A Platform for Change

The Potential for Vertical Integration on Britain's Railways

A discussion paper prepared by
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Executive summary

As a leading train operator in both commuter and long-distance franchises, Stagecoach Group believes that train service delivery and quality has in overall terms deteriorated since privatisation. The group's commitment to Britain's railways remains, but the present structure is demonstrably flawed.

We believe that the existing failures are in large part due to structural issues associated with the operating company/Railtrack and Railtrack/infrastructure contractor interfaces, together with continuing weak management by Railtrack of these relationships across the network.

In particular, we believe that safety responsibilities at the wheel/rail interface are blurred at best and flawed at worst, with a lack of aligned objectives between track operator, train operator and maintenance.

The administration of Railtrack provides Government with a unique opportunity to reshape industry structures to align safety and shareholder objectives in order to improve train service delivery and quality and to place the industry on a sound financial footing.

Stagecoach Group is concerned that the proposed nationwide "not for profit" model will not address these concerns and in fact may weaken the commercial and management motivation of the infrastructure owner. In particular, whilst we recognise the importance of customer representation, we believe that the proposed "stakeholder" board reflecting numerous interests will lose focus on the key business of running the track network.

We believe that such concerns can be addressed through combining the "not for profit" model with vertical integration region by region, through a bringing together of the management and control of train operations, network operations and infrastructure maintenance and renewals.

This paper outlines our proposed structure, the first elements of which could be implemented within the existing legislative framework, for South West Trains, Britain's biggest franchise, within 6 months of agreement. Ultimately such a structure could be adopted across the network alongside consolidation of the existing franchise map, and is broadly consistent with that already used for our Island Line franchise, the UK's smallest franchise and only integrated network. Similar models are already in operation in Australia and North America.

The key elements of our proposal are

- Consistent with Lord Cullen's recommendations.
- Issue of "vertically integrated safety licences" combining the relevant features of present operating company and Railtrack network licences.
- Grant of long term lease, consistent with franchise length from Railtrack over relevant network infrastructure together with responsibility for maintenance and renewals.
- Transfer of network operations, including signalling from Railtrack.
- Regulatory structure providing protection for secondary network users.
- Ultimate ownership of asset remaining with Railtrack (in its new "not for profit" form) together with residual functions.
- Initial 5 year period during which asset condition and future maintenance requirements are assessed and work undertaken to reach an agreed asset condition.
- Financing provided via existing track access charges.
- Risk sharing arrangements against an agreed asset condition to be established.
- Enhancement investments managed out with this structure and prioritised through the Strategic Rail Authority.

This proposal aligns safety and operations and enables proactive management of maintenance and renewals. It grants local management effective control and incentivises the operator who is best placed to look after the interests of passengers. It provides a mechanism for Government to pass railway risks back to the private sector in a controlled and limited manner. It retains the drive and entrepreneurial nature of private ownership, ensuring efficiency and value for money for the taxpayers.

Continued Government long-term support for the network remains essential, in view of the extensive and uncharted asset base and open-ended nature of the infrastructure risk. However, this proposal allows this support to be provided in a transparent and focused manner and requires operators to take immediate reputational and safety risks. It also begins the process of transferring the known and quantifiable issues of infrastructure ownership and safety into the private sector, both in terms of maintenance and renewal.

Stagecoach Group believes that the vertical model, whilst workable in a geographically separate franchise such as Scotrail, can be tested more robustly in a high-volume metropolitan franchise such as South West Trains. The group also believes that the rail regulator can robustly protect the interests of other operators within the franchise area.

Stagecoach Group believes in a strong future for Britain's railways, as demonstrated by our order for new trains that will bring a step-change in passenger perception in the next few years. That step-change must not be diluted by failing to address the maintenance and renewal problems of decades of under-funding and weak management of the track. The vertical model provides a railwayman's answer to the problems of Britain's railways.

