.

80 Q93.
81 See Annex.
82 McNulty report, p5.
83 HC Deb, 15 Nov 11, c42WS.
Conclusions and recommendations

UK rolling stock market

1. Although it may not be feasible or desirable to smooth out completely peaks and troughs in procurement there is scope for the DfT to ensure that there is a steadier flow of opportunities to UK-based manufacturers and the supply chain. (Paragraph 15)

2. We recommend that the Government clarify how it intends to use Network Rail’s passenger rolling stock RUS in ensuring that there is a steadier flow of procurements in future as well as clearer information to industry about the work which the DfT expects to initiate via operating firms or generate itself. We also recommend that the Government clarify whether the medium-term procurement plans mentioned in the Chancellor of the Exchequer’s autumn statement will include a plan for rolling stock. In the meantime, we would encourage the Government to assist the UK train building sector in finding opportunities for work before the next major train procurement projects are completed. (Paragraph 16)

The Thameslink procurement

3. We recommend that the Government explain how the measures announced in the Chancellor’s autumn statement to improve procurement practices will achieve a more strategic approach to large-scale procurement and publish an implementation timetable. (Paragraph 23)

4. There would now appear to be few defenders of the previous Government’s decision to exclude socio-economic criteria from the Thameslink procurement. We note that it would not have been possible for the terms of the contract to have been amended, following the change of Government in May 2010, without starting the procurement afresh with a new invitation to tender. Looking ahead, we fully support the Government’s intention to have a “sharper focus on the UK’s strategic interest” in major public procurements. We hope that this new approach to procurement does not come too late for the Bombardier plant in Derby. (Paragraph 24)

5. It is hard to escape the conclusion that Siemens’ A+ credit rating made a significant contribution to its success in winning the Thameslink procurement. Omitting credit ratings from the evaluation criteria for future rolling stock procurements, beginning with Crossrail, is a sensible step. We have a wider concern, however, that bundling train manufacture and financing together in procurement exercises will skew the market towards larger multinational firms, possibly at the expense of excellence in train design and domestic manufacturing. We recommend that the Government work with the railway industry to establish how train manufacturers can create finance partnerships which offer good value to the taxpayer whilst promoting long-term best value. (Paragraph 29)
6. We would expect the DfT to take a robust attitude to any further allegations of corruption involving Siemens, or any other firm it contracts with, and not to hold back from excluding firms from procurement exercises where there is sound evidence of corruption. (Paragraph 33)

Conclusion

7. We think that it would be in the public interest for the procurement process to be independently reviewed and we have written to the Comptroller and Auditor General to ask him to undertake this work and to report to Parliament before summer 2012 (Paragraph 38)

8. If the Government proceeds to sign a contract with Siemens we recommend that it publish the reasons for favouring Siemens over Bombardier and the difference in the cost of the two bids. (Paragraph 39)
Annex

Letter from the Chair of the Committee to the Comptroller and Auditor-General

You will be aware of the issues raised by the Government’s decision to award preferred bidder status in the Thameslink rolling stock procurement to Siemens plc and XL Trains. In particular, concern has been expressed that the original invitation to tender was too narrowly drawn and overlooked wider socio-economic factors. In the light of the outcome of the Thameslink procurement Rt Hon Philip Hammond MP, the then Secretary of State for Transport, and Rt Hon Vince Cable MP, the Secretary of State for Business, Innovation and Skills, wrote to the Prime Minister and asked for the Growth Review to “explore more fully the opportunities for us to take a strategic approach to large-scale public procurement” including whether the UK makes best use of EU procurement rules. Mr Hammond spoke to the Transport Committee in terms of achieving “long-term best value, looking at how to build and then support supply chains which ensure that you, the buyer, obtain the best long-term solution”. The Chancellor of the Exchequer’s autumn statement includes measures to improve procurement processes which seem to relate to this initiative.

The Transport Committee will shortly publish a report on the Thameslink procurement. This letter was agreed by the Committee and will be published in an annex to the report.

Our view was that it would be in the public interest for the Thameslink procurement process to be independently reviewed and that you are well placed to lead this work. In our report we recommend that, if the Government proceeds to sign a contract with Siemens, it should publish the reasons for favouring Siemens over Bombardier and the difference in the cost of the two bids. We suggest that you should audit this information and thereby provide assurance that the Government’s decision to favour Siemens was reasonable, on the basis of the original invitation to tender. We also suggest that you undertake a value for money study of proposed improvements to large-scale procurement procedures, to ensure that the changes achieve the more strategic approach to such procurement which Ministers have advocated and represent value for money.

We suggest that you report to Parliament on these issues by summer 2012.

I look forward to hearing from you on these points and would be pleased to meet with you if you wish to discuss this issue further.
Formal Minutes

Tuesday 6 December 2011

Members present:

Mrs Louise Ellman, in the Chair
Steve Baker
Julie Hilling
Mr John Leech

Paul Maynard
Iain Stewart
Julian Sturdy

Draft Report (Thameslink rolling stock procurement), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 40 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Tuesday 13 December at 10.00 a.m.]
Witnesses

Tuesday 7 September 2011

Colin Walton, UK Chairman, Bombardier Transportation UK Ltd, Professor Karel Williams, Director, ESCR Centre for Research on Socio-Cultural Change, University of Manchester, Professor Christopher Bovis, University of Hull, and Diana Holland, Assistant General Secretary, Unite

Ev 1

Steve Scrimshaw, Managing Director, Rolling Stock, Siemens plc, Jeremy Candfield, Director General, Railway Industry Association, and Jonathan Faull, Director General for Internal Market and Services, European Commission

Ev 8

Rt Hon Philip Hammond MP, Secretary of State, Department for Transport

Ev 12

List of printed written evidence

1. Department for Transport Ev 19
2. Professor Chris Bovis, University of Hull Ev 28
3. Siemens plc Ev 31, Ev 39
4. Bombardier Transportation UK Ltd Ev 39
5. Unite Ev 46
6. Railway Industry Association Ev 50, Ev 53
7. European Commission Ev 53, Ev 56

List of additional written evidence

(published in Volume II on the Committee’s website www.parliament.uk/transcom)

1. Angel Trains Ev w1
2. Derbyshire and Nottinghamshire Chamber of Commerce (DNCC) Ev w2
3. Porterbrook Ev w3
4. Huddersfield Penistone and Sheffield Rail Users Association Ev w4
5. Associated Society of Locomotive Engineers and Firemen (ASLEF) Ev w4
6. Margaret Beckett MP Ev w6
7. RMT, GMB and the TSSA Ev w7
8. Further written evidence from RMT Ev w12
9. Peter Cousins Ev w13
10. DATUM Ev w14
11. Chris Williamson MP Ev w17
12. Mark Thurnock Ev w20
13. Derby & Derbyshire Rail Forum Ev w21
14. Brian George Ev w22
15. Derbyshire County Council Ev w23
List of unprinted evidence

The following written evidence has been reported to the House, but to save printing costs has not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives (www.parliament.uk/archives), and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074; email archives@parliament.uk). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Additional material from Porterbrook
Additional material from RMT, GMB and the TSSA
### List of Reports from the Committee during the current Parliament

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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Oral evidence

Taken before the Transport Committee
on Wednesday 7 September 2011

Members present:

Mrs Louise Ellman (Chair)
Jim Dobbin
Mr Tom Harris
Julie Hilling
Kwasi Kwarteng
Mr John Leech
Paul Maynard
Iain Stewart
Julian Sturdy

Examination of Witnesses

Witnesses: Colin Walton, UK Chairman, Bombardier Transportation UK Ltd, Professor Karel Williams, Director, ESCR Centre for Research on Socio-Cultural Change, University of Manchester, Professor Christopher Bovis, University of Hull, and Diana Holland, Assistant General Secretary, Unite the Union, gave evidence.

Chair: Good morning and welcome to this meeting of the Transport Select Committee. I would like to declare that I am a member of Unite. Do other Members have any interests to declare?

Jim Dobbin: I declare that as well.
Mr Harris: I am a member of Unite, Chairman.
Julie Hilling: I am a member of Unite and I was a full-time official with TSSA, who had members in Bombardier.

Q1 Chair: Thank you very much. Could I ask the witnesses, please, to identify yourselves by giving your name and the organisation you represent? This is to help us with our records.

Diana Holland: Diana Holland, Unite the Union.
Colin Walton: Colin Walton, Bombardier Transportation.
Professor Williams: Karel Williams, Centre for Research on Socio-Cultural Change, University of Manchester.
Professor Bovis: Christopher Bovis, University of Hull.

Q2 Chair: Thank you. Mr Walton, over the past six years Bombardier has been very successful in winning 11 out of 14 passenger train procurement competitions, yet it has not won one single Department for Transport contract. Why do you think that is?

Colin Walton: This is a question that we are ourselves struggling to understand. We have been extremely successful when we are dealing with train operators or ROSCOs or, indeed, TfL. Their procedures and models are very much centred on choosing the best train and then going out for a separate financing. With the Thameslink and the DfT model, both the build of the train and the financing are coupled together. This means that the person with the strongest finance can really have a very good chance of winning the order. We are seeing and reading, as the Business Secretary said, that the DfT have very much defined the Thameslink process narrowly and there really was only one outcome. That, to us, signifies that finance has played an extremely important part of this deal as opposed to choosing the best train first. So this is one of the key areas that we are looking at and we are analysing.

Q3 Chair: Is there an issue to do with specification of the stock required?

Colin Walton: The specification was proven technology around the world, not just on one train. We believe that we have done an extremely good job of that by bringing together proven technology from different countries. We have put it together in a package in what we call the AVENTRA train, and we believe that was an extremely good specification. The specification of the train plays a very important part, but also how you construct the invitation to tender in the first place is something that we need to understand and review because there are factors in there, such as the socio-economics, that you can put in there under EU rules that do not appear to have been put in in this particular case.

Q4 Chair: As you have been so successful, apart from where the DfT have been directly involved, why have you come to a redundancy situation so quickly and are saying that you may even pull out of the UK? How can that be the case when you have been so successful apart from where your involvement was directly with the Department for Transport?

Colin Walton: We have been extremely successful. We have had a number of projects going through Derby and they have created a peak. Our business and our business cycle for rail is extremely “peaks and trough” driven. So we have been going over this peak and in fact it is a very narrow peak at the moment. The contracts that we are currently building have come to an end. Some have come to an end already; others will be coming to an end in the next few months, which will only leave us, without the Thameslink, one contract going forward, which is the sub-service line for London. Therefore, we had no alternative but to announce on 5 July that we would have a redundancy situation of some 1,400 people.
Q5 Chair: What is the current situation with Thameslink?

Colin Walton: The current situation with Thameslink is that we are a reserved bidder. We are obviously bound by their process and there is no contract yet signed. Siemens are the preferred bidder negotiating with the DfT and they are in the negotiation phase with the DfT.

Q6 Chair: You told us in your written evidence that you had very little or inadequate feedback from the Department about why you were not the preferred bidder. Is that still the situation?

Colin Walton: The situation is that the formal feedback we originally got from the Department was a one-hour meeting. Clearly, we recognise that we are in a commercial situation; we are a reserved bidder and could be called back to the table. But since that briefing we have had a further meeting with the Department officials, and, also, we have been gathering a lot of information with what has been said in the House in answer to various parliamentary questions. That, at the moment, has been one of our major sources of information-gathering so that we can just understand what the situation is and how the situation could look in the future.

Q7 Chair: You say that you secured more information through answers to parliamentary questions from MPs than you did from discussions with the Department. Is that still the case?

Colin Walton: We now have been given and have more information from the Department, but, still, I think the springboard to get that information was the information that we got in the public domain that helped us to go back and say, “We have heard this. Is it right? Is this your understanding?” We developed a dialogue with the Department in that area.

Q8 Paul Maynard: If you had won the contract to supply these trains, would there have been any job losses at your Derby plant?

Colin Walton: What we said is that, if we had been successful in being preferred bidder for Thameslink, we would have mitigated those job losses. Certainly, there would have been no job losses on our permanent staff, and this includes our very highly skilled staff and what we call the crème de la crème in our train design people—our engineers. These are the people that are vital to us to look and be able to bid for ongoing work. It is a skill that we really do not want to lose. We recognise we would have needed a lot of those people going forward when the Thameslink production hit our factory, and what we are looking at is a mitigation of a gap in production as opposed to having no orders now for the foreseeable future.

Q9 Paul Maynard: You made mention of permanent staff and, by implication, temporary staff. Can you just state for the record the number of temporary job losses you are now engaged upon and the number of permanent job losses? Can you explain for the benefit of the Committee, when you refer to temporary staff, in what way they are temporary, what sort of contract links they have, what sort of jobs they perform and how highly skilled they are?

Colin Walton: Yes. In the announcement where we announced just over 1,400 people, over 900 of those were what we call temporary staff. These are people that we wanted to keep for the Thameslink programme. They are very highly skilled and they fit our production cycle and our business extremely well, so we would have looked to retain those. When we work with agencies, particularly around Derby, we set length in terms of their contracts so they know it is a defined end to their contract. However, we wanted the contracts to roll on, because, in the past, when we have these peaks and troughs, we have suffered. When we are going up a peak, we have to go out to the marketplace, we have to find the right calibre of people, we have to make sure that they have the right skills, the right training and that is an extremely time-consuming learning curve for us. We know these people can do the job and we know that they can do it extremely well, and this is why we really wanted to keep our temporary staff as much as possible.

Q10 Paul Maynard: You give the appearance of having been very successful in winning contracts other than from the DfT, yet none the less you describe yourself as being in this trough. Is it not the case that you are living from tender to tender to tender, and, even if you had got this particular tender, a failure at the next tender or the next tender but one would have generated a similar situation? Is this not a reflection more on the nature of the management of the business rather than on the structure of the industry?

Colin Walton: We have our facility in the UK to cater predominantly for our domestic market and to look at export opportunities like the one that we did recently in South Africa where we built the trains for the 2010 World Cup. They were built in Derby and there was a transfer of technology to South Africa. We believe that with the Thameslink contract it would have given us, for the first time, long-term stability. As you rightly say, we have in the past had to rely on contract to contract because it has been very difficult to determine when these contracts will come out. As we know, a lot of the contracts should have been placed a long while ago, so a number of factors have caused this situation. It is true that what Bombardier wanted to do was build an export base with our supply chain. We have approximately 500 SMEs that we would have been using on the Thameslink contract and we are seen as their route to export. We wanted to take the facility and the factory away from the domestic UK peaks and troughs where possible and look at export opportunities.

Q11 Chair: Professor Williams, you cite Siemens’ higher credit rating as one of the reasons they got the contract. Is that something you can be firm about?

Professor Williams: It is interesting because, of course, the question of what is in the public domain and what is not in the public domain is relevant here. I have not seen figures on which the DfT has made the decision, nor has anybody else had sight of them. All I have is an envelope and that tells me that...
Transport Committee: Evidence Ev 3

7 September 2011 Colin Walton, Professor Karel Williams, Professor Christopher Bovis and Diana Holland

Bombardier has a B+ credit rating and Siemens an A+ credit rating. You can then play around with rates of interest and various other things, and on the back of my envelope it looks like it could be anything like £500 million. This comes back to the point which is made by Colin Walton about the fundamental mistake of issuing a bundled contract where you have multiple policy objectives, where you want low cost finance and you want the trains built appropriately, and you bundle it all together in one contract with one number at the end as the decision principle. Of course, you lose sight of a fair number of your objectives.

Q12 Mr Harris: Professor Bovis, I believe you wrote an article in The Guardian recently just in the wake of this decision. We are going to hear from the Secretary of State later on this morning and he will tell us that he had no choice but to award this contract to Siemens. Is it your understanding of EU procurement law that that is the case or would there have been some get-out, taking into account local economic factors when any EU Government awards a similar contract?

Professor Bovis: European law specifically on the procurement directives as implemented by statutory instruments in this country is pretty flexible. The European acquis is crystal clear. That allows, under the remit of the most economically advantageous offer, to take into account not only price but also a number of qualitative criteria. This is what the debate starts. Under qualitative criteria, what can feature as work criteria for a contract? In other European countries, in other nations across the World Trade Organisation, the elements that comprise what we understand as the most economically advantageous offer bring into play employment, industrial policy, innovation, security of supplies, reliability of supplies, and even aesthetics. Policy and law makers have a very wide remit—a non-exhaustive remit—to determine the award criteria of the contract. The key issue in this country is how we interpret the most economically advantageous criteria in order to award public contracts. We have for a number of years successfully applied the value for money principle. It served very well. However, we have some sort of schism or gap between the UK interpretation and continental European interpretation on what value for money can bring to the table of ancillary policies to economic policy.

Q13 Mr Harris: Having looked at this subject for a while, have you any theory about why the interpretation of that procurement directive in Britain is so different from our European partners? I am talking very specifically about EU member states and not beyond them. Why is that interpretation so different in the UK? I have heard this many times before but I have not seen any hard and fast evidence that this is the case. It is more about anecdotal evidence. Have you any hard and fast evidence that it is definitely the case that we interpret it so differently?

Professor Bovis: It is the flexibility that the policy maker and the applicator of the law bring to the table in order to award the public contract. For a number of years other European countries have allowed non-economic considerations legitimately to play a role in the procurement process. We have seen time and again since the 1980s, the 1990s, and the 2000s, member states proactively putting on the table the protection of employment, environmental considerations, issues in relation to social infrastructure and industrial policy. In certain areas of procurement, such as defence procurement, industrial policy is a key component of the award process.

Q14 Chair: Can consideration for tax revenues be included, looking at the potential implications of unemployment caused?

Professor Bovis: Yes, Madam. The court allows any consideration that has a direct link with the subject matter of the contract and at the same time it cannot be of an economic nature. It could be any nature that relates to the economically advantageous assessment exercise of the contracting authority.

Q15 Mr Harris: People watching this will come to the conclusion that this Government and its predecessors have conspired to give the British worker a raw deal for no apparent reason. What is the motivation for this very strict interpretation in Britain? You cannot expect us to believe that the British Government has some kind of ulterior motive. If best value is not served by giving these contracts abroad, then what is the motivation?

Professor Bovis: There is not a specific motivation to give a contract to a specific undertaking or economic operator, but it is how you arrive at the destination to award the contract that delivers public services. The UK, from a traditional point of view, focuses on best value from the appraisal of the price—the lowest price. It is in the public domain that the invitation to tender for the Thameslink project focused on two specific issues: specification compliance and lowest price. At every step the Thameslink project complied 100% with the letter and the spirit of the law. But if you applied the same situation in another member state or in another part of the World Trade Organisation that obeys the same rules on procurement, you will arrive at a different destination.

Q16 Mr Harris: This seems to me the very heart of this whole issue. Do other members of the panel want to make a comment on this?

Diana Holland: As the majority union representing the workers there, we totally agree that, had the social impact been included in the costings, there is potentially a very different outcome than the one that we have today. We have done some work not just on the direct loss of jobs but also looking at the supply chain. We have identified that there are suppliers, the majority of which are in the UK but across the world, but there are a very, very large number in Derby and also throughout most constituencies that will be directly affected by this. So, had the immediate impact on jobs within Bombardier been taken into account as well as the potential loss of jobs throughout the country, there would be a very different decision here. Also, to add to the earlier point about the way in which the contract was structured on this occasion, it is the first time that the manufacturing and the leasing
were linked together in this way. To go back to the important point that Colin Walton made, as a result it has not been the kind of considerations you would expect to be informing the awarding of this contract around the delivery of trains and about the importance of the community benefitting. We feel that the total cost has not been counted properly in this contract.

**Q17 Julian Sturdy:** Mr Walton, can I just take you back to your comments at the beginning to the Chair’s opening questions, and Mr Williams also alluded to this as well? I just want to get this clear in my mind. Are you saying there were real problems with the criteria and the parameters of the tender process—the ITT when it was set out—and do you believe that it was favoured toward Siemens or favoured toward one company?

**Colin Walton:** When we look at the information that we have today and we look back to the tender, there are two elements in the tender that could have well made a different outcome. The first is the fact that the manufacturer had to bring finance. The financial model seems to be the one that has taken priority over the choice of the best train. The other element is that no socio-economics were taken into consideration. If those two areas had been looked at, I do not know the outcome but it could have been very different. Also, the duration of the tender was much longer than was initially thought to be the case. Therefore, clearly, people had time in that tender to develop some elements of their product more, taking it along the route of a further enhancement of design. That time was specified in the tender period at the outset, yet clearly we all expected a relatively short tender period, which has gone on many more months.

**Professor Williams:** In response to Mr Sturdy, the bundling introduced a bias in favour of Siemens because they had the superior credit rating and that gave them an advantage of maybe several hundred million pounds on the deal. Apart from that, the other issue which all your witnesses are emphasising is that value for money was defined very narrowly as price for quality, as though it were you or I choosing a toaster at John Lewis or my central administrator for quality, as though it were you or I choosing a toaster at John Lewis. It is not appropriate for a £1.5 billion contract which is relevant to the future of train supply in the UK.

Therefore, as soon as one says that, the scale makes this a kind of procurement industrial policy, if you like. It is necessarily industrial policy, whatever you do. As soon as you say it is industrial policy, then you come back to Professor Bovís’s point about how the Europeans would often take into consideration a broader set of considerations. On that, if you look at our report, you will see that some of these considerations have some considerable weight. Each Bombardier worker pays £17k of taxes a year and makes £10k a year of tax contributions. Average pay in the rail supply industry is £44k total compensation. These are material considerations, material sums, which should have been taken into account and should now be taken into account if the question of penalties for breaking or changing things is to be introduced, because clearly there are items in the ledger which the DfT did not consider.

**Q18 Kwasi Kwarteng:** You are suggesting that there should be wider considerations than purely financing, but, clearly, a difference between an A+ credit rating and a BB+ credit rating is quite considerable, and you have said that that is £500 million. Mr Walton, there was a perception that Siemens were perhaps going to be more reliable in delivering the contract. I am not taking a view on that, but, if you look into yourself, were there any operational considerations that you felt you could have tightened up on to make your bid more attractive? Let me put it another way. If you look at what you have done in the past, do you feel that somehow your track record may have impaired your bid for this contract?

**Colin Walton:** We have been told that our track record did not impair our bid. If we look at our deliveries to date, we have delivered the Stansted Express train, which is a generation very similar to the Thameslink train, and we have delivered that ahead of schedule. We have restructured our facilities at Derby, we have done management change, we have been working with our supply base, and we now feel that we have a very robust delivery programme that has been put to the test on Stansted Express and met those criteria. So we were very confident that we could deliver this train.

**Q19 Kwasi Kwarteng:** Let me go back to the financing. Clearly, a difference between an A+ and a BB+ rating is very considerable indeed. In fact a BB+ in the market is a junk bond.

**Colin Walton:** Yes.

**Q20 Kwasi Kwarteng:** So investors are taking a look at your cash flows and thinking that you are not very stable in credit terms as far as they are concerned. Clearly, you operate in a very cyclical business; it is highly capital-intensive. A lot of the swings in the ups and downs of troughs mean that you are going to have to make some sort of retrenchment in terms of redundancies and savings, and when the peaks are good you do well. Your business perhaps is not as stable, which is suggested by the credit rating, as investors want to see. My question is, simply, given that you are in a highly cyclical business, do you think that this one contract would have made all the difference in terms of your outlook, not just in terms of the employment but in terms of the business situation, because clearly investors have taken the view that you are a fairly unstable business in terms of the cash flows?

**Chair:** Mr Walton, it is all about this contract.

**Colin Walton:** Here we could be mixing up our global business, which is where the rating comes, as opposed to our UK-specific business. The issue is that we are the global leader for train manufacturers; we are the largest in the world and we are the global leader. We are also the third largest aerospace manufacturer in the world. We have a credit rating that is very similar to other people in that business and those sectors. Clearly, Siemens is a bank. It is identified as a bank and it has a better credit rating than we have. When I
look at the cyclical trends, the cyclical trends are very much partly a UK phenomenon. In some parts of the world they really try and balance out the peaks and troughs because the more it can be balanced out the more even and better prices that the customer gets.

Q21 Kwasi Kwarteng: You would have a better credit rating as well.

Colin Walton: That could certainly affect the credit rating. It is one of the factors that could on a world basis. There is no doubt that the Thameslink contract was extremely important to Derby and this is why we are carrying out a full UK review. With regard to the outcome of that review, we anticipate to start getting the outputs at the end of September, early October.

Q22 Kwasi Kwarteng: I would just like to rephrase a question that my colleague made. If this contract had gone through, could you specify the number of redundancies that you would have made?

Colin Walton: If the contract had gone through and we were the preferred bidder, we said that we would mitigate the job losses because we would have needed the skills it is required of us to time going forward. We would have had a gap that we would have had to manage. There were different ways that we were looking at managing that gap, bringing in new work from elsewhere on a short-term basis and working with our agencies to see if they could take up those jobs in other organisations around the city.

Q23 Kwasi Kwarteng: Forgive me, have you got a number? We know that there are 1,400.

Colin Walton: We have said that there would have been no job losses, certainly on the permanent staff. We would have mitigated as much as possible on the temporary staff and we were hoping to mitigate that down to a zero level.

Q24 Kwasi Kwarteng: Despite the fact that you are in a highly cyclical business.

Colin Walton: Despite that fact. This is an order that, coupled with the SSO order that we had for London Underground, would have gone 2014, 2015, 2016, and therefore it is very important. We would have seen a vision of the future. It would have given us time to look at all the skills, to work with our work force, to retrain, and to look at our apprenticeship schemes which we have ongoing. All those would have been factors. At the same time we were looking for export opportunities. Clearly, as one of the prerequisites of exporting, one of the first things your customer asks is, “Do you have a domestic market?” Of course, we would have been able to say, “Yes”, and it would have helped in our export activities. We need to evaluate all that now and that is the purpose of the review.

Q25 Kwasi Kwarteng: Out of interest, just remind me where the bogie is made.

