

# **The Privatised Railway**

**Research Paper 97/71**

**30 May 1997**



This Research Paper summarises the present structure of the rail industry introduced in April 1994 following the passing of the *Railways Act 1993*. More detail of the legal framework is given in earlier Library papers (*Rail Privatisation: a Progress Report* (Research Paper 95/96), *The Privatisation of Railtrack* (Research Paper 96/54) and *Rail Passenger Franchises* (Research Paper 96/85)). For convenience the names and addresses of all the main organisations are included and the addresses and telephone numbers of the train operating companies and of the companies who now run them are listed in the accompanying Research Paper 97/72 *The Railway Passenger Companies*.

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## Summary

The *Railways Act 1993* provided the legal framework for the privatisation of British Rail and the introduction of a new structure for the rail industry. The Act received Royal Assent in November 1993 and many of the principal changes were brought into effect on 1 April 1994.

Two new statutory officers, the Rail Regulator and the Franchising Director, were established to oversee the industry. Railtrack became a separate Government owned company and was sold to the private sector in May 1996. British Rail was split into about 100 companies, almost all of which have been sold to the private sector or closed down. The passenger services have been divided into 25 separate units and sold to the private sector for periods of between seven and fifteen years. Other parts of the business including the freight operations and the rolling stock companies, are also in private hands.

The public subsidy to the passenger railway services was nearly £2 billion in 1994/95 but by 2003, when the first group of franchises reach the end of their lives, the subsidy is forecast to fall to £500 million. Passenger complaints about the system have increased, with concern being expressed particularly with the general services such as the national marketing of rail tickets and the information service. The cuts in services introduced by South West Trains at the beginning of this year resulted in a considerable number of complaints.

Worries are now less with the structure of the industry than whether the Regulators have sufficient powers to deal with the private sector companies who now run the railways. The Labour Government has said the system must be run "in the public interest with higher levels of investment and effective enforcement of train operators' service commitments. There must be convenient connections, through-ticketing and accurate travel information for the benefit of all passengers." The role of the Franchising Director, now that the first wave of franchises have been sold, is under review although he is responsible for monitoring and improving their performance. Seven companies, some of them bus companies, have been awarded more than one franchise and there may be competition implications. The second phase has also seen the purchase of the privatised companies for considerably more than they were originally sold by British Rail. The relationship between the Rail Regulator and the Franchising Director appears rather confused to observers, if not to the operators, and the Government has said it will look at the powers of both.

## Abbreviations

<b>ATOC</b>	Association of Train Operating Companies
<b>BR</b>	British Rail
<b>CRUCC</b>	Central Rail Users' Consultative Committee
<b>EPS</b>	European Passenger Services Ltd
<b>EU</b>	European Union
<b>HSE</b>	Health and Safety Executive
<b>ITT</b>	Invitation to Tender
<b>LRPC</b>	London Regional Passengers' Committee
<b>MBO</b>	Management Buyout
<b>MMC</b>	Monopolies and Mergers Commission
<b>OFT</b>	Office of Fair Trading
<b>OPRAF</b>	Office of Passenger Rail Franchising
<b>ORR</b>	Office of the Rail Regulator
<b>PQD</b>	Pre-qualification document
<b>PSR</b>	Passenger Service Requirement
<b>PTA</b>	Passenger Transport Authority
<b>PTE</b>	Passenger Transport Executive
<b>PSO</b>	Public Service Obligation
<b>ROSCO</b>	Rolling Stock Leasing Company
<b>RSC</b>	Railway Safety Case
<b>RSG</b>	Revenue Support Grant
<b>RUCC</b>	Rail Users' Consultative Committee
<b>TOC</b>	Train Operating Company
<b>TOU</b>	Train Operating Unit

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## **I Introduction**

The *Railways Act 1993* provided the legal framework for the privatisation of British Rail and the introduction of a new structure for the rail industry. The Act received Royal Assent in November 1993 and many of the principal changes were brought into effect on 1 April 1994.

The legislation to privatise the railways radically changed the structure of the railway industry by separating the responsibility for infrastructure and passenger service operations. BR was divided into a body known as Railtrack on the one hand, and a residual BR operating company to run all the other services until they were sold or franchised. A Regulator would oversee the charges to be levied by Railtrack for the use of the infrastructure. The core of the Conservative Government's proposals was the greater involvement of the private sector in the running of the railways through the sale of British Rail's freight and parcels businesses and the progressive contracting out of the management of passenger services by a new Franchising Authority. All passenger services would eventually be provided by private sector operators either acting as franchisees or as independent train operators. Government subsidy would be payable via the Franchising Director to franchisees in respect of socially necessary services that might not otherwise be provided. Competition in the provision of passenger services would be facilitated by allowing independent train operators (ie non franchisee and not in receipt of subsidy) who could meet the necessary operational and safety standards, to have a right of access to the railway network. The aim was to enable the huge investment needs of the railway industry to be met, as far as possible, by the private sector and to encourage the transformation of the rail system from an operations-led business to a customer-led one.

The structure of the whole industry has changed radically since April 1994 as the legislation has been implemented. The responsibility for a large amount of decision taking in the industry has been transferred from the Secretary of State to the two new statutory officers, the Rail Regulator and the Franchising Director. British Rail was split into about 100 companies, almost all of which have been sold to the private sector or closed down. The passenger services have been divided into 25 separate units and sold to the private sector for periods of between seven and fifteen years. Other parts of the business including the freight operations and the rolling stock companies, are also in private hands. Railtrack became a separate Government owned company and was sold to the private sector in May 1996.

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The public subsidy to the passenger railway services almost doubled from £930 million in 1993/94 to nearly £2 billion in 1994/95<sup>1</sup> and for several years it will not fall to the level of support formerly given to the railways. However by 2003, when the first group of franchises reach the end of their lives, the subsidy is forecast to fall to £500 million. It could be argued that the assured income the railway has from the subsidy and the pegging of fares should lead to improved performance for the passengers even without the benefits of the improved management generally found in the private sector.

The public, however, remain unconvinced. Passenger complaints about the system have increased, with complaints to the Central Rail Users Consultative Committee increasing by 14.5% over the previous year, but that may be in part the result of the public's increased awareness of the passenger charters.<sup>2</sup> The concern has been mainly with services which are not operator specific or which do not have a quick payback, such as the national marketing of rail tickets, the information service and putting staff on stations although the cuts in services introduced by South West Trains at the beginning of this year resulted in a considerable number of complaints.

The next stage of the privatisation process seems to have already begun. Comparisons have always been drawn with the bus industry where a large number of local bus operators gradually became five large companies controlling two-thirds of the market. Seven companies including Stagecoach, National Express, Prism, Virgin and Connex have all been awarded more than one franchise although there is not yet any question of merging the train companies. The number of bus companies who have been awarded franchises has led to competition concerns. The second phase has also seen the purchase of the privatised companies for considerably more than they were originally sold by British Rail. For example Stagecoach bought the train leasing company Porterbrook for £825 million in October 1996. Porterbrook had been bought by its management from the Government for £527 million eight months earlier.

### **The Labour Government policy**

The Labour Party campaigned against the privatisation proposals and fought to prevent each subsequent step. However in its election manifesto the point is made that a Labour

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<sup>1</sup> Transport Reports 1995 Cm 2806 p.26; 1997 Cm 3606 p.22

<sup>2</sup> Annual Report 1995/96



Government's role is to improve the industry as it finds it, not as it might wish it to be. According to its transport policy document published in 1996, its aim is to "encourage more intensive use of rail by both passengers and freight, on a system which is comfortable, affordable and safe, and which is fully integrated both across the network and with other transport modes."<sup>3</sup> The Labour Government is not against the involvement of private capital in the railways and will encourage partnerships between public enterprise and the private industry to improve the transport system.

The Labour Party's initial reaction was that once in government they would act to make the rail network once more "publicly owned and publicly accountable."<sup>4</sup> However it was not prepared to promise the large sums of money which would have been necessary to buy back Railtrack once it had been sold or break the contracts already signed for the train operating companies. By the time of the election the commitment was to a railway run "in the public interest." The manifesto stated:<sup>5</sup>

The process of rail privatisation is now largely complete. It has made fortunes for a few, but has been a poor deal for the taxpayer. It has fragmented the network and now threatens services. Our task will be to improve the situation as we find it, not as we wish it to be. Our overriding goal must be to win more passengers and freight on to rail. The system must be run in the public interest with higher levels of investment and effective enforcement of train operators' service commitments. There must be convenient connections, through-ticketing and accurate travel information for the benefit of all passengers.

To achieve these aims, we will establish more effective and accountable regulation by the rail regulator; we will ensure that the public subsidy serves the public interest; and we will establish a new rail authority, combining functions currently carried out by the rail franchiser and the Department of Transport, to provide a clear, coherent and strategic programme for the development of the railways so that passenger expectations are met.

The creation of a rail authority will require primary legislation. Details have not yet been worked out but it is unlikely to involve the rail industry in yet another major structural change.

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<sup>3</sup> Labour Party *Consensus for change - Labour's transport strategy for the 21st century* June 1996

<sup>4</sup> Tony Blair 3 October 1995 Labour Party Conference 1995

<sup>5</sup> *New Labour because Britain deserves better* Labour Party election manifesto 1997 p.29

## **II The Regulators**

### **A. The Rail Regulator**

Office of the Rail Regulator  
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138-142 Holborn  
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0171-282 2000

The Rail Regulator: John Swift QC

The rail industry's activities are subject to a high degree of regulation under both the *Railways Act 1993* and the network and station licences. The track access charges approved by the Regulator determine the main costs of the train operators and the major part of Railtrack's income. The Rail Regulator therefore has a significant role in deciding the legal and economic background in which both Railtrack and the franchisees operate.

The Secretary of State appoints the Regulator for a five year period and once appointed he cannot be removed except for "incapacity or misbehaviour." John Swift was appointed in December 1993. The Office of the Rail Regulator became a non-ministerial government department on 1 December 1993, at March 1997 it employed about 117 people and total expenditure on the office in 1996-97 was estimated to be £8 million.<sup>6</sup>

The Regulator sees his role as being to work with the industry to create a better railway for passengers and freight customers. He is guided in his duties by the statutory requirements set out in section 4(1) of the *Railways Act*. The main areas of his statutory functions are:

- the issue, modification and enforcement of licences to operate trains, networks, stations and light maintenance depots;

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<sup>6</sup> Transport Report 1997 Cm 3606 pp 88-91

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- the enforcement of domestic competition law in connection with the provision of railway services;
- the approval of agreements for access by operators of railway assets to track, stations and light maintenance depots;
- consumer protection and promotion of passengers' interests.

The Regulator is required to act in accordance with certain duties designed to protect users of the network but which also include a requirement not to make it unduly difficult for network operators to finance their activities and to have regard to the financial position of the Franchising Director and of Railtrack. His duties under section 4 include:

- the protection of the interests of users of railway services, including disabled people
- the promotion of the use and development of the national railway network for freight and passengers
- the promotion of efficiency and economy
- the promotion of competition
- through ticketing
- minimization of regulatory burden
- commercial certainty and security
- the protection of persons from dangers arising from the operation of railways, with the advice of the Health and Safety Executive
- the environmental effect of railway services
- the financial position of the Franchising Director and holders of network licences including Railtrack

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### 1. Licences

The Regulator is responsible for issuing licences to railway operators. In general all companies operating railway assets will need to be licensed and the Regulator is responsible for enforcing licence conditions concerning such matters as policing, the environment, insurance requirements and through ticketing. No track, train, station or depot may be operated without a licence.

### 2. Track Access Charges

Under the *Railways Act 1993* section 18, the Regulator also approves access agreements between Railtrack and the train operators by which the latter acquire the right to use the track, stations and light maintenance depots, and he may modify them. Under section 21 the Regulator may prepare and publish model clauses for inclusion in access agreements. Although the Regulator has to approve each access agreement on its own merits he issued a policy statement on the criteria he would adopt in approving agreements in October 1994. This was updated in March 1995.<sup>7</sup> The aim was to ensure that agreements were reached which protected the interests of travellers, promoted the development of the rail network, and enabled companies providing railway services to provide for the future. In December 1994 the Office of the Rail Regulator published a similar policy statement setting out the principles and processes the Regulator was likely to adopt in approving freight track access agreements.<sup>8</sup>

In the policy document, *Railtrack's Access Charges for Franchised Passenger Services: The Future Level of Charges*, the Regulator concluded that charges should be rebased in 1995-96 with an overall reduction in access charges for franchised passenger services of 8% in real terms compared with 1994-95.<sup>9</sup> Individual track access charges for franchised passenger services should fall by 2% a year in real terms from 1996-97 onwards, broadly in line with the reduction in Railtrack's overall costs. There should be a further review of access charges in 2000 with the conclusions to be reflected in all access agreements for franchised passenger services from 1 April 2001. Additional charges would be levied for the use of stations and

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<sup>7</sup> Office of the Rail Regulator *Criteria for the Approval of Passenger Track Access Agreements* 2nd edition March 1995

<sup>8</sup> Office of the Rail Regulator *Criteria and Procedures for the Approval of Freight Track Access Agreements* December 1994

<sup>9</sup> Office of the Rail Regulator *Railtrack's Access Charges for Franchised Passenger Services: The Future Level of Charges* January 1995

to fund specific new investment projects. Charges to freight and open-access passenger operators are negotiated directly and reflect the value to operators of using rail infrastructure and also recover at least the marginal costs.<sup>10</sup>

The Regulator considered his proposed level of income would generate sufficient cash flow to enable Railtrack to maintain the existing capability of the rail network and also to invest £3.5 billion (at 1995/96 prices) for investment in the renewal of the network over the period to 2001.