Introduction

Change does not come easily on the railways. The inheritance of under-funding, the inflexibility of long lead times for both rolling stock and infrastructure, and the daily challenge of keeping the network running safely and efficiently all combine to make change a matter of evolution, not revolution.

Stagecoach Group shares the commonly held view within the railway industry that the privatisation model, where the responsibility for the safety and quality of the train service and the infrastructure is split between two or more parties, is flawed.

We recognise that at this time of crisis within the industry, the solution is not to completely restructure the industry once again. There is, however, a need to consider what can be achieved quickly to improve the safety and efficiency of Britain's railways through a period of controlled and structured evolution.

This paper sets out to build on the statement issued by The Secretary of State for Transport, Local Government and the Regions when Railtrack was placed into administration. In that statement The Secretary of State allowed for the possible introduction of pilot vertical integration projects within the industry.

Stagecoach Group has the will to achieve such a transfer of responsibilities and the expertise to develop the contractual migration quickly with the minimum interference to other operators or the requirement for legislative change.

What's wrong with the present structure?

No one, least of all Stagecoach Group, would argue that privatisation of Britain's railways has improved train service delivery or quality. The fact that safety performance, in terms of serious accidents per million train miles, has marginally improved across the network is probably more of a tribute to the dedication of railway managers and staff than it is to privatisation.

Whilst Stagecoach Group would accept that management within Railtrack has been poor since privatisation, Stagecoach Group believes the reason that Railtrack failed was as much structural as managerial. The fragmentation of the industry into a matrix of contractual relationships, the absence of a clear command and control structure and the lack of a cooperative culture have all combined to produce a sub-agenda of diverse and counterproductive objectives. The proposal for an industry-wide "not-for-profit" company, may or may not solve the management issues, but will do nothing to correct these structural failings.

The present structure presumes that Railtrack would take a long-term view of asset maintenance and renewal. It has singularly failed to do this and we are now experiencing the consequences with a deteriorating asset condition. Railtrack has focused on driving down the costs of its maintenance and renewals contracts through a short-term contracting strategy to achieve the lowest possible prices. The maintenance contractors make their profit margin from cost cutting within these contracts; have no accountability to the end customer and no means of securing long-term investment in more efficient maintenance technology. Some employees of these infrastructure maintenance contractors are on their third employer since 1996. They have no loyalty to a transient management; in these circumstances how can a safety and quality culture flourish?

Safety responsibilities at the wheel/rail interface are blurred at best and flawed at worst. The operating companies find themselves trapped as the reliability of the infrastructure falls and they have to rely on Schedule 8 compensation payments from Railtrack rather than expanding their passenger base through delivering a high quality, reliable and punctual train service.

Britain's railways must break out of the present spiral of decline. Each part of the industry needs to have aligned objectives for both the short and long term. There must be an absolute focus on delivery to the end customer. The perverse incentives within the industry must be removed and realigned to reflect the priorities of the Government and the end customer; no one should be able to increase profit by reducing the quality of service to the end customer.

Railtrack's administration creates this opportunity. In addition it has created an environment where Government is, once again, effectively bearing all the financial risk for the infrastructure on Britain's railways with no obvious mechanism to induce the private sector to share in that risk should the industry structure remain unchanged.

Stagecoach Group believes that a measured and gradual migration towards a vertically integrated railway industry structure will allow the Government to once again share some of that risk with the private sector.

A proposed industry structure

Present

The present organisational structure of the rail industry separates the responsibility for both safety and quality (of train service delivery) between Railtrack, its maintenance and renewals contractors and the operating companies. Railtrack is organised as a contract management organisation and sub-contracts the responsibility for undertaking maintenance, renewal and asset enhancement to infrastructure contractors.

The only key operational functions that Railtrack retain in-house are signalling control, performance management and the stewardship of the national train plan.

Proposed

In all rail operations, safety is an absolute, which has to be met. But it has a cost, which must be covered, and a process, which must be managed. Stagecoach Group believes that safety will not only be maintained but will also be enhanced by the improved structures and tighter processes which vertical integration brings. In short, we believe that it is better to have trains and track managed by the same company.