Colin Walton: The bogie was designed in the UK and the frame is made in Germany. A lot of those components of the bogie come from the UK and go out to Germany where it is assembled.

Q26 Iain Stewart: I would like to go back to Professor Bovis’s comments about the qualitative criteria in which you say there is some flexibility. I just want to be clear in my mind. Do these have to be explicitly stated in the tendering criteria at the start of the process or can they be applied after the tenders have been received?

Professor Bovis: Categorically, all criteria, including the specific features of the most economically advantageous award criteria, should be stated at the outset of the project, advertised in the Official Journal and weighted accordingly at the beginning of the procurement exercise so that the economic operators know what they have to expect in terms of competition. If a contracting authority changes the criteria midway through the procurement process, it is subject to review. It breaches European law and cases have been brought before the European Court of Justice where the whole project is stopped.

Q27 Iain Stewart: Therefore, the problem in this circumstance was the narrowness of the criteria at the start of the process, and the Secretary of State’s room for manoeuvre now is very limited. In addition, if you are allowed to bring in these wider socio-economic factors, how does that square with not being allowed to be protectionist, nationalistic, in setting the criteria so it is clear you are going to award that contract to your domestic supplier?

Professor Bovis: The two sides of the equation, as you correctly identify, are protectionism, which is outlawed by the European Directives in European law, and on the other side of the equation is flexibility, which is inherent in the procurement directives. The court has said on many occasions, and the UK Government has admitted time and again in policy documents, that considerations that do not relate to economic considerations, meaning the lowest price, can legitimately be part of the evaluation process of the award criteria if they are proportionate, if they are put into the tender documents ab initio, from the beginning, and everybody in the procurement process—all economic operators—is aware of that. Best practice and case law analysis and policy analysis from the European Commission and also from cases across the European Union and across the world in terms of World Trade Organisations suggest that compliance with contracts after the award of the contract to your domestic supplier?

Q28 Iain Stewart: Out one last question if I may. I am not a lawyer but I cannot help concluding that the EU rules are sufficiently opaque and fuzzy that Britain plays by the rules and loses out where other European countries can find a way to favour their domestic suppliers. Would I be fair in reaching that conclusion?

Chair: Is that what the evidence shows?
**Professor Bovis:** I am not sure that you would be fair suggesting protectionism and favouritism, because Britain—the UK—is one of the champions in complying with public procurement. It is a bastion of legitimacy and compliance with the acquis and a number of issues.

**Q29 Chair:** Professor Bovis, would it be correct to say that other European Union countries award more contracts to domestic suppliers?

**Professor Bovis:** Yes.

**Q30 Jim Dobbin:** This has been alluded to in responses from the panel here, but it is really important that we get this on the record because it is very important for the country, the east midlands, etc.

If this is all confirmed, is this the end of train building in Derby? What impact will it have on the economy of the east midlands and what impact would the Thameslink decision have nationally on the economy, because this is the crux of the whole argument?

**Colin Walton:** I clearly cannot comment on the outcome of the review that we are currently undertaking, so it would be absolutely wrong of me to speculate in that area. I am sure you will appreciate that the first people we will be sharing that with will be our work force and our unions. I will let you know the outcome of our review as soon as I possibly can and I will send it to the Committee.¹

With regard to the wider economic factors around Derby and particularly the rail supply chain, Derby is the centre of the world’s largest railway cluster and it is something of which we should be extremely proud. There are over 250 companies around the area, of which 96 are in one federation called the Derby and Derbyshire Rail Forum. They have gone out and looked at their members and done a study with their members; so has the local chamber of commerce and so have the unions. Unfortunately, their findings are that there is a lot of dependency on Bombardier in that area, and you can expect that, and job losses are already taking place. That is extremely unfortunate.

I also chair the local enterprise partnership and we are very concerned because Derby is seen, and certainly was last year, as the techno capital of the UK. That is predominantly because of Rolls-Royce, Toyota, Bombardier and JCB. What is happening and what people are very concerned about, and, as Chair of the LEP I am particularly concerned about, is that it could be that one of the main cornerstones there in Bombardier is going to see a drastic reduction. Clearly, as an LEP Chair, it is a big worry. It is also not just an east midlands or west midlands issue. Bombardier’s supply chain is extensive across the UK and this is why we are doing a UK review. Also, our suppliers out there will have their own supply base around where they do their components. It is a national issue and it is an extremely important one, as you rightly say.

¹ E-mail from Neil Harvey, Group Communications, Bombardier Transportation, 2 December 2011: “The review of our UK operations is still on-going at this stage as there are a number of issues that have to be taken into account before we can reach a definitive conclusion. Unfortunately, we cannot put an anticipated timescale on this but we will keep you informed of progress.”

**Q31 Mr Leech:** Mr Walton, you said that the specification for the Thameslink contract was similar to the Stansted Express, which you built. What similarities are there and what differences are there, and if the specification had been exactly the same as the Stansted Express would the contract have ended up being cheaper and would it have increased your chances of winning that contract?

**Colin Walton:** It could not have been the same. The Stansted Express is based on our ELECTROSTAR product. The AVENTRA product that we offered for Thameslink is an evolution of that product. It uses a lot of the commonality of components, but it also uses a lot of other components that we have developed around the world and are proven that we believe are now best in class for a future EMU that is the next stage. The ELECTROSTAR is an extremely good product. It is the lightest product running in the UK at the moment, has more miles than any other product in the UK and has been a real good workhorse for the UK, but we wanted to take it to the next step.

Therefore, we wanted to look for proven technology, which the specification called for. So we looked around the world for where we have proven technology that would enhance our ELECTROSTAR platform and we repackaged and restructured it into what we believed was a real cutting edge product in the AVENTRA.

**Q32 Mr Leech:** Earlier in your comments you described there needing to be the best train. What is the definition of the “best train”? What elements of the train products make it the best train?

**Colin Walton:** For us, it is very much tied in with what the operational criteria are of the rail network. Obviously, you want the train that fits the best operational standards. As you can imagine, London Underground standards are very different from mainline standards. It is what we believe is the most reliable train, the train that delivers the right specification, the train that meets the criteria, the train that is very much energy-efficient, and as light as possible for today’s market, particularly in the UK where you have track access charges, so weight is very much a premium. This is why our bogie—the FLEXX Eco—is so important because that helps us bring the overall train weight down.

**Q33 Mr Leech:** What makes your train better than what is on offer from Siemens?

**Colin Walton:** I do not want to do a direct comparison with Siemens, but I can tell you why we believe our train is as good as you can get and is state of the art. We have taken the best technologies that are proven around the world. These are cutting-edge products from the global market leader. We have put those together. We have the key element of a proven bogie. The bogie that we have has done 1.5 billion miles in service and that is in regular service in the UK. We have taken those kinds of technologies, put them all together and packaged them together and this is why we believe we had a terrific train on offer.
Q34 Mr Leech: One last very brief question to Mr Williams. You helpfully quantified the difference between an A+ rating and a B++ rating.

Professor Williams: I guessed at the consequence, yes.

Q35 Mr Leech: But you gave us an indication of what the difference would be. Would you have any concerns about a company with a B++ rating being able to deliver the contract?

Professor Williams: At that stage I think my response would be “poor Derby”, because the B++ is not the result of some kind of verdict on Derby. It is the result of where the merry-go-round of changes of ownership stopped in the early 2000s. After BREL was privatised in 1989, in the following 12 years there were five changes of ownership. If the merry-go-round had stopped at a different place, we could be talking about Daimler’s credit rating or ABB’s credit rating.

Q36 Chair: Could you just tell us how you see the position now? That is what we want to concentrate on.

Professor Williams: I do not see that the credit rating of Bombardier, the parent, should be the key consideration in allocating this.

Chair: Mr Kwarteng, is that on this point?

Q37 Kwasi Kwarteng: On this particular point there is a massive difference in terms of financing. One of the bankers was saying that it was £700 million over 30 years, which is an appreciable amount of money. Someone allocating the contract will look at this very materially on the economic grounds. Yes, there are other factors, but the difference between an A+ rating, which is solid in investment terms, and a B++ or BB+ rating is night and day to an investor, and it has a material impact in terms of consideration in awarding a contract.

Professor Williams: If you have a bundled contract, which is what the DfT decided to go for, it is almost inevitable, given the difference in credit rating, that you will choose the company with the higher credit rating because the difference is of the order of £500 million to £700 million on the back of different envelopes.

Q38 Julie Hilling: Does the decision going forward affect Bombardier Crewe?

Colin Walton: We are clearly looking at our entire UK footprint and Bombardier Crewe is part of that evaluation. Bombardier Crewe would have played a major role in Thameslink on the overhaul of the Thameslink trains, the refurbishment of those trains, the overhaul of equipment and where we have our spare parts handling. So Bombardier Crewe would have played a role in Thameslink and that is part of the review.

Q39 Julie Hilling: Then I have just a general question to people. If the decision is not reversed on this contract, what does the Government need to do to protect the train-building capacity of the UK?

Diana Holland: First of all, we do not want to accept that it is too late yet.
thinking about how we rebuild the supply chains and not simply let them go.

Q44 Chair: Mr Walton, we do not have time to have a lot more detail on this because we have more people to question, but could I just put this point to you? In his analysis, Professor Williams suggests to us that the jobs implications for the UK are not as extensive as you and others are saying. Do you accept that?

Colin Walton: The situation with the Thameslink contract is that we would have placed some 70% of the orders with UK companies. We have an extensive supply base on our SMEs—over 500 suppliers—so there would have been a considerable amount of work for those suppliers. We are very much encouraged by the Secretary of State for BIS and Transport writing to the Prime Minister because it clearly seems that there is recognition that there is a need to look at the contract and the process again going forward. We are very much mindful that this process on Thameslink has had something like five reiterations of bids with an extremely long time scale. What we would like to see is clearly a decoupling of finance from the purchase of a train. I think it has been well demonstrated today that that has been a deciding factor. We would also like to see the best price put forward first. This cyclical number of keeping on having to put best prices forward and change the specification just adds to the length of the process and makes it extremely expensive. We believe that socio-economics should play a role and we also believe that the right train should be purchased and then the finance dealt with separately. Connecting the two together is bound to deliver the outcome that we currently have today, with the effects of that outcome.

Diana Holland: The knock-on effect on the supply chain is not minimal. There are over 800 sites that are going to be directly affected, and the qualitative research we did with over 100 manufacturing sites, which included Bombardier and Siemens manufacturers, shows that already nearly half of them have said that within the 12 months they have either already lost jobs or they will lose jobs, and there are some that are saying they will close altogether.

Chair: Thank you very much for answering our questions.

Examination of Witnesses

Witnesses: Steve Scrimshaw, Managing Director, Rolling Stock, Siemens plc, Jonathan Faull, Director General for Internal Market and Services, European Commission, and Jeremy Candfield, Director General, The Railway Industry Association, gave evidence.

Q45 Chair: Good morning, gentlemen. Welcome to the Transport Select Committee. Could you please identify yourselves for our records and give your name and the organisation you represent?

Jonathan Faull: Jonathan Fall, Director General, European Commission.

Steve Scrimshaw: Steve Scrimshaw representing Siemens in the UK.


Q46 Chair: Thank you very much. Mr Scrimshaw, why do you think you were made preferred bidder? Have you been told why and what is happening now?

Steve Scrimshaw: I think we were made preferred bidder because, under the evaluation criteria, which is a lot more complex than has so far been described, which takes into account lots and lots of different factors like energy consumption, weight, maintenance periodicity, damage to the infrastructure, etc, as well as capital cost, as well as finance, everything, we were judged to be the best value for money for the UK taxpayer.

Q47 Chair: Would that include an assessment of the implications for jobs in the UK?

Steve Scrimshaw: No. That was not part of the published criteria; so I do not think that impact would have been assessed as part of the evaluation. That is probably something you need to address to the Secretary of State.

Q48 Chair: If that had been in the criteria, would it have affected the outcome?

Steve Scrimshaw: I do not genuinely know how they would take that into account because it is a very broad issue to try and take into account. I understand a procurement review has been suggested and we welcome that, providing it does not lead to uncompetitiveness, protectionism and delivers value for money for the taxpayer.

Q49 Chair: How many jobs will come to the UK with your contract?

Steve Scrimshaw: We have declared as part of the preferred bidder announcement that we would create 2,000 jobs in the UK, of which around 1,400 would be the building of depots and the ongoing maintenance for around 30 years, which probably could be the same as Bombardier. I would guess, and another 600 in the UK supply chain, which would involve around 300 at our facility in the north-east of England.

Q50 Chair: Is that an assessment or is that a commitment?

Steve Scrimshaw: That is what we are committing to do as part of it. The numbers are near enough. It is not an exact science.

Q51 Chair: Mr Candfield, what is your assessment of the implications for the supply chain if the contract is awarded with Siemens is finally agreed?

Jeremy Candfield: It is very difficult for us to say on the basis of the data that we have available. We do not have sufficient information about the supply chains of either company. From time to time we carry out business surveys of the Association’s membership.
They are not necessarily representative of the industry as a whole, but they do give some indications about mood, confidence, activity levels and what people say about the future. In the most recent one, which was carried out just after the announcement was made, a number of companies from Bombardier’s supply chain indicated that they were expecting a lower level of activity, but that was not in any quantified form.

Four indicated that they could be at risk of closure as a result of the decision if it was carried through and the total number of employees in those four companies would be about 130 or something of that order.

Q52 Iain Stewart: I would like to ask a technical question first to Mr Candfield. We have received evidence from both Bombardier and Unite about the design of the Siemens bogie for this train. They are claiming that it is not tested compared to the Bombardier bogie, which is a proven technology. In your experience of the rail industry over the last 30 years or so, have there been other procurement decisions made where significant components of the train have only been at the design stage and not proven?

Jeremy Candfield: I do not have the information to answer that question. I am sorry.

Q53 Iain Stewart: Could you perhaps supply that afterwards?

Jeremy Candfield: Certainly. I would be very happy to look at it.

Q54 Iain Stewart: Network Rail has approved the design and the Department has said that it will undergo extensive testing before it is introduced into service. From your perspective is that sufficient, or do you have any concerns that, after testing, the bogie may not prove to be acceptable and we would have to revert to Bombardier’s design as a reserve supplier?

Jeremy Candfield: Perhaps it might be helpful if I clarified the Association’s activity because we would not be involved in the consideration of individual companies’ products or proposals in the normal way of business. You will be aware from our written evidence that both Bombardier and Siemens are members of the Association. So I can readily speak about matters where the Association has a collective view, but, on matters which pertain directly to the individual companies, that would not normally be an area where the Association has a view. I would not be able to comment in those areas. On the generic points, if I have understood your question correctly, I am sure it would be a matter of concern for the industry as a whole if there were a risk of a substantial failure to a key component emerging at a late stage. But I have no reason, on the basis of the very limited information available to me, to think that that might the case.

Q55 Iain Stewart: Mr Scrimshaw, as it is your design, would you like to comment?

Steve Scrimshaw: Sure. We are a leading bogie manufacturer in the world; you are probably aware of that. In the last five or six years we have made something like 33,500 bogies for the global bogie market. I could repeat the same as Colin Walton did. All the components that go into our bogie are from the best of what we have got around the world and we have been developing these bogies since the DfT’s technical strategy was issued in 2007. The bogies are being made right now, will be on test later on this year, beginning of next year, and they will accumulate a million miles of operational service in our dedicated test track at Wildenrath long before they arrive in the UK. As well as that, they will meet all of the necessary standards in the specification and all the necessary standards for bogies, so I do not think it is a risk.

Q56 Mr Leech: Mr Scrimshaw, you have said that if you win the contract it will create 2,000 jobs in Britain. How many of those jobs would be permanent jobs?

Steve Scrimshaw: Good question. I think in the building of the depots it is a project-related activity. There were four bidders in this competition and not just the two of us and therefore the depots jobs would be the same for all competitors in that once the depots are finished, the project-related jobs would disappear. In terms of the long-term maintenance jobs, they would remain because it is a 30-year contract, potentially. With regard to the jobs that we do in the supply chain, once the Thameslink project has finished, they would be doing other projects, potentially. With regard to the supply chain, our global rolling stock business purchases from the UK, we have a similar supply chain, as was mentioned by Unite. We have over 400 suppliers in the UK. We spend about £75 million to £80 million in the UK for our global projects and I cannot see any reason why they would not continue in other projects. But once the Thameslink project is finished it is finished.

Q57 Mr Leech: But the vast majority of those jobs would, in effect, be simply for this contract.

Steve Scrimshaw: Certainly for this contract, yes.

Q58 Mr Leech: Were the decision to be overturned and Siemens did not win the contract, what impact would that have on jobs in Siemens?

Steve Scrimshaw: In the UK?

Q59 Mr Leech: I was actually going to say in the UK and then my follow-up question was going to be abroad.

Steve Scrimshaw: In the UK the 2,000 jobs would not be created, and obviously the works that we would be doing in our factory in Krefeld and in part of Vienna would not be there either.

Q60 Mr Leech: I am not talking about the jobs that no longer would be created. I am talking about the impact on jobs at your current locations in Britain and abroad and whether there would actually be any losses.

Steve Scrimshaw: We have 16,000 employees in the UK. In our facilities in Hebburn, for example, if we were not to get the Thameslink contract, the impact there would be that the jobs would not be created in Hebburn. So there might be an impact there.
Q61 Mr Leech: You have not really answered the question. In the same way that the contract is incredibly important to Bombardier, how important is it to Siemens in terms of protecting jobs within the Siemens company?

Steve Scrimshaw: This is growth business for us. So it would be establishing a new development of our business in the UK, which we want to do. We want to continue growing in the UK and continue to be successful.

Q62 Kwasi Kwarteng: The point is that you would not actually lose any jobs.

Steve Scrimshaw: No.

Q63 Kwasi Kwarteng: If you lost this contract, you would not have lost jobs.

Steve Scrimshaw: We might lose some but I do not think it is a great loss.

Q64 Chair: So it is about new jobs rather than losing existing jobs.

Steve Scrimshaw: It is about new jobs.

Q65 Mr Leech: Why do you not consider building trains in Britain?

Steve Scrimshaw: Our structure is somewhat different from Bombardier’s. We have a network of manufacturing facilities and we look at levelling the resource across those factories so we share manufacturing content across the factories. We have a capacity for our factories currently that suits the market demand. We do not have an excessive number of factories. Recently we closed a factory in the Czech Republic because we had too much capacity. So that is the reason. We have sufficient capacity.

Q66 Mr Harris: Mr Faull, are the Commission aware of any glaring difference between the interpretation the British Government places on the EU procurement rules and the interpretation which other EU nations place on those same rules?

Jonathan Faull: No. There are occasional disputes and there are cases which go all the way up to the European Court of Justice, but there is no widespread difference between this country and the others on the basic elements of the legislation.

Q67 Mr Harris: In your experience then, some of the contracts that are let by other nation states for large sums of money, more than £1 billion or Euros, as far as you are aware, do not take into account local employment effects and local taxation revenue. Are they done basically on exactly the same basis that this contract was let by the DfT?

Jonathan Faull: Broadly, yes.

Q68 Mr Harris: That is in direct contradiction to the previous witnesses. Have you any idea—

Chair: Mr Faull, you said “broadly”.

Jonathan Faull: Well, there are disputes. If everybody obeyed the law all the time perfectly, we would not need enforcement mechanism and courts to do it. There are disputes occasionally, not that often, but, broadly speaking, the rules are complied with throughout the European Union. We have provided written evidence to the Committee and the figures show that that is the case. The United Kingdom benefits very considerably from that situation.

Q69 Chair: We may be talking about interpretation of the rules and not breaking the rules. How often do other European countries use the most economically advantageous criteria in the contract?

Jonathan Faull: That is frequently used, but, to be very clear about a point which I heard was raised earlier, a local employment condition would be unlawful in any member state and would—

Q70 Chair: But is that criteria used in other European countries?

Jonathan Faull: No.

Q71 Chair: Not employment criteria but the category of most economically advantageous criteria is used.

Jonathan Faull: Yes, indeed. That is used and can be used, and must relate to the subject matter of the contract itself.

Q72 Mr Harris: Is it more often used in other nation states than in Britain?

Jonathan Faull: No, not to my knowledge. We can provide figures if we have them on that. I am looking round to see my colleague. If we have them, we will supply figures.

Q73 Mr Harris: In your experience then, Germany and France, for example, grant these kind of contracts in as great a capacity to foreign-based companies in other parts of the EU as the British Government does. There is no imbalance there at all, as far as you are aware.

Jonathan Faull: It is not absolutely identical but there are no very wide divergences.

Q74 Mr Harris: Mr Scrimshaw, would Siemens be prepared to commit to sourcing a particular percentage of component parts through British manufacturers when and if this contract is confirmed?

Steve Scrimshaw: I think that is what we are doing. Out of the 2,000 jobs, 600 are going to be from the UK supply chain. We are actually doing that.

Q75 Mr Harris: There will be a specific percentage committed by you.

Steve Scrimshaw: Yes.

Q76 Mr Harris: Has Siemens as a German company received contracts from the German Government in recent years—in the last 10 years or so?

Steve Scrimshaw: Yes, we have. Siemens is classed as a German company. We have been in the UK for 168 years. We were in the UK before we were in Germany, but I understand the meaning. Yes, we have had some contracts from Deutsche Bahn, for example, in Germany. I have some figures. We have had some
something like three contracts in the last five years. Bombardier, in comparison, has had 21 contracts.²

Q77 Mr Harris: What kind of size were those contracts?
Steve Scrimshaw: We have had something like half a billion Euros. I think Bombardier had maybe three or four. You can maybe ask Bombardier—

Q78 Mr Harris: I was asking for Siemens actually and not for Bombardier. If Bombardier were here I would probably ask them, but you are Siemens and so I am asking you.
Steve Scrimshaw: Half a billion.

Q79 Kwasi Kwarteng: In your role as an industry practitioner, someone who has worked in the industry, how surprised are you at the thought that a company would be reliant on one contract for its ensured future?
Steve Scrimshaw: I would suggest it is very unusual. Businesses go through a business planning cycle normally every year. They look at what the market is like for the next five or six years. If you just talk about the transport business, there is an interaction with the Department for Transport at all different levels, with train operators, etc. Most manufacturers, us included, have a view of what life looks like a number of years out.

Q80 Kwasi Kwarteng: You would have to do this because it is a highly cyclical business.
Steve Scrimshaw: Absolutely.

Q81 Jim Dobbin: Just to clarify for the Commission, what would be the EU legal implications if the Secretary of State considered reversing this decision? What would be the legal status of that?
Jonathan Faull: If the Secretary of State reversed the decision in the sense that he went back to the very beginning and faced whatever contractual consequences he may have with Siemens, but that is a matter for the United Kingdom’s law and not for ours, he can do that. He can go back and say, “I am going to start the procedure all over again, at the beginning.” That he can do.

Q82 Jim Dobbin: I am asking the question because the inference in the press has been that if he took that decision it would be illegal.
Jonathan Faull: I can assert very clearly it would not be, although there might be consequences that he would have to face. There may be a breach of contract in it, but that is not a matter for us. Perhaps I should specify. When an award is made in a public procurement procedure by a member state we do not know about it. We only hear when things go wrong, when somebody complains to us or when people start suing each other, or where Parliaments ask us to come and give evidence about it. I do not know at all the details of this particular award. If the Secretary of State has reasons to say, “I want to look at this again and start again from the very beginning” and remains within the bounds of the EU law in doing that, then we have nothing to say about it.

Q83 Paul Maynard: Can I just ask Mr Faull this in particular, referring to the EU contracts and the notion of most economically advantageous? Different countries will have different ways of reaching a definition of that term. To your knowledge, do any other EU nations seek to include what we are generically calling social criteria? It may relate to, say, employment protection or reducing skill shortages. If they do, do they have to be on the face of the tender and therefore open to all or would it be the case that they could choose to apply their social criteria without it being visible and therefore not subject to this notion that no single member state or area of a member state can be disadvantaged by the tender?
Jonathan Faull: First of all, in answer to the last question, in order to be fair to all potential bidders the criteria should be known in advance. My answer to the last question is that the criteria should be set out on the face of the tender documents from the very beginning and not added on later on. Secondly, within the notion of MEAT—apologies to any vegetarians here but we call it that in our jargon: the Most Economically Advantageous Tender—social criteria are certainly allowed. MEAT is very widely used. My colleague has now given me a rough estimate figure saying in 70% of cases it is used and 30% price only. The MEAT test, if you like, must relate to the specific subject matter of the contract, and within that there may well be social considerations and employment of certain categories of people of the sorts you mentioned, but not—

Q84 Chair: Is it possible, Mr Faull, in that, to include assessments of benefits incurred to the tax revenues and unemployment benefits that might be involved?
Jonathan Faull: Criteria which relate directly or indirectly to geographical location within a member state of the European Union are not permitted. They run counter to the very basic principles of the common—now single—European market.

Q85 Chair: Does that mean, in assessments, that, if it was related to a geographical area, the impact of unemployment could or could not be assessed in terms of the cost of revenues?
Jonathan Faull: The impact of the award of a contract on employment or unemployment³ necessarily cannot be taken into account as a relevant consideration.

Q86 Chair: The award of this contract was anonymised and we are told that the Minister did not know who the contract was being awarded to until after he had made the decision. Is that common practice in other European countries?
Jonathan Faull: It is certainly used as a practice. I do not know how common it is, but we can check that. Again, I am saying we can check that. We do not³

² These figures (in answers Q76–78) relate to the five year period up to March 2011, see RSP 08a for additional information.
³ Note from witness: in a specific location, not related to the subject matter of the contract.
know a lot of what is going on because we only know when something goes wrong.

Q87 Julie Hilling: The previous witnesses said that part of the criteria that could be used was industrial policy. Therefore, as part of the criteria in the bid, can it be the loss then of train-building capacity in a country so that if the contract is awarded to Siemens then potentially we have no train builders left? Can that be used in terms of that industrial policy as part of the bidding process?