### 3. Competition

The Regulator is also instrumental in deciding the level of competition. In July 1994 he published a consultation paper on competition in railway passenger services and in December he published his policy statement on the subject.<sup>11</sup> The Regulator accepted that competition would have to be moderated to an extent in order to secure a successful transfer of passenger operations to the private sector through franchising. Although he said he remained convinced that there were substantial benefits to both the train operators and the passengers through increased competition, he concluded that for an initial period competition between operators should be restricted. Only companies that take up train operating franchises will be allowed to offer passenger services during the first four years of privatisation and severe restrictions will be imposed on new entrants for three years thereafter.

### 4. Network benefits

The Regulator's functions under the *Railways Act 1993* also enable him to concern himself with a wide range of consumer interests. Even in cases where he does not have a statutory function, he frequently has a formal right to be consulted. The Regulator recognises that the benefits that an integrated network can provide may need protecting and he may secure many of these benefits through conditions in operators' licences. These will require operators to participate in industry-wide arrangements covering:

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<sup>10</sup> Office of the Rail Regulator *Framework for the Approval of Railtrack's Access Charges for Freight Services: a policy statement* February 1995

<sup>11</sup> Office of the Rail Regulator *Competition for Railway Passenger Services* December 1994

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- through ticketing and ticket retailing
- telephone enquiry bureaux
- publication of the national timetable and the sharing of operating information between licence holders

Through ticketing and inter-availability need to be available to passengers. "Through" journeys refer to journeys involving more than one passenger train operator and inter-available tickets mean that tickets issued by one train operating company are available for the same journey on other operators' trains.

The *Railways Act 1993* made provision for through ticketing to be a condition of a passenger service operator's licence. The idea originally was that the use of British Rail's existing ticketing and revenue allocation systems would mean that operators would be able to offer through tickets on much the same basis as did BR. Through tickets would therefore continue to be available from a range of outlets and in a range of ticket and fare types.<sup>12</sup> In his paper on the retailing of tickets, the Rail Regulator decided that operators should be obliged to maintain the service currently provided although there would be a procedure to allow for changes in the system provided they could be shown to improve the system for the customer.<sup>13</sup>

For most journeys, including through journeys, passengers are able to buy both full and discounted inter-available tickets, the fares for which are set by the main operator on a route. The provision of inter-available tickets is obligatory except in those cases where the Franchising Director considers the benefits of price competition outweigh those of inter-availability. Competing operators may introduce additional non-inter-available fares which allow passengers to trade flexibility in return for a lower price.

New routing rules were introduced for a six month introductory period to 31 May 1997.<sup>14</sup> The British Rail rule of tickets being sold for travel between two stations by "any reasonable

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<sup>12</sup> Department of Transport press notice 2.2.93

<sup>13</sup> Office of the Rail Regulator *Ticket Retailing: A Policy Statement* April 1995

<sup>14</sup> Office of the Rail Regulator press notice 26.9.96 "Routeing guide defines "reasonable" rail routes for the first time"

route" is replaced by the more restrictive "any permitted route." The change was proposed because the degree of freedom passengers now have makes it difficult to allocate ticket revenues between the 25 privatised train operators. An official list of permitted routes would, it was hoped, avoid disputes between passengers and ticket inspectors.

The problems of informing the public about the timetable and the various different fares available have been considerable. Railtrack had to reprint the railway timetable; The magazine *Which?* reported that ticket clerks were failing to offer the cheapest routes on up to 87 per cent of occasions.<sup>15</sup> Although the Rail Regulator usually takes the lead on these policies, they can also involve the Franchising Director, and their implementation lies with the train operators and with Railtrack. All operators are under an obligation to provide impartial information, ie without discrimination in favour of one operator or another, as a condition of the Ticketing and Settlement Agreement approved by the Regulator on 23 July 1995. The Regulator also approved the Telephone Enquiry Bureaux Agreement on the same day.

The Regulator does not underestimate the difficulties of achieving the provision of fully accurate information: limitations on ticket issuing and other systems, the many different ticket and route options and the pressure to serve passengers quickly to avoid long queues, pose particular challenges to operators. However he takes the view that accurate information is vital if passengers are to take full advantage of a restructured railway and it is to develop and achieve commercial success.<sup>16</sup> In a recent policy statement on information and retailing services provided by train operators, the Regulator clarified the retailing requirements under the licences and emphasised to the operators that it was their responsibility to improve the service they offered.<sup>17</sup> If the train operators do not comply with their licence obligation to give impartial sales advice on competitive routes, the Regulator could make an order to secure compliance under section 55 of the *Railways Act 1993*.

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<sup>15</sup> Consumers Association press release 1.7.96 "Rail passengers still facing fares fiasco"

<sup>16</sup> Office of the Rail Regulator press notice 1.8.96 "Rail Regulator launches enquiry into accurate and impartial retailing"

<sup>17</sup> Office of the Rail Regulator *Accurate and impartial retailing - meeting the needs of the passengers: a policy statement* January 1997

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### B. The Franchising Director

Office of Passenger Franchising (OPRAF)  
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2 Hay's Lane  
London Bridge  
London SE1 2HB  
0171-940 4200

Director of Passenger Rail Franchising: John O'Brien

The franchises for the train operating companies are awarded by the Director of Passenger Rail Franchising. As all the passenger train franchises were let by the time of the general election, the role of the Franchising Director now concentrates increasingly on the monitoring of the performance of the train operating companies.

OPRAF was constituted as a non-ministerial government department on 8 November 1993 with Roger Salmon as Director. John O'Brien succeeded him on 4 November 1996. In March 1997 OPRAF employed about 109 people. Support for the passenger railway is paid through the Franchising Director and in 1996-97 was around £1813 million. OPRAF's administrative expenditure for the same year was about £40 million.<sup>18</sup>

The Franchising Director's main functions are laid down in section 5 of the *Railways Act 1993*. He is responsible for securing the provision of railway passenger services by entering into franchise agreements, with franchisees being selected through a competitive tendering process. The Act requires the Franchising Director to exercise his statutory functions so as to fulfil objectives given to him by the Secretary of State and to ensure that his expenditure represents value for money in achieving these objectives. In March 1994 the then Secretary of State set the Franchising Director the following principal objectives:<sup>19</sup>

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<sup>18</sup> Transport Report 1997 Cm 3606 pp 78-85

<sup>19</sup> Department of Transport *Objectives, Instructions and Guidance to the Franchising Director from the Secretary of State for Transport* 22.3.94



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- to secure that railway passenger services in Great Britain, other than exempted services, are provided under franchise agreements as soon as reasonably practicable; and
- to secure an overall improvement in the quality of railway passenger and station services available to railway passengers.

Other objectives set by the Secretary of State were:

- to encourage efficiency and economy in the provision of railway services;
- to promote the use and cost-effective development of the railway network;
- to promote the award of franchise agreements to companies in which qualifying railway employees have a substantial interest.

The Objectives, Instructions and Guidance are set out in full in the Franchising Director's annual report. These objectives can be varied by the Government. For example on 11 December 1995 they were amplified in relation to risk sharing, the funding of the services of Passenger Transport Executive areas, and the provision of concessionary travel for railway employees<sup>20</sup> and on the 18 December 1995 the then Secretary of State announced further changes as a result of the court case by Save Our Railways. The pressure group had challenged the legality of the first three franchising proposals on the grounds that the Franchising Director had failed to base the minimum passenger service levels on the current British Rail timetable as instructed by the former Transport Secretary, John MacGregor. The then Director, Roger Salmon, had set standards in some cases well below the existing timetable on the grounds that private franchisees would have a strong commercial incentive to run more trains. On 7 December 1995 the High Court ruled that Roger Salmon had not set the future minimum passenger services too low but on 15 December the Court of Appeal overturned the ruling in relation to the second group of franchises.<sup>21</sup> The key section in the ruling said that:

"'Based on' is not...an exact term. It is obvious that every train timetabled by BR need not continue to run. There may be changes...but there is a limit. The changes must in our view be marginal, not significant or substantial."

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<sup>20</sup> PQ HC Deb 11.12.95 c.460W; Deposited Paper 2496 (3S)

<sup>21</sup> *Times* 18.12.95 "Regina v Director of Passenger Rail Franchising, ex parte Save our Railways and others"

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Rewriting the minimum service requirements would have been time consuming and costly and the Government instead rephrased its instructions to the Franchising Director.<sup>22</sup>

The Franchising Director's role is gradually evolving. All the passenger businesses have now been sold and OPRAF is become more involved in managing contracts and monitoring the performance of franchise operators, rather than selling the businesses. For this reason the then Secretary of State for Transport clarified further the Franchising Director's objectives in July 1996, to be certain that the guidance was not interpreted too narrowly.<sup>23</sup>

Concern has been expressed at the ability of the Franchising Director to ensure that the TOCs keep to their agreements following the recent performance of the Stagecoach owned South West Trains. South West Trains cancelled services in February and March 1997 and had to pay penalties (via adjustments to the monthly subsidy payments) of £900,000 as a result of failing to meet performance targets in those months. The company avoided heavier penalties by restricting cancellations to off-peak services: off-peak cancellations incur penalties of £100 a train whereas peak-time trains incur penalties of £600. On 14 March the Franchising Director threatened a £1 million fine and ultimately the loss of the franchise if services were not restored to an acceptable level by the end of April. SWT improved its performance in April so avoiding the fine. Fines can only be imposed if targets have been missed for three months.

The Franchising Director's second principal objectives is to "secure an overall improvement in the quality of railway passenger and station services available to railway passengers". If appropriate and affordable, he may provide support by the use of section 54 of the *Railways Act 1993* for necessary investment which would not otherwise be made and where there is a substantial value for money gain. This may also involve providing additional revenue support to train operators to pay (through higher access and/or leasing charges) for essential major investments which are not commercially viable. Where for example the use of section 54 is necessary to secure investment in new rolling stock, the Franchising Director may require a successor franchise operator to continue using the stock on similar lease terms. This provides the owners of the stock with the benefit of an extended lease period. However, section 54 will only be used as a last resort where it is clear that the market cannot provide the required

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<sup>22</sup> HC Deb 18.12.95 cc 1236-1246

<sup>23</sup> PQ HC Deb 24.7.96 c.363W; Deposited Paper 3779 (3S)

investment by any other route and where the use of this provision offers value for money for the taxpayer.

Thameslink 2000 is an example of a project where section 54 has been used to secure a substantial enhancement to the network. Under the terms of an agreement largely negotiated with Railtrack during 1995-96 and signed on 24 April 1996, the existing north-south Thameslink rail link across London will be enhanced, subject to Railtrack obtaining the necessary consents, from a capacity of six train paths per hour in each direction to 24 train paths per hour in each direction. The Franchising Director has given Railtrack an undertaking that he will procure the payment of access charges in relation to Thameslink 2000 train paths on agreed terms from project completion for a period of 14 years. The detailed specification of franchised services will be determined over the next few years. In return, Railtrack has agreed, subject to obtaining the necessary consents, to deliver the project to a fixed price and programme. The project is currently expected to be completed in 2002.

### Proposals for Change

The Labour Government has asked the Franchising Director to prepare a report on the extent of his powers as Ministers were concerned his enforcement powers were inadequate to deal with cases such as South West Trains.<sup>24</sup>

The most detailed account of Labour Party policy regarding the passenger service franchises was set out by Brian Wilson in December 1995. He said that there would be no extension of franchises which had been let and the franchising process would cease once Labour come to office. Some of this has been overtaken by events as all the franchises had been let by 1 April 1997 but the remainder of what he wrote may be relevant:<sup>25</sup>

We will not break legally binding contracts which have been entered into. Neither will we come into government waving a chequebook and offering to buy them out. That would only succeed in guaranteeing the franchisees a no-lose bet, at the expense of a substantial spending commitment. However, we will most certainly enforce the terms of the franchises in a way which the Tories will not. To facilitate this process, the Office of Passenger Rail Franchising will be abolished, since it is an unnecessary piece of bureaucracy within an integrated railway.