Vertical integration can take a number of different forms (e.g., contracting, JV or even direct ownership models) but we believe that there is a powerful argument to suggest that a single management focus on delivering safety and quality will produce better results than a diverse matrix of integrated contracts.

The traditional command and control structure of operating railways, with personal accountability, vested within a single and clearly defined management structure, has historically and consistently produced the best quality and safety outputs.

No one would credibly argue that the present rail structure should be scrapped and a new structure put in its place; the issue is not one of being unable to design a replacement structure but the sheer disruption that another structural change would have on the delivery of a safe and efficient train service. The answer must be to evolve from the present structure in the least disruptive way possible to a new structure where accountability for safety, efficiency and customer service is vested in a single organisation.

Stagecoach Group believe that the solution is to pilot a vertically integrated organisation where the various issues that surround vertical integration can be tested and proven before the model is rolled out to other operating companies. To secure the right contractual and investment incentives and to provide the right safety culture it is critical that this is established on a long-term basis, although with clear review mechanisms for the protection of both parties. The current wisdom is that Scotrail should be the basis of such a pilot. Whilst Stagecoach Group would accept that Scotrail is a good pilot, we believe that there are real benefits in also piloting this on a dense urban network with greater secondary access use.

We believe that such an alternative pilot site would be the South West Trains franchise and the Wessex Division of Railtrack's Southern Region. South West Trains has the ability to be a critical pilot site because it has a number of secondary operators, has a busy freight business based around Southampton and is sufficiently difficult to operate so as to test the complexities of the intended organisational change. It also has a largely self-contained geographical area with South West Trains as the dominant operator. It will be an ideal test-bed for the proposed structure, including charging and access rights, while being sufficiently self-contained to ensure that the operation of the railway continues safely.

What does vertical integration mean?

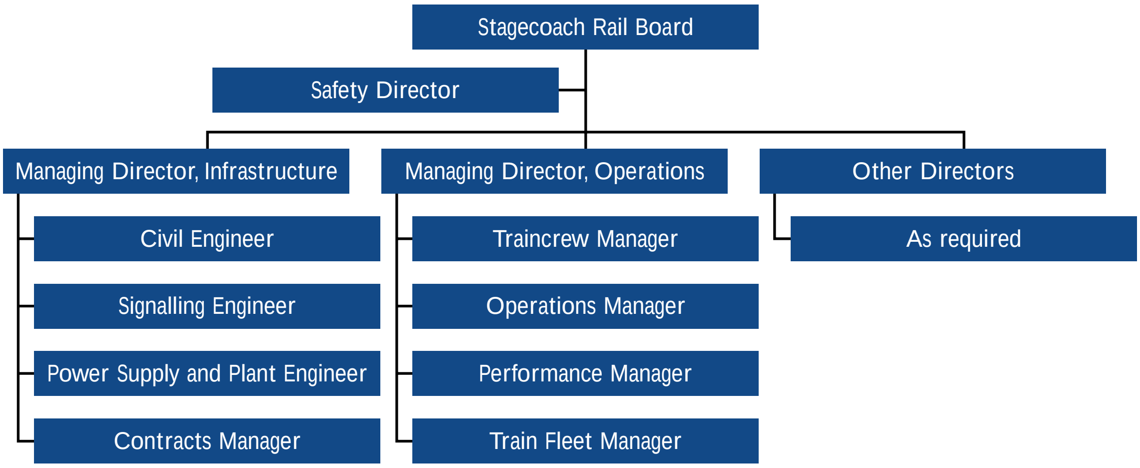
Vertical integration means one party (the operator) taking responsibility for the management and operation of train services and the network as well as maintenance and renewals against agreed asset condition measures and an asset maintenance plan. Whilst the management of operations (signalling and network control) would be internalised within SWT, there are a number of possible ways of achieving the integration of infrastructure with operations. These include:

- Direct contractual relationship between operator and infrastructure contractor
- Joint venture relationships between operator and infrastructure contractor
- Direct responsibility for, and employment of, all infrastructure staff.