Jonathan Faull: In those stark terms, no. A tender can be crafted to encourage participation of small and medium sized companies, subcontracting arrangements, but anything which indirectly requires location or origin in a particular country is obviously discriminatory.

Q88 Chair: Explicitly that could not be done, but the organisation seeking the contract could put criteria in the contract that related to it.

Jonathan Faull: That is a commercial decision for the organisation itself.

Q89 Chair: That is a matter of decision for the Government, if it was a Government involved, that it would be done that way. We do have to end in a moment; we do have a Secretary of State about to come in. Mr Candfield, I just want a very brief answer from you. We are talking a lot about a specific contract here but we are concerned with general issues. Would you say there is a general concern about the way in which rolling stock is procured?

Jeremy Candfield: Yes, absolutely. We have shown in the Association’s written evidence the extreme volatility in the ordering of rolling stock which has taken place in this country for the last 15 years. That imposes a very substantial cost on the industry and its members, and ultimately on the taxpayer. We have a concern about the multiplicity of vehicle types which are procured. We would favour a much smaller number of types of vehicle. We would prefer to see a procurement system which operated more swiftly and more economically than we see taking place at the moment, and we would welcome seeing a greater degree of discussion in advance of the decisions on the timing of procurements of where and when—or, in particular, when—capacity is most likely to be available in the supply industry’s plants to meet that demand in the interests of getting the best outcome both for suppliers and for clients.

Chair: Thank you very much, gentlemen, for coming and answering our questions.

Examination of Witness

Witness: Rt Hon Philip Hammond MP, Secretary of State for Transport, gave evidence.

Q90 Chair: Good morning, Secretary of State, and welcome to the Transport Select Committee. I understand you would like to make a statement.

Mr Hammond: I do not want to make a lengthy statement. I just wanted to be clear about something that I think Mr Walton has already touched on in his remarks, which I was watching earlier. The situation at the moment is that Siemens have been selected as preferred bidder and Bombardier remain reserved bidder. The terms of the bids that both companies have made remain confidential. Of course I have seen the terms of both bids, but there will be a limit to what I can say about some of the issues contained within them because of the commercial confidentiality that remains both as a contractual term between the Department and the bidders and because of the Department’s need to protect the interests of the taxpayer because we may be negotiating with both of the parties—the preferred bidder and the reserved bidder—in the future.

Q91 Chair: What was the main reason for Siemens being made preferred bidder rather than Bombardier?

Mr Hammond: The bids were evaluated against a set of predetermined criteria that were set out at the time that the ITT was issued in 2008, with a very rigorous structure of assessment under different categories. Different parts of the bids were assessed and scored separately and then aggregated together. On the basis of that evaluation the Siemens bid represented better value for money, and in accordance with the criteria that had been set out Siemens were thus awarded preferred bidder status.

Q92 Chair: How important was what you saw as Siemens’ ability to raise finance as opposed to its ability to build trains?

Mr Hammond: There has been a lot of speculation in the press about this because the project was structured as a package to build, finance and maintain the trains over, potentially, a 30-year contract period. Clearly, finance is a part of the package, but I think it would be wrong to suggest that the difference in the credit rating between the companies and, thus, the difference in cost of long-term finance is likely to have been a determining factor. It will have been a factor but it is unlikely to have been a determining factor in the difference between the bids.

Q93 Kwasi Kwarteng: We have heard a lot about employment losses and the potential impact of Bombardier losing out on the contract. What is your understanding of the situation with regard to Bombardier and the redundancies that they have announced? Do you believe the argument that, had they been awarded the contract, their position with regard to employment would be the same as it is now—they would not have had to make those redundancies? What do you think about that?

Mr Hammond: The redundancies that have been announced are deeply regrettable, but the company has indicated, and we all know, that they were coming
to the end of a number of substantial orders that they had been successful in winning. They are in a consultation process that is expected to lead to a number of redundancies that will be effective in October 2011. My understanding is that production of the Thameslink train would have been expected to begin in 2014. Bombardier says, and I heard Mr Walton saying this morning, that if they had won this order they would have hoped to mitigate those job losses, which of course would be a desirable thing to do. What I did not understand completely was how Bombardier would have gone about mitigating those losses given that there appears to be a three-year gap between the current effective redundancy date and the start of manufacturing in the plant for Thameslink delivery. It may be that work could have been brought into the Derby plant from elsewhere, and, if there is such a possibility, we would be very interested in hearing about the possibility of bringing work into the Derby plant from other parts of Bombardier’s business. That would be very good news.

Q94 Kwasi Kwarteng: Let me make this absolutely clear. Your understanding is that there was a gap between the end of their existing contracts and the commencement of building for the Thameslink project.

Mr Hammond: That is my understanding and I think that is what Mr Walton said this morning. Bombardier says that it would have sought to mitigate redundancies and I am absolutely sure that is what they would have tried to do. I think it would be interesting to understand how that would have been done.

Q95 Mr Harris: Secretary of State, you have described as “astonishing” that the French and Germans manage to build so many of their own trains for railways. Have you had discussions with your officials about how we can be slotted into that same “astonishing” category?

Mr Hammond: Let me answer that question in two ways. First of all, it is important that we recognise when we talk about a large proportion of German trains being built in Germany that does not mean that Siemens are winning all the orders for German railway trains because Bombardier also manufactures in Germany. When Bombardier wins a German order, the trains get manufactured in Germany. When Siemens wins a German order, the trains get manufactured in Germany. But because Bombardier is currently the only manufacturing company in the UK, if an order is won by anyone at present other than Bombardier in the UK, it is manufactured outside the UK. However, and I have listened carefully to what has been said so far this morning, it is my perception that we need to look at how these things are done in other EU member states. We need to consider how socio-economic factors are taken into account in other EU member states while being fully compliant with EU procurement law. We need to look at how other member states seek to take into account their strategic national interests without breaching EU procurement law and see whether there are lessons that we can learn for the way we do public procurement in the UK.

Q96 Mr Harris: That is an extremely interesting commitment, Secretary of State. Does that mean that, if you had access to a time machine, you would go back and look again at the very start of this contract and perhaps do what 70% of the contracts from EU Governments do and take into account those locally economic advantages for this particular contract, hypothetically?

Mr Hammond: I do not have access to a time machine so I am going to focus on how we deal with future contracts. However, fortuitously, you were the Rail Minister—

Mr Harris: I know.

Mr Hammond:—at the time of this ITT issue so perhaps you might like to answer your own question.

Mr Harris: I was wondering if you might bring that up. No more questions, Secretary of State.

Q97 Iain Stewart: A lot of the controversy about this decision seems to centre on the technical aspect of the design of the bogie for the train. In your assessment of the different bids how critical was that part of the decision?

Mr Hammond: I should be clear that, contrary perhaps to some of the impression that has been given, in evaluating the bids there were other criteria than cost taken into account, very substantial other criteria, including technical criteria, technical performance of the train offered. Things like weight and power to weight ratios were very important, as was deliverability of the options proposed by the different bidders. The Department has evaluated the technical aspects of the trains offered by both Bombardier and Siemens and it has also evaluated the deliverability of both of those options. I think I can say this. Both trains involved an element of innovation and design development and I would be horrified if they did not. Frankly, with an order of this size, as these trains have got to last for 30 or perhaps 40 years if we do not expect a degree of innovation each time we procure a large number of new trains, then the technology will never move forward. In every case, and in this tender in both cases in the final two bidders, they were offering designs based on an existing platform and a number of proven components, but also incorporating some innovative elements of technology where the Department needed to look at the track record and capability of the bidders to see whether what they were proposing was deliverable. We needed to talk to our partners, Network Rail in particular, who did the technical evaluation of the bogie, designed to make sure that they were comfortable with what was being proposed, and in this case they were.

Q98 Iain Stewart: Thank you. That is quite a significant point because we are being asked on the evidence we have received to balance the representation that the Siemens bogie design is tested against the tried and tested Bombardier design. I am trying to get a sense, in rolling stock procurement, to the extent that there has been an innovative part of the design, that you do award
contracts on the basis that some component parts have not yet been proven but will subsequently be rigorously tested. Are you satisfied that the Siemens bogie falls into that category?

Mr Hammond: Yes. On this issue, as with every other issue that has been raised in the media and the public debate since June, I have pressed my officials and the people who have carried out the technical evaluation very hard on this. While much media attention has focused on the bogie, where Siemens has offered an innovation on their existing product, there were elements in both offers which represented innovation which required further design. Indeed, one of the issues for Bombardier is that having won the Thameslink design would have secured the future of their design department at Derby. I think Mr Walton mentioned this morning that the design and engineering department is very important, and, of course, that design and engineering department would have been deployed in producing those detailed designs from the innovative solutions that formed part of their offer, as indeed they did part of Siemens’ offer. But the Department and its advisers were quite satisfied that both trains offered by Bombardier and Siemens were technically proficient and were deliverable.

Q99 Julian Sturdy: Secretary of State, earlier in the evidence sessions we have had, Mr Faull from the European Commission indicated that, if the Government wanted to reopen the decision process, that would only be possible. He also indicated that there would potentially be compensation depending on the wording within the contract, but he indicated quite clearly that the Government would have to go back to the beginning, terminate and start again. I just want to get clear what impact that would have not only on the Thameslink programme but also what the consequences would be on the other networks across the country as well.

Mr Hammond: I have been very clear from the beginning of this debate that there is a nuclear option and it is absolutely true that the Secretary of State has the ability to abort this whole process and decide to look afresh at the need for the Thameslink project, the affordability of the project and to start all over again. But the consequences would be very significant. The Thameslink project is already 16 years behind schedule on its original intended delivery date. You will remember that in its original iteration it was known as Thameslink 2000. It has already had very large amounts of capital investment sunk into it. There is the new viaduct at Borough, the new station at Blackfriars, which is now well under way, and platform lengthenings up the line. There are about 3,000 construction jobs at the peak involved in this project at the time when London Bridge station is due to be rebuilt. All of those would be put at risk.

The benefits for passengers who are currently travelling on one of the most overcrowded commuter routes into London would be further deferred. The cascade of released rolling stock from the existing First Capital Connect services which are planned to be deployed in the north-west to support the electrification programme between Liverpool and Manchester and on the Thames Valley commuter lines to support the first stage of electrification of the Great Western Mainline would also be delayed and thus would put in jeopardy those electrification programmes, because the value for money case for those electrification programmes would be significantly affected because of the time value of money if the benefits were delayed by the rolling stock not being available.

Q100 Julian Sturdy: What sort of delays are we looking at? Do you have any time scales on those, potentially?

Mr Hammond: On a procurement of this complexity, which is looking at an innovative design solution because we have imposed a very exacting technical specification in terms of acceleration requirements to get the number of trains per hour through the system that we need in terms of weight because of environmental considerations, and in a procurement that requires the bidder not merely to deliver the train but to finance and to maintain it over a long period, we believe that it would take between two and three years starting from scratch to complete the process. Of course, if we aborted the current procurement, we would not be able to restart the process immediately. I do not know if Mr Faull said this because I had to stop watching in order to come over here, but we would have to reflect on what we need. In order to go down this path, we would have to make a decision that the current procurement was inappropriate. We would have to go back to the drawing board and start again, scouring what it was we wanted, so there would be a pause and then a new procurement which we believe would take between two and three years.

Q101 Chair: Is there anything that happened during the securing of the IEP contract that would make you think you did not actually have to go back to the beginning again and you could do a reassessment?

Mr Hammond: No. What happened in the IEP contract is that my predecessor decided, I think rightly, with a general election approaching, that it was appropriate not to take such a big decision without reviewing it. So he asked Sir Andrew Foster to carry out a review of the value for money and affordability of the project and to look at the potential for alternatives. Having received and considered Sir Andrew Foster’s report, we decided to go ahead with the IEP project. That was not about deciding whether to procure from one bidder or another. It was about deciding whether the project should go ahead. It would be perfectly possible, as I have just said, for me now to call a pause and order a review into whether the Thameslink project is affordable, desirable and appropriate. But my judgment is that, with billions of pounds of taxpayers’ money already committed, a series of other projects dependent upon it and the long time delays that would not be appropriate in this case.

Q102 Chair: But Bombardier have said to us that there is no need for any re-tender process to take as long as you are suggesting because the nature of the
contract is well defined. Is that correct? Have you considered that?

Mr Hammond: Yes, I have. The advice I have is that we would have to go right back to the beginning. It is not about the nature of the contract being defined. We would have to re-scope our requirement from scratch and believe that the procurement in this case of the trains, together with a maintaining and financing responsibility, represents a transfer of risk which delivers good value for money for the taxpayer. We believe that a procurement that involves that package of innovative train design, risk transfer through financing and ongoing maintenance obligation will take something in the order of two to three years to complete.

Q103 Chair: You have taken advice on that.

Mr Hammond: I have taken advice on that. I have not only taken advice but I have cross-examined the advice that I have received. I have looked at the examples that have been quoted in the media and, indeed, some examples that have been given to me by industry players of shorter procurements, and in every case there is a defining difference that explains why the procurement process has been shorter. My conclusion is that, at the very best across Europe, if you are procuring a simple train, the purchase with public money of a train which is already in production, it would be possible to do that procurement in perhaps nine or 10 months. But, elsewhere, we see procurements that are of the complexity we are talking about here, for example, the German Intercity Express procurement, where the procurement period is again of the order of three years.

Q104 Chair: When you were seeking that advice, were you looking for a way to do it or a way of reassuring yourself you could not do it?

Mr Hammond: I will be very frank with you, Madam Chairman. My approach to most things in Government is one of frustration about the time everything takes to do. My background is private sector. I am used to things being able to be done in much shorter time scales than they generally seem to be able to be done in the public sector. So I approach this as I approach many things, asking the question, “You are saying three years. Why can’t it be done in three months?” But I do find that very often, usually, there are very good answers to that question. They often lie around European regulations and sometimes our own requirements for transparency and accountability, all of which are there for good reasons but which very often do delay the process.

Q105 Kwasi Kwarteng: Obviously we are talking about general procurement and, in the light of this, your letter in June with the Business Secretary to the Prime Minister is of interest. The letter mentioned the need “to manage our public procurement so as to sustain a competitive supply base over the longer term”. Would you like to tell the Committee more about that because that seems like quite an interesting comment to make?

Mr Hammond: Yes. The Prime Minister has now agreed that the growth review, which is ongoing, should consider procurement and that work stream has started. I would like to test the idea that we need to look at the way we do procurement in the light of the evolution of procurement practice in the private sector, which has moved, in my judgment, quite significantly over the last 15 years from transactionally based best value to medium to long-term best value, looking at how to build and then support supply chains which ensure that you, the buyer, obtain the best long-term solution. Many commercial companies which may have once had a reputation for ruthlessly bearing down on the price charged by their suppliers have realised that in many cases working with suppliers, sometimes even investing in suppliers, is the way to deliver the best value to them in the longer term. I am not personally sure that we have yet captured that in the way we manage public procurement. I would like to see how other European countries are doing this. I would like to draw on the very best and most recent commercial good practice and see whether we can do it better in the UK.

Q106 Paul Maynard: Many commentators and politicians have observed that, with this decision, it appears to be the end of train manufacturing in the United Kingdom. Do you consider it appropriate to think of train manufacturing as a national critical industry in the same way as we do the defence industry, stressing sovereign capability? Do you think that such an approach would benefit the passengers for whom we are, after all, building these trains?

Mr Hammond: Defence is in a class of its own because, of course, the European procurement rules allow different treatment in the case of defence industries where national sovereign capability is considered strategic. My job here is to ensure that the long-term best interest of the UK railway is served and I certainly would like to see a train-building industry remaining a viable train-building industry in the UK. Fortunately, we know that that will happen. Hitachi is committed, under the IEP project, to building a train-building plant in Newton Aycliffe in County Durham, which will have 600 direct employees. But I want there to be competition within the UK. I want us to be in a position in the future where, when we are looking at tenders for trains, we can have a genuine competition running between British-based manufacturers so that the benefits of competition are delivered but we can still hope to see the orders executed in the UK because there is more than one bidder manufacturing in the UK.

I very much hope that Bombardier will remain as a thriving train producer in the UK. They have been extraordinarily successful in the past and I cannot emphasise that enough. This is not a company that needs propping up. This is an extraordinarily successful company. They have won 11 of the last 14 train procurements in the UK. They have delivered over half of all the rail vehicles bought by the system since privatisation, plus all of the new rail vehicles bought by London Underground in the same period, so they have had an extraordinary run of success and
I hope they will go on being extraordinarily successful as a UK-based train manufacturing business in the future.

Q107 Paul Maynard: Given all you have just said and given what you wish the growth review to undertake, how would you seek to avoid undesirable protectionism—undesirable at least to those of us who believe in free markets?

Mr Hammond: I believe in free markets but I also believe in level playing fields. One of the things we need to make sure is that our UK-based businesses are competing on a level playing field with the foreign competitors with which they are competing. It is a finely balanced judgment. We have heard already this morning from other witnesses about socio-economic impacts and the ability to take into account appropriately relevant socio-economic impacts. That is one of the things that the growth review will look at. We have also heard very clearly, I think it was from Mr Faull, that a local employment condition would be illegal. This is not about imposing local employment conditions. It is not about saying the contract has to produce jobs in the UK, but it may be about taking into account directly relevant socio-economic factors that would give us perhaps a different perspective on how we made the decision. It would be another category of criteria that was included in the evaluation set.

Q108 Chair: You have spoken about Bombardier’s success, yet they have not succeeded in winning a contract directly from the Department for Transport. Why should that be?

Mr Hammond: There have been two Department for Transport-led procurements: the IEP and Thameslink. Bombardier bid in consortium with Siemens for the IEP and were unsuccessful, and of course for Thameslink. These were bigger, more complicated transactions that included long-term maintenance obligations and financing obligations. Bombardier will have to draw the appropriate lessons in due course from the analysis of what has happened, but on the face of it one might think that there are lessons about the way they approach the overall package rather than just the train building itself, how they position themselves—

Q109 Chair: What do you mean by that? Is that about financing?

Mr Hammond: No, it is not just about financing; it is also about the maintenance of the trains over a long period. It is about focusing the supplier on the whole life cost of the train, which after all is what matters to the railway. It is not what it costs up front. It is what it costs us over the whole of its life to deliver reliable service to the passenger railway.

Q110 Chair: It has been suggested there might be a departmental prejudice against Bombardier.

Mr Hammond: That would be extraordinary as a suggestion. I do not think that is the case at all. I have detected nothing that would suggest that, but I would say that the evaluation process is very precisely laid down, it is very rigorous and—this is all in the public domain because it was published at the time of the ITT—there is a mechanism within it that provides a different approach at the final hurdle if the bids are within 5% of each other than if the bids are not. So there is already a recognition that where there is a wide gap there will be a certain process, and where the gap is very narrow it might be appropriate to revisit some of those areas.

Q111 Chair: In this case was the gap narrow or big?

Mr Hammond: In this case a reading of the process as laid down in the ITT and the way this has been approached would answer that question. But, if I may, because of the commercially confidential nature of the process, I do not think I can answer the direct question. If I am subsequently advised that I can, I will write to you.4

Q112 Mr Harris: Do you think the DfT in this Government and previous Governments have been guilty, as the industry have said, of over-specifying contracts across the board—procurement and franchising but particularly procurement? Do you think that is a valid criticism?

Mr Hammond: It depends what you mean by over-specifying. There has been a move away from prescriptive input specifications towards the type of contract that we are now talking about where the outputs are specified and in the case of IEP the payments were clearly linked to the availability of trains for service. It was very much thrown back to the provider to work out how to deliver the best package between upfront capital investment and ongoing maintenance spend to deliver reliability. I think that our focusing on the outputs and specifying the outputs, leaving the private sector partners to work out the best combination of capital investment and ongoing application of maintenance to deliver that, is the right way to go forward.

Q113 Mr Harris: On the financial structure of this particular tender, the building and maintaining over 30 years, it has been suggested that that put Bombardier at something of a disadvantage because of their credit rating. Does the combination of the financing for this particular contract say something about the DfT’s lack of confidence in the existing structure where the ROSCos—the rolling stock companies—would normally take the financial hit over the period of use of the trains? Do the DfT no longer believe in that particular set-up and are they moving more towards this building and maintaining contract?

Mr Hammond: No, it does not mean that. It means horses for courses. Let us use NXEA as an example. It needs trains for the Stansted Express. They are buying a train which is an existing proven train, as Mr Walton explained this morning. It would be perfectly sensible for that train to be bought by a ROSCO and leased on some kind of a dry lease from the ROSCO by the train operating company. If we are talking about a very large-scale procurement, as we were in the case of Thameslink, with an innovative train design, certainly at the time that the Thameslink

4 No further information was provided by the Department for Transport on this point.
procurement was started in 2008 under the previous Administration, there would quite rightly have been questions about the ability of any ROSCO to take on and finance a transaction of that scope. In fact, I can say categorically it was clearly beyond the capacity of any of the existing ROSCOs to do that, particularly as the financing markets deteriorated and the project, as you will know better than I do, was designed around what at the time looked like a very, very uncertain financing climate.

Q114 Julie Hilling: You talked earlier about the Hitachi contract protecting the skills of train builders, but surely that contract is one of assembly rather than building the trains? Then, just moving on from that, how are we going to retain in the economy those skills of train building going forward, because clearly there is an ageing work force? How do we ensure that there are apprentice teams? How do we ensure in our economy that we still have the ability to build trains going forward? Are there further contracts coming forward? I appreciate you talked before about taking into account the other elements that can be taken into account, but are there things coming forward then that we can look at to protect that train-building capacity in the UK?

Mr Hammond: The answer is that there may be. As you know, with regard to the Crossrail order, for which Bombardier is a pre-qualified bidder, as also is Siemens, the ITT will be issued next year. That is quite a large order of 600 vehicles. I take on board the feast and famine point, absolutely. We are looking at the requirements of the network over the next few years and looking to see what we can do to make that procurement pipeline more attractive for the supply chain across the board. But if I can just go back to your slightly dismissive comment about Hitachi’s plant in Newton Aycliffe as an assembly plant, this is a difficult point and I know there is a lot of emotion around this. But the train-building business is a global industry and, as we have already heard this morning, some of the key components for the Bombardier Thameslink train would have come from other countries. The bogies for Bombardier’s trains built in Derby are built in Germany and delivered to the Derby plant. The body panels, as far as I am aware, are not manufactured there. All train building, to some significant extent, is an assembly process. I am sure this is what Mr Walton would say if he was sitting here, but the key element is design. The Derby plant at the moment has a very significant design capability and it is that that is the key going forward. Retaining that design capability is the key to Bombardier’s future in the UK. Once Hitachi establish their assembly plant here, the key to making that a sustained fixture of the UK economy will be eventually persuading them to tap into the UK’s undoubtedly expertise in train engineering and design to establish a design centre in the UK as well. That will certainly be one of the objectives that my colleagues at BIS will have over time in working with Hitachi.

On the question of the design and engineering function at Derby, we are looking at proposals from the industry, which are well known in the public domain, for example, around possible modification of the existing Voyager units that are already in service, that would create design work to see whether it is possible to support the supply chain by bringing any of that work forward or by giving the go-ahead to any of those industry-originated proposals. We will certainly do everything we can to support the wider supply chain.

Q115 Kwasi Kwarteng: In your answer to my colleague you have touched on the international nature of the industry going forward, given that there is this international dynamic, do you think that it might be self-defeating if you were to try and promote home-grown expertise in this, because on the one hand you have acknowledged that it is an international businesses, but on the other you are saying that you want to see British talent and expertise specifically in design? Is there a tension in that?

Mr Hammond: No. There are lots of businesses that are international but we want to see the UK thriving and prospering as a base for them. That is not about just British companies. It is about being a place where global companies want to come and do business. Car industries are very international business and yet the UK has been extraordinarily successful in attracting particularly Japanese companies to come here and make the UK a base for their operations. It is also worth saying, and I do not want to teach grandmother to suck eggs because I know members of the Committee are very much aware of this, that the requirements of the UK rail market are technically different from the requirements of the European market. Although it is a global business, the product required for delivery to the UK is always a UK-specific product. It is reasonable to assume that, if there was not a UK-based competitor, the industry might find it more difficult to get good value for money when it is ordering relatively small quantities of a UK-specific product. Unfortunately, there is nothing we can do about that UK specificity, and that goes back, as you know, to the Victorian times.

Q116 Kwasi Kwarteng: You understand the quandary you are in because every time that Bombardier does not win a contract, because it is the only builder in Britain, you are going to be under the same pressure and criticism. What do you think about that? Is that something that you think is sustainable?

Mr Hammond: First of all, it is not for me to answer for how Bombardier run their business model, but I thought listening to the evidence earlier it was very interesting that Bombardier have a business model which involves manufacturing plants in all the major markets that they serve. The truth is that the Bombardier plant in the UK is unlikely to get an order for delivery to France, Germany or Italy, whereas the Siemens business model is different and the Siemens plant in Germany can expect to get orders for delivery to France, the UK and Italy because they have a dual source model in Germany and Austria.

Q117 Kwasi Kwarteng: That is a reflection of how different companies are structured.

Mr Hammond: It is a different business model.
Q118 Chair: Is it the case that the winner of the Thameslink tender is most likely to win the Crossrail tender?

Mr Hammond: I do not accept that. I have read that in the press and I understand that there will be some commonality of components, and issues around size of production run may create some advantages at the margin. This will be an important issue for the Department in terms of ensuring that we have a properly competitive process and we get good value for money in Crossrail. The Department’s analysis is that there will be a strong competition around Crossrail, and I hope and expect that Bombardier, as a pre-qualified bidder, will be bidding strongly to win the Crossrail project.

Q119 Chair: You do not think they are at a disadvantage.