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<sup>24</sup> *Financial Times* 9.5.97 "Strang to strengthen rail regulation"

<sup>25</sup> *Guardian* 12.12.95 "Perils of riding Stagecoach"

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Until the Railways Act can be amended, the Franchising Director will remain, but under the aegis of the British Railways Board. There will be no question of franchisees coming back to him either to obtain more money or to achieve derogations on fares or the levels of service.

As we have told the potential franchisees, we will lay stress on the absolute priority of safety and on the needs of passengers and staff. Since notice is being given in advance of our detailed approach, there will of course be no question of compensation if operators fail to meet these conditions, and pull out.

This approach represents a sensible balance between our political commitment to restoring an integrated railway and the realities we will inherit. If any franchisee can live with these terms, then so be it. If they cannot, then the services will revert sooner than otherwise to the main railway network.

In the Labour Party's 1996 policy document, *Consensus for Change*, reference is made to the need for greater public accountability for public subsidy.<sup>26</sup> Train operating companies are dependent on high levels of public subsidy because of the high charges Railtrack sets for the use of the track, making it impossible for rail to compete with roads on an equal basis. The Labour Party said it would therefore reorganise the subsidy regime and would ask the Rail Regulator to review the current arrangements. In Holland and Sweden the railway subsidy is put into the infrastructure, so that train operating companies are profitable. A re-routing of the subsidy towards the infrastructure would create a greater transparency, enable government to reach an agreement with Railtrack on the use of the subsidy and would also reduce the marginal costs of enhancing rail use by passengers.

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op cit

### **III Railtrack**

Railtrack plc  
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0171-344 7100

Chairman: Sir Robert Horton.  
Chief Executive: John Edmonds

#### **A. The Company**

Railtrack became a separate Government owned company on 1 April 1994 when the track, signalling and freeholds of stations, other buildings and operational land were transferred to it. It employs about 11,000 people (of whom 6,000 are signalmen and supervisory staff) organised in seven geographical zones. It owns and manages the vast majority of track, signalling and other infrastructure of Britain's railways. Train operators are granted access rights to the track and are charged for that access. Railtrack is in charge of coordinating train movements through central timetabling, train planning and signalling and is also responsible for the safety of the operational network. It operates the rail network, including signalling, and provides electricity for the train operators.

Railtrack is the freeholder of passenger train stations and light maintenance depots, which generally it leases to private sector operators. In most cases, stations and depots are leased to the passenger train operator which runs most of the services through the station or makes greatest use of the depot. Railtrack retains responsibility for operating the 14 large mainline stations which have potential for commercial trading or property development and aims to involve private sector operators in developing these stations. It also has a property portfolio including, as well as the stations, operational railway land, buildings and installations which it took over from British Rail.

At 31 March 1996 the net book value of Railtrack's tangible fixed assets was given in the 1995/96 annual report, the latest to be published, as £4,554 million. This included investment properties, other land and buildings, track, signalling systems, electrification, other

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infrastructure and plant and machinery. Net assets after indebtedness was taken into account were given as £2,482 million.

### 1. Income

Railtrack does not receive direct revenue subsidy from the government but it is indirectly dependent on the significant amount of public sector support received by the train operating companies who in turn pay access charges to Railtrack. In the year ended 31 March 1996, the TOCs paid £2,003 million to Railtrack for access to track and major stations.

Railtrack's main sources of revenue are the charges it levies on train operators for track access and the lease income it receives for stations and depots. The track access payments provide the major part of its income: in the year 1995/96 they accounted for 94 per cent of its turnover. They come from the operators of passenger services, freight operators and open access passenger services. This latter category comprise special services such as excursion trains and also Eurostar which runs trains to Paris and Brussels through the Channel Tunnel.

At the time of privatisation the Treasury had originally valued BR's fixed assets at £6.5 billion and demanded that Railtrack earn an annual return of 5.1 per cent, rising to 8 per cent after four years. The level of track access charges which would have been necessary to meet those charges would have meant that almost all the passenger services would be loss making and so reliant on subsidy. In July 1994 the Regulator issued a consultation document on passenger access charges and his conclusions were published in two stages, the first covering the structure of the charges<sup>27</sup> and the second the level of charges.<sup>28</sup>

The Regulator concluded that charges should be rebased in 1995-96 with an overall reduction in access charges for franchised passenger services of 8% in real terms compared with 1994-95. Individual track access charges for franchised passenger services should fall by 2% a year in real terms from 1996-97 onwards, broadly in line with the reduction in Railtrack's overall costs, until 1 April 2001. Additional charges would be levied for the use of stations and to

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<sup>27</sup> Office of the Rail Regulator *Railtrack's Track Access Charges for Franchised Passenger Services: Developing the Structure of Charges: a policy statement* November 1994

<sup>28</sup> Office of the Rail Regulator *Railtrack's Access Charges for Franchised Passenger Services: The Future Level of Charges* January 1995

fund specific new investment projects. A system of performance-related payments would be used to reflect achievement of quality of service objectives, for example the punctuality of trains. Charges to freight and open-access passenger operators are negotiated directly and reflect the value to operators of using rail infrastructure and also recover at least the marginal costs.<sup>29</sup>

In addition to the track access charges Railtrack also obtains rental income from retail lettings at major stations, from letting arches and other commercial property and from property disposals and developments. The company's 1995/96 accounts show total income of £2,300 million, an operating profit of £296 million and pre-tax profit of £190 million.<sup>30</sup>

## 2. Costs

Railtrack must fund the maintenance of and the investment in the rail infrastructure, including track and stations, and other operating costs, for example the provision of signalling on the network and the supply of electricity for traction. Total costs in 1995/96 were £2,004 million.<sup>31</sup>

Railtrack needs to spend money on maintenance to meet its contractual and statutory obligations but it has said it will also undertake projects to improve the network. However any enhancements to the network have to be largely funded either through additional access charges to be agreed with train operators who may benefit from the project or through cost savings. Railtrack may also be eligible for contributions to the costs of specific projects from public sector bodies, including the European Union and local authorities.

The sum set aside for investment does not cover the large projects such as Thameslink 2000 or the renewal of the West Coast Main Line. Thameslink 2000 aims to expand the capacity of the current Thameslink routes and it is hoped construction will start in 1998. Project costs are estimated in the region of £650 million and are expected to be financed by Railtrack's debt facilities. Railtrack is developing, in association with the train operators, a major programme

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<sup>29</sup> Office of the Rail Regulator *Framework for the Approval of Railtrack's Access Charges for Freight Services: a policy statement* February 1995

<sup>30</sup> Railtrack Annual Report and Accounts 1995/96

<sup>31</sup> *ibid*

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of renewal of the core infrastructure of the WCML, the main arterial rail link joining London, the West Midlands, the North West and Scotland. Expenditure over a period of 10 years includes a projected expenditure of £857 million on signalling and electrification schemes.

### **3. Contracts and Performance Regimes**

Now that there are so many separate companies in the rail industry, the relationship between Railtrack and its customers and principal suppliers is governed primarily by contractual agreements. The most complex ones are the track access agreements, the major station access agreements, the leases of stations (other than the major stations), the light maintenance depots and other rail facilities and the maintenance and renewal contracts.

Railtrack's principal contracts with its customers and the Infrastructure Maintenance Units (IMUs) and Track Renewal Units (TRUs) include performance regimes which provide financial incentives to the parties aimed at improving the punctuality and reliability of the services. Any delay in a passenger service of over three minutes has to be attributed to one of the companies involved. Railtrack is responsible for any disruption on the network caused by the condition of the network, train timetabling and control of train movements, the performance of other train operators, the actions of third parties and other external influences such as the weather. The train operator is responsible for all disruption to services it causes, for example as a result of the mechanical failure of its trains.

In the year to March 1996 the **net** charge to Railtrack of the performance regime was £5 million, which included £84 million received from the Train Operating Companies and net payments to customers and suppliers based on performance. The pathfinder prospectus issued for the flotation of Railtrack estimated that if there was a complete cessation of services on an average weekday it would cost Railtrack about £12 million.



## B. Investment

It is this area which has caused MPs and the Rail Regulator most concern as it appears that Railtrack has been underspending on its essential maintenance budget which includes track maintenance, signalling and other large projects, and station improvements. When the Rail Regulator set the track access charges in 1995 he set them at such a level that would allow Railtrack to spend £3.5 billion (at 1995/96 prices) over the subsequent six years on renewing the network. This was to allow for longer term plans to be made. As 94 per cent of Railtrack's income comes from the track access charges which include about £2 billion of public money paid by the Franchising Director to the TOCs there is concern about the accountability of Railtrack in this area.

Railtrack's Network Licence requires it to publish, annually, a statement describing its projections of future network capacity requirements, planned modifications to its network and the method proposed for financing such requirements and modifications within its overall financial framework. In December 1995, Railtrack published its first 10-year Network Management Statement in which it said it expected to spend over £1 billion a year for 10 years on the maintenance and renewal of its assets. It intended to replace 2,900 miles of sleepers and 1,400 miles of rails, renew dozens of bridges and upgrade stations and depots. Further improvements would be made to signalling and control equipment, some of which is 40 years old. As it was then in the public sector the form and content were approved by the Secretary of State for Transport. Subsequent statements are approved by the Rail Regulator.

Details of new strengthened proposals for monitoring how effectively Railtrack plans for, and actually carries out the maintenance, renewal and enhancement of the rail network were published in September 1996 by the Rail Regulator and Railtrack.<sup>32</sup> The consultation document set out proposals for expanded coverage of the annual document on Railtrack's plans for the rail network. Mr Swift, the Regulator, said:<sup>33</sup>

I regard the annual Network Management Statement as a key document for Railtrack to demonstrate publicly that it is an efficient and effective steward of the national rail network. I shall expect it to meet certain objectives. In particular I want the statement to help me, Railtrack's customers, providers

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<sup>32</sup> Office of the Rail Regulator *Railtrack's Network Management Statement: A Consultation Document* 4 September 1996

<sup>33</sup> Rail Regulator press notice 4.9.96 "Regulator launches proposals for Railtrack's ten-year plan for developing the rail network"

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of funds, and the wider public to monitor how effectively Railtrack is planning for, **and actually carrying out**, maintenance, renewal and enhancement of the railway.

A large part of Railtrack's assured income comes indirectly from the taxpayer through subsidies to the train operators. This income is at levels which require and enable renewal of the network. Railtrack **must** therefore be accountable to its customers and others funding its operations, to satisfy them that **their** money is being spent on the railway and spent well.

They agreed that ten years should be covered, with more detail given for the first three years, and should comprise:

- Forecasts of future demands on network capacity for passenger and freight services, and their implications for the supply of capacity on the network;
- Policies and plans for maintenance, renewal and enhancement of the network including details of the work and financial information;
- Major projects for renewal and enhancement; and
- Method of financing of maintenance, renewal and enhancement within Railtrack's overall financial framework.

Railtrack's half year results to 30 September 1996 were published on 15 November 1996 and led to concerns that it was underspending on maintenance and renewals, estimated at between £333 million and £700 million.<sup>34</sup> In reply to a letter from the pressure group Save Our Railways, the Regulator said "the level of underspending is wholly unacceptable to me and I expect prompt action to remedy this."<sup>35</sup> John Swift repeated this view in January 1997 at a meeting with Railtrack directors.<sup>36</sup> At the same time he published a document setting out the company's responsibilities in this area which stated:<sup>37</sup>

To date, Railtrack's record, in terms of its stewardship responsibilities, is disappointing in important aspects. It has taken speedy action to improve current operational performance, which is clearly very welcome to rail users, but this has not been matched by equally prompt action to renew the infrastructure in modern equivalent form, for which Railtrack is also being paid.

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<sup>34</sup> *Financial Times* 18.1.97 "Railtrack investment row gets up steam"

<sup>35</sup> *Daily Telegraph* 21.12.96 "Watchdog in attack on Railtrack underspend"

<sup>36</sup> *Financial Times* 17.1.97 "Railtrack warned to speed up investment"

<sup>37</sup> Office of the Rail Regulator *Regulatory Objectives for Railtrack* January 1997

When Railtrack published its interim accounts in November, these showed some increase in spending on the infrastructure in the first half of the financial year. But even with growth in spending in the remainder of the year, I estimate that it will be carrying forward significant unspent accruals in respect of renewal of the infrastructure and backlog of expenditure on property, largely stations and maintenance depots. As I said in December 1996, the current level of underspend is wholly unacceptable. Railtrack must demonstrate that it has credible plans to deal with that backlog and should deliver on those plans, now that it is free from public sector financing limits.

Railtrack published its second Network Management Statement on 20 February 1997.<sup>38</sup> The programme involves about £5.7 billion being spent on day to day maintenance of the network, £8.3 billion on other renewal work and £1.9 billion on large projects to increase capacity. It involves the overhaul of about 2,500 km of rail and 1,200 bridges as well as the £1.5 billion upgrade of the WCML and the £600 million Thameslink 2000 project. Over 2,000 stations will benefit with 49 stations having more than £1 million spent on them and four - Paddington, Waterloo, Edinburgh Waverly and Glasgow Central - each receiving £25 million or more of investment.