Whichever approach is adopted, it results in:

- A common strategic focus and long-term vision for infrastructure and operations.
- Network control consolidated as one function.
- Effective management of operations and infrastructure.
- Elimination of perverse incentives and blame culture.
- More efficient and targeted use of asset funding.

Under this proposal, South West Trains would be organised as set out below:



Ultimately a similar model could be adopted across the entire network alongside the consolidation of the existing franchise map.

How will safe operations be sustained?

Stagecoach Group welcomed the opportunity to give evidence to the Cullen Inquiry, on behalf of the Association of Train Operating Companies, on the future safety structure for the industry. We were pleased that Lord Cullen supported the majority of our proposals. We saw the Railway Inspectorate as the "police force" for the industry that, as a part of the Industry Safety Body, would contribute their knowledge and experience to the development of industry standards and safety legislation and carry out a compliance-monitoring role.

We would support a safety culture in the future industry where, to be part of the new railway, one had to have an appropriate safety licence relevant to the activity the organisation would carry out on the network. Any organisation found to be negligent, reckless or simply inefficient could risk losing its safety licence and, as a result, its ability to be part of Britain's railways. There are clear analogies with the airline industry, which faces similar pressures and responsibility.

Our proposals for vertical integration assume that initially the operator would be the holder of an Operator's licence and a Network Licence, both of which include the requirement to have an approved Railway Safety Case. By combining these responsibilities in one organisation safe operation is enhanced. Once the railway safety authorities have created a "vertically integrated safety licence" these would be issued to operating companies on approval of their integrated Railway Safety Case. Those licences would incorporate the relevant features of the present operating company licences and similarly, the relevant parts of Railtrack's licence.

The infrastructure maintenance and renewal contractors who would initially contract with the operating companies would, in future, require their own safety licence in order to tender for maintenance and renewal contracts. The Rail Industry Safety Body would in future authorise these licences. Once the maintenance and renewal contract commenced, the operating company licence would assume responsibility for the activities of the maintenance and renewals contractors as part of its licence.

This arrangement will ensure that there is absolute clarity over safety responsibilities:

- Newtrack remains the owner of the asset and is responsible for ensuring that the operating company has mechanisms in place to maintain and renew its assets to industry standards.
- The operating company has total responsibility for delivering the train service, including the whole of the wheel/rail interface.
- A single industry body is responsible for setting and monitoring safety standards.

What is the role of Railtrack's successor?

We believe that these proposals align with Government intentions for its "not-for-profit" successor to Railtrack ("Newtrack").

In the context of a South West Trains pilot project, Newtrack will:

- Continue to be fully funded by charges paid by operators or direct Government grant;
- Continue to own the railway network (other than those assets financed in future by SPVs);
- Lease assets on a long term basis to the operating company;
- Monitor and have oversight of asset condition and the delivery of an asset maintenance plan;
- Set network engineering standards;
- Undertake certain strategic and investment planning roles on behalf of the Strategic Rail Authority;
- Play a co-ordinating role in the enhancement of the network, including route rationalisation, modernisation and re-signalling schemes (whether funded by Government or through SPVs);
- Manage inter-zonal/operator issues, and;
- Be responsible for the overall timetable production process

This is also consistent with European Union directives.

What is the role of the Regulator?

In any model where Railtrack, or its successor, retains asset ownership and other residual responsibility there is likely to be a need for independent regulation of the charges that it levies on operators, whether vertically integrated or otherwise. Additionally, in a vertically integrated railway, there may be some need for an independent review or arbitration of the requirements that Newtrack imposes on operators in relation to its monitoring and oversight of asset condition.

Equally important, there would continue to need to be some regulation or independent oversight to ensure fair treatment for secondary users of the infrastructure, including the freight sector and, potentially, of coordination between vertically integrated operating companies.