Mr Hammond: I do not think they are at a material disadvantage. I do not think the fact that Siemens is the preferred bidder for the Thameslink project creates a disadvantage to Bombardier that is material in the context of all the other issues that they will need to address, because clearly they will want to look at the outcome of Thameslink and address the areas where they feel they need to do some work in order to be successful on the next procurement.

Q120 Chair: Secretary of State, you have been very positive in some of the things you have said, but in relation to this issue you did say that you simply inherited the tender process that had been started by the previous Government, and that of course is correct. But you did have 14 months in Government before we came to this. Would you say that this is a wake-up call?

Mr Hammond: The wake-up call is around the way we do procurement and that is why we have now sought from the Prime Minister, and secured, agreement that the growth review should look specifically at public procurement and the role public procurement plays. But in that 14 months we would not have had any lawful opportunity to change the course of the Thameslink contract process. The parameters were set out at ITT and it would have been unlawful for us to change those parameters subsequently in a way that advantaged or disadvantaged any bidder.

Q121 Chair: But did you consider this matter? You say now it would have been unlawful. Did you think about these issues before this controversy erupted?

Mr Hammond: To be very honest, no, I did not. The process was ongoing. My understanding throughout this process has been that Bombardier was highly confident. I visited the plant earlier this year and they indicated to me that they were highly confident. Having regard to the way we do things in the DfT, I had no sight of the ongoing dialogue with the bidders. Ministers are not party to those discussions. They are carried out at official level in confidence. I took at face value from Bombardier that they were very confident of the process that they were in and the bid they had put forward. At no point as far as I am aware in the Thameslink process—at no point—did any of the bidders raise any query about or any objection to the terms of the ITT, the way the project had been bundled with finance and maintenance included, or the evaluation criteria that were set out. We heard no objection, concern or question about any of those things until the outcome was announced.

Q122 Chair: What happens now in relation to the Thameslink contract?

Mr Hammond: The Department officials are negotiating with Siemens, as I think Mr Walton indicated earlier on, as the preferred bidder to nail down the contractual terms. If those contractual terms can be nailed down in line with the bid that has been received and in a way that delivers value for money as defined in the ITT to the taxpayer, then the Department will proceed to contract with Siemens. If it proves impossible to do that, if Siemens seek to renegotiate significant elements of their bid, then Bombardier remains the reserved bidder.

Q123 Chair: What is the time scale for this?

Mr Hammond: I expect that we will move to a contract early in the New Year.

Chair: Thank you very much.
**Written evidence from the Department for Transport (RSP 04)**

### Introduction

This Memorandum has been produced in preparation for the Transport Select Committee hearing into UK rolling stock procurement on 7 September 2011.

It covers the overall status of the current UK rolling stock market. As requested it focuses in particular on the current procurement of the new trains required for the Thameslink Programme and addresses a number of points that have been raised in the media following the Department for Transport’s decision to award preferred bidder status to Siemens plc and Cross London Trains (XL Trains). It also covers the Government’s approach to future procurements as set out in the recently announced Growth Review.

It must be stressed from the outset that it is not possible for the Department to disclose details of the proposals provided from either of the shortlisted Thameslink bidders whilst the procurement is ongoing as much of the information is commercially sensitive and disclosure at this stage would prejudice the commercial interests of both the bidders and the Department, and potentially result in the unequal treatment of the bidders. Further, the Department and the bidders are constrained by the legally binding Process Agreement which was entered into to protect that commercially sensitive information.

This Memorandum will address the following matters:

- Overall status of the UK rolling stock market;
- Background to the Thameslink Programme;
- Thameslink rolling stock project, including procurement timeline;
- Commercial structure for the Thameslink rolling stock project;
- The Thameslink Invitation to Tender, evaluation and decision making process;
- Future procurements; and
- Points raised by the media following the Thameslink preferred bidder announcement.

### Overall Status of the UK Rolling Stock Market

Rolling stock procurement in the UK is a multi billion pound market. Since railway privatisation there has been massive investment in new rolling stock to replace fleets of trains dating back to the 1960’s. The most notable investments have been the replacement of the fleets of trains for the commuter services of south east England in the mid 2000’s and new trains for the West Coast Main Line and Cross Country routes. Overall, since privatisation in 1996 over 5,500 new carriages have been ordered by UK train franchise operators which represents around 50% of the current UK passenger fleet. In addition a further 1,800 carriages have been ordered for London Underground since 1996.

The principal suppliers of new trains to the UK main line rail network have been Alstom, Siemens, Hitachi and Bombardier. Alstom has supplied new “Pendolino” trains for the West Coast Main Line and new trains for the Cross Country routes. Overall, since privatisation in 1996 over 5,500 new carriages have been ordered by UK train franchise operators which represents around 50% of the current UK passenger fleet. In addition a further 1,800 carriages have been ordered for London Underground since 1996.

The principal suppliers of new trains to the UK main line rail network have been Alstom, Siemens, Hitachi and Bombardier. Alstom has supplied new “Pendolino” trains for the West Coast Main Line from its factories in Savigliano in Italy and Washwood Heath in Birmingham (the latter facility closed in 2005). Siemens has supplied new trains for South West Trains, Trans Pennine Express, London Midland and as well as for Scot Rail from its factory in Germany.

Hitachi has supplied the new "Javelin" train for commuter markets in Kent that operate on the High Speed 1 line. These trains were manufactured in Japan. Hitachi are part of the Agility Trains consortium appointed as preferred bidder for the new trains for the Intercity Express Programme. Hitachi are proposing to construct a new train assembly plant at Newton Aycliffe in the north east of England to build the trains for this project in the UK. They would also use this factory to manufacture new trains for other European orders in the future.

Since privatisation, Bombardier has supplied the greatest number of new trains across the UK main line rail network and also for the London Underground network, with a combined total of over 4,500 new carriages ordered since 1996. The Bombardier plant in Derby has supplied by far the majority of this number, with the remainder being supplied from its factory in Belgium (Voyager, Meridian and Pioneer trains).

The Spanish company CAF also has a presence in the UK rolling stock market, supplying diesel trains for Northern Ireland Railways. They have also been a major sub contractor to Siemens, for example for the trains for the Heathrow Express service.

In recent years interest has been shown from other global manufacturers to attempt to enter the UK rolling stock market. This includes the China South Locomotive and Rolling Stock Corporation.

For all manufacturers, the train parts assembled at the factories are sourced from a large variety of sub suppliers right across the world, including emerging markets such as China. As such train manufacturing is truly a global business and not just concentrated in one particular country or location.
Furthermore, the train manufacturers make components from a range of their own factories around the world. For example Bombardier’s bogies are manufactured in a Bombardier factory in Germany. For Siemens, bogies are manufactured at their factory in Austria. This further underlines the global nature of the business.

Procurements have traditionally been based on a model whereby Rolling Stock Leasing Companies (ROSCO’s) purchase trains from a manufacturer, with the Train Operating Company (TOC) then paying for the use of the train to a ROSCO for a fixed period of time as a lease cost. To encourage investment in new rolling stock the Department has provided undertakings to ROSCOs that the trains will be utilised beyond the life of a specific train operating company franchise, therefore providing certainty to the ROSCOs that the lease cost will continue to be paid. This particularly applies when a train operating company has a relatively short franchise term.

There have been occasions where the Department have had a more direct involvement in the procurement of new trains. This particularly applies to the Thameslink and the Intercity Express projects. As a rule however it is expected that this train operating company/ROSCO procurement model will continue for most future rolling stock orders. It will be for the train operating company to specify whether new rolling stock is required for their franchise term in response to the Department issuing an output related specification of the services it expects the train operating company to deliver. This approach has been highlighted by Sir Roy McNulty in his recent review of the structure of the rail industry. As such, for the majority of procurements, the Department will continue to have an “arms length” involvement, with the train operating companies and ROSCOs having the responsibility for choice of supplier.

Following the completion of the Spending Review last year the Government re-affirmed its commitment to a programme of significant investment in UK rail as part of its overall drive to stimulate sustained economic growth. Billions of pounds have been committed to a programme of schemes such as Crossrail, Thameslink, rail electrification, station modernisation and capacity improvements.

As part of this, the Government remains committed to continued and sustained investment in the UK rolling stock market. Through the continuation of Crossrail, Thameslink, the Intercity Express Programme and other programmes this Government has announced that around 2,700 new carriages will be delivered on to the mainline rail network by 2019. London Underground is also investing in new trains with significant numbers currently being introduced on the Victoria and Sub Surface Lines. There are also plans for replacing the Underground trains on the deep level tube lines after 2016.

**Thameslink Programme Background**

The full continuation of the Thameslink Programme was announced by the Government in November 2010. The Thameslink Programme aims to relieve congestion on some of the most crowded commuter routes into London and provide capacity for future growth in demand. It will deliver significant benefits and make travelling across London and the south east faster, easier and more reliable and will reduce crowding on some of the busiest sections of London's transport network including the heavily congested London Underground Victoria and Northern lines. It provides for improvements to the rail infrastructure and major upgrades to central London stations such as Blackfriars, Farringdon and London Bridge.

The Thameslink Programme will also see the introduction of a new generation of electric commuter trains operating with metro-style frequency through the central section during the morning and evening peaks by the end of 2018.

The introduction of these new trains will enable the cascade of existing Thameslink trains to other parts of the rail network. This includes the supply of trains for the electrification proposals for the North West of England and the Thames Valley routes.

Network Rail are delivering the necessary infrastructure works with redevelopment of Blackfriars and Farringdon station well progressed enabling the first 12 car trains to operate on the route from Bedford to Brighton from December 2011 as planned.

The major works to improve London Bridge station will be implemented after the Olympics with work planned to be completed by 2018. The works include a reconstruction of the station with a new and larger concourse. Following completion of these works Thameslink trains will run at a frequency of up to 24 trains per hour in either direction through the central London section. There will be an interchange with Crossrail at Farringdon station.

**Thameslink Rolling Stock Project**

Following a comprehensive market testing exercise which involved consultation with a wide range of organisations, including the rolling stock manufacturers, the Department invited the procurement of circa 1200 new railway carriages for the Thameslink Programme in April 2008 through the release of an OJEU notice. After the completion of an intensive evaluation and negotiation process the Department announced on 16 June 2011 that Siemens Plc and XL Trains—a consortium of Siemens Project Ventures GmbH, Innisfree Ltd and 3i Infrastructure Plc—were the preferred bidder for the new trains order. The Department is continuing
to work closely with Siemens and XL Trains to conclude the contractual arrangements and is targeting contract award this winter.

The timeline for the Thameslink procurement is as follows:

- April 2008: issue of pre-qualification OJEU.
- November 2008: issue of invitation to tender.
- June 2009: tender returns.
- October 2009: Alstom deselected from competition.
- June 2011: Siemens Plc and XL Trains announced as preferred bidder.
- December 2011: target date for financial close.
- Early 2015: first trains scheduled to enter passenger service.
- 2017: delivery complete of all trains.
- December 2018: commencement of Thameslink 24 trains per hour service in either direction through central London.

Thameslink Rolling Stock Commercial Structure

As mentioned above, since privatisation the majority of new train procurement exercises have been undertaken by train operators and/or rolling stock leasing companies and as a rule it is expected that this model will continue for most future procurements. However, for the reasons set out below, the Department elected to lead the procurement of the Thameslink trains up to the contract award stage, with the Thameslink train operator then entering into the contract for the new trains thereafter. The Department’s reasons for this approach are set out below:

- The Thameslink Programme introduces new trains across three existing train operating franchises—First Capital Connect (FCC), Southern and Southeastern. Consequently, the Department, as the train operating franchise specifying and letting authority, was the only party capable of providing overall control and direction to these parties;
- Delivery of the new Thameslink trains into service will continue beyond the contracted end dates of the existing train operating franchises; and
- The existing train operating franchises had not been let with a requirement to procure large numbers of new trains. Any variations to the franchises to accommodate this requirement may not have resulted in good value for money for taxpayers (as they would have to be negotiated in an uncompetitive environment).

For similar reasons, the Department is undertaking the procurement for the new trains for the Intercity Express Programme. This approach, where the Department leads initially, is not unique. For example, in 2001 the Strategic Rail Authority (on behalf of the Government) commenced the procurement process for the replacement of the Mk1 ‘slam door’ trains for the South Central, South East and South West franchises. Such an approach was also adopted for the new commuter trains now operating between London and Kent on the High Speed 1 network.

Whilst the Department is responsible for the Thameslink procurement it is important to stress that it has worked closely with key industry stakeholders on the design of the procurement and subsequent evaluation of the bids. This includes the existing Thameslink train operator First Capital Connect (FCC) and Network Rail. The Department will continue to lead the procurement process up to contract award supported by FCC who have been involved in the contract negotiations with bidders leading up to the preferred bidder decision. At contract award FCC will enter into the contract for the new trains. Upon the expiry of FCC’s existing train operating franchise the new Thameslink trains contract will be novated to the successor franchise.

In order to ensure that FCC are able to take leadership post contract award, FCC has established a team to oversee the activities of Siemens during the critical train and depots design phase. The Department will continue to be involved in the process post contract award to ensure the overall outputs continue to be delivered and also to ensure delivery of its obligations as set out in the suite of agreements with Siemens.

Network Rail has also had a significant role in the procurement project to date. Initially they assisted in the development of the invitation to tender documentation in so far as it impacts the infrastructure interface. Furthermore, Network Rail has been fully involved in the bid evaluation from a technical perspective. In particular Network Rail has played a key role in reviewing the bogie characteristics from each of the bidders to ensure confidence in the important area of wheel/rail interface. Going forward, Network Rail is leading on the System Integration workstreams to ensure the proposed new trains, upgraded infrastructure and revised operating procedures “gel” together to deliver the overarching Thameslink Programme objectives.

The Department also has an objective of moving away from “hell or high water” train leasing payments where the train operator pays for the ongoing lease of the train irrespective of reliability of the train. For the Thameslink trains the Department has introduced a degree of risk transfer such that if the trains are not performing to their targets then an element of the lease payment is withheld.
The Invitation to Tender (ITT)

Consultation and design of procurement

The Department’s Train Technical Specification for the new Thameslink trains is an output specification which requires trains that are highly reliable, can achieve the very exacting dwell time demands and thus deliver 24 trains per hour through the core central London Thameslink route, and will provide reductions in whole life and whole industry cost through a reduction in track damage and lower energy consumption. There is no train design currently operating in the UK that can meet these requirements and consequently it was incumbent upon all bidders to develop the next generation of trains that will meet these objectives. It therefore follows that the bidders’ proposals would include a degree of design innovation.

The Department undertook a consultation exercise before finalising the content of the ITT. In April 2008 the Department held an Industry Day at which it outlined its plans and included details of the programme overview, train technical requirements, infrastructure interface, commercial and financial structure, operator’s perspective and the procurement process that would be adopted. The Industry Day was attended by over 100 interested people representing a wide range of train manufacturers, ROSCOs, banks, financial advisors, legal advisors and project management organisations.

The Invitation to Tender was developed by the Department and its technical, financial and legal advisors in collaboration with Network Rail, FCC and Passenger Focus.

The Integrated DBFM (Design, Build, Finance, Maintain) with train operator involvement structure was assessed as being the most suitable approach for Thameslink. The requirement to include finance was essential as the Department does not have the funds to purchase the trains and depots outright.

This type of design, build, finance and maintain structure, whereby the responsibility for providing the financing is passed to the private sector, has been used widely in the UK and across Europe in public procurements and has successfully led to many companies with a wide range of credit ratings being involved in providing services to the public sector.

The structure of the ITT gave bidders the freedom to engage with manufacturers, investors and funders in order to produce the best value for money solution over the 30 year life of the project.

Invitation to Tender

In response to the issue of the OJEU, five organisations expressed an interest in the project and four were subsequently invited to bid: Alstom Transport, Bombardier Transportation, Hitachi Rail (Europe) and Siemens plc. Hitachi Rail (Europe) withdrew from the competition prior to the deadline of submitting tender returns as they wanted to concentrate on the Intercity Express Programme. Alstom were deselected from the competition in October 2009.

The procurement competition invited pre-qualified companies to submit proposals for a fully financed package for the design, manufacture, entry into service and support of a new fleet of trains and the design and construction of two new train maintenance depots. The trains and depots will be owned by the successful bidder and leased to the Thameslink Train Operator.

The Invitation to Tender was issued to the four pre-qualified bidders in November 2008. The documentation was placed on the DfT website shortly thereafter, and hence has been in the public domain for over 2½ years.

In April 2009 the Competition Commission produced a report on the rolling stock leasing market. In that report the Competition Commission found there to be no particular issues around the bundling of maintenance with leasing and indeed found wet leasing to be sometimes beneficial on efficiency grounds. The Competition Commission also considered it to have a relatively benign impact on competition and the entry of rivals into the market. No alterations were therefore made to the process or procedure as a result of this report.

At no time during the bidding process or prior to the appointment of Siemens and XL Trains as the preferred bidder did any bidder raise concerns about the structure of the tender, the evaluation criteria being used, the requirement for bidders to provide all necessary funding or any other aspect of the procurement approach being adopted.

The Tender Evaluation Criteria

The evaluation criteria was detailed in the ITT and therefore published on the Department’s web site. It involved a four stage process. The first three stages allowed the Department to assess the bidder’s technical, financial, depot, maintenance and project deliverability proposals. Proposals that were assessed as meeting the minimum requirements of each of these three stages were then subject to a whole life and whole industry cost assessment. Therefore any proposal which met the minimum requirements of stages one to three has satisfied the Department that the bidder is able to design, manufacture, maintain and finance a trains and depot solution which will meet the project aims.

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3 Wet leasing refers to the arrangement whereby the leasing of the trains is accompanied by the provision of a full train maintenance package. Alternative arrangements include dry leasing whereby the trains are leased without maintenance and the train operator either maintains the trains themselves or procures their own maintenance contract.
Once the Department was satisfied that one or more proposals met the stage one to three thresholds, the Department selected the proposal that offered the best value for money as determined by the whole life and whole industry cost model. More detail of the evaluation stages is provided in Annex 1.

**Evaluation and Decision Making Process**

Throughout the evaluation process the identities of all bidders were anonymised in line with Departmental policy, and to eliminate any personal bias prejudicing the outcome of the competition.

The results of the evaluation were then presented to the Department’s Contract Award Committee, which is responsible for, and gives approval to proceed with, all procurement activity associated with major procurements undertaken by the Department.

Based on the principal of anonymity the Thameslink preferred bidder decision was approved at the Contract Award Committee on 27 April 2011. The decision was then endorsed by the Board Investment Commercial sub-Committee (BICCC) on 4 May 2011 and was reported to the main Department for Transport Board on 6 May 2011. The recommendation was made to the Secretary of State who gave his approval on 12 May 2011. On the same day, but after he had approved the recommendation, he was informed of the identity of the preferred bidder. It is standard practice for major Government announcements to be co-ordinated across Departments. Taking this into account and the protocol of not making major Government announcements during times when Parliament is in recess the preferred bidder decision was announced on 16 June 2011.

**Future Procurements**

As mentioned earlier it is intended that train operating companies will continue to procure new rolling stock required for new train franchises. We are aware for example of potential proposals from the private sector to modify the existing fleet of Voyager trains on the Cross Country route and are interested in understanding the feasibility and value for money of this proposal further.

An exception to this market led approach is the new trains required for the Crossrail project which is being procured by Crossrail Limited (a wholly owned subsidiary of Transport for London). This is for an order for around 600 new railway carriages. Contract award is expected late 2013.

Furthermore, were the Government to decide to progress the High Speed 2 project, new rolling stock would be required. It is too early at this stage to make a definitive statement as to which procurement route is most suitable for this project but there is a possibility that this could be Government led.

There is also a recognition that the UK rolling stock market has been plagued with extremes of “feast” and “famine” as is evident at Bombardier’s Derby factory. The Business Secretary and Transport Secretary are committed to working with the industry to deliver a more sustainable market for future long term rolling stock orders than the one that was inherited in 2010. As part of this, and drawing on the conclusions from Sir Roy McNulty, the Government is looking to specify longer train operating company franchises which will help give the market greater certainty of longer term rolling stock requirements and thus help to “smooth” the order profile going forward.

For all future Government led procurements (ie not just rolling stock) the Prime Minister has now asked the Growth Review to look at the degree to which the Government can set out the requirements and the evaluation criteria with a sharper focus on the UK’s strategic interest, including a review of public procurement practice and outcomes in other EU Member States. The results of these reviews will inform future Government led procurements.

**Points Raised by the Media Following the Thameslink Preferred Bidder Announcement**

Following the announcement of Siemens and XL Trains as the preferred bidder for the Thameslink Rolling Stock Project a number of issues have been raised in the press about the procurement process and the selection of Siemens and XL Trains as the preferred bidder. Set out in Annex 2 is the Department’s response to these issues, insofar as the Department is able to comment at this stage in the competition recognising its commitments under the Process Agreement. The issues raised are:

- Train design including bogies;
- Credit rating;
- The purpose of bidder anonymity;
- Procurement Directive;
- Socio-economic factors in the Thameslink procurement;
- Risk of stopping the procurement now and starting again with a new procurement;
- Subcontracting work to a competitor; and
- Corruption allegations.
THAMESLINK ROLLING STOCK EVALUATION CRITERIA

STAGE 1
Mandatory Requirements

The Department identified criteria which must be satisfied by bidders in order for their proposals to be considered further. These are the basic characteristics required for any train to be able to gain access to the Thameslink Network and operate the Thameslink 24 trains per hour service.

Any proposal which failed to meet any of the Mandatory Requirements would not have been taken forward for further consideration.

STAGE 2
Technical Requirements and Financial Deliverability

Once proposals satisfied the mandatory requirements in Stage 1, the Department then undertook an assessment of the overall technical requirements and the financial deliverability.

The overall technical requirements were separated into three areas:

(i) Train Technical Specification (TTS): The Department required that proposals achieve a minimum compliance level of 75%. The TTS requirements included compliance with all British and European Standards, Unit Mass, Reliability, Gauge and Track Interaction, Ride Quality, Noise and Vibration and Design Life.

(ii) Train Infrastructure Interface Specification (TIIS): The Department required that proposals achieve a minimum compliance level of 75%. TIIS requirements included requirements for Gauge, Wheel-Rail Interface,Axle Loading and Route Availability.

(iii) Train Maintenance and Depots: The Department assessed proposals for the continued achievement of the train design performance and reliability and availability undertakings throughout the design life of the trains. The Department required that proposals achieve a minimum compliance level of 50%.

The financial deliverability requirements were separated into two areas:

(iv) Funding Deliverability: The Department assessed proposals to establish the extent to which the financial proposal demonstrated that there is commitment in place from the providers of equity and debt finance. The Department required that proposals achieve a minimum compliance level of 50%.

(v) Financial Robustness: The Department assessed proposals to establish the ability of the proposed commercial structure to mitigate and absorb the risks involved in the project and to minimise their impact on the financial structure. The Department required that proposals achieve a minimum compliance level of 50%.

STAGE 3
Project Deliverability

In Stage 3 the Bidders’ abilities to deliver the proposals assessed in Stage 2 were evaluated. The evaluation was split in to two areas: management plans and programme. The robustness of three groups of management plans of each bidder (Project Management, Engineering Management and In-Service Management), was assessed using the R A D A R © methodology.

Amongst other things the bidder was expected to use the Engineering Management Plans to provide the Department with confidence in their ability to implement the rolling stock project. The engineering management plans comprised plans covering Systems Assurance, RAM (Reliability, Availability and Maintainability), Design Management, Standards, Acceptance, Systems Integration, Testing, Manufacturing Management and Commissioning/hand-over.

All proposals which achieved the minimum thresholds in Stage 1–3 were considered to have demonstrated the ability to deliver the requirements for the rolling stock project. The final stage of the evaluation process identified the proposal that offers the best value for money.

STAGE 4
Value Assessment

All Bids which pass Stages 1 to 3 were subjected to a value assessment based on whole life and whole industry cost of each Bidder’s Proposal. A cost model was produced to calculate the costs over 30 years based upon the bidder’s proposals for train leasing costs, train maintenance costs, depot leasing costs, energy
Selection of Preferred Bidder

Section 3.3 of the ITT sets out the process for the selection of the preferred bidder. It stated that at the conclusion of Stage 4 the Preferred Bidder was determined on the following basis:

(a) All proposals would be ranked in order of NPV, after risk and value adjustments, of their submitted Stage 4 cost model. The bidder which has the lowest NPV would be ranked first (the Interim Lead Bidder). If all the other lower ranked Proposals had an NPV that is more than 5% greater than the NPV of the Interim Lead Bidder, the Interim Lead Bidder would be identified as the preferred bidder.

(b) If one or more lower ranked proposals had an NPV that is less than 5% greater than the NPV of the Interim Lead Bidder, then the identification of the preferred bidder would be determined according to a calculation based on the evaluation scores from Stages 2 and 3.

Annex 2

Train Design

As mentioned earlier the Department’s Train Technical Specification for the new Thameslink trains is an output specification which requires trains that are highly reliable, can achieve the very exacting dwell time demands and thus deliver 24 trains per hour through the core central London Thameslink route, and will provide reductions in whole life and whole industry cost through a reduction in track damage and lower energy consumption. There is no train design currently operating in the UK that can meet these requirements and consequently it was incumbent upon all bidders to develop the next generation of trains that will meet these objectives. It therefore follows that the bidders’ proposals would include a degree of design innovation.

Bogies

The Siemens proposed train solution includes their SF7000 bogie design. Siemens commenced the design of this bogie in 2007 and have confirmed that much of the design is based upon proven subsystems in both the domestic and international markets. These bogies are currently being built and will undergo extensive testing at both the Graz plant (Siemens’ dedicated bogie design and manufacturing facility in Austria) and their dedicated test track in Germany where the bogies will have undergone circa 1 million miles of running before the first new train enters passenger service. Many of the component parts have been subjected to type testing and the first completed bogies will be available for testing at the Graz facility later this year. Subject to contract award these bogies will then be fitted to vehicles and commence test track testing in 2012, some 2½ years before the first trains arrive in the UK.