Railtrack's explanation for the shortfall was that it was still a public sector company subject to the usual public spending constraints in its first two years. Its management was also preoccupied with preparing the company for privatisation. Managers also say there was a shortage of qualified contractors and suppliers.<sup>39</sup> In response to the Rail Regulator's criticisms, the chairman conceded it had taken longer than expected to get investment programmes moving and that spending had not matched up to its initial plans but he maintained that by March 1997 the company would have overtaken the Regulator's target of £1.3 billion and by 2001 it would have spent £1 billion more than the Regulator expected. It had taken longer to get under way than expected but it is now implementing organisational changes which would streamline the process.<sup>40</sup>

Concern about Railtrack's investment plans continued and on 21 May the Regulator announced that he was to amend its licence to ensure delivery of those plans.<sup>41</sup>

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<sup>38</sup> Railtrack *Investing in Britain's Railway: Network Management Statement 1996/97* February 1997

<sup>39</sup> *Financial Times* 18.1.97 "Railtrack investment row gets up steam"

<sup>40</sup> *Times* 21.2.97 "Railtrack plans £16bn investment programme"

<sup>41</sup> Office of the Rail Regulator press notice 21.5.97 "Regulator calls for greater public accountability from Railtrack"

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Railtrack published its first post-privatisation Network Management Statement in February. The form and period of the Statement were approved by me and it contains much more information about Railtrack's plans for the renewal and development of the railway network than has previously been available. The Statement is an important first step forward in demonstrating Railtrack's commitment to planning and future investment. However, there is more to be done and I am asking Railtrack, over the course of the year, to set out more detail on their plans in a number of important areas.

But the Statement is only a set of plans and I have concluded that it is now timely to consider strengthening Railtrack's obligations to ensure delivery of those plans. In certain areas, Railtrack's delivery against its plans to date has been disappointing: there remains a substantial backlog of expenditure on network assets, stations and depots which Railtrack must eradicate as a priority.

Railtrack's investment programme must be directed to achieve three purposes:

Timely maintenance of the railway network.

Timely renewal and replacement of the network in the appropriate modern equivalent form.

Improvement, enhancement and development of the network.

Railtrack has no competitors. The role of regulation, therefore, is to provide, through systems of controls, what a competitive market should be expected to achieve through incentives. But at present Railtrack's obligations on delivery of its investment programme are extremely light. First, there is no obligation to demonstrate how it proposes to link its investment programme to output targets. Second, there is no direct means of ensuring that Railtrack complies with its duty to spend the money it receives for investment, and to spend it wisely. Assurances that the capital and maintenance programme will be carried out, the more especially when most of the annual expenditure is funded by the State, require something more bankable than the expression of intentions or the short-term pressures to meet contractual obligations.

I have therefore commenced discussions with Railtrack to seek to agree with it an appropriate modification to its licence which would meet public interest concerns without prejudicing its effective management of a properly directed capital investment programme. I would then consult with interested parties to ensure that their concerns were being properly addressed. The new licence condition should safeguard and promote their interests as partners of Railtrack in a better railway, and their views will be particularly important.

Investment by BR over the ten years prior to privatisation is given in the table overleaf.

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### Capital spending on track & property infrastructure

£ million

	cash	1995/96 prices
1986/87	460	711
1987/88	539	791
1988/89	521	717
1989/90	661	850
1990/91	695	827
1991/92	862	966
1992/93	938	1,010
1993/94	825	863
1994/95	695	714
1995/96	780	780

*Note: figures to 1993/94 include spending on track renewal, signalling and track projects, electrification, telecoms, terminals (which includes some international spending), depots and other. The 1994/95 figure does not include any international spending and the 1995/96 figure is estimated.*

*Sources: HC Deb 15 Jan 1996 c402/3w, GDP deflator at 16 Apr 1996*

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### C. Privatisation

When railway privatisation was first discussed, there does not seem to have been any specific intention of transferring the track authority to the private sector. The first mention of the possibility of privatising it appears to be in October 1992 in the consultation document, *Franchising*. This commented: "It may be possible for track to be sold outright to the private sector," subject to the general right of access being preserved for passenger services and to the oversight of the Regulator.<sup>42</sup> The Secretary of State for Transport confirmed this point in a debate in January 1993 when he said "Tracking and signalling will remain in public ownership, although in the long term privatisation of that is not ruled out."<sup>43</sup> The following month the commitment to eventual privatisation had hardened and the following paragraph appeared in another consultation document:<sup>44</sup>

"2.1 Railtrack will be the owner and manager of railway infrastructure. It will for the present be in the public sector. But from the outset Railtrack will be independent of British Rail. In the longer term, the Government wishes to see the private sector owning as much as possible of the railway, and in the Railways Bill is seeking powers to allow the future privatisation of all infrastructure currently owned by British Rail."

There was no specific mention of Railtrack in the *Railways Bill* although by implication it is covered by Part II of the Bill which enabled the Secretary of State to restructure BR as he thought best. Nor did Railtrack feature much in debate in Committee although it was referred to from time to time. For example, clause 103 (later section 113) specifically stated that the principal objective of the Secretary of State was to ensure railway services were performed by the private sector. Reference was made to Railtrack and Roger Freeman said:<sup>45</sup>

"Finally, on infrastructure, Railtrack will initially be in the public sector, supported by the Government through capital financing and seeking to cover its revenue costs through revenue charges. We hope that ultimately the infrastructure itself can be transferred to the private sector, but I cannot forecast when that will be. It will be subject to substantial regulation. Bearing in mind the experience in the United States where, subject to regulation, utilities can be passed from the public to the private sector, I hope that we can follow suit."

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<sup>42</sup> Department of Transport consultation document *Franchising* October 1992

<sup>43</sup> HC Deb 12.1.93 c.790

<sup>44</sup> Department of Transport consultation document *Gaining Access to the Railway Network* February 1993

<sup>45</sup> Standing Committee B 16.3.93 c.783

The Railways Bill was eventually passed on 4 November 1993 and received Royal Assent the following day. No further legislation was needed to sell Railtrack to the private sector.

Railtrack was sold on 20 May 1996 at a UK price of 380p a share to be paid in two phases. The details were reported to Parliament by the then Secretary of State, Sir George Young:<sup>46</sup>

**Sir George Young:** I am pleased to report that the Government's UK public offer and international offers of Railtrack shares were successfully completed this morning when dealings in interim rights started on the London stock exchange.

As a result of bids received in the international offers, the price of the second instalment for all investors in the UK public order and the international offers were set at 190p per interim right.

Accordingly, the price for Railtrack interim rights purchased in the United Kingdom public offer was 380p per share, comprising 190p paid on successful application and 190p to be paid by 3 June 1997.

The price for interim rights purchased in the international offer of Railtrack shares was 390p per share, comprising 200p paid on successful application and 190p to be paid by 3 June 1997.

The Government offered for sale up to 434.8 million Railtrack shares in the UK public offer and the international offers.

Some 665,000 applications were received in the United Kingdom public offer for a total of some 391 million Railtrack shares. This represented some three times the shares initially expected to be sold in the UK public offer. In response to this demand, the Government increased the total number of shares allocated to the UK public offer to 210 million shares. At this level, the number of shares applied for in the UK public offer represented some 1.9 times the shares available.

Over 44 per cent. of applicants in the UK public offer received an allocation of shares. Over 97 per cent. of applicants had their applications met in full.

Some 180.4 million shares were allocated to bidders in the international offers. This number does not include any shares that SBC Warburg may have over-allotted in connection with the international offers. The extent of any such over-allotment will not be disclosed until later.

Individual investors bidding in the United Kingdom retail tender bid for some 136 million shares in Railtrack. Of these numbers, some 32.5 million shares were in respect of personal equity plan applications.

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<sup>46</sup>

PQ HC Deb 20.5.96 cc 35-6W

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In addition to the shares sold in the UK public offer and the international offers, SBC Warburg, as global co-ordinators for the sale, hold an option to acquire from the Secretary of State for Transport up to a further 65.2 million Railtrack shares for the purposes of meeting any over-allotment made by them in connection with the international offer. This option must be exercised by 14 June.

Total gross proceeds from the UK public order and international offers are expected to amount to some £1.67 billion, of which some £849 million is expected to be received in this financial year.

Total gross proceeds may be further increased by a maximum of £254 million to the extent that, if at all, the global co-ordinator, SBC Warburg, exercises its option to acquire further shares.

The costs of the sale will be disclosed to Parliament in due course.

Following the offers, and assuming the exercise in full of the option over Railtrack shares granted by the Secretary of State for Transport to SBC Warburg Ltd., the Secretary of State for Transport expects to hold not more than 1 per cent. of Railtrack group plc's issued share capital. These amounts comprise principally shares that may be needed to meet share bonus entitlement under the UK public offer.

The costs of the Railtrack sale were given by John Watts as follows:<sup>47</sup>

**Mr. Watts:** The costs to the Government of the Railtrack share offer are estimated to be as follows:

	<i>£ million</i>
Advisers fees and expenses	9.4
Marketing (including prospectus production and distribution)	4.9
Receiving bank and share shops	1.3
Overseas costs	2.1
Commissions	24.8
<b>Total (UK and overseas offer)</b>	<b>42.5</b>

These costs represent some 2.2 per cent. of the estimated total proceeds due from the sale of shares. The costs exclude stamp duty and VAT on services provided to the Government, which are not net costs to the Exchequer. There will be some further expenditure in respect of the instalment collection and the issue of bonus shares.

<sup>47</sup>

PQ HC Deb 4.6.96 c.429W



### Target Investment Limit

Under section 101 of the *Railways Act 1993* the government had to fix by order a limit on the government's shareholding within six months of any operating company ceasing to be a public sector railway company. This limit, known as the Target Investment Limit, may not exceed by more than 0.5 per cent the government's shareholding which existed at the time the order was made. From time to time the Secretary of State may fix a new TIL but any new limit must be lower than the one its replaces (s.101(4)). The *Railtrack Group plc (Target Investment Limit) Order 1996* stated the government's shareholding in Railtrack was 0.8% and set the TIL at 1.25%.<sup>48</sup>

Target investment limits are designed to constrain future governments from acquiring a larger shareholding in a privatised enterprise as primary legislation is required before a future government can increase its shareholding above the TIL. TILs are fairly common and go back to at least the privatisation of British Telecom.

The Government's debt holding was sold as two groups of bonds on 1 July 1996 for a total of £246.1 million.<sup>49</sup> According to a report in the *Economist*, the loan agreements between Railtrack and their bankers by which Railtrack has borrowed £2.35 billion for its working capital, include covenants giving the banks the right to terminate the loan and demand repayment if there is "a material change" in Railtrack's regulatory regime.<sup>50</sup>

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<sup>48</sup> SI 1996 No.2551

<sup>49</sup> PQ HC Deb 3.7.96 c. 453W

<sup>50</sup> *Economist* 1.6.96 "The Railtrack trap"

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### D. The Labour Party's View

The most detailed account of the Labour Party's policy towards Railtrack was included in the prospectus for the privatisation and gave increased power to the Rail Regulator. Clare Short wrote:<sup>51</sup>

Labour is confident that its programme for rail can be carried through using the power to regulate, the power of the public subsidy and the power to acquire ownership. We do not believe that the public will or should be willing to continue to provide an annual input of public funds of as much as £2 billion without proper public accountability, and a fair return on public investment.

Potential investors in Railtrack should be aware that a future Labour government will pursue its public interest objectives for the railway by the use of existing mechanisms in the regulatory and contractual arrangements which presently apply to Railtrack. ....

The powers of the Rail Regulator are central to the achievement of the objectives of a Labour Government. The Regulator will be the immediate instrument of change. Some changes will require to be made in relation to the duties, control and accountability of the Rail Regulator. These changes will be made by primary legislation early in the life of the Labour Government. In legislative terms, the changes are very simple indeed. In political and economic terms, they will be very important. The effect of the changes will be that the Rail Regulator will be made answerable to the Secretary of State to a far greater extent than is now the case. The powers of the Secretary of State to remove the Regulator from office will also be widened.

The degree of control exercisable by the Secretary of State will not prejudice the ability of the Regulator to take a long-term view of the affairs of the company and the industry as a whole. However, matters of public policy are properly the concern of an elected government, and the relationship between the Secretary of State and the Regulator will be adjusted to reflect that fact. Once that has happened, the new Labour government will have at its disposal substantial instruments for achieving its policy objectives for Railtrack.

These include the direction of Railtrack's investment spending, controls on its access charges, restrictions on disposals of its valuable land assets and the clawback of substantially all of its property disposal income. The powers will also be used to make Railtrack far more responsive to its dependent users including in matters of safety. They will be used to review - and if necessary alter - the economic arrangements which impose financial penalties on Railtrack for delays and cancellations, and in other areas. These are things which are at the heart of Railtrack's business. They may change substantially.

