OFFICE of the
RAIL REGULATOR

# PROPOSED PIGGYBACK WAGON PURCHASE BY RAILTRACK

# A CONSULTATION PAPER

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# *Proposed piggyback wagon purchase by Railtrack – A consultation paper*

## Summary

1. Railtrack plc has requested the Regulator's permission to purchase 80 "piggyback" wagons - that is, rail vehicles on each of which a 13.6 metre length road trailer can be conveyed. The purpose of this consultation document is to explain the proposal as made by Railtrack, to describe certain conditions the Regulator might require Railtrack to accept were he minded to agree the request and to seek the views of parties who might reasonably be considered to have an interest in the matter so that the Regulator's decision may be properly informed.

## Railtrack's licence

2. Condition 10 of Railtrack's Network Licence prohibits it from conducting any business other than Permitted Business except in so far as the Regulator may consent. Permitted Business means the Network Business - providing and operating its network and any related ancillary service - and the Permitted Non-Network Business - any business other than the Network Business of the type transferred to Railtrack when the company was created as a result of the Railtrack Transfer Scheme.

   Condition 11 of Railtrack's Network Licence prohibits the Railtrack group from being directly or indirectly interested in the ownership or operation of any rail vehicle in Great Britain, again except in so far as the Regulator may consent.

3. The purpose of these is primarily to preserve the vertical split between infrastructure owner and train operator created by the Railways Act 1993 (the Act) and to prevent Railtrack from competing in its customers' markets. The licence condition is not however an absolute prohibition; it allows the Regulator to give permission should he think it appropriate to do so. In reaching a decision he would consider a request in the light of the duties contained in section 4 of the Act and in particular section 4(1) (Annex A).

## Railtrack's request

4. Railtrack has sought permission to purchase 80 transfer platform vehicles which it states would suffice to form two trains and would cost approximately £4.2m at current prices.

**Railtrack's justification for purchase**

5. Railtrack states that there is a significant opportunity to develop a latent market for piggyback services in the UK and that the Piggyback Consortium - a group made up of interested parties, including Railtrack - has evaluated its size and considers that ultimately up to 400,000 lorry movements per annum could be transferred to rail. Studies commissioned by Railtrack from Deloitte and Touche are said to support these forecasts. Unfortunately considerable investment in equipment and track infrastructure is required to fulfil this potential and no party has yet been prepared to commit significant funds. Railtrack believes that a small-scale exemplar operation is not only possible without infrastructure enhancement, but is essential to convince the market and possible funders of the likely benefit of the mode. As a major industry party Railtrack wishes to facilitate this and also to test whether the nature of the market is such as to justify expenditure on gauge enhancement. It states that the granting of permission by the Regulator would accord with his duty under section 4 of the Act to "promote the use of the Network for the carriage of goods", would also accord with the Regulator's Objectives for Rail Freight (September 1997 - available from ORR Library) and the Government's wish to encourage the transfer of freight from road to rail.

**Undertakings offered by Railtrack to allay possible concerns**

6. Railtrack is aware that some might consider it undesirable for the vertical separation between infrastructure owner and wagon owner to be bridged. In making its application to the Regulator, certain safeguards were offered:

   i) Although no decision had yet been made on choices of equipment system, the choice once made would not lead to discrimination by Railtrack against the future developer of other systems.

   ii) If, whilst the vehicles were being built, any party wished to purchase them for bona fide operation of piggyback services in the UK, Railtrack would arrange for the order to be assumed by that company on similar terms and conditions.

   iii) Railtrack would charge for the wagon at a short-term rate which would facilitate start-up operations but would be sustainable in a developed market; it would propose to incorporate access charges with those for wagon use thereby providing a single figure for use.

iv) Once a market was established Railtrack would seek to dispose of the wagons to a suitable purchaser or lessee.

**The Regulator's position**

7. The Regulator would wish to give due consideration to any proposal which might promote the use and development of the Network for the carriage of goods. At the same time he has to consider whether, even if benefit existed, any disbenefits would allow him to permit an activity normally forbidden to a party. In reaching a decision he would weigh the issues in the light of all his section 4 duties.

8. In this particular case it is possible that there could be considerable benefit in "pump-priming" a market which many believe to exist but which has proved difficult to stimulate. It could also be considered that disbenefit might arise from Railtrack engaging in an activity which could properly be regarded as the preserve of its natural customers or those close to them; this could give Railtrack a stronger commercial position than is appropriate, restrict competition or set an unhappy precedent.