The evaluation of the bidders’ bogies included consideration of the designs from the perspectives of:

- Compliance with all British and European Standards.
- Wheel / rail interface.
- Unit Mass.
- Reliability.
- Gauge and Track Interaction.
- Ride Quality.
- Noise and Vibration.
- Design Life.
- Gauge.
- Axle Loading.
- Route Availability.

There has been much commentary in the press that the Bombardier bogie took 10 years to develop, and whilst this may be true this should not be necessarily considered as the ‘benchmark’ time required for design and development timescales for bogies. Significantly shorter timescales have been achieved for example with the bogies for the Alstom UK Pendolino and the Hitachi Class 395 Javelin. Moreover the design of the new fleet of trains for the Inter City Express Project also assumes new types of bogies.

2 Vehicle Track Interaction Strategic Model provides links between inputs, such as track and vehicle characteristics, and outputs, such as rail life, wheel life and maintenance regimes, to predict the impact of change in one part of the VTISM system on another part.
Evaluation of Designs

In evaluating the design proposals, and recognising the existence of novelty in all bidders' train designs, the evaluators also considered the bidders' experience, capacity and capability in taking their train designs, including novel features, through the phases of design, development, manufacture, testing, fault free running, entry into service, operation, maintenance and overhaul. This analysis was done through the evaluation of a range of project, engineering and in-service management plans including project execution, quality, safety, risk management, systems assurance, RAM (reliability, availability and maintainability), design management, standards, acceptance, systems integration, testing, manufacturing management, commissioning/hand-over and configuration management.

Credit Rating

There has been speculation in the press that the difference in the credit ratings of the parent companies of the bidders was a determining factor in the outcome of the procurement. The Department does not accept that this was the case.

The debt terms provided by the bidders are likely to take the strength of the parent company of the manufacturer into account but it is just one element that makes up the pricing. Other important factors are the contractual structure, the covenant of the contracting party paying the lease payments, the nature of the asset being provided, the debt terms, the construction period drawdown profile and length, the gearing of the financing package and the return required by equity investors. Taken together all these factors have a significant impact on the cost of financing the new trains.

The Purpose of Bidder Anonymity

The purpose of bidder anonymity is to ensure that supplier selection decisions (when it is categorised as strategic, high value, high risk, novel or contentious, and is likely to be greater than £1M in value) are made based on objective evidence, and are not influenced by knowledge of the identity of bidders. The key decision points when bidder anonymity is used are:

- when deciding the shortlist of suppliers to be invited to tender;
- the selection of a preferred bidder;
- when seeking endorsement of the above procurement decisions from Board Committees; and
- when seeking the approval to proceed from Ministers.

Anonymous bidding gives ministers protection from any possible allegations regarding bias, lobbying, hospitality etc.

Procurement Directive

The question has been raised in the press as to whether we have used the correct procurement Directive for the new Thameslink trains.

As explained earlier the procurement is being conducted by the Department to facilitate the Thameslink Train Operating Company (First Capital Connect) to enter into a suite of agreements to take on lease and to pay for the benefit of the trains for a fixed period. The Department will enter into related arrangements including the provision of a commitment to lease the trains for an agreed period through a section 54 undertaking.

The Utilities Contracts Regulations 2006 (Utilities Regulations) apply to procurement by a utility. A ‘utility’ is defined as "a relevant person specified in one of the Parts of Schedule 1 carrying out an activity in that Part". Part Q of Schedule 1 includes any relevant person involved in "the provision or operation of a network providing a service to the public in the field of transport by railway." Train Operating Companies running passenger rail services fall within this definition.

The use of the Public Contracts Regulations 2006 was considered but these Regulations exclude the seeking of offers in relation to a proposed public contract where the contracting authority is a utility within the meaning of regulation 3 of the Utilities Contracts Regulations 2006(b) and that contract is for the purposes of carrying out an activity listed in any Part of Schedule 1 to those Regulations in which the utility is specified.

Therefore, as the purpose for which the trains are being procured is a utility purpose, and the contracting party is a utility the Department concluded that the procurement should be governed by the Utilities Regulations.

It is also worth noting that it is usual for the procurement of rolling stock to be conducted by train operating companies in accordance with the negotiated procedure under the Utilities Regulations, and that rolling stock manufacturers, finance lessors and other relevant market players are accustomed to the use of this procedure.
Socio-Economic Factors in the Thameslink Procurement

The Department did not include consideration of socio-economic factors in the evaluation criteria contained within the ITT. This position was known to all bidders and was clear from the ITT published on the DfT website. Furthermore the Department cannot include new evaluation criteria at a stage following the issue of the ITT and the receipt and evaluation of bids as this would be contrary to EU procurement law.

Government procurement processes seek to award contracts on the basis of MEAT (most economically advantageous tender), because this is regarded as providing best value for the taxpayer. OGC guidance is clear that the Government’s procurement policy is that all public procurement is to be based on value for money, having due regard to propriety and regularity.

Risks of Stopping the Procurement Now and Starting Again With a New Procurement

The invitation to tender has a provision which allows the Secretary of State to terminate the competition. The wording of this right in the invitation to tender is as follows:

“... The issue of this ITT in no way commits the Secretary of State to award the TRSP [Thameslink Rolling Stock Procurement] to any person or party. The Secretary of State reserves the right to terminate the competition, to award the TRSP without prior notice, to change the basis, the procedures and the timescales set out or referred to in this document, or to reject any or all Proposals and to terminate discussions with any or all Bidders at any time. Nothing in this ITT should be interpreted as a commitment by the Secretary of State to award the TRSP to a Bidder”.

Although it may appear at first sight that this is a wide ranging power, it is constrained by the overarching procurement law under which the competition was conducted and therefore would not allow the Secretary of State to vary the procedures or the basis of the competition in a manner which could disadvantage any bidder in a way in which altered the outcome of the competition. The Secretary of State clearly does have a power, in certain circumstances, to terminate the competition. However, any decision to terminate would have to be based on valid and defensible reasons, for example, that changes in external factors result in the overall Thameslink project no longer being value for money or affordable to the taxpayer. If bidders considered that the reasons for termination were not valid then they could challenge the decision and, if successful, claim damages including loss of profit.

Large amounts of public money have already been spent on infrastructure improvements for Thameslink (including the complete rebuilding of Blackfriars station). There would be significant programme implications of terminating the existing procurement and commencing a new competition.

— The additional capacity that Thameslink will provide is urgently needed now by London’s commuters, and the 400+ existing Thameslink carriages that will be released for redeployment elsewhere are also urgently needed to address overcrowding. Without them, the planned electrification programme for the Great Western Mainline and for the Liverpool/Manchester area could not proceed. A new competition would take between two and three years to conclude which would delay these benefits by a corresponding time period.

— The delay would also add significant prolongation costs to the Thameslink Programme as the infrastructure modernisation works at London Bridge station may have to be delayed because they are not aligned with the rolling stock delivery programme. This would mean that the overall business case for the project would have to be reviewed and re-evaluated with consequent potential loss of benefits arising from the delay.

— There would also be additional costs associated with conducting a new procurement for the supply of trains.

It is also important to stress that, even if a decision to retender was taken based on valid reasons, it would not be possible to achieve an early award of a new contract so even if Bombardier were ultimately successful in such a retender process, job losses would not be avoided.

Subcontracting Work to a Competitor

The scope of the tender documents does not give the Department rights to require the winning bidder to sub-contract work to a particular third party. Such a requirement could not be introduced at this stage of the procurement process as it could be seen as discriminatory and against EU procurement law.

Bidders themselves do have freedom to elect to sub contract work to third parties as part of their bid. For reasons of confidentiality the Department is not able to comment on whether the bidders proposed to sub contract to third parties.

Corruption Allegations

As part of the process for the pre-qualification of bidders for the Thameslink Rolling Stock Project the Siemens plc accreditation submission was received on 9 June 2008. The submission included a specific reference to investigations concerning its parent company Siemens AG and certain of its then current and
former employees regarding allegations of public corruption. The submission also identified the steps the company has taken to address these issues.

Following consideration of Article 26 of The Utilities Contracts regulations 2006 and OGC guidance, the Department asked Siemens plc for further information and assurances.

On receipt of this information the Department satisfied itself that the individuals involved in the allegations were not and would not be involved in Siemens plc or any aspect of the Thameslink procurement exercise and consequently Siemens plc was not excluded.

The Thameslink ITT contains the requirement for Bidders to notify the Department of any changes to the information provided to the Department as part of the pre-qualification process. No relevant notifications have been received since the issue of the ITT.

Siemens AG continue to disclose progress of on-going investigations on a quarterly basis on their Global website.

August 2011

Written evidence from Professor Chris Bovis, University of Hull (RSP 07)

Thameslink Project

The recent procurement exercise has revealed fundamental issues in relation to strategic procurement in the UK and in particular the procurement of rolling stock.

Below are some thematic issue analysis which could familiarise the Select Committee on Transport with the latest developments at EU and domestic levels.

A. What are the principles which underpin public procurement regulation?

1. Public procurement in the European Union has been significantly influenced by the internal market project. The identification of public procurement as a major non-tariff barrier has revealed the economic importance of its regulation. Savings and price convergence appeared as the main arguments for liberalizing the trade patterns of the demand (the public and utilities sectors) and supply (the industry) side of the public procurement equation. The economic approach to the regulation of public procurement aims at the integration of public markets across the EU. Through the principles of transparency, non-discrimination and objectivity in the award of public contracts, it is envisaged that the regulatory system will bring about competitiveness in the relevant product and geographical markets, will increase import penetration of products and services destined for the public sector, will enhance the tradability of public contracts across the common market, will result in significant price convergence and finally it will be the catalyst for the needed rationalization and industrial restructuring of the European industrial base.

2. In parallel with the economic arguments, legal arguments emerged supporting the regulation of public procurement as a necessary ingredient of the fundamental principles of the Treaties such as the free movement of goods and services, the right of establishment and the prohibition of discrimination of nationality grounds. The legal significance of the regulation of public procurement in the common market has been well documented. Public procurement liberalization reflects the wish of European Institutions to eliminate preferential and discriminatory purchasing patterns by the public sector and create seamless intra-community trade patterns between the public and private sectors. Procurement by member states and their contracting authorities is often susceptible to a rationale and policy that favours indigenous undertakings and champions at the expense of more efficient competitors (domestic or Community-wide). As the relevant markets (product and geographical) have been sheltered from competition, distorted patterns emerge in the trade of goods, works and services destined for the public sector. These trade patterns represent a serious impediment in the functioning of the common market and inhibit the fulfillment of the principles enshrined in the Treaties.

3. Legislation, policy guidelines and jurisprudence have all played their role in determining the need for integrated public markets in the European Union, where sufficient levels of competition influence the most optimal patterns in resource allocation for supplying the public sector as well as the public utilities with goods, works and services. Public procurement has now been elevated as a key objective of the EU’s 2020 Growth Strategy.


4 The European Commission has claimed that the regulation of public procurement could bring substantial savings of ECU 20 billion or 0.5% of GDP to the (European) public sector. See European Communities, The Cost of Non-Europe, op.cit.


6 The term implies a firm with more than a third of its turnover made in its own country and has enjoyed formal or informal government protection.
B. Procurement regulation as an economic exercise

1. Viewing public procurement from the prism of an economic exercise, its regulation displays strong neo-classical influences. Such influences embrace the merit of efficiency in the relevant market and the presence of competition, mainly price competition, which would create optimal conditions for welfare gains. The connection between public procurement regulation and the neo-classical approach to economic integration in the common market is reflected upon the criterion for awarding public contracts based on the lowest offer. This feature of the legal framework focuses on price competition being inserted into the relevant markets and, assisted by the transparency requirement to advertise public contracts above certain thresholds would result in production and distribution efficiencies and drive the market towards an optimal allocation of resources.

2. Removing protectionism and preferential treatment and inserting an environment of competition in public markets will bring about allocative efficiencies, which in turn will result in social welfare gains at European and national levels through the emergence of three major effects that would primarily influence the supply side. These gains include a trade effect, a competition effect and a restructuring effect.

3. The trade effect is associated with the actual and potential savings that the public sector would be able to achieve through lower cost purchasing. This effect appears to have a static dimension, since it emerges as a consequence of enhanced market access of the relevant sectors or industries. The trade effect emanates from the principle of transparency in public markets (compulsory advertisement of public contracts above certain thresholds). On the other hand, the competition effect relates to the changes of industrial performance as a result of the market price behaviour of national firms which had previously benefited from preferential regime imposed upon the demand and supply sides, as a result of openness and transparency and the sequential trade and competition effects.

4. The lowest offer as an award criterion of public contracts is a quantitative method of achieving market equilibrium between the demand and supply sides. The supply side competes in costs terms to deliver standardised (at least in theory) works, services and goods to the public sector. Price competition is bound to result in innovation in the relevant industries, where through investment and technological improvements, firms could reduce production and/or distribution costs. The lowest offer criterion could be seen as the necessary stimulus in the relevant market participants in order to improve their competitive advantages.

5. The lowest offer award criterion reflects on, and presupposes low barriers to entry in a market and provides for a type of predictable accessibility for product or geographical markets. This is a desirable characteristic in a system such as public procurement regulation which is charged with integrating national markets and creating an homogeneous and transparent common market for public contracts. In addition, the low barriers to enter a market, together with the transparent price benchmarking for awarding public contracts through the lowest offer criterion would inevitably attract new undertakings in public procurement markets. This can be seen as an increase of the supply-side pool, a fact which would provide the comfort and the confidence to the demand side (the public sector) in relation to the competitive structure of an industry. Nevertheless, the increased number of participants in public tenders could have adverse effects. Assuming that the financial and technical capacity of firms is not an issue, the demand side (the public sector) will have to bear the cost of tendering and in particular the costs relating to the evaluation of offers. The more participants enter the market for the award of public contracts, the bigger the costs attributed to the tendering process would have to be born by the public sector.

6. However, competitiveness in an industry is not reflected solely by reference to low production costs. Efficiencies which might result through production or distribution innovations are bound to have a short term effect on the market. For two reasons: if the market is bound to clear with reference to the lowest price, there would be a point where the quality of deliverables is compromised (assuming a product or service remains standardized). Secondly, the viability of industries which tend to compete primarily on cost basis is questionable. Corporate mortality will increase and the market could revert to oligopolistic structures.

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7. The demand side often omits risk assessment tests during the evaluation process. The Directives remain vague as to the methods for assessing financial risk, leaving a great deal of discretion in the hands of contracting authorities. Evidence of financial and economic standing may be provided by means of references including: i) appropriate statements from bankers; ii) the presentation of the firm’s balance sheets or extracts from the balance sheets where these are published under company law provisions; and iii) a statement of the firm’s annual turnover and the turnover on construction works for the three previous financial years. See case C-27/86, Constructions et Entreprises Industrielles S.A. (CEI) v. Association Intercommunale pour les Autoroutes des Ardennes; case C-28/86, Ing.A. Bellini & Co. S.p.A. v. Regie de Betiments; case C-29/86, Ing.A. Bellini & Co. S.p.A. v. Belgian State, [1987] ECR 3347.
7. The welfare gains emanating from a neo-classical approach of public procurement regulation encapsulate the actual and potential savings the public sector (and consumers of public services at large) would enjoy through a system that forces the supply side to compete on costs (and price). These gains, however, must be counterbalanced with the costs of tendering (administrative and evaluative costs born by the public sector), the costs of competition (costs related to the preparation and submission of tender offers born by the private sector) and litigation costs (costs relevant to prospective litigation born by both aggrieved tenderers and the public sector). If the cumulative costs exceed any savings attributed to lowest offer criterion, the welfare gains are negative.

8. A neo-classical perspective of public procurement regulation reveals the zest of policy makers to establish conditions which calibrate market clearance on price grounds. Price competitiveness in public procurement raises a number of issues with anti-trust law and policy. If the maximisation of savings is the only (or the primary) achievable objective for the demand side in the public procurement process, the transparent/competitive pattern cannot provide any safeguards in relation to underpriced (and anti-competitive) offers.

9. The price competitive tendering reflects on the dimension of public procurement regulation as an economic exercise. On the one hand, when the supply side responds to the perpetually competitive purchasing patterns by lowering prices, the public sector could face a dilemma: what would be the lowest offer it can accept. The public sector faces a considerable challenge in evaluating and assessing low offers other than "abnormally low" ones. It is difficult to identify dumping or predatory pricing disguised behind a low offer for a public contract. On the other hand, even if there is an indication of anti-competitive price fixing, the European public procurement rules do not provide for any kind of procedure to address the problem. The anti-trust rules take over and the suspension of the award procedures (or even the suspension of the contract itself) would be subject to a thorough and exhaustive investigation by the competent anti-trust authorities.

C. The ordo-liberal approach to public procurement regulation

1. Harmonisation of laws has been entrusted to carry the progress of public procurement regulation. Directives, as legal instruments, have been utilized to provide the framework of the acquis communautaire, but at the same time afford the necessary discretion to the Member States as to the forms and methods of their implementation. This is where the first deviation from the traditional economic approach of public procurement occurs. Anti-trust law and policy is enacted through the principle of uniformity across the common market, utilizing directly applicable regulations. By allowing for discretion to the Member States, an element of public policy is inserted in the equation, which often has decentralized features. Traditionally, discretion afforded by Directives takes into account national particularities and sensitivities as well as the readiness of domestic administrations to implement acquis within a certain deadline. In addition, individuals, who are also subjects of the rights and duties envisaged by the Directives, do not have access to justices, unless provisions of Directives produce direct effect.

2. However, the public policy dimension of public procurement regulation is not exhausted in the nature of the legal instruments of the regime. The genuine connection of an ordo-liberal perspective with public procurement regulation is reflected in the award criterion relating to the most economically advantageous offer. The public sector can award contracts by reference to "qualitative" criteria, in conjunction with price, and thus can legitimately deviate from the strict price competition environment set by the lowest offer criterion. There are three themes emanating from such approach: one reflects on public procurement as a complimentary tool of the European Integration process; the second regards public procurement as an instrument of contract compliance; last, the ordo-liberal perspective can reveal a rule of reason in public procurement, where the actual and potential savings the public sector (and consumers of public services at large) would enjoy through a system that forces the supply side to compete on costs (and price). These gains, however, must be counterbalanced with the costs of competition (costs related to the preparation and submission of tender offers born by the private sector) and litigation costs (costs relevant to prospective litigation born by both aggrieved tenderers and the public sector).

D. How are complex public contracts awarded?

1. Although in numerous instances the importance of the economic approach to the regulation of public procurement has been reinforced by European and national institutions, the relative discretion of contracting authorities to utilise non-economic considerations as award criteria it has also been confirmed. Under the most

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8 The European rules provide for an automatic disqualification of an "obviously abnormally low offer". The term has not been interpreted in detail by the judiciary at European and domestic levels and serves rather as a "lower bottom limit". The contracting authorities are under duty to seek from the tenderer an explanation for the price submitted or to inform him that his tender appears to be abnormally low and to allow a reasonable time within which to submit further details, before making any decision as to the award of the contract. See Case 76/81, SA Transporoute et Travaux v. Minister of Public Works, [1982] ECR 457; Case 103/88, Fratelli Costanzo S.p.A. v. Comune di Milano, [1989] ECR 1839; Case 296/89, Impresa Dona Alfonso di Dona Alfonso & Figli s.n.c. v. Consorzio per lo Sviluppo Industriale del Comune di Monfalcone, [1991] ECR 2967; Case C-285/99 & 286/99, Impresa Lombardini SpA v ANAS, [2001] ECR 9233.


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economically advantageous offer award criterion, environmental\textsuperscript{11} and socio-economic considerations\textsuperscript{12} are allowed to play a part in the evaluation process and determine the award of public contracts, provided that they are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the authority,\textsuperscript{13} are expressly mentioned in the contract documents or the tender notice,\textsuperscript{14} and comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.\textsuperscript{15}

2. Often, questions are asked as to the possibility of a contracting authority to lay down criteria that pursue advantages which cannot be objectively assigned a direct economic value, such as advantages related to the protection of the environment or the promotion of employment policies. The European Court of Justice held that each of the award criteria used by contracting authorities to identify the most economically advantageous tender must not necessarily be of a purely economic nature.\textsuperscript{16}

3. The European Court of Justice maintained that a criterion relating to the reliability of supplies is a legitimate factor in determining the most economically advantageous offer for a contracting authority.\textsuperscript{17} However, the capacity of tenderers to perform the terms and conditions of the contract cannot be legitimately linked with the subject matter of the contract, unless the contracting authority provides for an objectively determined verification. Therefore, the link of non-economic criteria to the subject matter of the contract presupposes the existence of procedural requirements which permit the authentication of the accuracy of the information contained in the tenders and confirm that the criteria serve the objective pursued.

August 2011

Written evidence from Siemens plc (RSP 08)

Executive Summary

Siemens plc is a major UK employer of 16,000 people. One of its key business activities is rolling stock supply and maintenance. Siemens plc, along with a number of other rolling stock suppliers all with international parent companies, has participated in various procurement exercises in the UK rail market over the past 10 years. As is the nature of competition, Siemens plc has won certain tenders and not others. Siemens plc now has over 300 Siemens trains (1,500 rail vehicles) in service with various operators.

This written submission sets out Siemens plc’s position on a number of key points in relation to UK Rolling Stock procurement (excluding the London Underground market) but also various issues that have been raised since the selection of Siemens plc by the Department for Transport (DfT) as the preferred bidder for the Thameslink Rolling Stock Procurement Project (TRSP).

In summary:

- The opening up of competition in the UK rail market post privatisation has resulted in cost reductions, improved rolling stock from a range of suppliers, better performance and a significantly improved passenger environment.
- The lack of continuous orders is a challenge to rolling stock suppliers but can drive a wide range of behaviours and tender strategies, some of which may actually be positive.
- Contrary to popular opinion, the European rolling stock market is also highly competitive, with both foreign-owned and indigenous manufacturers securing orders.
- Siemens plc has had a degree of success in the UK rail market and this has been recognised by a number of industry awards.
- Siemens plc was one of four bidders that prequalified in response to the OJEU Notice in April 2008 for TRSP.
- Siemens plc has subsequently been involved in bidding for the TRSP since the issue of the Invitation to Tender in November 2008 and on 16 June 2011 the Secretary of State announced that Siemens had been awarded preferred bidder status.
- As part of the TRSP, Siemens plc will create up to 2,000 jobs and bring into service the Desiro City, which is an evolution of its proven Desiro UK train. A new bogie based on proven technology will be utilised.

\textsuperscript{14} See case C-28/86, Bellini, [1987] ECR 3347.
\textsuperscript{15} See case C-370/98 PreussenElektra [2001] ECR I-2099, paragraph 73.
\textsuperscript{17} See case C-448/01, EVN AG, Wienstrom Gmbh and Republik Österreich, judgment of 4 December 2003, paragraph 70.
Introduction

1. Siemens plc has been present in the UK for 168 years, and is now a major UK-wide employer. We employ 16,000 people in the UK (largely UK nationals), of whom around half are involved in manufacturing and engineering across our key Sectors of Energy, Healthcare and Industry (a fourth Sector, covering Infrastructure and Cities, will be established on 1 October 2011). The company has an annual turnover of £4.1 billion in the UK, and contributes significantly in direct and indirect taxes to the UK Exchequer. Siemens annual purchase volume in the UK is in the order of Euro 1.5 billion, which in turn secures many thousands of jobs in the supply chain.

2. Siemens plc is committed to the UK manufacturing sector and currently has 13 manufacturing sites in the UK, involving a range of technologies. For example:

(a) 15,000 traffic signals for the UK and 28 international markets are manufactured at Siemens Traffic Solutions in Poole, officially “Britain’s best factory” (Works Management / Manufacturing Institute Awards 2010).

(b) Industrial gas turbines for power plants are manufactured at Siemens Industrial Turbomachinery in Lincoln. 96% of the turbines are exported, with 3,690 engines sold to date.

(c) Siemens MRI scanners and more than a third of all MRI scanners installed in hospitals around the world have at their heart a superconducting magnet designed and manufactured by Siemens Magnet Technology in Eynsham, Oxfordshire.

(d) High efficiency motor drives exported to 78 countries globally are made by Siemens Standard Drives in Congleton. More than 1.3 million drives are produced per year, saving customers 4 million tonnes of CO₂ per year.

3. Siemens plc has a strong track record of investment in the UK. For example, the company has recently announced:

(a) Inward investment of around £80m in Hull establishing a wind turbine manufacturing plant to capitalise on the growing market for offshore energy. The factory will create up to 700 new direct jobs as well as additional employment in the supply chain in the Humber region.

(b) £30 million investment in the Siemens Urban Sustainability Centre in London’s Docklands, demonstrating Siemens’ commitment to creating sustainable cities. The centre will attract 100,000 visitors every year, from city mayors, global experts, city planners and officials to members of the local community, school children and post graduate students.

(c) The creation of up to 340 new jobs at a new Renewable Energy Engineering Centre being built in Manchester.

(d) £8 million at Siemens’ Newcastle site, where Siemens will officially open a Fossil and Renewable Energy Training facility in September this year, a key investment to address the skills requirement in the North East of England.

4. As a result of our existing and planned investments in the UK economy, Siemens is deeply committed to the development of UK jobs and skills. As an example, Siemens is this year recruiting over 100 apprentices across its business in this country.

UK Rolling Stock Market

5. The Rolling Stock market in the UK has a number of major UK based suppliers with international parents, they are:

(a) Siemens plc with its parent based in Germany.

(b) Bombardier Transportation UK Limited with its parent based in Canada and headquarters in Germany.

(c) Hitachi Europe Limited with its parent based in Japan.

(d) Alstom Transport with its parent based in France.