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<sup>51</sup> *Railtrack Share Offer Prospectus* May 1996

Railtrack's present obligations to invest in the network are not sufficient. The new Labour government will impose a greater degree of regulatory control on how Railtrack spends the money it receives from train operators, which are themselves financed by the taxpayer through the Franchising Director's budget.

The existing power of the Regulator would enable the following to be done:

- First, an appropriate amendment of Railtrack's network licence will be made to ensure that Railtrack carries out the investment assumptions made by the Regulator when setting track and station access charges. That obligation will be enforceable by the Regulator.
- Second, train operators will be encouraged to apply for changes to their track access contracts in order to impose on Railtrack contractually enforceable investment obligations. The Regulator will give the appropriate signals to train operators in relation to his willingness to approve the necessary changes. Under the existing mechanisms for amending track access contracts, these are changes which can be made against Railtrack's will.
- Third, changes will be made to the Access Conditions for track, stations and depots in order to impose on Railtrack greater obligations to invest in the railway assets of which it is custodian. Adjustments will also be made to the right of Railtrack to require those wishing to promote alterations of the network, stations and depots to make payments to Railtrack. These rule changes will be made using the existing powers of the Regulator unilaterally to effect changes.
- Fourth, the right of Railtrack to block changes which are in the interests of the industry and the public as a whole will be severely curtailed. Its right to retain extra profits from these changes will also be constrained to a significant extent.

There is no question of existing contracts being cancelled *against the wishes of the parties to them*. Rather, the mechanisms which the existing contracts *already provide for* will be used to their full potential.

The exercise of these powers will not involve the expenditure of public money - indeed transaction costs will be reduced as the fragmented industry is brought back together.

More recently Andrew Smith wrote to the *Financial Times*:<sup>52</sup>

Railtrack's £700m investment underspend seriously calls into question whether the present regulatory framework is up to the task of grappling with this powerful natural monopoly. Other than intricate and untested procedures to vary the network licence or track access

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<sup>52</sup> *Financial Times* 27.1.97 "Tougher regulation needed" (letter)

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conditions, the regulator's only real weapon on the investment front is the 2001 price review, as you suggest in your leader.

It is surely a weakness of the Conservative regulatory regime that we have to wait so long. The public is already paying Railtrack £2bn a year, through the franchising director and train operators. This is almost double the pre-privatisation public subsidy. People are entitled to see a proper programme of infrastructure and network improvement in return.

Labour stands ready to sharpen the regulatory framework, and to empower the regulator to enforce effectively Railtrack's investment and maintenance obligations. Labour will put right the weaknesses which the Conservatives built into the system at the expense of the long-term interests of the industry and the public. Taxpayers and users of the railway network have the right to expect no less.

## IV The TOCs and the Franchising Process

Association of Train Operating Companies (ATOC)  
CP 333  
3rd floor The Podium  
1 Eversholt Street  
London NW1 1DN  
0171-214 9941 (External Affairs: Paul Lawson)

Chairman: Chris Tibbits (after 23 July 1997, Ivor Warburton)  
Director-General: Major General James Gordon CBE

The names and addresses of all the passenger train operating companies and of the franchisees are given in the accompanying paper, *The Railway Passenger Companies* (Research Paper 97/72).

### A. The Franchising Process

#### 1. The Restructuring of the Passenger Services

The Conservative Government's intention was that all passenger services should eventually be provided by private sector operators either acting as franchisees or as independent train operators. The railway network would be divided into a number of franchises, which would provide the bulk of passenger services. Government subsidy would be payable via the Franchising Director to franchisees in respect of socially necessary services that might not otherwise be provided. Competition in the provision of passenger services would be facilitated by allowing independent train operators (ie non franchisee and not in receipt of subsidy) who could meet the necessary operational and safety standards, to have a right of access to the railway network.

After April 1994 the passenger railway was restructured so that domestic passenger train services could be offered to the private sector to run on a franchised basis. British Rail reorganised its passenger services into 25 different train operating units (TOUs). These TOUs

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were gradually incorporated as subsidiaries of British Rail and run as separate "shadow" businesses within British Rail. They paid access charges for the use of track and infrastructure, and rentals for stations and rolling stock, on the same basis as the franchisees do after franchising. Each operated under its own licence (granted by the Rail Regulator), its Railway Safety Case (approved by the Health and Safety Executive) and a track access agreement with Railtrack (approved by the Regulator). A wide range of station and depot access agreements (also approved by the Regulator), property leases and other contracts was also required by each train operating business. The objective was to provide financial and operational information and experience of how the business would operate under the new arrangements and to give potential franchisees financial and management information to assist them in tendering for the franchises.

Each of the 25 train operating companies was then offered for sale as a separate franchise. Private sector companies, management employee buy-outs and, if the Franchising Director agreed (in practice he never did), British Rail could bid for the franchises through a bidding process overseen by the Franchising Director. The successful bidder acquired the TOC outright for a fixed number of years. The first franchises, South West Trains and Great Western were awarded on 19 and 20 December 1995 and the first privatised services started operating on Sunday 4 February 1996. The last franchise to be agreed was ScotRail which started operating in private hands on 1 April 1997. The franchising process has become very much faster as it progressed, according to the previous Franchising Director for the following reasons:<sup>53</sup>

109. Could you say what particular changes have been made to the franchising process as a result of the lessons learned from letting the first three if any?

*(Mr Salmon)* It has got faster. We use advisers to a lesser extent. We use our own staff to a much greater extent, which I do not think we could have done in the early ones. We have a much simplified indicative bidding stage now and we therefore prepared a short list of bidders earlier in the process which saves the non-short-listed bidders expense. We have managed to simplify the due diligence investigations. Linklaters insist that we go through very elaborate verification of documents to comply with the Financial Services Act and we have been able to simplify that process and save ourselves considerable money while still meeting the requirements. We have essentially standard documentation now; for the first three franchises we had to develop the documentation from scratch. We now have a standard form of franchise agreement and the team selling that franchise then completes the schedules appropriate for that franchise. We will only revisit the standard form if there is something very special or different about that franchise.

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<sup>53</sup> Committee of Public Accounts *The OPRAF: the award of the first three passenger rail franchises* 15th report 1996-97 5 March 1997 HC 39 Q109

All train operating companies are members of the Association of Train Operating Companies. Its purpose is two-fold: to ensure the continuation of network benefits such as inter-available ticketing, impartial ticket retailing and railcards, and to act as a trade association, promoting the rail network and lobbying.

## **2. The Franchise Agreements**

A franchise is the right to run specified services within a specified area for a specified period of time, in return for the right to charge fares and, where appropriate, to receive support from the Franchising Director. Service standards are monitored by the Franchising Director throughout the duration of the franchise. Franchisees earn revenue primarily from fares and from subsidy. They generally lease stations from Railtrack and earn rental income by sub-letting parts of them, for example to retailers. Franchisees' main costs are the track access charges they pay to Railtrack, the costs of leasing stations and rolling stock and of employing staff. Franchisees may do light maintenance work on rolling stock themselves or contract it out to private sector companies. Heavy maintenance is normally procured for them by the rolling stock leasing companies according to the contracts between them.

The rights and obligations are specified in a franchise agreement between the Franchising Director and the train operator. Each franchise is negotiated individually with the Franchising Director. Each franchise contract is a legal document which could only be terminated with the agreement of both parties. If one side withdrew, it would be likely to lead to damages. Franchisees have to co-operate in certain central arrangements such as those necessary to provide through ticketing and revenue settlement between train operators. At the end of the franchise period the service will be available for the Franchising Director to pass to another body. There may be some assets belonging to the former franchisee to be negotiated but the franchise companies own very little other than the right to run a passenger service over a particular line.

All the franchises for the passenger train operating companies have been sold for periods of between seven and fifteen years. Except for Gatwick Express, all the train operating companies have made heavy losses in the past few years. Purchasers pay a nominal sum up-front and then receive subsidies from the Government although the level of support falls over the life of the franchise.

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Details of all the franchising agreements are available to the public via the Franchising Director's Register which can be seen at the OPRAF office. In addition the Franchising Director has entered on the Register the provisions of the Disabled, Senior, Young Persons and Staff travel schemes.

### **3. Passenger Service Requirements**

The Passenger Service Requirement sets out the minimum service levels for train services and is produced by the Franchising Director. Each PSR is specific to the franchise. The draft PSR is for consultation only and appears at about the same time as the pre-qualifying bids are invited. The final PSR is the one on which the prospective franchisees based their bids.

In January 1995 Dr. Mawhinney, then Secretary of State, explained how the PSR would work. He spoke of the two different requirements of the rail services: one to vary and develop existing services in response to demand and the other to offer reassurance to passengers through a guaranteed service.<sup>54</sup> Without the first, the benefits and opportunities offered by the introduction of private ownership, management and finance would be foregone. The second requirement is needed to ensure the Franchising Director can purchase, on behalf of passengers and the taxpayer, the appropriate level of service he judges to be necessary. These two objectives are reconciled through the PSR. At the time he stressed that the PSRs were not future timetables. These would be for the operators and Railtrack to develop. The PSR provided the guaranteed minimum safeguard. Where a service was not commercially attractive, the PSR was likely to provide for broadly the existing level of service but where the service was commercially attractive, the PSR was likely to be below the existing level to give the operator the opportunity to develop new and varied services within an assured framework.

Operators must submit to the Franchising Director details of their proposed timetable. The Franchising Director will ensure these are compliant with the PSR and will monitor the actual services run. The PSR is included as part of the franchise agreement. If operators do not deliver the proper timetable, the Franchising Director may impose penalties or, as a last resort, terminate the franchise agreement.

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<sup>54</sup> Department of Transport press notice 27.1.95 Speech by Dr. Mawhinney



Initially the Transport Secretary instructed OPRAF to use the service currently provided by BR as the basis for setting the passenger service requirement for the franchises but OPRAF also had a duty to develop alternative criteria and it is currently consulting on cost benefit criteria which could take into account service enhancements and reductions, and capital projects.<sup>55</sup> In the consultation paper the Franchising Director explained:

I have sought to draw on the wide experience of appraisal within the industry and to base my framework on best industry practice. These factors have led me to believe that Cost Benefit Analysis (CBA), which attempts to quantify in monetary terms as many of the costs and benefits of a proposal as possible, should form the central pillar of my appraisal framework.

Not all scheme impacts will be amenable to valuation and in some instances the CBA framework may need to include the consideration of such impacts. These are more difficult to appraise and this document discusses possible approaches to the treatment of costs and benefits which cannot readily be measured in monetary terms.

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<sup>55</sup> OPRAF *Appraisal of support for passenger rail services: a consultation paper* December 1996

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### B. Income

A franchisee's main sources of income are the subsidy it receives from the Government and the money it raises from fares.

#### 1. Subsidy payments

Prior to 31 March 1994 Passenger Services Obligation (PSO) grant was paid to British Rail by the Department of Transport to bridge the gap between total passenger revenues and the cost of maintaining services broadly at the level prevailing in 1974. The cost of maintaining lines used by passengers (more than 90% of the network) was essentially covered by the PSO grant. Freight was expected to pay its way operationally and to cover the cost of freight-only lines but was charged for the use of passenger lines on a marginal cost basis. InterCity routes ceased to benefit from PSO grant in 1988 and so from 1988-89 only Network South East and Regional Railways received the grant. Regional Railways also received money from the seven Passenger Transport Executives and small sums from other local authorities.

In addition to PSO and other grants such as the Level Crossing Grant, BR was able to borrow from the National Loans Fund to cover investment and losses on its unsubsidised businesses. The combined total of grant and loans in any year was subject to the External Finance Limit which was set each November by the Chancellor of the Exchequer. The actual total on a historic basis is known as the External Finance Requirement. In 1995 the Department of Transport gave the following information about the PSO to the Transport Committee:<sup>56</sup>

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<sup>56</sup> Transport Committee *Railway Finances* 5 July 1995 HC 206-I,II of 1994/95

**Government support to the Railways  
Public Service Obligation Grant<sup>1</sup>  
1985-86— 1994-95**

	£ million cash	£ million 94-95 prices
1985-86	820	1,274
1986-87	714	1,077
1987-88	794	1,137
1988-89	473	635
1989-90	501	629
1990-91	602	699
1991-92	892	975
1992-93	1,155	1,214
1993-94	930	949
1994-95 <sup>2</sup>	1,700	1,700

Notes:

1. Until 1 April 1994 BR received Public Service Obligation Grant to support certain passenger services. PSO grant is allowed under EC rules and subsidised loss making but socially desirable services on Regional Railways and Network South East (and Intercity up to 1987-88). It covered both capital spending (investment) and current spending (running costs).