On a positive note, vertical integration will eradicate some of the monopoly supplier relationships with train operating companies that currently cause constant reference to the Rail Regulator, thus reducing the need for regulation.

We believe that the retention of a regulatory function will also satisfy relevant European Union directives (see Appendix 1).

How are secondary user rights protected?

We recognise the need for adequate protection to existing and future secondary users rights.

Each secondary user would enter into a contractual track access arrangement with South West Trains as the infrastructure controller. The present Schedule 8 (and similar) mechanisms for paying and receiving compensation for failing to deliver contractual obligations would continue to apply to these secondary users. Such models are common on North American railways where freight, main line and commuter services seem perfectly able to use the same infrastructure.

In addition, we would envisage the regulatory framework providing a quick appeal mechanism for disputes.

How will future investment be delivered?

Consistent with Government proposals, we believe that future network enhancements, including major resignalling projects should be financed by the public/private sectors on a case-by-case basis, outwith the track access charging regime.

Self-financing investments would remain a matter for individual companies and we would expect Newtrack/SRA to establish the priorities for major network enhancements and participate in appropriate feasibility studies.

How will this be financed?

Setting appropriate charges for the long-term lease of Newtrack's assets to the operating companies will not be easy, nor will deciding the price for maintaining those assets in a satisfactory condition over the franchise life.

The present level of track access charges paid by each train operating company is not a reliable guide:

- There is no real way of assessing if the correct charges were introduced at privatisation;
- There is no asset register, let alone a condition register, on which to base a long-term lease charge;
- Because Railtrack have under-maintained their assets since privatisation, the actual level of spend is no guide to the real requirement for funding, and;
- The existing backlog of maintenance needs to be once-off funded so as to set an output specification for the infrastructure going forward.

What is a matter of record is the present level of access charge paid by each train operating company and the amount spent each year since privatisation by Railtrack on maintaining and renewing those assets. Whilst a proportion of these charges would need to be continued to be paid to Newtrack to allow it to repay historic debt, the balance would be retained in the vertically integrated South West Trains. This amount would need to be modified in later years in the light of experience. We believe that within this sum there is substantial scope to improve actual funding availability for maintenance and renewals including the elimination of overheads.

Since the accident at Hatfield, many train operating companies have avoided bankruptcy simply because of Schedule 8 payments from Railtrack. Any financial structure going forward needs to take into account the actual level of Schedule 8 payments from Railtrack being received at the time vertical integration is implemented and such payments would need to continue for the duration of the pilot. Provided the output specification from the pilot includes the need to restore asset condition to a pre-determined level by a pre-determined time, there would be an incentive for the operating company to properly maintain its leased assets within the timescale allowed. At this point Schedule 8 payments would cease.

How are risks being shared between public and private sectors?

This proposal represents a true sharing of risk between the public and private sectors.

Through vertical integration, Stagecoach Group would take substantial safety and reputational risks. As regards funding risk, the present administration arrangements for Railtrack mean that the Government are, once again, effectively bearing all financial risk for network infrastructure. There appears no obvious mechanism to induce the private sector to take that risk, at this time, should the industry structure remain unchanged, given the lack of an asset register and condition statement against which to establish a costed asset maintenance plan.

Our proposal would be for Stagecoach Group to manage infrastructure maintenance and renewal during a pilot period of five years. An output specification for infrastructure would be agreed with Newtrack and the Government. As part of the pilot, Stagecoach Group would be expected to produce an asset register for the infrastructure on the Wessex Division along with a statement of condition by the end of the initial five-year period. This condition statement would be made available to all parties, including secondary users.