6. Based on information available to Siemens, since privatisation and the opening up of the UK market to competition, the commuter rail market share of Diesel Multiple Unit (DMU) vehicles and Electric Multiple Unit (EMU) vehicles between the various rolling stock suppliers is shown in the following graphs:
7. Following privatisation of the Railway industry in the mid 1990s the management of procurement of Rolling Stock has predominantly been undertaken by either Train Operating Companies directly or via their appointed procurement consultants or by the DfT.

(a) Train Operating Companies directly or via their appointed procurement consultants

(i) In summary, procurement is conducted in accordance with European Procurement Law. It involves the issue of an OJEU Notice (call for competition) by the procuring entity inviting companies interested in Rolling Stock provision (and separately financing) to prequalify to participate.

(ii) The interested parties then submit pre-qualifications to the procuring entity (or in some cases using automatic pre-qualification systems for example Link-Up) and a short list of prequalified bidders is developed by the procuring entity.

(iii) An Invitation to tender is issued to the pre-qualified tenderers specifying the scope of the procurement together with the relevant evaluation criteria that will be used to assess the tender submissions—these are often very detailed documents.

(iv) Suppliers then develop their tender strategies by focussing on what the procuring entity is looking to buy and how the bids would be evaluated—this is a critically important element for a supplier in developing a winning bid. To give some examples:

- If the number of seats is weighted highly in the evaluation criteria, the supplier would look carefully at the layout of the train and the location of equipment cubicles to ensure that they maximise furnishable space;
- If “deliverability” is weighted highly in the evaluation criteria, the supplier would put particular emphasis on how they will demonstrate to the buyer that what they are offering will be delivered in accordance with the contract;
If the whole lifecycle cost is highly weighted in the evaluation criteria, this could drive the supplier to maximise the period between maintenance, drive a reduced spares consumption rate or reduce operating costs such as electricity consumption.

(v) In parallel the procuring entity would normally select a financier to fund the purchase for example a Rolling Stock Leasing Company.

(vi) Following the selection of the successful supplier, the required stand still letters are issued in accordance with EU procurement law and after the standstill period the contract between the supplier and the procuring entity can be concluded.

(vii) The diagram below shows a typical contractual structure with the relevant parties.

![Diagram of contractual structure]

Key: S54—Section 54 undertaking by government for a guaranteed usage period to encourage investment in the Railways; Dir A—Direct Agreement enabling step in rights in certain circumstances; TSA—Train Service Agreement; MSA—Manufacturing Supply Agreement; RSLA—Rolling Stock Lease Agreement.

(viii) Examples of procurement contracts that have been conducted since privatisation are shown in the table below. The participants and the successful bidders are shown, with the successful bidder is underlined.

<table>
<thead>
<tr>
<th>Contract</th>
<th>Participants</th>
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<td>South Eastern</td>
<td>= Bombardier / Alstom</td>
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<td>c2c 1</td>
<td>= Bombardier / Alstom</td>
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<tr>
<td>c2c 2</td>
<td>= Bombardier / Siemens</td>
</tr>
<tr>
<td>Great Eastern (NXEA)</td>
<td>= Siemens / Bombardier / Alstom</td>
</tr>
<tr>
<td>South West Trains</td>
<td>= Siemens / Bombardier / Alstom</td>
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<tr>
<td>ScotRail 1</td>
<td>= Alstom / Bombardier / Siemens</td>
</tr>
<tr>
<td>South Eastern Met</td>
<td>= Bombardier / Hitachi</td>
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<tr>
<td>Southern 1</td>
<td>= Bombardier / Siemens / Alstom</td>
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<tr>
<td>Southern 2</td>
<td>= Bombardier</td>
</tr>
<tr>
<td>TransPennine Express</td>
<td>= Siemens / Bombardier / Alstom</td>
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<tr>
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<td>London Midland 2</td>
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<tr>
<td>London Overground</td>
<td>= Bombardier / Siemens / Hitachi</td>
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</tbody>
</table>
(b) Department for Transport

(i) The DfT also procures Rolling Stock, following much the same process as outlined above, but it tends to do this for projects with much more of a National Strategic dimension for example the proposed Diesel Multiple Unit tender (that was subsequently cancelled due to the electrification of the network), the Inter City Express Programme and Thameslink.

(ii) In both the Inter City Express Programme and Thameslink, bidders were asked to commit long-term equity and arrange debt from numerous sources in the market to fund the deal.

(iii) An extract from the Thameslink tender showing diagrammatically the contractual structure anticipated in the tender documents is shown below.

8. As a result of the opening up of the UK Rolling Stock market to competition, we firmly believe that this has resulted in cost reductions in procurement, improved rolling stock, better performance and a significantly improved passenger environment.

9. We are aware of concerns about the way in which orders are placed in the UK, and the “feast and famine” effect of the DfT procurement regime. It is true that continuous production would be more efficient, and we believe that all manufacturers would prefer that situation. But it is difficult, if not impossible, to achieve this ideal at the domestic level, when there are a limited number of orders and the prospect of three to six suppliers bidding competitively for them.

10. This lack of continuous orders can drive a wide range of behaviours and tender strategies, some of which may be positive. For example, a company may decide to approach tenders by taking more risks and offering a particularly competitive price, or to restructure to improve competitiveness, or to revise its business strategy by diversifying into new markets (e.g. rolling stock refurbishment).

11. Moreover, the UK’s approach has purposely driven positive changes. A key example is the DfT’s 2007 technical strategy, which encouraged manufacturers and their supply chains to innovate, leading to the development of the next generation of EMUs that would be more energy efficient and lighter, include more innovative features, do less damage to the infrastructure and reduce whole life whole system cost, as opposed to the traditional focus on just capital costs. The key was not to have a revolution, but to have a development and evolution of technologies and design features that could be incorporated into the next generation of Rolling Stock. The first deployment of the full second generation EMU rolling stock will be seen on Thameslink.

12. Significant opportunities for rolling stock suppliers continue to exist in the UK market in the near to mid-term. Examples include more than 3,000 vehicles for London Underground, around 600 vehicles for Crossrail, projects relating to potential re-franchising on Greater Anglia and the West Coast Mainline, as well as opportunities relating to Merseyrail, Transport Scotland and trams with Centro in Birmingham.
13. As mentioned, Siemens plc's rail business has grown steadily in the UK since the early 1990s. We are now one of the UK’s leading rolling stock providers, with a market share in the commuter rail sector of around 35 percent. Our rail business is part of Siemens Mobility, which is in turn a division of our Industry Sector. Siemens Mobility Division comprises all of Siemens’ competencies in rail, road, and traffic solutions, and currently employs around 1,600 employees in the UK.

14. Siemens Mobility is recognised as an industry leader and has won several awards over the past 18 months including, Modern Railways “Rail Innovation Award” for RailBam—a non-invasive bearing condition detection system (2010); Modern Railways “Golden Spanner” for the most reliable Electric Multiple Unit with the Class 444 train (2010); Investors in People accreditation for our Rolling Stock business in 2010; and EFQM 4 Star rating for business excellence in (2010).

15. Siemens plc has supplied more than 1,500 of the current rail vehicles in the UK, and has delivered trains to Heathrow Express and Heathrow Connect, London Midland, First TransPennine Express, South West Trains, National Express East Anglia, Northern Rail and ScotRail. We are responsible for deploying well over 300 train sets each day, and they travel over 50 million miles per annum.

16. We have also constructed and operate six depots for rail maintenance under the terms of our rolling stock contracts. All of the new depot builds that we have been involved with have been carried out directly by Siemens plc or by its subcontractors—we have developed and built more train maintenance depots in the UK than any other rolling stock supplier. Currently, Siemens employs 650 people at its depots.

17. Siemens is widely renowned for efficiency of service and on-budget delivery. A key factor in that reliability is our unique test track. In 1997 Siemens bought the former RAF base in Wildenrath, Germany, and invested €9 million in a test track which replicates the UK network conditions. This ensures that trains are fully tested on Network Rail standard track prior to their entry to the UK, allowing fault free mileage accumulation for each vehicle and avoiding extensive testing periods on the busy UK rail network. The Wildenrath test track also offers the ability to have “on the job” training for both drivers’ trainers and maintenance trainers.

18. Siemens announced in March that due to its large fleet of trains in this country that the UK will become Siemens’ “Global Rail Innovation Centre of Competence”. This means that the UK will become a test bed for the very latest in predictive technologies, directly benefitting UK rail operators. Siemens has also recently committed to establishing a UK Rail Training Academy. We are working with the National Skills Academy for Rail Engineering to develop the proposal for implementation.

**Competition in European Markets**

19. There has been some misleading press coverage about the extent to which European Rolling Stock markets are open to competition. We have developed the graph below to show how market share has been spread between the various manufacturers over the past five years. This shows that a highly competitive market exists in the countries shown.

### Market Share by Volume Up to March 2011

<table>
<thead>
<tr>
<th>Country</th>
<th>Siemens</th>
<th>Alstom</th>
<th>Bombardier</th>
<th>Stadler</th>
<th>CAF</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>27%</td>
<td>47%</td>
<td>11%</td>
<td>1%</td>
<td>9%</td>
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<tr>
<td>Scandinavia</td>
<td>38%</td>
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<td>19%</td>
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<tr>
<td>France</td>
<td>27%</td>
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<td>19%</td>
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<tr>
<td>UK</td>
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<td>19%</td>
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</tr>
<tr>
<td>Germany</td>
<td>51%</td>
<td>19%</td>
<td>14%</td>
<td>13%</td>
<td>8%</td>
<td>2%</td>
</tr>
</tbody>
</table>
Thameslink procurement process

20. Siemens plc was one of four bidders that prequalified in response to the OJEU Notice in April 2008 for the Thameslink Rolling Stock Project (TRSP); the other three were Hitachi Europe Limited, Alstom Transport and Bombardier Transportation UK Limited. We have subsequently been involved in bidding for the TRSP since the issue of the Invitation to Tender in November 2008. On 16 June 2011 the Secretary of State announced that Siemens plc had been awarded preferred bidder status. We are currently working with the DfT to reach financial closure and bring the programme to successful fruition.

21. Siemens made a total of four submissions in response to the DfT’s Supplemental Instructions. This was a significant undertaking as the procurement process was very detailed; the last submission was around 7,000 pages in content.

22. The procurement process required bidders to submit some elements of their tender in RADAR (Results, Approach, Deployment, Assessment and Review) format, part of the EFQM excellence model. This methodology allows those assessing the bid submissions to use a structured approach in their evaluation.

23. In Siemens’ view, the procurement process has been very strict and transparent; the evaluation criteria were made clear at the start of the process. We entered the process as a willing participant with a full understanding of the rules of the procurement especially the evaluation criteria (which have not changed from Day 1). The DfT has consistently made clear that bids must be affordable, deliverable and offer the best value for money.

24. Specifically, the evaluation criteria involved a myriad of elements to allow the DfT to assess the best value for money for the UK taxpayer, including aspects such as train, depot and maintenance costs, energy consumption, track damage, spares consumption, maintenance frequency, performance, deliverability and risk appetite and more—overall the value assessment on a life cycle cost basis.

Desiro City

25. Siemens spent Euro 50 million developing the Desiro City train, specifically with the UK market in mind. It has been developed to meet the requirements of current and future UK mainline commuter rail projects (including Thameslink), and is a second generation platform based on proven technology in the form of the successful Desiro UK train. The Desiro UK fleet has now achieved more than 1 billion miles of operational service.

26. The Desiro City is a single car concept designed with maintainability in mind. The highly flexible train design offers a combination of motor and trailer cars for tailored performance levels and incorporates extensive maintenance and servicing improvements and innovations based on the expertise and lessons learned from the current Desiro UK. The modern flexible and modular interior design allows for multiple interior configurations, enhancing passenger comfort and capacity. The lightweight bogie design with inboard bearing concept and optimal wheelbase results in significantly less track wear and lower life cycle costs.

27. The Desiro City also has a significantly reduced weight—weight optimised equipment and an aluminium bodyside results in a train that is 25% lighter than current UK fleets. Alongside an advanced driver advisory system, improved aerodynamics, an intelligent air conditioning system and intelligent stabling modes are just some of the highlights. The Desiro City’s reduced weight and environmental features enable primary energy consumption reductions of up to 50%.

Train Bogie

28. There have been some suggestions since the announcement was made that Siemens plc was the preferred bidder for TRSP, that Siemens does not have an approved bogie. We are glad to be able to address this directly.

29. Siemens is one of the leading bogie designers and manufacturers worldwide. Siemens’ expertise in bogies incorporates a spectrum of types and designs that have been developed over the last 50 years. Since 1995 Siemens has manufactured and delivered 33,500 bogies to customers worldwide. For example, Siemens recently completed the redesign, manufacture and supply of over 1,400 replacement bogie frames for London Underground’s Central Line; this project is being held up as a positive reference project by London Underground.

30. Siemens’ SF7000 bogie that will be used on Thameslink is based on proven subsystems in both the domestic and international markets. It is an evolution of Siemens proven bogies, one of which is the SF5000 Desiro bogie which has more than 1 billion miles of operational service on the UK network. As part of the tender process, we have identified the heritage of every component that makes up the bogie from both our domestic and international experience. Designs for the new Desiro City model were started in early 2007 and the bogies are being built to allow extensive testing at both the Graz plant and at Wildenrath.
Job Creation

31. Another issue raised has related to job creation. Siemens envisages that, as a direct result of the Thameslink contract, we will create up to 2,000 new jobs in the UK, including up to 600 highly skilled roles in the manufacture of train components—up to 300 of which will be at Siemens’ factory in Hebburn, South Tyneside. Other jobs will be based within our supply chain across the country. Although we obviously cannot finalise the selection of our final suppliers before reaching financial closure of Thameslink we have already engaged in discussions with a number of potential UK suppliers.

32. These new UK jobs have the potential not only to leave a lasting and sustainable skills base in the UK supply chain, but should also assist in creating a critical mass to allow such businesses to compete on the world stage for projects of a similar nature.

Credit Rating

33. There have also been comments made about Siemens’ credit rating. Our A+ (S&P) credit rating reflects our credit worthiness and financial strength as a global enterprise. The fact that we have a good credit rating has been true since the very outset of the procurement process.

Compliance

34. Since Siemens was appointed preferred bidder for TRSP on 16 June 2011, there have been various questions asked in relation to the Thameslink procurement process regarding the suitability of Siemens as a bidder.

35. The bidder for the TRSP was Siemens plc. We can confirm that no proceedings have been brought or allegations made against Siemens plc or any of its directors on any grounds which would result in mandatory exclusion under the Utilities Contracts Regulations 2006. Siemens plc as an entity is therefore a reliable bidder.

36. We are aware that in some circumstances, under EU procurement rules, the behaviour of a bidder’s parent company can be taken into account. However, we can confirm that neither Siemens Holdings plc nor Siemens AG nor any person who has powers of representation, decision or control over Siemens plc has been convicted by final judgment of any of the offences listed in Article 45 (1) of Directive 2004/18/EC or under Regulation 26(1) of the Utilities Contracts Regulations 2006. Therefore there are no grounds for mandatory exclusion of Siemens plc from the tender process.

37. It is the case that Siemens AG, the ultimate parent of Siemens plc, was fined a significant sum of money in the United States some years ago under the provisions of the U.S. Foreign Corrupt Practices Act. We have never hidden this very public fact from the DfT nor anyone else. Indeed the case arose when Siemens raised issues and concerns proactively with the authorities. Since then Siemens has implemented a multitude of significant measures worldwide to ensure its reliability as a bidder; and Siemens AG continues to bid throughout Europe.

38. Siemens globally is now fundamentally reformed, in terms of personnel, organization and leadership culture, and independent observers consider Siemens a role model in compliance. For instance, the prestigious Dow Jones Sustainability Index has ranked Siemens AG top of the “codes of conduct/compliance” index for the second year running. Siemens AG reports openly and transparently about its compliance programme on its global website.

Conclusion

39. Siemens is a credible and committed player in the UK rail market, which has already demonstrably shown its ability to deliver highly reliable rolling stock on time and on budget. We have invested significantly to develop the Desiro City train for the UK market and look forward to introducing the Desiro City train into service to commuters on the Thameslink route in due course.

40. Siemens welcomes the opportunity to give both written and oral evidence to the committee and would be happy to expand on any of the points above.

August 2011
Supplementary evidence from Steve Scrimshaw, Siemens plc (RSP 08a)

I wanted to clarify one of the answers I gave to the Committee this morning in answer to Tom Harris MP, regarding orders Siemens has had from Deutsche Bahn. I said that Siemens has had three orders from DB since 2006, with a value of around €50 million; and that to our knowledge Bombardier has had 21 orders over the same period, valued at just over €2.1 billion. I should have made clear that my answer was related to the five years up to March 2011 (the time period used in our written evidence).

As a result I did not in my answer include the latest ICx contract, concluded in May this year—the was won by Siemens working in partnership with Bombardier and is worth up to €6 billion Euro over around 30 years, of which at least €2 billion will be sub-contracted to Bombardier.

I am sorry if my answer to the Committee was inadvertently misleading. I would of course be happy to provide further clarification to the Committee of this, or any other aspect of my evidence, if required.

September 2011

Written evidence from Bombardier Transportation UK Ltd (RSP 09)

EXECUTIVE SUMMARY

Bombardier Transportation UK Limited thanks the House of Commons Transport Committee for the invitation to submit evidence for its hearing into rolling stock procurement.

In this memorandum we describe:

— Bombardier’s position as a global rail technology innovator and manufacturer;
— The structure of Bombardier’s UK rail business;
— The significance of our Derby factory as the UK’s only train manufacturer;
— The importance of our Derby operation to the UK’s rail manufacturing supply chain;
— The linkage between our Derby factory and the cluster of high technology manufacturers in the East Midlands;
— Bombardier’s success in the UK train procurement market amongst private sector customers and with Transport for London;
— Some examples of train procurement timescales on mainland Europe;
— Bombardier’s experience with UK Department for Transport procurement, in particular the Intercity Express and Thameslink Rolling Stock Projects; and
— The disappointment of Bombardier and our workforce at not being chosen as preferred bidder for the Thameslink train order.

BOMBARDIER TRANSPORTATION— A GLOBAL LEADER IN RAIL TECHNOLOGY

Bombardier Transportation is the rail division of Bombardier Inc., a Canadian company employing 65,400 people worldwide at 69 sites in 23 countries. We manufacture, sell and support world-class rail and aerospace technology. Our sister division, Bombardier Aerospace, is the world’s third largest manufacturer of commercial aircraft, and operates a cutting-edge manufacturing site at the former Short Brothers facility in Belfast employing 5,000 people.

Bombardier Transportation is a global leader in the rail technology, manufacturing and servicing industry with more than 100,000 vehicles operating worldwide and 34,900 employees manufacturing, engineering and servicing vehicles in 36 countries. We are proud of the fact that, for the past three years, we have achieved between 18% and 22% marketshare in the global rail sector and, in the fiscal year 2011, our proven transportation technologies and turnkey systems have yielded record orders.

Bombardier’s rail portfolio is the broadest in the sector and encompasses the world’s most advanced very high speed, long distance, regional and commuter trains, light rail vehicles, advanced rapid transit systems, automated people movers and monorail systems, high capacity metro and underground trains, locomotives, world-leading bogie technology, signalling and control systems and comprehensive service/maintenance support.

Our global reputation for innovation is coupled with strong leadership in driving the environmental credentials of the sector. ECO4 (a range of products/technologies which combine the four “E”s of Economy, Ecology, Energy and Efficiency) has become recognised for its pioneering contribution to sustainable mobility.

18 Source— Bombardier Transportation annual report FY 2010-11
Bombardier Transportation in the UK

In the UK, Bombardier Transportation currently operates from major facilities in Derby, Crewe, Plymouth, Burton upon Trent and Ilford as well as several other locations. We currently directly employ 6,000 people, and have a strong record of investment in training, apprenticeships and graduate entry programmes.

We acquired these facilities 10 years ago at a time when manufacturing was out of favour in the UK. Investment in the UK of over £2 billion in design and technology both in Transportation and in Aerospace has now made Bombardier one of Britain’s largest manufacturers and an example of the impact foreign direct investment can have on employment and the economy.

We have introduced to the UK many examples of high technology design, including our ELECTROSTAR electrical multiple unit, the most environmentally-friendly TURBOSTAR diesel multiple unit, and our advanced MOVIA metro train for London Underground. These include the first air-conditioned trains on that network.

Derby—Our Manufacturing Base in the UK

Although we have several sites in the UK, Derby is arguably our best-known location, as train manufacture began at Litchurch Lane as long ago as 1876. There is immense community pride in this important and long-standing UK train-building site, where our listed Victorian buildings must not obscure the fact that we design and make trains that are amongst the most advanced in the world. Bombardier is the UK’s last remaining train manufacturer.

From Derby, we export vehicles, knowledge and skills around the globe. For example, we recently exported ELECTROSTAR trains for the Gautrain airport link, which opened in South Africa in June 2010 and was showcased at the football World Cup. We recently exported Derby-built bodyshells for the Taipei Metro vehicles in Taiwan, whilst Strasbourg’s trams were also built in Derby.

We have in the region of 300 employees working in design/engineering in Derby. These experienced and expert individuals are recognised across Bombardier globally as constituting a centre of excellence for many areas, particularly high technology aluminium train body design, cab and interior industrial design and human factors, product safety and material fire performance. Their engineering expertise is used worldwide, for example in the development of the latest high speed train technology for China and Italy, and in double-deck trains for the Swiss national operator.

Supporting the World’s Largest Rail Technology Cluster—The East Midlands

Our Derby factory sits at the centre of an important rail technology manufacturing hub in the East Midlands. The 231 railway businesses based in or around the City constitute the world’s largest cluster of such companies. Many of them supply Bombardier, sustaining up to 24,000 jobs in addition to our own. Since the economic downturn began in 2007, we have provided financial, process improvement and management assistance to our suppliers and, in some cases, bought them outright when this was needed to ensure the viability of our supply chain.

This attitude is synonymous with the values of Bombardier Inc. Our company operates to the highest global operational and ethical standards. We provide competitively paid jobs; we recognise trades unions; we have safe and healthy workplaces; we take our responsibilities to our communities seriously, and we invest in training our workforce, in particular the engineers, designers and the tradespeople of tomorrow.

Alongside neighbours such as Rolls-Royce, Toyota and JCB, we are at the heart of the UK’s most flourishing high-technology cluster in a country where manufacturing has hitherto generally been in decline. This wider cluster currently employs 46,000 people and contributes £10.3 billion to the UK’s economic output.

Whilst the vast wealth and power of the City of London’s financial sector is seen as the barometer of the nation’s economy, the Derby manufacturing cluster has already grown to be a quarter of the London financial sector’s size. According to the Planes, Trains and Automobiles report, sustained development of our cluster would be worth an extra £1.7 billion per annum to the region, including 5,500 additional new jobs in rail plus many more in aerospace and automotive.

Bombardier Transportation’s 10-year commitment to the UK has not required Government subsidies or special treatment. We design and make trains in Derby rather than merely assembling them, employing many highly-skilled and qualified people like those described above. We remain committed to a healthy, UK-based train building industry.

UK Train Procurement

Overview

As the Committee will see from the tables below, we have been notably successful in winning 11 out of 14 of the passenger train procurement competitions it has entered in the UK run by private sector train operating

19 Duxbery et al, Planes, Trains and Automobiles Research, December 2009
20 ibid.
companies (TOCs) and rolling stock leasing companies (ROSCOs), as well as Transport for London (TfL). The company has not fared so well in those run by the UK Department for Transport (DfT):

<table>
<thead>
<tr>
<th>Total Orders</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bombardier</td>
<td>11</td>
</tr>
<tr>
<td>Siemens</td>
<td>4</td>
</tr>
<tr>
<td>Alstom</td>
<td>1</td>
</tr>
<tr>
<td>Hitachi</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-DfT Orders</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Bombardier</td>
<td>11</td>
</tr>
<tr>
<td>Siemens</td>
<td>3</td>
</tr>
<tr>
<td>Alstom</td>
<td>0</td>
</tr>
<tr>
<td>Hitachi</td>
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</tr>
</tbody>
</table>

<table>
<thead>
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</thead>
<tbody>
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<td>Bombardier</td>
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</tr>
<tr>
<td>Siemens</td>
<td>1</td>
</tr>
<tr>
<td>Alstom</td>
<td>1</td>
</tr>
<tr>
<td>Hitachi</td>
<td>2</td>
</tr>
</tbody>
</table>

Bombardier recognises that the prime focus of Government procurement is to achieve value for the taxpayer. For this reason, we welcomed the introduction of a DfT-led centralised strategy for train procurement from 2004, as we believed this could produce better results for taxpayers, passengers, train operators and, of course, manufacturers. We took this view because we believed such an approach would lead to a higher degree of standardisation whilst ironing-out some of the expensive peaks and troughs in orders, lowering costs and increasing value for money.

Our optimism turned out to be misplaced. From our experience as the worldwide market leader in train manufacturing, our perception today is that the DfT’s procurement processes are quite cumbersome and expensive, requiring far more external consultancy support than we have generally observed elsewhere. In addition, the processes for the assessment of bids seem to be far more complex and time consuming than those applied by either the private sector or TfL.

The risk of such an outcome was foreseen when the House of Commons Transport Committee commented in its July 2008 report into the 2007 Rail White Paper:

“we are concerned that the Department may not have adequate and appropriate expertise to handle such vital strategic decisions in-house, and to do so efficiently. Matters of such importance should not be left to expensive external consultants...” 22

The DfT rejected the Committee’s conclusions and insisted that:

“The Department’s Rail and National Networks Group has a number of well experienced managers originating from the public transport, railway operating and manufacturing industries. As such it is very capable of making decisions ‘in house’ and efficiently. However, the Department is also keen to harness the wider skills and knowledge within the industry, in order to ensure that investment is targeted to achieve the best possible return for the taxpayer. Additional skills are required from time to time and targeted external support can be an efficient way of obtaining them.”

The DfT then cited the Intercity Express Programme, as an example of why hiring external consultants was justified.