2. From 1994-95, grant support to passenger services paid by the Franchising Director. The figure for 1994-95 is an estimate. Figures are not available for future years.

Source: Evidence p.4 Annex A and B1

The *Railways Act 1993* changed all this. Since 1 April 1994, Government support for passenger services has taken the form of grants paid by the Franchising Director and grant paid to Passenger Transport Authorities. These grants count as public expenditure within the total finance available to the railways. Level Crossing Grant continues, but is now paid to Railtrack. Government support for rail services provided by BR under agreements between Passenger Transport Executives continues to be paid under Section 20 of the *Transport Act 1968*.

Subsidies are paid to the franchising companies to secure the provision of socially necessary services. Subsidy payments for rail services are paid out of sums allocated by the Secretary

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of State for that purpose but OPRAF is responsible for making the payments on behalf of central government. The table on the next page shows the support the train operating companies received immediately prior to being sold and the projected subsidies in the future. Payments to the Franchising Director appear as negative amounts: Gatwick Express receives no subsidy and six others receive none by the end of the franchise. The years in the table relate to franchise years which are not necessarily the same as financial years.

The deals signed by the Franchising Director do seem to represent a significant cut in subsidy. Some observers believe this to be OPRAF's primary aim but the franchising process has also secured some significant improvements in train services and investment in rolling stock.<sup>57</sup> Where stock investment or extensive refurbishment is involved, OPRAF has been willing to extend the length of the franchise beyond the standard seven year term. An analysis of the franchises show an annual improvement required in the bottom line of the TOCs to meet their commitments to the franchising director varies between 1.2% and over 16%.<sup>58</sup> The pessimists fear that the savings will come from job cuts and service reductions: others believe the results will be achieved from steadily improving revenue and productivity from greater volumes handled more efficiently. Some management buyout bidders are believed to have been staggered by the assumption and pledges on which successful rivals have based their plans. This might reflect different attitudes to risk and market opportunity but some observers share the view that some of the new operators are likely to face a tough task in meeting their business targets. Save our Railways commissioned a report which found that under the most optimistic scenario five franchises would make a loss (WAGN, Cardiff, South Wales and West, Thameslink and Thames Trains).<sup>59</sup> The broad pattern is that those franchises which were let early in the process were let on terms which were too easy, largely due to lack of confidence in privatisation in the City. Later in the process, companies made unrealistic bids. Roger Salmon realised what was going to happen and asked the government for a claw back mechanism so that any excess profits could be regained but this was rejected.<sup>60</sup>

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<sup>57</sup> *Local Transport Today* 23.5.96 "New hands on the controls - but where will the private sector take the railways?"

<sup>58</sup> *Local Transport Today* 13.3.97 "Private train operators sign up to 7 year £1bn subsidy cut - will revenue growth or cost-cutting close the gap?"

<sup>59</sup> Save Our Railways *The prospects for the franchised railway* March 1997

<sup>60</sup> Committee of Public Accounts *The OPRAF: the award of the first three passenger rail franchises* 15th report 1996-97 5 March 1997 HC 39 Q89



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### 2. Fares

Fares are the other main source of income. Directions issued by the Secretary of State to the Franchising Director require him to control fares where he considers it necessary to avoid abuse of market power and to ensure that fares are reasonable. Overall the view of the Franchising Director is that where effective competition is provided by other forms of transport, market forces are more efficient than regulation in keeping fares at a reasonable level. Where he does decide to regulate, the provisions are contained in the franchise agreement and he will specify the maximum rate of a fare rise which may take place during the term of the franchise.

A joint announcement was made by then Secretary of State, Dr. Mawhinney, and the Franchising Director on 15 May 1995 giving details of the policy on fares regulation. From 1 January 1996, increases in capped fares will not be permitted to be more than the RPI from the 1995 base price. For the four years from 1 January 1999, the price cap will be RPI minus one. Unless the Franchising Director decides otherwise, the price cap from 1 January 2003 will continue to be RPI minus one.

Franchisees may not change the terms and conditions of the statutorily protected Young Person's, Senior and Disabled Person's Railcards. The Family Railcard and Network Card will continue. Operators cannot withdraw from the latter two schemes without the agreement of at least one third of the franchisees.

## C. Competition

The Conservative Government believed the absence of competition in the railway industry was a major problem. It wanted competing train companies outbidding each other to provide quicker and cheaper services. In fact franchisees were assured by the Regulator that new operators would not be allowed to compete in the first four years and there will be restrictions until 2002. The Regulator will review the competitive regime in 2001. However a recent ruling by the Rail Regulator showed that he is prepared to promote new services. He is allowing the company South Wales and West to launch new rail services despite an earlier decision by the arbitration committee of ATOC which had come down in favour of the rival company, Virgin Cross Country, and ruled against their introduction.<sup>61</sup>

The bus industry is now dominated by relatively few large companies and it is possible that in future years the railways could be the same. What has in fact caused more concern than merges between the train operating companies is the ownership of a rail service and a competing bus service by the same company. Any competition issues raised by a rail franchise bid are for the Franchising Director, the Rail Regulator and the Director General of Fair Trading. The *Railways Act 1993* confers on the Rail Regulator the functions of the Director General of Fair Trading with respect to monopoly situations or anti-competitive practices relating to the supply of rail services. Qualifying mergers would be investigated by the OFT under the *Fair Trading Act 1973*. The President of the Board of Trade can decide, whatever the advice of the OFT, to refer a merger to the Mergers and Monopolies Commission as Margaret Beckett did on 22 May 1997 with National Express.

The companies awarded the rail passenger franchises are listed overleaf:

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<sup>61</sup> *Financial Times* 10.5.97 "Rail regulator signals support for new routes"

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<b>Company</b>	<b>Franchise</b>
FirstBus plc	Great Eastern Railway
Connex Rail Ltd	Connex South Central Connex South Eastern
GB Railways Ltd	Anglia
GNER Ltd	Great North Eastern Railway
GOVIA Ltd	Thameslink Rail
Great Western Holdings Ltd	Great Western Regional Railways Great Western Trains
M40 Trains Ltd	Chiltern Railways
MTL Trust Holdings Ltd	Merseyrail Electrics Regional Railways North East
National Express Group plc	Central Trains Gatwick Express Midland Main Line North London Railways Scotrail
Prism Rail plc	Cardiff Railway LTS Rail South Wales & West Railway West Anglia Great Northern Railway
Stagecoach Holdings plc	South West Trains Island Line
Victory Railway Holdings Ltd	Thames Trains
Virgin Group Ltd	Cross Country Trains West Coast Trains



So far the only franchises which have attracted the attention of the OFT have been the acquisition by National Express of Midland Mainline and of Scotrail. The first was referred to the MMC on 30 July 1996 not because the company already had a train franchise but because it operated express coach services in the West Midlands over some of the same routes as the railway it was acquiring. The MMC found that it could be expected to operate against the public interest<sup>62</sup> and Ian Lang, then the President of the Board of Trade decided that National Express should be required to give certain undertakings relating to coach fares and level of services.<sup>63</sup> The Director General of Fair Trading advised Margaret Beckett, the present President of the Board of Trade, to accept undertakings from National Express to divest its coach company, Scottish Citylink Coaches, in lieu of a reference to the MMC following its acquisition of ScotRail. She decided to refer the acquisition of both companies to the MMC.<sup>64</sup> It is to report by 19 September 1997.

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<sup>62</sup> MMC *National Express Group and Midland Main Line: a report on the merger situation* December 1996 Cm 3495

<sup>63</sup> DTI press notice 20.12.96 "National Express required to give fares and service undertakings"

<sup>64</sup> DTI press notice 22.5.97 "Margaret Beckett announces reference to MMC of certain National Express acquisitions of rail franchises"

## **V British Rail**

British Rail Board  
Euston House  
24 Eversholt Street  
London NW1 1DZ  
0171-928 5151

Chairman: John Welsby

The British Rail Board now employs about 170 people and has only a very few businesses still in its hands. These include Rail Direct, a telephone company which was divided into three geographical companies before the election, one of which was sold; a BR property company set up to sell the assets of the BR Property Board; and RDDs which holds all the designs of the rolling stock. Any further disposals will have to be approved by the Government and the British Rail Board can only be wound up by an Act of Parliament.

The responsibilities of the British Rail Board continue to include the British Transport Police which is governed by a committee within the BRB. Primary legislation will be needed to establish an independent police board.

The costs of privatising BR were given in reply to a PQ in July 1996 as more than £450 million. According to the PQ this was the sum spent on lawyers, accountants and consultants during the privatisation of British Rail.<sup>65</sup> The proceeds of the sales of the BR companies made to November 1996 were given in a PQ as follows:<sup>66</sup>

### **Rail Privatisation**

**Mr. Lidington:** To ask the Secretary of State for Transport if he will list the names of purchasers, prices paid and dates of sale for those companies previously owned by British Rail which have been sold, pursuant to the Railways Act 1993.

**Mr. Watts:** The table summarises sales of those companies previously owned by British Rail which have been sold pursuant to the Railways Act 1993. The table updates all sales announced previously. Where appropriate, gross proceeds are subject to post completion adjustments.

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<sup>65</sup> PQ HC Deb 22.7.96 c.14W

<sup>66</sup> PQ HC Deb 27.11.96 cc 273-6W

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In addition, the sale of Railtrack plc will realise gross proceeds of £1.93 billion. Including this, and dividends of some £800 million and £50 million paid before the sales of the rolling stock leasing companies and the BR infrastructure service companies respectively, total gross proceeds are £5.28 billion.

<i>Company</i>	<i>Purchaser</i>	<i>Gross proceeds £ million</i>	<i>Sale date</i>
<i>BR Infrastructure</i>	<i>Services Design Offices</i>		
DCU Birmingham Ltd.	Owen Williams Railways Ltd. (a subsidiary of Owen Williams Consulting Engineers)	1.0	25 July 1995
IDG Glasgow Ltd.	Scott Wilson Kirkpatrick (a subsidiary of SWK Holdings)	0.6	18 August 1995
Mainline Swindon Ltd.	Scott Wilson Kirkpatrick (a subsidiary of SWK Holdings)	0.6	18 August 1995
BPE Mechanical and Electrical Engineering Consultancy Ltd.	James Scott BPE (a subsidiary of AMEC Group plc)	*0.24	15 September 1995
Civil Engineering Design Group, York Ltd.	British Steel plc	*2.9	15 September 1995
CEDAC London Ltd.	W S Atkins	3.6	15 December 1995
Powertrack Engineering Co. Ltd.	W S Atkins	3.6	15 December 1995

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<i>BR Infrastructure</i>	<i>Service Companies</i>		
Scotland Track Renewals Co. Ltd.	Relayfast Ltd. (MBO funded by Hambro European Ventures Ltd.)	*10.7	8 February 1996
Scotland Infrastructure Maintenance Co. Ltd.	TrackAction Ltd. (MBO)	*27.5	14 February 1996
Central Track Renewals Co.Ltd. Ltd.	Tarmac Construction	*2.9	29 February 1996
Western Infrastructure Maintenance Co. Ltd.	Amey Railways Ltd. (MBO)	*15	7 March 1996 (exchanged) 5 March 1996 (completed)
Eastern Track Renewals Co. Ltd.	Fastline Rail Services Ltd.	*11	15 March 1996
Eastern Infrastructure Maintenance Co. Ltd.	Balfour Beatty Ltd.	<sup>1</sup> *29.7	2 April 1996
South East Infrastructure Maintenance Co. Ltd.	Broomco (919) Ltd. (an MBO/Balfour Beatty joint venture)	*20.3	2 April 1996
Southern Track Renewals Co. Ltd.	Balfour Beatty Ltd.	*20.3	2 April 1996
South West Infrastructure Maintenance Co. Ltd.	AMEC plc	*11	18 April 1996
Central Infrastructure	GT Railway Maintenance Ltd. (a	*18.8	7 March 1996 (exchanged)

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Maintenance Co. Ltd.	joint venture between GEC Alsthom Ltd. and Tarmac Construction Ltd.)		9 April 1996 (completed)
Northern Infrastructure Maintenance Co. Ltd.	Jarvis plc	<sup>2</sup> *9	21 May 1996 (exchanged) 8 June 1996 (completed)
Northern Track Renewals Co. Ltd.	Fastline Group Ltd.	*4.6	23 May 1996
Western Track Renewals Co. Ltd.	Relayfast Ltd.	*8.5	23 July 1996
<i>BR Maintenance Ltd.</i> Swindon Electronics Services Centre Ltd.	ABB Customer Support Services Ltd.	*19.46	13 April 1995
Chart Leacon Rail Maintenance Ltd.	ABB Customer Support Services Ltd.	*19.46	5 June 1995
Doncaster Rail Maintenance Ltd.	ABB Customer Support Services Ltd.	*19.46	5 June 1995
Ilford Rail Maintenance Ltd.	ABB Customer Support Services Ltd.	*19.46	5 June 1995
Glasgow Rail Maintenance Ltd.	Railcare (a joint venture of Babcock International Group plc and Siemens plc)	*5.7	6 June 1995
Wolverton Rail Maintenance Ltd.	Railcare (a joint venture of Babcock International Group plc and Siemens plc)	*5.7	6 June 1995
Eastleigh Rail Maintenance Ltd.	Wessex Traincare Ltd. (MBO)	*7.15	7 June 1995