9. The Regulator therefore requires to test the base proposition made by Railtrack, if it is in substance sound, to consider what safeguards against undesirable effects might be required as a condition of any consent and, finally, whether the balance of benefits and safeguards is such as to enable him to give permission for an activity not normally permitted.

**Process for decision**

10. Railtrack has already offered certain safeguards to prevent its initiative having adverse effects. The Regulator considers that were he minded to give consent to the proposal he would require as a minimum the following:-

i) Ownership of the vehicle should be by a separate company within the Railtrack group and separate accounting records should be maintained which show all costs and income associated with, or deriving from, ownership of the vehicles. These accounting records, together with details of all quotations made to potential users or purchasers of the wagons, should be made available to the Regulator at his request. A profit and loss account should also be produced to the Regulator at six-monthly intervals. Railtrack must, at his request, provide to the Regulator any information he might require on this company and on any other matter arising from or connected with ownership of the wagons.

ii) Unless otherwise agreed by the Regulator Railtrack should actively seek to dispose of the wagons by sale or lifetime lease to a party which undertook to operate them, or procure their operation, for piggyback services wholly or mainly within the UK at the earliest opportunity, and at a price no greater than net book value. Railtrack should report to the Regulator every six months from the date of order on progress in securing this objective and, unless otherwise agreed by the Regulator, dispose of the wagons within three years of 75% of the order being accepted for entry into Railtrack's Rolling Stock Library (that is recognised as fit for service).

iii) Access charges should be negotiated separately from those for wagon use.

iv) Railtrack must offer the wagons, without discrimination, for use or charging to any bona fide operator or procurer of a piggyback service to be operated wholly or mainly within the UK.

v) Railtrack should agree with the Regulator how, subsequent to its choice of equipment system, it would avoid discrimination against other systems.

vi) No more than 80 vehicles may be procured during the lifetime of the company.

11. The Regulator would also like to receive the opinions of interested parties on the proposition itself; on whether, were he to give his consent to it, the undertakings in Para 10 would be adequate to meet any concerns or whether other undertakings should be sought; on whether the balance of advantage suggests that his consent should be given or withheld. The Regulator will, in reaching a decision take account of all representations made, but make the decision itself in the light of his duties under the Act.

**Questions**

12. Any party may comment on the proposal or any part of it in the way which he thinks most appropriate. It would however assist the Regulator in assessing responses if parties could consider including answers to the following within their replies:-

i) Is there a latent market for piggyback services within the UK?

ii) Could the purchase of 80 wagons by Railtrack and their subsequent offer to operators or intermediaries facilitate the development of a piggyback market?

iii) If Railtrack did not place an order for wagons within the next year is it likely that any other party would place such an order?

iv) If no party placed an order within a year what effect would that have on the development of a piggyback market?

v) Would there be any disadvantages in Railtrack purchasing wagons if there were a latent piggyback market and no other party was prepared to make a purchase within an early timescale?

vi) In order to avoid unreasonable discrimination against alternative systems, what criteria should Railtrack adopt in deciding which equipment system to order should permission for a purchase be given?

vii) If permission for the purchase were given would the proposed safeguards contained in para 10 be sufficient to counter any concerns?

viii) Should the Regulator give or withhold permission for the purchase to proceed? In either case what reasons would support the view expressed?

**Form of replies and timescales**

13. It should be stressed that the Regulator is seeking to assess opinion: he does not wish to impose on respondents a burden of research, or the need to write lengthy papers. The closing date for receipt of replies is 15th May 1998. The Regulator will then consider the issues raised, discuss any relevant matters with Railtrack and publish his decision. It is anticipated that this process can be completed by 29th May 1998.

14. Please address replies to:- Edmund Cullen, Freight Network Regulation, Office of the Rail Regulator, 1 Waterhouse Square, 138 - 142 Holborn, LONDON, EC1N 2ST. Telephone 0171 282 2122, Fax 0171 282 2042.

Office of the Rail Regulator
April 1998

# *Annex A*

**Section 4(1) of the Railways Act 1993**

*General duties of the Secretary of State and the Regulator*

4. (1) The Secretary of State and the Regulator shall each have a duty to exercise the functions assigned or transferred to him under or by virtue of this Part in the manner which he considers best calculated -

(a) to protect the interests of users of railway services;

(b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that he considers economically practicable;

(c) to promote efficiency and economy on the part of persons providing railway services;

(d) to promote competition in the provision of railway services;

(e) to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;

(f) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of his functions under this Part;

(g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.