The Committee went on to say:

“We look forward to the Competition Commission’s report on the rolling stock market in the UK, due in 2009. In the meantime, the Department must improve its rolling stock procurement strategy so as to create a stable and consistent pattern of procurement. By doing so, it will achieve the best value for money for tax payers, and it will ensure that Britain can continue to have a rolling stock industry.” 23

We know from our experience that costs for bidders taking part in DfT-led procurements are extremely high, especially in the area of legal advice. As we shall demonstrate later, procurement is designed so that financial engineering is deemed more important than building good, reliable, cost-effective trains.

21 DFT orders include those to preferred bidder where procurement not completed
23 Transport Committee, Delivering a sustainable railway: a 30-year strategy for the railways? (tenth report of session 2007–08), HC 219, 21 July 2008, para. 113
Meanwhile, we are surprised to note that DfT procurement appears to operate in complete isolation from other aspects of the Government’s economic strategy such as rebalancing the economy in favour of manufacturing.

**Procurement Examples**

We have taken the opportunity to provide the Committee with some comparative examples of procurement processes both in the UK and abroad:

- **Stansted Express (National Express)**—Procurement Duration: 7.5 Months
  - OJEU: 28/08/08
  - Bombardier Bid Submission: 22/10/08
  - Award: 01/04/09
  - Winner: Bombardier Class 379

- **First Scotrail Emus**—Procurement Duration: 13.5 Months
  - OJEU: 01/06/07
  - Bombardier Bid Submission: 21/01/08
  - Award: 11/07/08
  - Winner: Siemens Class 450

- **Dmus For Angel/Porterbrook**—Procurement Duration: 3 Months
  - OJEU: n/a
  - Bombardier Bid Submission: 15/10/07
  - Award (Porterbrook): 13/12/07
  - Award (Angel): 18/01/08
  - Winner: Bombardier Class 172

- **London Overground Emus**—Procurement Duration: 12.5 Months
  - OJEU: 08/08/05
  - Bombardier Bid Submission: 04/01/06
  - Award: 31/08/06
  - Winner: Bombardier Class 378

- **Intercity Express Programme**—Procurement Duration: 53 months to date
  - OJEU: 08/03/07
  - Bombardier (joint) Bid Submission: 30/06/08
  - Award (planned): 01/04/09
  - Preferred bidder (actual): February 2009
  - Financial close not yet achieved

- **Thameslink Rolling Stock Project**—Procurement Duration: 39 Months To Date
  - OJEU Notice and PQQ received: April 2008
  - Bombardier Response: June 2008
  - ITT Issued: November 2008
  - Original Response Date: April 2009
  - Actual Response Date: June 2009
  - Various Supplementary Instructions meant that Bombardier’s final bid submission (in response to Supplementary Instruction 5) was made in February 2011
  - Preferred Bidder Announcement (planned): October 2009
  - Preferred Bidder Announcement (actual): June 2011
  - Contract Award (planned): March 2010
  - Contract Award (actual): to be confirmed

**Overseas Procurement Examples**

- **Regional Single Level Trains Pp, SNCF (France) For The Regions**—Procurement Duration: 21 Months
  - Launch of tender: January 2008
  - Announcement of preferred bidder: 1 July 2009 (not an official announcement but press reports)
  - Contract signature: 27/10/2009
  - Winner: Alstom Transport

- **Regional Double Decker Trains PH—SNCF (France) For The Regions**—Procurement Duration: 18 Months
  - Launch of tender: August 2008
  - Announcement of preferred bidder: 18 November 2009
  - Contract signature: 24 February 2010
  - Winner: Bombardier Transportation
Very High Speed Trains (Italy)—Procurement Duration: 9 Months
Date of invitation to tender: December 2009
Date of announcement of preferred bidder: August 2010
Date of contract award: September 2010
Winner: Consortium of Bombardier/Ansaldo Breda.

These examples show that DfT procurements are lengthier and more complex. We shall now discuss more specifically the two DfT-led processes referred to above.

Intercity Express Programme

This flagship project to replace Great Britain’s diesel Intercity 125 train fleet was originally to be procured through private sector leadership. The favoured cost-effective train designed under this process would almost certainly be in service now if the project had continued on its trajectory. The design envisaged a train with underfloor engines utilising the best contemporary technology.

In 2005, the DfT took over the project, which became known as the Intercity Express Programme (IEP), issuing a specification for diesel, electric and bi-mode trains. We anticipated that the redesigned train would require some 1.6 million design hours, so Bombardier partnered with Siemens to create the Express Rail Alliance (ERA). ERA is still the reserve bidder for IEP, so this constrains some of our ability to comment.

Of particular concern is that the DfT made clear the new train could not have underfloor engines. Consequently, Bombardier and Siemens were unable to deploy a modified version of successful Voyager/Meridian design widely used in Great Britain, and were forced to design from scratch a very complex and, hence, more costly train.

In February 2010, a full year after the announcement of the Hitachi-led Agility Trains consortium as preferred bidder, Transport Secretary Lord Adonis halted the IEP procurement process pending an independent review by Sir Andrew Foster. In his report, Sir Andrew said he was not convinced that all of the viable alternatives to IEP had been assessed alongside it on an equal footing. Sir Andrew also expressed some doubts over the technical feasibility of the new bi-mode trains and stated that the value for money had declined over time. In describing the electric option he stated:

“The specification of the train has driven features within the design that have been questioned and may well be unnecessary (eg the requirement to have a small diesel generator to power the train in the event of a loss of electricity). It should be noted that without these features, there are similar broadly acceptable products available in the market from other manufacturers.”

Sir Andrew also referenced the bi-mode trains as already supplied in the UK market:

“The Meridian and Voyager trains currently used by East Midlands Trains, CrossCountry and Virgin Trains are a distributed power diesel train built by Bombardier between 2001 and 2005. Unusually for this type of train, their design is such that they could be converted to bi-mode or even electric trains through the addition of a pantograph and transformer. Such a conversion may well be cost effective for these trains for the services that they currently operate upon and as an existing diesel train, adding the functionality to operate as an electric train seems more sensible than building a new train designed for both.”

He went on to say that he and his team struggled to make sense of the multiple changes to the specification during IEP’s lifetime and criticised the DfT’s management of the Programme including its communication of it.

Although still known as IEP, the DfT has now changed the specification so it matches very closely the original cost-effective train the private sector would have acquired. Contracts have still not been signed with the preferred bidder.

Thameslink Rolling Stock Project (TRSP)

Bombardier Transportation was extremely disappointed not to be selected as preferred bidder to provide the Thameslink rolling stock. We remain, however, reserve bidder for the TRSP, and our ability to comment is therefore limited.

The company had been optimistic of success for a number of reasons and was surprised not to have been selected:

1. We would have provided proven technology through our tried and tested lightweight bogie (chassis and wheelbase) that is already in operation on other tracks.
2. Our manufacture would have been based in the UK, securing British jobs and retaining technical and manufacturing design expertise within this economy.
3. Our commercial proposal was highly competitive, particularly given the quality of our products.

DfT, Review of the Intercity Express Programme by Sir Andrew Foster, 6 July 2010, pp3-8
DfT, Review of the Intercity Express Programme by Sir Andrew Foster, 6 July 2010, pp5
All of the management and workers at Bombardier Transportation are saddened by the fact that, following the Thameslink decision, the company has had no option but to announce a consultation process relating to a large number of redundancies at its Derby facility. It simply does not have enough orders to maintain the existing workforce, despite their diligence, expertise, commitment and dedication. The company believes that the skills being lost to the company through this process are, potentially, also a grave loss to the UK economy.

Design of Procurement Procedure

The DfT is charged with procuring a solution representing best value for the taxpayer. We believe the model used to calculate the TRSP process is flawed, as it did not take into account the full effect on the public finances of the decision.

For example, the University of Manchester\(^26\) estimates that building trains in Derby generates £20 million a year in tax revenue, equivalent to hundreds of millions over the lifetime of the contract. Immediate knock-on costs in higher benefit payments would also be significant, as would the wider social and economic benefits of continuing to strengthen high-technology manufacturing in the region. The DfT did not see a need to consider these effects.

The procedure suffered from the following specific shortcomings:

A. Need for a Full Economic Assessment

When asked for their assessments of the importance of the rail technology sector to Derby and the East Midlands in recent written questions, the Treasury\(^27\) and the Department for Business Innovation and Skills\(^28\) both answered that they had not done any work in this field.

B. Impact on Future Costs Should be Assessed

The DFT’s model neglects the effects of its own decisions. Its slow and irregular procurement process means manufacturers face serious peaks and troughs in their orders, as highlighted in the McNulty report. These can add up to 20% to costs.

C. Impact on Employment Should be Evaluated

The DfT has also sought to point to Siemens’s promise to create a number of assembly, maintenance and construction jobs. However, we understand that most of these jobs will be created no matter who wins the contract. Indeed, the Siemens factory in Hebburn, Tyne & Wear was on our own shortlist as a possible supplier.

D. Effect of the Transfer of Undertakings (Protection of Employment) Regulations to be Uniformly Applied

Bombardier planned to honour TUPE in full for the significant number of First Capital Connect employees who will transfer to the TRSP provider. We do not know whether the DfT sought similar commitments from other bidders.

E. Exchange Rate Risk to be Retained by Bidders not the Taxpayer

The DfT has agreed to take the exchange rate risk on the TRSP until contract signature. This means that the cost of vehicles supplied from Germany will increase if the Euro appreciates against Sterling. We understand that a similar position applies for IEP in relation to the Yen. This is clearly not in the best interests of UK taxpayers, and it even provides an incentive for production to take place overseas.

Need for Tried and Tested Technology

The prime reason we were surprised not to be selected as preferred bidder for the TRSP is our ability to deliver a lightweight train through our tried and tested technology. This core requirement for the Thameslink fleet was designed to reduce track wear and damage, thereby lowering track access charges and reducing energy consumption, thus cutting the whole life costs of the scheme.

Whilst the Bombardier ELECTROSTAR is the lightest EMU in the market—weighing an average of just 42 tonnes per car—our AVENTRA train designed for Thameslink is 20% lighter.

When the Thameslink competition was launched, Bombardier was the only supplier who could achieve such a weight reduction. This resulted from our development of the FLEXX Eco inside-frame bogie, which took 10 years to design and test. Initially tested in prototype form in the UK for two years under Class 320 vehicles (in 1991–92 using trailer bogies) and subsequently under Class 466s using motor bogies, FLEXX Eco remains the only lightweight high-performance bogie in the world on mainline passenger services.

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\(^{26}\) http://www.cresc.ac.uk/sites/default/files/Knowing what to do.pdf

\(^{27}\) http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110617/text/110617w0001.htm#11061741001471

\(^{28}\) http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110617/text/110617w0001.htm#11061741001471
FLEXX Eco has an extremely credible record, having travelled 1.5 billion kilometres in service in the UK under Voyager, Meridian and, more recently, TURBOSTAR trains. It has also been exported to Norway, with 122 bogies supplied to state operator NSB. In reducing overall vehicle weight, the bogie makes a significant contribution to energy saving. It is particularly stable at high speed. It has been tested to 275kph under a Japanese Shinkansen and 392kph beneath an ICE2 in Germany. It delivers excellent performance through curves. The FLEXX Eco bogie is the chosen bogie for the new German ICX very high speed trains (the trains will be built by Siemens and the bogies provided by Bombardier).

Siemens does not have a proven bogie design which could achieve the target weight requirements of Thameslink. We understand that whilst their proposal exists “on paper”, it has not been tested or proven in service.

It is significant that, for the Thameslink project, Alstom was offering its X’Trapolis train, an articulated design that offers very lightweight vehicles. However, articulation also creates substantially higher axle loads than the more conventional EMUs offered by Bombardier and Siemens. In October 2009, Alstom was informed that it had been unsuccessful in its bid for the TRSP. Whilst Bombardier provides articulated designs elsewhere in Europe, they were not offered for the Thameslink project, as the Network Rail track wear model used to calculate whole-life costs penalises heavy individual axle load.

DfT Feedback

A meaningful dialogue between the DfT and firms not selected as preferred bidder has great potential for improving the quality of our offerings and hence the benefits to taxpayers. It is also essential to holding procurement officials accountable.

Following the TRSP preferred bidder announcement, Bombardier representatives received a 1-hour feedback briefing by DfT officials (in this case there was also a subsequent meeting with the Permanent Secretary). Officials used half of the meeting to describe the procurement process (with which we were obviously familiar) and then declined to give what we considered to be adequate answers to our other questions on grounds of commercial confidentiality. This is clearly disappointing. Parliamentary Questions by MPs have revealed more information than the formal feedback process.

Bidders for DfT rolling stock contracts will usually have been required to spend many millions of pounds on their submissions. If the DfT wishes to attract competitive bids in future that provide best value for taxpayers, it must be more forthcoming in the provision of feedback.

European Union Procurement Rules

The DfT asserts that EU rules tied its hands on the TRSP, but this is due not so much to the rules themselves as to the way the DfT has interpreted them. Officials chose to exclude socio-economic criteria including the long-term effect on taxpayers even though, as Professor Chris Bovis of Hull University has explained:

“There are no EU laws against including socio-economic factors in any procurement process. In fact, the EU is also very flexible on this matter. All significant procurement projects should include the details of the socio-economic impact if the work does not go to home market, just as much as the procurement document should include details on health and safety compliance, ethical trading, social responsibility and employment requirements. The EU law allows all of this—and that is why countries like Germany and France always include this in their procurements. They look at the bigger picture and factor in what would happen to their home market if the work went abroad. And it is not done in a clandestine way. This data is not hidden.”

EU procurement laws do not require the Government to select the lowest priced bid. The DfT could have used a more sophisticated set of criteria, known as the "most economically advantageous" test. Other EU countries such as France and Germany use this method to ensure that procurement decisions can safeguard a domestic industrial base in the long-term interests of the country. The DfT appears to have put multinational companies like ours, that invested in the UK, at a disadvantage in public procurements.

The underlying problem is that there is no linkage between the rail procurement policies of the DfT and the industrial strategy of DBIS. We welcome, therefore, the initiative of the two Secretaries of State writing jointly to the Prime Minister seeking to reform the DfT’s procurement processes.

Moreover, nothing in the EU rules required officials to hold a contest linking manufacturing, maintenance and finance together. Officials designed the TRSP tender so that the bidders’ financial performance was used to rank the offers. At the time this ranking was done, technical criteria were excluded from further consideration. As Paragraph 3.2.4 of the Invitation to Tender states (our emphasis):

"Those Bids That Have Proceeded To The Stage 4 Evaluation will already have achieved the minimum levels of technical compliance in Stage 1 and demonstrated a high level of technical and commercial competence and deliverability in Stages 2 and 3. It is Therefore Considered That By Reaching Stage 4 The Rolling Stock Is Expected To Be Capable Of Meeting The Aims Of The Department For The TRSP."

29 Derby Telegraph, 9 July 2011
Despite the overriding importance of the financial ranking, costs would have been lower if the Government arranged financing itself because it can borrow more cheaply than private companies.

According to Professor Bovis, the Government had the ability to abort the process and retender at any time. Indeed, as described above, the previous Government initiated a review of the IEP programme after the preferred bidder was announced.

The Government has repeatedly stated that it would be too time-consuming to halt the present TRSP procurement, as the only way to change the outcome would be a complete restart of a process that would then take too long to complete. Our table of procurements timetable demonstrates there is no need for a rebid to take a lengthy period, especially now that the specification is well defined and understood.

**Conclusion**

We hope that this submission will have helped the Committee to understand Bombardier’s experience of train procurement in the UK.

As a team, we are all still numb that we were not named as the preferred bidder for Thameslink. Our disappointment flowed from having built a successful business in the UK through investment, strong design and engineering, great trains at good prices and, above all else, a talented and proud team of Britons working together.

We felt we would win, as we do in most of the processes run by operators themselves because we believe that we delivered a very competitive bid that was in the interests of the UK economy. With DfT procurement, however, we believe the rules have worked against us and against our colleagues who will ultimately pay a tough price for this decision. Those rules have worked against the UK too, not just in the added bill for unemployment but in the impact on our reputation as a manufacturing nation. The UK needs manufacturing excellence. Help us to achieve a process that keeps skilled jobs here.

August 2011

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**Written evidence from Unite (RSP 10)**

1. **Introduction**

   1.1 **Unite** is the majority union at the Bombardier Transportation site in Derby, and strongly welcomes the Transport Select Committee’s decision to discuss matters related to UK rolling stock procurement following the recent decision to award Siemens preferred bidder status for the supply of the new Thameslink trains.

   1.2 **Unite**, has taken great pride in the illustrious history of rail manufacture, and employment of thousands of working men and women in the Derby rail manufacturing site. Now, together with colleague unions RMT, TSSA, GMB and the whole community, **Unite** is deeply concerned by the government decision to make the Derby Bombardier site reserve bidder for this contract, with the immediate threat to jobs, skills, apprenticeships, and to the future of the only rail manufacturing site in the UK.

   1.3 **Unite’s** written evidence to the select committee concentrates on the following key areas:

   - The New Leasing Requirement Contained in the Tender for the Thameslink Contract.
   - The Lack of Inclusion of the Social Impact in Awarding the Contract.
   - The Impact on Jobs Across the UK.
   - Technical Concerns.
   - Recommendations.

2. **The New Leasing Requirement Contained in the Tender for the Thameslink Contract**

   2.1 For the first time, the Thameslink contract contained a requirement for the manufacturer to not only produce and maintain the trains, but also one whereby they would retain ownership of the rolling stock and would lease the trains to Thameslink directly, in direct competition to the ROSCOs. **Unite** understands that it was hoped that this requirement would reduce the leakage of profits away from the industry. Instead it gave Siemens an overwhelming advantage in the Tendering process given its credit rating and backers providing it with the ability to obtain loans at a 1.5% lower interest rate than Bombardier to finance the deal, \(^31\) and giving Siemens an estimated £700 million cost advantage over 30 years.\(^32\)

   2.2 The background to this new approach to the contract lies in the privatisation of the rail network in 1993, when the previous Conservative government set up a series of Rolling Stock Operating Companies (ROSCOs)\(^30\).
who lease the rolling stock out to the Train Operating Companies (TOCs). This created an environment where the size and number of orders being placed became highly volatile.

2.3 This volatility has lead to the closure of all train manufacturing in the UK with the exception of the Derby facility which has changed hands to new owners five times in the last twelve years. The situation has also created significant problems regarding the retention and replacement of skilled workers. At times over the past few years, the workforce have been asked to either clean or maintain the factory or sent home on full pay, owing the company up to three months worth of hours on a flexible working system while the company awaits the next order to arrive. At other times the factory’s workforce has had to be augmented with a considerable number of temporary workers.

2.4 The ROSCOs were initially sold in November 1995 for a combined sum of around £1.7 billion. By 1996 the rolling stock companies generated a combined pre-tax profit of £1.8 billion and have continued to employ what have been identified as potentially anti-competitive practices with repeated accusations of overcharging which was investigated by the Competition Commission.33 Despite excessive profits the ROSCOs did not commit to new rolling stock procurement programmes due to the train operating companies not being prepared to commit to the need for new rolling stock as they feared that by the time the new rolling stock arrived they would have lost the franchise.

2.5 Profit margins for 2000 reveal the extent to which the ROSCOs have benefited from privatisation—Angel Trains 29%, Porterbrook 35% and HSBC (Rail) UK 38%. These profits have continued, with Angel trains, for example making a 60.36% profit margin in the seven months till December 2010.

3. The Lack of Inclusion of the Social Impact in Awarding the Contract

3.1 The Government has stated that they believe that Siemens offered the best value for money yet when you take into consideration the taxation revenue which would have been generated by building the trains here, it becomes clear that it would be cheaper to manufacture the trains in the UK.34 “for purposes of argument, let us assume that 1,000 jobs could have been secured by Thameslink and other contracts. In this case the tax receipt offset would be nearly £20 million per annum by 2012 and increasing each year with inflation and real wages (and that £20 million pessimistically excludes all pension contributions).”

CRESC REPORT : KNOWING WHAT TO DO? How not to build trains July 201135

3.2 Unite has noted that the tender document does clearly enable the Secretary of State to intervene in the process and to revisit the contract.36 He has the power to put in place provisions to ensure the security of supply and maintenance of these trains by having them manufactured and maintained in the UK. Unite believe that European procurement rules allow social and economic factors to be taken into account when awarding contracts yet the government openly admits that these were not considered when awarding the preferred bidder status under this contract.

3.3 The Government has claimed that they could not alter the terms of reference of the Tender set by the previous administration. This Government has had 14 months to review and amend the tender and did not use this opportunity to protect the British workforce in the light of the very changed economic circumstances prevailing. Under the previous Inter City Express Programme (IEP) contract, which was won by a consortium led by Hitachi, that tender was amended significantly on several occasions after it was sent out, including an additional three-month review taking into account the extent and length of the tender.37

3.4 The supplementary instructions sent out to the bidders amending the delivery date was contained in one of five separate amendments which occurred during the tendering process for the Thameslink contract.38 The last of these instructions was sent to Bombardier as late as November 2010 with their response going in during January 2011. The original Official Journal of the European Union (OJEU) notice was sent out in April 2008 with a planned announcement date of preferred bidder in October of that year. The Thameslink contract was then to be signed in March 2010. These five supplementary instructions have themselves delayed the award of this contract by over a year.

4. The Impact on Jobs Across the UK

4.1 The decision to go with Siemens as preferred bidder has led to the announcement that over 1,400 will lose their jobs, all apprenticeships have been stopped and the very future of the plant is now at risk. Although Bombardier had previously been discussing the potential loss of 700 temporary workers by November when

34 CRESC report http://www.cresc.ac.uk/sites/default/files/Knowing%20what%20to%20do.pdf
35 CRESC report http://www.cresc.ac.uk/sites/default/files/Knowing%20what%20to%20do.pdf
36 Invitation to Tender document 2008
37 Lord Adonis at exactly the same stage in the process of bidding for the Inter City Express Programme, after the announcement of Agility Trains as preferred bidder, made an announcement in Parliament in 2009, in which he set up a three-month independent assessment of the value for money of the Programme
38 See appendix
their current level of work subsided, there were plans to invest in apprentices and other educational and training programmes to build a future for the workforce and its supply chain.

4.2 Of the 1100 suppliers of goods or services to Bombardier, around 900 are based in the UK with almost all constituencies affected, including almost 100 in Derby or the surrounding area. Unite is further researching this impact.

4.3 The Government highlighted that the award of the contract to Siemens would create around 200 jobs but even if the contract is finally given to Bombardier, Unite believes that the majority if not all of these jobs would still be have been created as they are within the supply chain for elements common to both designs, not final assembly or manufacturing of the finished rolling stock.

4.4 According to the Office of National Statistics over 6% of the UK’s gross value added (GVA) is created in the East Midlands. The region’s headline GVA in 2009 was £77.2 billion. In 2008, 16% of the region’s GVA was contributed by the manufacturing sector, the largest percentage in this sector of any region or country. Throughout the recession, employment has fallen and unemployment has risen and at the end of 2010 showed no clear signs of recovery. This hammer blow to the region will therefore only serve to create more problems.

4.5 Work done by Birmingham University on the long term loss of skills that resulted following the mass redundancies at MG Rover in 2007 showed that a quarter of those who lost their jobs were still in a financially difficult position three years on. The study also showed that although 90% of ex-workers were back in work, 60% were no longer using the skills they used whilst working at Rover. Just 30% were still in manufacturing roles.

4.6 The IEP contract which has still to be finalised three years on, gave preferred bidder status to a consortium lead by Hitachi. Once signed and sealed it will create around 600 jobs, but these will be primarily assembly line roles putting together elements manufactured in Japan and elsewhere. Bombardier and Siemens are of course still reserve bidders on this.

4.7 The Government are talking about the next big contract for Crossrail. It is vital that the impact of the Thameslink contract decision on Bombardier’s ability to bid for this contract is also recognised. Again, not just the jobs at Bombardier placed at risk, but also those in the region’s supply chain.

5. TECHNICAL CONCERNS

5.1 Siemens have not as yet produced a bogie capable of carrying their design of trains on the network. This flaw in their bid could result in the rolling stock being delivered without a compliant bogie, sets being overweight, having performance issues, and may result in the stock requiring new bogies within as little as five years. The problem is so significant that Unite has evidence to suggest Siemens asked for and received a revision to the tendering process for Thameslink to give them the time to allow them to develop and assess the suitability of these wheels. If they get it wrong there could be significant damage done to the track and points on the route. The Bombardier bogies took 10 years to develop and construct and are now seen as the world’s leading bogie frame and has proven reliability.

5.2 Additionally the Thameslink current stock is all of a standardised Bombardier design. Consequently all the drivers on the route will need to be retrained on the new control layout.

6. RECOMMENDATIONS

6.1 Unite is calling for the government to take a pause and reconsider the full situation in line with issues raised above, taking into account the social impact.

6.2 Look at experience elsewhere in Europe, including the following two examples:

- In March 2008 Siemens won a contract to produce 300 three car units for the Belgium rail network defeating Alstom and Bombardier. Due to the level of protests about the potential loss the last rail manufacturing site in Belgium, Siemens agreed to subcontract some of the fitting out work back to Bombardier in Bruges.

- More recently Siemens won another contract to produce trains in Germany. They have again subcontracted the production of the bogies and some of the metalworking to the Bruges Bombardier plant.

6.3 At present the UK operates an open tendering process (in line with EU regulations) that has a systematically negative effect on the UK manufacturing sector, and does not take into account the location that

39 Canadian academic, Robert Hickey of Queen’s University, Canada has described Siemens as engaging in “Aggressive Bargaining and Union Busting” and that it has Siemens as an “aggressively anti-union business strategy”. Morally, Siemens has an appalling record conducting business in a number of other countries deemed sensitive by the Journal of Management Research (such as Burma and Pakistan) due to factors concerning labour, political freedom, civil liberties, and human rights. On 3 March 2011, Siemens lost its appeal to a European Court to have an anti-trust fine overturned. The EU Commission imposed a fine of almost €400million on Siemens in 2007 for heading a cartel on gas insulated switchgear for electricity grids.