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<i>BR Central Services</i> Meldon Quarry Ltd.	ECC Construction Materials Ltd.	4.5	February 1994
Special Trains Unit	Waterman Railways	1.25	31 March 1995
Baileyfield Switch and Crossings Works	VAE Baileyfield Ltd., (a subsidiary of VAE Aktiengesellschaft of Vienna)	*1.13	7 July 1995
Ditton Timber Treatment Works	PTG Holdings (a subsidiary of The Phoenix Timber Group plc)	*0.47	1 September 1995
Quality and Safety Services Ltd.	Ingleby (805) Ltd. (MBO)	0.32	10 November 1995
Railways Occupational Health Ltd.	Occupational Health Care plc	0.7	30 November 1995
Signalling Control UK Ltd.	Westinghouse Brake and Signal Holdings Ltd. (a subsidiary of BTR)	39.5	1 December 1995
Interlogic Control Engineering Ltd	ABB Daimler-Benz Transportation (Signal) Ltd.	17.5	4 January 1996
Castleton (Long Welded Rail and Track) Works	British Steel plc	0.2	15 March 1996
The engineering link Ltd.	MBO	1.0	19 March 1996
Interfleet Technology Ltd.	Broomco (909) Ltd. (MBO)	0.69	22 March 1996
College of Railway(MBO)Tech	Advicepart Ltd.	0.6	29 March 1996

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Network Train Engineering Services Ltd.	W S Atkins (Consultants) Ltd.	0.8	1 April 1996
BR Projects Ltd.	Addspice Ltd. (MBO)	1.25	26 June 1996
<i>BR Freight and Parcels</i>			
Red Star Parcels Ltd.	MBO	<sup>30</sup>	5 September 1995
Rail express systems Ltd.	North and South Railways (consortium led by Wisconsin Central Ltd.) but now forms part of English, Welsh and Scottish Railway	24.2	9 December 1995
Transrail Freight Ltd.	North and South Railways (consortium led by Wisconsin Central Ltd.) but now forms part of English, Welsh and Scottish Railway	225.15	24 February 1996
Mainline Freight Ltd.	North and South Railways (consortium led by Wisconsin Central Ltd.) but now forms part of English, Welsh and Scottish Railway	225.15	24 February 1996
Loadhaul Ltd.	North and South Railways (consortium led by Wisconsin Central Ltd.) but now forms part of English, Welsh and Scottish Railway	225.15	24 February 1996
Freightliner (1995) Ltd.	MBO now known as Freightliners Ltd.	5.39	25 May 1996

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### *Rolling Stock Leasing Companies*

Porterbrook Leasing Co. Ltd.	Consortium led by management team with funds managed by Charterhouse Development Capital	*528	8 January 1996
Angel Train Contracts Ltd.	GRS Holdings (including Prideaux and Associates, Babcock and Brown, and Nomura International)	*696	17 January 1996
Eversholt Leasing Ltd.	Eversholt Holdings, a consortium led by Candover Partners Ltd. together with the management team, and including Electra Fleming Ltd. and the Royal Bank of Scotland	<sup>4</sup> *598	2 February 1996
<i>Other companies</i>			
OBS Services Ltd.	European Rail Catering Company Ltd. (MBO)	*11.15	3 October 1995
British Rail Telecommunications plc	Racal Electronics plc	*132.75	21 December 1995

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<sup>1</sup> This figure includes deferred amounts.

<sup>2</sup> This figure includes deferred amounts.

<sup>3</sup> £2.25 million was made available to the purchaser to reflect movements in the value of fixed assets, reduced gross profits and other changes from the basis of his final bid.

<sup>4</sup> Includes £80 million deferred consideration in respect of Networker vehicles. Details of the sales marked with an "\*" have been previously announced.



## VI Rail Users' Consultative Committees

Central Rail Users Consultative Committee  
Clements House  
14-18 Gresham Street  
London EC2V 7NL  
0171-505 9090

Chairman: David Bertram  
Secretary: Michael Patterson

The local offices are listed at the end of this section.

The Central Rail Users Consultative Committee and the eight Rail Users' Consultative Committees were set up under the *Railways Act 1993* section 3. Their duties are set out in sections 76-79 and are basically to protect the interests of the users of the services and facilities provided on the rail network. The RUCCs are appointed and funded by the Regulator. The CRUCC co-ordinates the work of the RUCCs and deals with issues affecting rail users generally.

The committees take up rail users' complaints when further help is needed to obtain a satisfactory response from operators. The Regulator can refer matters to the RUCCs for investigation and the RUCCs can ask the Regulator to use his powers to take action where necessary. The Franchising Director can also ask RUCCs to report on the extent to which franchises standards are being attained by train and station operators. They have a special responsibility for assessing the effect on users if stations or lines are proposed for closure. They have to report to the Regulator on hardship caused by closure and may make recommendations to lessen the impact of any proposed closure. They also regularly discuss fares, quality of service and policy issues affecting their area.

Locally the RUCC is keeping watch on punctuality and reliability of train services, timetable changes, overcrowding, cleanliness, fares, quality and design of trains, tickets (both purchase facilities and ticket inspection), station facilities, and provision of information at stations, on trains and by telephone.



London:	LRPC Clements House 14-18 Gresham Street London EC2V 7PR 0171-505 9000
North Eastern England:	Hilary House 16 St Saviour's Place York YO1 2PL 01904 625615
North Western England:	Room 112, Boulton House 17-21 Chorlton Street Manchester M1 3HY 0161-228 6247
The Midlands:	77 Paradise Circus Queensway Birmingham B1 2DT 0121-212 2133
Eastern England:	Crescent House 46 Priestgate Peterborough PE1 1LF 01733 312188
Southern England:	4th floor, 35 Old Queen Street London SW1 9JA 0171-222 1391
Western England:	13th floor, Tower House Fairfax Street Bristol BS1 3BN 0117 926 5703

## VII The Rolling Stock Companies

### A. The sale of the companies

The Conservative Government's proposals for privatising the provision of passenger rolling stock were set out in January 1993 in *Railway Privatisation: Passenger Rolling Stock*.<sup>67</sup> Most of the privatisation changes were introduced on 1 April 1994, including the establishment of three rolling stock companies - Angel Trains, Eversholt and Porterbrook - to lease rolling stock to the new railway operators. At the time the BR passenger fleet consisted of 11,000 vehicles ranging from brand new locomotives and coaches to those that were nearing the end of their economic life. Each company was given a portfolio of a similar mix of stock with a similar age profile. The new ROSCOs, as they came to be called, would be responsible for acquiring new trains when needed. They were not to have in house maintenance capabilities but were responsible for specifying all maintenance and for contracting with maintenance suppliers for all heavy maintenance and refurbishment. The idea was that they should offer operating, rather than finance, leases which means they carried most of the risk of holding and maintaining the rolling stock.

In 1993 the BR passenger fleet was said to have a book value of some £2 billion.<sup>68</sup> The proposed sale of the three companies was announced in March 1995<sup>69</sup> and bids for the purchase of these companies were invited in May 1995. Details of the contracts for the sales were announced on 9 November 1995<sup>70</sup> and were completed in early 1996. Eversholt and Porterbrook were acquired by their managements with development capital backing - though Porterbrook has since been bought by Stagecoach, the bus group and Eversholt by Forward Trust, a subsidiary of HSBC - while Angel was bought by an external management team with the financial backing of Nomura International.

The actual sale price payable by the purchasers was approximately £1.8 billion but some £800 million was also paid to the Government in cash as dividends from the ROSCOs before the

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<sup>67</sup> Department of Transport January 1993

<sup>68</sup> Department of Transport press notice 29.4.93 "New companies to manage passenger rolling stock after railways privatisation"

<sup>69</sup> Department of Transport press notice 20.3.95 "Mawhinney announces details of rolling stock sale"

<sup>70</sup> Department of Transport press notice 9.11.95 "Britain creates new train leasing market with £1.8 million sale"

sale. The Government therefore maintained that total proceeds from the sale exceeded £2.5 billion. Perhaps not surprisingly the Opposition parties accused the Government of selling the companies "on the cheap".<sup>71</sup> Perhaps rather more surprisingly Roger Ford, the editor of *Rail Privatisation News*, who is not known as a fan of privatisation, was quoted as saying "This has to be a good deal for the taxpayer. We have got rid of a fleet of trains, two thirds of which are geriatric, to the private sector for not a bad price."<sup>72</sup>

The three ROSCOs are now worth around 60 per cent more than the Government sold them for. The *Independent on Sunday* commented at the time of the sale of Eversholt to Forward Trust:<sup>73</sup>

The .. profit on the sale, little more than a year after privatisation, also made clear to the world at large - as if we needed to be reminded of it again - that government sell-offs are invariably underpriced. .. The original underpricing can easily be explained. The Government rushed the sales timetable for political reasons, the Labour Party spent a year rubbishing the privatisation, and the City talked the price down. It is tempting to say good luck to those who were smart enough to pick a winner under the noses of the Transport Department and the Treasury. There was, nevertheless, another side to this story of windfall rewards. It is also a rare glimpse of the techniques used by venture capitalists, who are expert in structuring the finances of the companies they back to make substantial profits for the management and for themselves. The ROSCOs have been made out to be high-risk projects that deserve high rewards. But this is hardly an accurate description. Their revenues are essentially guaranteed by contracts with train-operating companies that last until well past the end of the decade. The train-operating companies are, in turn, subsidised by the Government. Even the risk that some of the franchises will go bust is largely underwritten by the Treasury, which is obliged to make up 80 per cent of the revenues lost by the Roscos in the event of a default by a customer. With guaranteed cash flows in their early years, the main uncertainty about the value of the Roscos was how much new business would be available after the contracts run out. ...

The ROSCOs are not subject to regulation under the *Railways Act 1993*, although they are subject to general competition law. In 1995 Brian Wilson, then the Labour Party's transport spokesman said a Labour Government would bring the companies under the control of the Rail Regulator in order to guarantee that the much needed investment in rolling stock would be delivered.<sup>74</sup>

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<sup>71</sup> *Guardian* 10.11.95 "BR rolling stock sold "on cheap" for £2.5bn"

<sup>72</sup> *Times* 10.11.95 "BR's train fleet sold for £1.8bn"

<sup>73</sup> *Independent on Sunday* 23.2.97 "In for a penny and out for a pound"

<sup>74</sup> PQ HC Deb 23.10.95

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### B. The Rolling Stock Companies

#### 1. Porterbrook Leasing

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Porterbrook was acquired for £527 million in January 1996 by a consortium led by its management team. Management and employees shared in up to 20 per cent of the equity share capital through subscription for shares and option schemes.

In July 1996, soon after it had bought the franchise for South West Trains, Stagecoach announced that it was to buy Porterbrook Leasing for £825 million. Brian Souter, the chairman of Stagecoach, was reported as saying he could reduce Porterbrook's spending on maintenance by up to 30 per cent and he foresaw further savings through bulk purchases of components, which are shared by some of Stagecoach's buses and trains.<sup>75</sup> There was media outcry when it was calculated that the Porterbrook directors and city advisers would make vast sums from their shares. The Managing Director was reported to have made £30 million in the seven months since the buy-out.<sup>76</sup>

The Rail Regulator immediately announced a review of the competition issues and warned the bid might be referred to the MMC.<sup>77</sup> He said the takeover raised important public interest issues relating to investment in rolling stock, future competition in rolling stock services and in passenger services. On 18 October 1996 John Taylor, then Minister for Corporate and Consumer Affairs, announced that he intended to refer the merger to the MMC unless suitable legally binding undertakings were received from Stagecoach. These should cover the six principles of non-discrimination, confidentiality, provision of information, cross-subsidy, co-operation with train operating companies and separate reports and accounting. The DGFT set out the following possible adverse effects of the merger:

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<sup>75</sup> *Financial Times* 1.8.96 "Stagecoach bids for rail stock leasing group"

<sup>76</sup> *Sunday Times* 4.8.96 "The Great Train Robbery"

<sup>77</sup> ORR press notice 31.7.96 "Rail Regulator to consult on proposed merger"

Although the merger has not involved any loss of competition at the horizontal level, the vertical link which arises from ownership both of a rolling stock company and train operating companies does give rise to concern. Accordingly, I consider that adverse effects arise both now, at the initial stage of passenger train franchising, and at the later stages of franchise renewal and open access operation. While I recognise the argument that it may not be in the commercial interests of the new group as a whole to offer Porterbrook's customers terms which are materially dissimilar to those given to Stagecoach train operating companies (TOCs), the vertical link creates both the opportunity and incentive for the new group to operate to the detriment of the interests of potential or actual competitors and, ultimately, to rail users. Accordingly, I consider that the merger may be expected to lead to higher levels of subsidy and rail fares and to a reduction in the quality, availability and frequency of rail services through the following effects:-

- (i) the possibility of discrimination by Porterbrook against actual or potential competitors to Stagecoach TOCs; and by Stagecoach TOCs against competitors of Porterbrook;
- (ii) the possibility that information obtained either by Porterbrook or by Stagecoach TOCs, as the case may be, may be obtained and misused to the detriment of potential or actual competitors;
- (iii) the possibility that cross-subsidisation may occur between different members of the Stagecoach Group;
- (iv) the possibility that Porterbrook will not co-operate with potential or actual competitors of Stagecoach TOCs, thus giving Stagecoach TOCs an improper advantage both at the stage of bidding for franchises and in protecting themselves from open-access entry once that becomes possible.