During the pilot period Stagecoach Group would be able to gauge the condition of the assets, identify probable lease life maintenance and renewal cost and propose a risk transfer mechanism that allowed Stagecoach Group to take risk in a measured and sensible way. During the pilot, Stagecoach Group would bear the financial risk of maintenance and renewal up to a limit of £3 million. Financial risk beyond £3 million would be borne by Government. If Stagecoach Group were to be able to maintain the assets it leased to the required outputs for less money than the Government had allocated, then each year this surplus would be paid into a maintenance reserve fund. At the end of each year of the pilot the interest earned from the maintenance reserve fund would be split on an equal basis between Government and Stagecoach Group and at the end of the five-year pilot period the maintenance reserve fund would be split on an equal basis. For subsequent periods, once the asset register was produced and an asset maintenance plan agreed, Stagecoach Group would take responsibility for maintenance and renewal of the assets at its own risk. At the end of each subsequent five-year period any surplus in the maintenance reserve fund would be distributed on an equal basis between Stagecoach Group and Government.

Stagecoach Group is not able to spread the risk of catastrophic infrastructure failure, as British Rail or Railtrack was able to do. Accordingly we would not wish to take risk, at any stage, for the catastrophic failure of infrastructure assets such as tunnels and significant bridges.

If the pilot were a success, the vertical integration model would continue over the life of the franchise. If the pilot was deemed to have failed, Stagecoach Group would revert back to its original operating company licence and South West Trains remain a conventional franchise. During the pilot Stagecoach Group would not be prepared for its operational license be put at risk. Once the trial period was complete and Stagecoach Group were taking the whole risk for the maintenance and renewal of the infrastructure, we would accept that our safety responsibilities were completely and irrevocably aligned to our shareholder responsibilities and our status as a licence holder would be linked to our performance as a combined operator and infrastructure maintainer.

How will this proposal be implemented?

Stagecoach Group would propose a gradual and phased approach to moving towards a vertically integrated operating company structure. We have set out below a mechanism for discussion that we believe will facilitate this organisational change within the context initially of a contract based model of vertical integration.

Step 1

1. Vertically integrated safety licence obtained.
2. Transfer the responsibility for signalling and control, along with the associated staff, from Newtrack to the operating company. Rationalise the present multi-tier control structure into a single entity.
3. Amend contracted track access charges.

Step 2

1. Newtrack grants a long-term lease on the infrastructure to the operating company.
2. Transfer the existing contract management staff from Newtrack to the operating company to enable a seamless change to the maintenance and renewal contract management.
3. Rationalise the duplication of staff required to operate the performance regimes.
4. Amend the track access agreement between Newtrack and the operating company.
5. Novate the existing maintenance and renewal contracts from Newtrack to the operating company.
6. Transfer existing access contracts between secondary users and the principal operating company.
7. Set access charges between Newtrack, primary operating company and secondary users, initially on the same basis as set by the Regulatory review.

By using the existing licence procedures, Railway Safety Case Regulations and track access contracts together with appropriate regulatory support, we believe that a pilot scheme such as we describe could be implemented within six months of principles and financing strategy being established.

Should the pilot be successful, there are two further structural options that could be considered. The first option would be for the franchise owner and the infrastructure maintenance and renewal contractor to form a joint venture and each take an equity position in the new operating company. A second and more radical solution would be to transfer the infrastructure maintenance and renewal staff into the ownership of the operating company once the novated contract had expired.

Conclusions

The Stagecoach Group was one of the first of the publicly listed transport groups to enter the privatised railway business; once again we intend with these proposals to be among the first to embrace a new era of investment, safety and service delivery, where track and trains are managed to the direct benefit of the passenger, where public and private funding are available, and where taxpayers' money is efficiently and carefully invested

It is not in the interests of Stagecoach Group, or its shareholders, to be part of an industry perceived to be in a spiral of decline. The present flawed privatisation broke the link between wheel and track, which formerly existed in British Rail, and we are now paying the price of that separation.

In railway terms, there is a middle way. Stagecoach Group and the other train operators have numerous expert railway people within their management teams, with years of experience of running vertically integrated networks. Our proposals retain Britain's railway assets in a "not-for-profit" stakeholder company whilst aligning operations and engineering management focus onto serving the end customer.