40 See the Appendix time line.
products will be manufactured in. This means that although a UK company may be awarded a contract, this does not automatically mean there will be job security for UK workers or the creation of new manufacturing jobs. At Rolls Royce, 62% of research and development activity now takes place abroad. Where the intellectual capability goes so do the jobs.

6.4 According to network rail there are currently 12,000 vehicles on the GB rail network, divided into 64 different rolling stock classes. Each new design adds to procurement, maintenance and driver training costs. Unite believe it would be significantly cheaper and easier to standardise designs rather than go with a bespoke option. Such an arrangement would result in contracts lasting longer, stabilising the volatility, potentially long enough to enable time for a series of apprentices to complete their training. It would also be easier to select a further run of an existing design and provide updates.

6.5 The track profile on the UK rail network has helped and hindered the Derby plant. In UK, rails negotiate a series of low bridges and other restrictions causing the activities in Derby to be generally restricted to the UK domestic market. It also creates challenges for manufacturers from outside the country, as they have to adapt their designs to work on the UK specification track. The Derby Plant could produce rolling stock for the European network but the resultant rolling stock would currently have to be shipped to the docks by road, adding significantly to the cost. Rail freight gauge enhancements may provide a future possible solution. There are already advanced plans to improve the rail freight route from Felixstowe to Nuneaton. Such a corridor could eliminate the road element of such a journey.

6.6 Unite further recommends more widely:
— Government needs to talk to companies in the manufacturing sector and trade unions to ensure a pragmatic, sustainable and long term strategy for key industries within the sector.
— The commitment of the present government is the key to ensuring that public procurement works in an advantageous way for UK manufacturing companies.
— Government needs to show its support for industry and ensure that social clauses are used successfully to support local businesses, communities and workers.
— Government must emphasise public procurement as a lever of skills, training and apprenticeships for suppliers and especially SMEs.

## APPENDIX

### THAMESLINK TENDER TIMELINE

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42 giving more development time to Siemens.
ES1. The Association represents the railway supply industry in the UK, including the three historic suppliers of rolling stock, Alstom, Bombardier and Siemens, although not Hitachi. The Association is regularly consulted by major clients and stakeholders for rolling stock in the UK. The Association makes no comment on the outcome of the Thameslink procurement so far, but welcomes the favourable decisions which the Government has made to support major investments in the mainline railway.

ES2. The Association does however have substantial concerns about the volatility in demand for mainline rolling stock and other causes of uncertainty, and the difficulties and costs which result from such uncertainty. A more predictable and consistent flow of work would lead to significant cost reductions through the optimisation of tendering costs, production planning, supply chain management and the financing of new train projects. The Association also favours strengthened dialogue between clients and suppliers to optimise the timing of procurements.

Written evidence from the Railway Industry Association (RSP 11)

Executive Summary

1. The Railway Industry Association (RIA) would like to thank the Select Committee for the opportunity to present evidence on rolling stock procurement.

2. The Association is the trade body representing the railway supply industry in the UK. It has more than 160 member companies of all sizes. Manufacturers, contractors, consultancies, leasing companies and providers of specialist services to the railway are all members. They include most top tier companies from the principal railway discipline supply chains, such as track, electrification, signalling and rolling stock. They therefore account for the great bulk of the sector by turnover; numerous lower-tier companies and SMEs (Small and Medium-sized Enterprises) are also members.

3. Member companies supply to the principal railway client bodies in Great Britain and export worldwide. They hold in-depth expertise in many aspects of the railway itself; indeed the supply sector is believed to account for some 40% of the employment base of the railway industry as a whole. The Association and its members hold regular discussions with client-side organisations such as the Department for Transport, Crossrail and London Underground.

4. There is much to be said that is very positive about the investment in mainline rolling stock that has taken place since the mid-1990s. Some 5,000 new vehicles have entered service, approximately 40% of the fleet, such that this country has the youngest train fleet in Europe, and more have been refurbished. The ROSCOs (Rolling Stock Leasing Companies) have been central in providing finance for this investment; two—Angel Trains and Eversholt Rail Group—are members of the Association. Their success in attracting funding from the capital markets has demonstrated the importance of their portfolio ownership approach and ensured that the lifetime value of trains is taken into account at all stages.

5. At the same time, the trainbuilders have demonstrated their capability to supply modern, efficient and significantly improved rolling stock, which has been accompanied by the development of a range of service models to support the new fleets. More recently, the Department for Transport’s Technical Strategy of 2007, and its implementation through procurement, have been key in encouraging manufacturers and their supply chains to develop the next generation of EMU’s (Electric Multiple Units) that by contrast with the first generation will be more energy efficient, lighter, do less damage to the infrastructure and cost less on a whole life whole system basis (as opposed to the traditional focus on rolling stock capital costs only).

6. Such trains were specified for the Thameslink project. The Association cannot comment on the outcome of that procurement so far: RIA members were consulted during the lead up to the tender process, but RIA has not been party to the negotiations, which have been conducted on a confidential basis between the DfT and the tender participants. Moreover, the shortlisted bidders, Bombardier and Siemens, are both members of the Association, as is Alstom.

7. On behalf of all its members, however, RIA very much welcomes the outcome of the 2010 Comprehensive Spending Review for the mainline railway. So far as rolling stock is concerned, the confirmations of for example the Thameslink and Crossrail projects, and of the major renewal of the Great Western Main Line, were much needed, and we recognise the scale of the investment that the Government is making.
8. Nonetheless the Association believes that the Committee may find it helpful to be aware of some of the
less positive aspects confronting its train builder members operating in the UK, and the supply chains of
smaller companies that depend upon them.

9. RIA member companies are well-versed in competing for workload, and the UK rail market is probably
one of the most open and competitive markets worldwide. But members’ capability to compete effectively is
seriously harmed if major and unexpected changes or delays are made to the workload facing the sector. Such
changes have repeatedly occurred in the volume of orders placed for the mainline railway over the last 20
years. The extreme volatility is shown in Figure 1:

For three years during the period of privatisation no mainline orders were placed. During this period the
Association believes that at least 10,000 jobs were lost by the train builders and their supply chains. Over time,
and for a number of reasons, the number of major production sites in the UK fell from ten to one.

10. This period of orders famine was followed by very large orders for new trains associated with the first
round of franchising and then with the decision to replace all slam-door trains on the network. Both of these
were matters of public policy. They were followed by a further period of famine, then by relatively subdued
activity.

11. Volatility on this scale is costly both for train builders and for companies in the supply chain: in times
of low demand expensive plant is under-utilised, trained staff are made redundant, skills are lost, and smaller
specialist suppliers withdraw from the railway supply chain either voluntarily or through closure. When demand
is restored, firms then have to recruit, train, re-open moth-balled facilities, seek new sources of sub-supply and
reclimb the learning curve. The process is expensive, wasteful of human and other resources, strongly
discourages innovation, drives up the cost of capital and can make long term skills development impossible
to achieve.

12. The volatility is difficult enough for the train builders to accommodate. Companies in their supply chains
have even less visibility of future demand and often find themselves continuously ramping up or ramping down
production, both of them costly processes.

13. The Association has advised Sir Roy McNulty’s review of the Value for Money of the Railway that the
lack of continuity of production has added roughly 20% to the general cost of rolling stock in Great Britain.

14. Unnecessary uncertainty is not restricted to ordering patterns only. For example, when procurement
exercises have been launched, substantial uncertainty still remains. Thus, in December 2008 a procurement
notice was issued for 200–250 Diesel Multiple Units (DMUs) with the contract to be awarded in March 2009;
the procurement was cancelled in August 2009 because of the change in policy on electrification, but after bids
had been submitted. Timing is also a source of major risk: in April 2008 the Thameslink contract was to be
signed by summer 2009; it has not yet been let, having just reached preferred bidder stage. Similarly, at the
launch of the Intercity Express Programme (IEP) competition in 2007, contract let was forecast for early 2009.
The contract has yet to be signed.

15. These delays and changes of direction are not cost-free; they waste resources that often cannot be
redeployed or put to optimal use. They have a more insidious damaging effect also. The GB market is
significant, but substantially smaller than the markets in a number of our most important competitor countries.
Moreover, for reasons of gauge it requires specialist train building equipment not needed by other railways.
Yet the railway supply industry is substantially now globalised; none of the headquarters of the train builders
is located in this country, and the same is true of many of their subsystems suppliers. The frequency of changes
to policy and to project timescales is inevitably damaging to the credibility of any forecasts of the GB demand for rolling stock. That in turn undermines the credibility of the market, and therefore companies’ willingness and ability to invest in research and development, production plant and skills development in or for this country.

16. There is nothing inherent about rolling stock that requires such uncertainty or such large bursts of feast and famine as are seen in this country. For example, Figure 2, provided by the Japan Association of Rolling Stock Industries (JARI), shows rolling stock production there over the last 20 years:

![Figure 2](railcars manufactured per year in Japan 1988-2008)

Source: Japan Association of Rolling Stock Industries (JARI) Nov.2009

17. It is emphasised that the data relate to production rather than orders, so the comparison with Figure 1 is not totally direct, but it is evident that even with some weaker years the overall pattern is substantially more smooth than that seen in GB. Even in the very lowest years, production has never fallen below half that in the highest peak year; the baseload has been high throughout; and the UK years of zero workload (matching zero orders) have not been seen. Moreover, in a number of years of low orders by the Japan Railway (JR) companies, volume was compensated by work for the private railway companies in Japan and for exports, suggesting a good degree of market flexibility.

18. Within the UK, we note that the draft Network Route Utilisation Strategy for Rolling Stock, prepared by Network Rail and the subject of recent consultation, urges consideration of procurement at more consistent and predictable levels of workload and with fewer designs of trains. We agree with this view, and with the conclusion that substantial industry savings could be obtained by so doing.

19. Finally in his July 2010 report to the Secretary of State on the Intercity Express Project, Sir Andrew Foster noted with approval that:

![Figure 3](CONSULTATION WITH INTERNATIONAL MANUFACTURERS)

In the course of our work we learned that government officials in France and Germany meet informally with the rolling stock manufacturers and industry supply chains to discuss future orders for new trains. These discussions take place with each company separately but allow the companies to declare the orders that they have in their factories and the available space and timescales that they have for further new orders. This information allows the state-owned railway companies to time the procurement of new trains to align with available manufacturing capacity across one or several of the manufacturing and supply chain companies; this drives a more competitive price for the new trains as each company obviously wants to fill the spare capacity of its factories rather than bid for work that falls when they have little or no capacity.

Consultation with manufacturers and industry supply chains in this way make sense both in terms of engaging with key stakeholders and in ensuring that the timing of future new train procurements aligns with capacity in the factories to drive the best practice for the new trains.

20. We have already noted that substantial dialogue exists both within the industry and between train builders and client bodies. As Sir Andrew implies, however, that dialogue is less strong in relation to issues of capacity in advance of the launch of procurement exercises. We recommend that in future the capacity issues should be addressed earlier in the process and in a more formalised manner, so that the timing of procurements can be optimised to the benefit of both clients and suppliers.

August 2011
Supplementary evidence from the Railway Industry Association (RSP 11a)

In response to the Committee’s request for further information, I would like to submit the following supplementary evidence:

As the Secretary of State stated in his oral evidence, there is likely to be a level of innovation and design development in all major train orders. It is quite difficult to compare the level to which any particular innovative technology has been developed or tested at the time an order is placed. However, some recent examples of the first introduction of significant new technology would include:

- **Alstom Class 390 Pendolino**—Tilt Authorisation and Speed Supervision (TASS).
- **Bombardier Class 220 Voyager**—Longitudinal Final Drive.
- **Siemens Class 332 Heathrow Express**—Insulated Gate Bipolar Transistors (IGBTs) for traction and auxiliary inverters.
- **Siemens Class 185 First Transpennine Express**—Ecomode and Driver Advisory System (DAS).
- **Siemens Class 380 First ScotRail**—First introduction in the UK of fully computer controlled train control (fly by wire).

The key issue in all such cases is that the innovation should be managed correctly and without introducing inappropriate levels of risk.

I hope that this will be of assistance to the Committee, and thank the Committee again for the opportunity to present oral evidence on the 7th.

September 2011

Written evidence from the European Commission (RSP 12)

1. Introduction

EU law on public procurement aims to increase competition and transparency in a key sector of the European economy: total public expenditure on goods, works and services amounted to over €2 trillion in 2009 (19% of EU GDP). The EU public procurement directives establish common rules and procedures for high-value procurements, which represent around one fifth of total procurement expenditure (€420 billion in 2009).

The current generation of public procurement Directives are the latest step in a long evolution that started in 1971 with the adoption of the first Directive on public procurement. The Directives apply common principles of transparency, open competition and sound procedural management to public contract award procedures which are likely to be of interest to suppliers across the single market. EU procurement rules govern the way that public money is spent—rather than what the money is spent on. The focus of EU legislation is therefore primarily on the procedures that individual contracting authorities must follow when organising a public purchase for an expected value above the thresholds laid down in the Directives.

Modernising and opening up procurement markets across borders mean more opportunities for businesses and better value and higher quality services for the taxpayer. According to a recent Commission evaluation,43 total estimated savings stemming from all the procedures covered by the EU Directives amount to €20 billion in 2009, without including any allowance for improvements in quality and wider environmental or social benefits. UK companies are the second most successful in the EU when competing cross-border outside their home country, winning 17% of all EU public procurement contracts awarded directly to companies from other Member States. At the same time, UK procurement markets are not more open to suppliers from other Member States than the EU average.

2. Key Principles of EU Public Procurement Legislation

(a) Applicable EU rules

Public procurement in the EU is regulated by the Treaty principles of equal treatment, non-discrimination and transparency, which have been further developed in the secondary legislation. The main legal instruments are Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (the “utilities” Directive) and Directive 2004/18/EC on the coordination of procedures for the award of public contracts relating to the supply of goods, services and public works (the “classical” Directive). In order to ensure that they are complied with, Directive 2007/66/EC (the Remedies Directive) was adopted so as to ensure that economic operators everywhere in the EU would have access to effective procedures for seeking redress where they consider contracts have been unfairly awarded. Finally, Directive 2009/81/EC on defence and sensitive security procurement sets EU rules for the procurement of arms, munitions and war material for defence purposes, the procurement of sensitive supplies, works and services for security purposes. As this is tailored to the specificities of defence and security equipment and markets, it will not be further discussed in this note.

(b) Thresholds

EU procurement rules have to be followed when organising a public tender for an expected value above the thresholds laid down in the Directives. The thresholds in the utilities Directive are currently set at €4,845,000 (GBP 3,927,260) for works, and at €387,000 (GBP 313,694) for supplies and services contracts. In the classical Directive, the same threshold has been set for works, but for services and supplies purchased by the central government authorities the threshold is set at €125,000 (GBP 101,323) while for services and supplies purchased by sub-central contracting authorities this is higher at €193,000 (GBP 156,442).

The Directives impose a number of steps that public purchasers must follow for awarding public contracts, the most important of which are briefly outlined below.

(c) Transparency

For the purpose of improving transparency, all the standard procedures require the publication of a contract notice in the Official Journal of the European Union (OJEU) via the TED (Tenders Electronic Daily) website, in any of the official EU languages. This can be found at: http://ted.europa.eu/TED/main/HomePage.do

(d) Exclusion, selection and award criteria

The Directives also provide for specific grounds of exclusion criteria. These take two forms; mandatory and non-mandatory exclusion criteria, and may exclude the participation of an economic operator from a public contract. The mandatory criteria include cases of final convictions for certain serious crimes such as for corruption and fraud. The non-mandatory ones concern other situations such as bankruptcy and convictions for offences affecting the professional conduct that render the economic operator unable or unsuited for the task.

In addition, economic operators have to meet certain selection criteria. These have to be set out beforehand in the contract notice, and relate to the requirements to be met in order to participate in the tendering procedure. They aim at verifying the economic operators' suitability, by ensuring that they have the required minimum levels of technical, financial and economic capacities. They must also be related and proportionate to the subject-matter of the contract.

Public purchasers also have to apply the criteria for the purpose of assessing the tenders and thus designating the preferred bidder. These award criteria have to be published in the contract notice or documents. Public purchasers have a choice between two award criteria; the lowest price only or the most economically advantageous tender. When the award is made to the most economically advantageous tender, the criteria used must be objective and linked to the subject-matter of the contract. These may include factors such as technical merit and cost-effectiveness, environmental criteria and social criteria.

With regard to social policy considerations, it should be noted that these may also be taken into account, in principle as conditions governing the performance of a contract. However, they have to be compatible with EU law and must be indicated in the contract notice. In order to provide further guidance to the national authorities, the Commission has issued a communication and a guide on how to integrate social considerations into public procurement (Buying social—A Guide to Taking Account of Social Considerations in Public Procurement, 2010; Commission communication—Integrating social considerations into public procurement, 2001).

(e) Procurement Procedures

The Directives contain provisions setting out the different types of procedures for the award of public contracts. They do not harmonize every aspect of the procedures. While the EU legislation establishes common rules and procedures for high-value procurements, Member States have considerable discretion in implementing the provisions of the public procurement Directives, within the limits provided therein— in particular as regards the mechanisms and administrative arrangements that are put in place to ensure compliance with those provisions.

By contrast, and subject only to the general provisions and principles of the Treaty, Member States retain full discretion for the regulation of public procurement outside the scope of the EU Directives (for example for procurements with a value below the EU thresholds).

The procedures foreseen by the Directives are the following: 1) the open procedure, 2) the restricted procedure, 3) the negotiated procedure with the prior publication of a contract notice, 4) the negotiated procedure without the prior publication of a contract notice and, 5) the competitive dialogue (in the case of the classical Directive only).

The “Classical” Directive identifies five different types of procedures:

1. Contracting authorities are free to choose the open procedure. In the context of this procedure, any bidder may submit a full tender as a response to the contract notice. The suitability of the bidders is verified after the tenders have been presented. Following this, the tenders are assessed in the light of the award criteria.

2. The restricted procedure is another procedure which contracting authorities are free to choose. Those economic operators who meet the minimum requirements are invited to tender. However, contracting
authorities retain the power to limit that number in line with objective and non-discriminatory criteria. In restricted procedures the minimum number of economic operators to be invited to tender is 5.

3. Economic and Statistical Data

In 2009 total EU public procurement expenditure was estimated at €2.3 trillion (19% of EU GDP). Almost a fifth of this amount, €420 billion (3.6% of EU GDP), concerned contracts above the value of the EU thresholds and should therefore be awarded according to the EU Directives. Approximately 39% (€165 billion) was spent on works, 38% on services (€160 billion) and 23% on goods (€95 billion). A round 20% of the procurement advertised at EU level originates from Utilities operators.

The total cost of the procurement process (including all the bidders’ costs plus those of the awarding authority)\(^4\) for those procedures covered by the EU Directives has been estimated at €5.6 billion per year or 1.3% of the total value of contracts published. This is more than offset by the estimated savings, which are around 5% of the total ie €20 billion in 2009, without making any allowance for improvements in quality and wider environmental or social benefits.

In 2010, nearly 162,000 contract notices and over 143,000 contract award notices (CANs—ie notices with the results of the award procedure) were published in the OJEU via TED. On average, each of these contract notices receives five to six offers (compared to two to three bids in the private sector). The number of bidders varies significantly across countries; Spain has the highest number of bidders (8.8) and the Slovak Republic has the lowest (2.1).\(^5\)

A cross the EU, the open procedure is most commonly used, generally for contracts of relatively low value (73% of CANs; 52% of the total published value). The second most popular procedure is the restricted, which is used for contracts of much higher value (9% of CANs, 23% of total value). The negotiated procedure with publication was used in 8% of CANs and accounted for 14% of the total value published. Again, there is marked variation across Member States—three Member States (France, Poland and Germany) awarded half of the contracts during 2006–10 while half of the value of these contracts was awarded by the UK, France and Spain. The UK is the most frequent user of the restricted procedure and the competitive dialogue and is the lowest user of the open procedure. It also tends to award larger value contracts. The procedure followed is one of the factors influencing the time taken to procure (others include contract value and complexity). In the UK the average time taken from the dispatch of a contract notice to the award was 161 days, which is higher compared to an EEA average of 108.

Procurement markets remain largely national with direct cross border procurement (ie procurement where a firm operating from its home market, bids and wins contracts (launched in a different Member State) accounting for just 1.6% of the contracts awarded (roughly 3.5% of the total value). Direct cross-border procurement

\(^4\) The cost of complying with the EU directives is only a part of this total— it should be noted that the cost would not reduce to zero in the absence of the EU rules.

\(^5\) UK 6.4, France 5; Germany 7.6.
seems to be influenced by geography, history and a common or similar language and in general, smaller countries have a higher than average shares of direct cross-border procurement.

The UK direct procurement figures are very close to the EU averages—1.5% of the public contracts published by the UK at EU level are awarded to companies from other Member States (3% of UK total value). UK companies are also very successful in competing in these cross-border markets, winning 17% of all EU public procurement contracts awarded to companies from other Member States. UK suppliers are particularly successful in Ireland (74% of all direct cross-border contracts); Poland (46%); Malta (37%), Denmark (26%) and Germany (22%).

4. **Consistent Application of the EU Legislation Across the EU**

The application and the implementation of the EU rules is the joint responsibility of the European Commission and the Member States.

The European Commission is entrusted with the task to oversee the application of EU law under the control of the Court of Justice of the European Union and for therefore ensuring its consistency across Member States. In this context, the Commission, as guardian of the EU Treaties, has always the discretion to launch an infringement procedure foreseen by article 258 of the Treaty on the Functioning of the European Union, in case of a Member State wrongfully transposing the Directives into its national law or in case there are violations of the EU public procurement legislation by a Member State during a specific tendering procedure. In this respect, it should be underlined that the assessment by the Commission of a specific case of alleged violation of the public procurement rules on the basis of article 258 TFEU, does not aim at the protection of individual rights but at the correction of violations of EU law which have important implications for the functioning of the Internal Market.

In addition, the Remedies Directive put in place a decentralized remedies system, in which Member States bear primary responsibility for ensuring that rapid and effective means of redress are available at national level. In particular, the Directive strengthened the accessibility of remedies, through measures such as the introduction of a mandatory stand-still period that has to be observed by public purchasers between the award and the conclusion of the contract, and the possibility to declare contracts ineffective where they were entered into illegally.

Because of the high number of procedures and the importance of the EU public procurement rules, these two lines of implementation at the level of the European Commission and at the Member States’ level are equally important for the purposes of ensuring a consistent and effective application of EU law.

5. **Application of the EU Rules in the Transport Sector**

The utilities Directive applies to contracts awarded for the pursuit of activities relating to urban transports by buses, by metro and by tram, but also to transport by railways, whether urban or not. The Directive covers both the operation of the transport service as such, for example moving persons and goods from one place to another, as well as the provision of the network infrastructure. In the transport sector, the Directive will thus apply to procurements of rolling stock as well as contracts for the construction of new railway lines. Furthermore, other contracts for the pursuit of the relevant activity, for instance the purchase of ticket issuing machines or the purchase of office furniture for the company headquarter, are also subject to its provisions. It should be noted that other transport modes such as air transport, is not covered by the Directive, apart from the operation of the airport facilities. Similarly, waterborne transport is also not covered, apart from the operation of ports facilities for both river ports and maritime ports. Finally, it should be noted that Regulation (EC) 1370/2007 regulates certain aspects of the national and international operation of public passenger transport services by rail and by road.

Further information on the EU public procurement rules can be found at the following link: http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

September 2011

**Supplementary written evidence from the European Commission (RSP 12a)**

The extent that the Most Economically Advantageous Tender is used for procurements in other EU countries, and whether this differs from the UK (Q 72)

Tenders can be selected by using the lowest price criterion or a combination of qualitative and quantitative aspects—Economically Most Advantageous Tender. This award criterion is used in about 70% of all invitations to tenders.

Price only criteria are used for smaller contracts and with the least complicated procedures, such as negotiated procedures without publication and accelerated procedures.

46 DE—1.5% of awards, 1.7% of value; FR—0.9% of awards, 1.5% of value
47 Only German companies win more—26%.
The table below shows percentages for MEAT and lowest price as advertised in MS contract notices in 2010.

Ireland and France are MS which use MEAT as often as the UK does. Quality, technical merit, delivery times and after sales support seems to feature widely as criteria within MEAT together with payment terms.

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<th>Lowest price%</th>
<th>MEAT%</th>
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<td>EU27</td>
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The EU average takes into account the total number of notices published by all Member States (ie it is calculated on the basis of a weighted average).

Further information on the extent that other EU countries decide to award procurement contracts on an anonymous basis (Q 86)

Specific and technical provisions on the choice of the winning offer (procedure of the selection committee) are not subject to the EU public procurement rules. Member States are free to determine the way in which offers will be (technically) presented, chosen, disclosed etc. Obviously, such rules can not undermine the choice of the winning bidder made according to the terms of the tender documents. Therefore, Member States remain free, for example, to decide whether public contracts in general or part of them are awarded on an anonymous basis. In this respect, it appears that some EU Member States have put in place rules to protect the anonymity of the bidders, at least to a certain stage of the procedure. In Portugal, for example, anonymity is observed only until the opening of the offers. Similar practices are also reported in Cyprus. In others Member States, eg Greece or Spain anonymity is not practiced. It should nevertheless be underlined that the OECD guidelines for fighting bid rigging in public procurement (available on http://www.oecd.org/dataoecd/27/19/42851044.pdf) suggest that, whenever possible, contracting authorities should request that bids are filed anonymously. In particular, the guidelines invite procurement officers to consider identifying bidders with number or symbols. It follows that anonymity of the bidders would mitigate risks of collusion between bidders.

September 2011