On 23 December 1996 John Taylor announced that he had accepted satisfactory undertakings from Stagecoach and that the acquisition would not be referred to the MMC.<sup>78</sup> His decision was in accordance with the advice he had received from the Director General of Fair Trading and would be reviewed after five years. The original sale is now being investigated by the National Audit Office.

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<sup>78</sup> DTI press notice 23.12.96 "Stagecoach/Porterbrook merger: John Taylor accepts undertakings from Stagecoach"

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### 2. Eversholt Leasing

1 Eversholt Street  
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Eversholt was acquired for £580 million in February 1996 by a consortium of institutional investors. It was reported on 19 February 1997 that the company had been sold to Forward Trust, the leasing subsidiary of HSBC for £788 million.<sup>79</sup> Forward Trust already has a small involvement in rail, including a £200m financing for new Northern Line trains for London Underground.

### 3. Angel Train Contracts (ATC)

14 Pentonville Road  
London N1 9JZ  
0171-728 0500

ATC was acquired for £672.5 million in January 1996 by GRS Holding Company Limited. This was a consortium comprising Prideaux & Associates, the leading railway consultancy company chaired by Dr. John Prideaux; Babcock & Brown, the specialist leasing, asset and finance company; and Nomura International plc, the UK based wholly owned subsidiary of Nomura Securities Co. Ltd.

The following article from the *Financial Times* looked at the future of the rolling stock companies:<sup>80</sup>

The three rolling stock leasing companies formed on the break-up of British Rail are beginning to steam ahead in the supply of new and modernised trains for the privatised train operating companies. Eversholt Leasing this week placed a £30m order with Canadian-owned Bombardier Prorail to refurbish 380 passenger coaches for four train operators and a £12m order with the international group ABB Daimler-Benz (Adtranz) for the modernisation of 64 three-car electric trains.

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<sup>79</sup> *Financial Times* 20.2.97 "Emerald and Hyacinth face the future"

<sup>80</sup> *Financial Times* 9 November 1996 "Rolling stock groups look further down line"



Improving old trains and buying new ones allows the roscos to increase their leasing charges. Because they own large fleets leased to several train operators they are able to negotiate terms - for new trains of refurbishment - which should be better than those which can be achieved by any individual train operator. They are also putting pressure on the privatised railway maintenance depots to improve their performance. The new rail leasing sector has also demanded financial innovation. Nomura has replaced Angel's conventional debt with two asset-backed bond issues, a process which required an intensive campaign to inform investors about the rolling stock industry and the new privatised railway structure because rail assets had never been funded this way.

In spite of all this activity, a question mark hangs over the future of the roscos. They were set up to make the train franchises more attractive - bidders did not need to buy expensive rolling stock - and to establish organisations with a long-term interest in looking after BR's trains. But the train operators are under no obligation to lease their trains from the roscos once the four to 10-year leases they have inherited run out. They could turn to other leasing companies or go direct to the manufacturers. Adtranz says that the manufacturers are perfectly capable of arranging financial packages with independent leasing companies and it expects the next new train deal to be won by a manufacturer. GEC-Alsthom has unveiled plans for a rail leasing subsidiary called Juniper. Mr Jukes [Managing Director of Eversholt] believes that the manufacturers will go into leasing if that is the only way of selling their trains but he thinks the roscos will still retain an advantage. 'We ought to be able to compete because we can take on the residual risk (the value left in an asset once the lease expires) and because we are closer to the train operators.' He also believes that the roscos will be uniquely placed to take over the complete management of train fleets to agreed performance targets. The role of the roscos will be to specify new trains and manage maintenance, leaving the operators to concentrate on satisfying their passengers,' he says.

But the roscos have been set tough financial targets by the government and must reduce their own costs by 3 per cent a year over the next few years. Even when new train orders come through, the train operators are expecting to make significant price savings, putting pressure on both manufacturers and the roscos.

## **VIII Freight**

Rail freight has been in decline since the end of the First World War, with road overtaking rail in the mid 1950s. The trends suggest that, even taking account of the new opportunities offered by the channel tunnel, total volumes are unlikely to increase without a significant improvement in rail's efficiency compared to road.

In 1994-95 rail moved 6 per cent of freight handled in the UK and represented about a quarter of British Rail's turnover. British Rail's freight business was split into two operating units, Trainload Freight (TLF) and Railfreight Distribution (RfD). The vast majority of rail freight business - over 80% of total revenue - was concentrated in the "trainload" markets. Trainload services are dedicated to individual customers and typically operate under contract. Customers send full trainloads of commodities, principally coal, metals, petroleum and aggregates, from private siding to private siding in a single train movement. Railfreight Distribution specialised in container traffic and distribution of finished products.

### **A. Privatisation proposals**

The Conservative Government wanted to see the long running decline in rail's share of the freight market checked and reversed and believed the keys were privatisation and liberalisation of railfreight services, freeing the way for innovative marketing and pricing strategies. Its proposals for the privatisation of rail freight were outlined in 1993 in *Rail Freight Privatisation*.<sup>81</sup> The key proposals were:

- to split BR's existing trainload businesses into three geographical companies for transfer to private ownership;
- to establish the channel tunnel freight business on a sound commercial footing with the aim of privatisation as soon as possible;
- to invite proposals from the private sector on the future of the Freightliner domestic and deep-sea container business;
- to privatise Rail Express Systems which carried Royal Mail letter traffic as soon as was practicable.

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<sup>81</sup> Department of Transport *Rail Freight Privatisation: the government's proposals* 1993

The Government proposed that BR restructure the **trainload operations** into three companies of comparable size based on geographical regions. However when it came to sell the companies, bidders preferred to buy all three as an entity and on 24 February 1996 it was announced that the three companies were to be sold to North and South Railways (later renamed English, Welsh and Scottish (EWS)), a consortium led by the US Wisconsin Central Transportation Corporation.

**Railfreight Distribution** was the smaller of British Rail's two freight operating units, and had a more complex structure than the trainload businesses. It did not lend itself to the relatively straightforward approach to privatisation outlined for the domestic trainload business. The domestic trainload part of RfD (about 25% of RfD's total turnover) was merged with the trainload freight companies and sold to EWS. The remainder of RfD could be considered in two parts: Freightliner and Channel Tunnel.

Freightliner made up to 62% of the volume of freight carried in 1991/92 by RfD. As a train operation, Freightliner is more complex than the trainload services described earlier. It offers a network of train services carrying containers between major ports and inland terminals which are located in or near major centres of industry and population. Its main customers are the deep sea shipping lines and freight forwarders. This form of operation is known as "intermodal" as it relies on road transport to convey the containers between the rail terminal and a customer's facilities. Freightliner owns a road haulage fleet which in 1992/93 covered 9.1 million lorry miles. In the same period train miles amounted to some 4.3 million. In addition Freightliner operates eight inland trans-shipment terminals. Freightliner's turnover was about £78 million in 1993 but it still lost nearly £40 million. It benefitted from the new rules introduced in February 1994 to allow 44 tonne lorries to travel to and from rail terminals.

Freightliner was put on the market in May 1994 but withdrawn in July 1995 for the business to be restructured. It was separated from RfD and set up as a freight company in its own right with its own terminals and handling equipment, rail and road vehicles, depots and staff. It was offered for sale again in December 1995 and on 29 May 1996 it was announced that the company had been sold to a group of former managers. The purchaser was Management Consortium Bid Ltd (MCB), which has equity backing from 3i and Electra. In October 1995 it was announced that the winning bidder would receive a five-year track access subsidy of between £10 and £20 million a year to encourage the use of rail freight instead of road transport.

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Railfreight Distribution operates around 160 international freight trains a week through the Channel Tunnel, carrying containers, swap body traffic, cars and conventional freight. The opening of the channel tunnel for freight on 27 June 1994 was seen as a tremendous opportunity to compete in the European market. BR developed extensive joint ventures and co-operative arrangements with European railways and railway organisations as well as private sector partners, covering for example train operations, terminal provision, secondary distribution and retailing. The through European services benefit from much longer distances and also from time savings in respect of the crossing. RfD does seem to have achieved an increase in the volumes shipped through the tunnel although this has not led to increased profits. In British Rail's 1995/96 annual report it was announced that BR had written off £500 million of its investment in the freight company (£300 million in rolling stock and £200 million to cover the minimum usage charge of £20 million payable to Eurotunnel for the next ten years). The British Rail Board, in consultation with the Department of Transport, drew up a programme for the disposal of RfD in the latter part of 1996 and in March 1997 it was announced it had been sold to EWS although it is still subject to clearance by the EC.

The value of the sales were summarised in the following PQ:<sup>82</sup>

**Mrs. Dunwoody:** To ask the Secretary of State for Transport if he will list for each of the former British Railfreight companies (a) the estimated value of the assets, (b) the sale price, (c) the amount of subsidy to be paid to the purchaser and (d) the length of the subsidy period.

**Mr. Watts:** The answers are as follows:

(a) The price for each sale reflects the value to the purchaser of the assets and liabilities of the company.

(b) The gross proceeds for each of the former BR freight companies were as follows:

Rail Express Systems Ltd.: £24.2 million;

Loadhaul Ltd., Mainline Freight Ltd. and Transrail Freight Ltd.: £225.15 million;

Freightliner (1995) Ltd.: £5.39 million.

(c) and (d) None of those sales involves subsidy. Freightliner is receiving track access grant of up to £75 million over five years.

The sale of Railfreight Distribution has yet to be completed.

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<sup>82</sup>

PQ HC Deb 20.3.97 c.766W

## Track Access Charges

In December 1994 the Office of the Rail Regulator published a policy statement setting out the principles and processes the Regulator was likely to adopt in approving freight track access agreements.<sup>83</sup> In respect of the level of the charges, the Regulator decided charges to freight and open-access passenger operators should be negotiated directly and reflect the value to operators of using rail infrastructure and should recover at least the avoidable costs which they generate.<sup>84</sup>

The Labour Party announced in its 1996 policy paper that it would encourage the more intensive use of the rail network. It said it would shift the rail subsidy from the operators to the infrastructure and so charges for using the rail network would become comparable with those using the road network.<sup>85</sup>

## B. Liberalisation

The *Railways Act 1993* abolished BR's statutory monopoly of railfreight services. Two companies - National Power and Direct Rail Services - have already started their own railfreight operations with their own locomotives and drivers. A number of other freight operators have incorporated a rail link into new-built freight depots (eg Hays Network Distribution at Dagenham) and the Piggyback Consortium has plans for freight services carrying road semitrailers from Scotland and the north of England through the channel tunnel to France.

On 20 May 1996 the Central Railway Group plc submitted an application to the Secretary of State for Transport under the *Transport and Works Act 1992 (TWA)*, to build a freight railway from near Lutterworth in Leicestershire to the Channel Tunnel. Central Railway would run a shuttle service designed to take ordinary lorries either as trailers or with their cabs and drivers.

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<sup>83</sup> Office of the Rail Regulator *Criteria and Procedures for the Approval of Freight Track Access Agreements* December 1994

<sup>84</sup> Office of the Rail Regulator *Framework for the Approval of Railtrack's Access charges for Freight Services: a policy statement* February 1995

<sup>85</sup> *Consensus for Change* Labour's transport strategy for the 21st century, June 1996

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Applications under the TWA are not normally referred to Parliament. However Mr Watts, the Minister for Railways and Roads, announced on 22 May 1996<sup>86</sup> that he had decided that in the case of the Central Railway proposals, Parliament should have an opportunity to debate the principle of the proposals **before** a public local enquiry was held. The motion to approve the Central Railway proposals was debated in the House of Commons on 24 July 1996<sup>87</sup> but was defeated by 172 votes to 7. MPs from all sides of the House condemned the proposals, their main concerns being blight and the uncertainty over the funding and financial viability of the scheme.

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<sup>86</sup> HC Deb 22.5.96 c.237W

<sup>87</sup> HC Deb 24.7.96 cc 408-429

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