Many of the present problems that beset Railtrack can be laid at the door of poor management. Stagecoach Group would wish to be part of the solution to the industry's problems and we believe we have the motivation and railway management expertise to introduce a vertical integration pilot onto our franchise at South West Trains. We are satisfied that it is possible to identify a path towards a position where both operator and Government can see themselves in a true partnership and where risk is shared in a proper and responsible way to the benefit of the end customer and our shareholders whilst ensuring best value to the taxpayer.

Once this pilot has been satisfactorily tested, the model can be rolled out to other operating companies. The aim should be to reduce the number of operating companies and to align these with infrastructure organisations that make geographic sense.

We believe that the structure of the industry can be evolved to bring accountability for safety and quality closer to the end customer. Our proposals will bring, for the first time in the privatised railway, safety, customer and shareholder interests together in an integrated operating company. We are firmly of the view that Britain's railways will not improve so long as these interests remain so far out of alignment.

Appendix 1: Relevant legislation

There is obviously a need to analyse the requirements of separation of infrastructure management and operations that is enshrined in EU legislation, in the context of the vertical integration of management responsibility.

There are two relevant pieces of legislation:

1. Council Directive 91/440/EEC on the development of the Communities railways, as amended by Directive 2001/12/EC, and;
2. Directive 2001/14/EC on the allocation of infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

The 2001 EU Directives require more stringent separation of infrastructure management and train operations than their predecessors. They are due to be implemented in the UK no later than 15 March 2003. In preparing a structural solution we have focused on these Directives because they embody the strict regime that will apply to any vertically integrated rail transport undertaking in the near future.

Directive 91/440/EEC (as amended)

The Directive defines railway undertakings as providers of services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensures traction or is a provider of traction only. Existing passenger and freight train operating companies fall under this definition. Such undertakings must have independent status as regards management, administration and internal control over administrative, economic and accounting matters.

Equally, infrastructure managers also have to be responsible for their own management, administration and internal control. Infrastructure managers are defined as bodies responsible for establishing and maintaining railway infrastructure, which may or may not include the management of control and safety systems. The functions of the infrastructure manager can be allocated to different undertakings.

The extent of the separation of railway undertakings and infrastructure managers is the key to delivering vertical integration within the existing legislation. Separate profit and loss accounts and balance sheets relating to the separate functions within the overall business would need to be kept and published. Equally, any public funds paid to one of these businesses could not be transferred to the other, and this prohibition would need to be reflected in the accounts of the two areas of activity. This arrangement is simply a mechanism to prohibit cross-subsidy and is not designed to stop payment of proper access charges from one business to the other.

The essential functions determining equitable and non-discriminatory access to infrastructure must be entrusted to independent bodies that do not themselves provide rail transport services. The Rail Regulator, Railtrack and The Strategic Rail Authority would constitute such parties. The collection of such charges and the responsibility for managing the railway infrastructure may, however, be assigned to railway undertakings or any other body.

Crucially, the Directive allows member states to provide that the separation of infrastructure management and train operation, whilst requiring the organisation of distinct divisions, may be placed within a single entity.

Directive 2001/14/EC

This Directive uses the same definitions of infrastructure manager and railway undertaking and reinforces the importance of management independence of the two activities.

The determination of charges generally falls within the responsibility of the infrastructure manager, in accordance with preset charging rules. However, where the infrastructure manager is not independent of the railway undertaking an independent body must perform all functions relating to the setting of infrastructure charges, other than the collection of those charges.

Access to the track also falls within the responsibility of the infrastructure manager. Again, in a vertically integrated business, this activity would need to be performed independently and the present Track Access Agreements, with their description of the access rights each operator is entitled to, meet this requirement very well.

In summary, provided that a structure in which an independent body, such as the SRA or the successor to Railtrack, sets access charges, determines capacity and path allocation, a vertically integrated railway company is likely to meet EU requirements provided:

1. The UK does not implement the amendments to Directive 2001/12/EC in such a way as to require that the infrastructure has to be managed by a separate entity, and;

2. That the required separation within the operating company is maintained.

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