WESTMINSTER WATCH

Railtrack's future

The Government's plans for the future structure and funding of Railtrack were outlined in a statement to the House of Commons on 23 October.

Transport Secretary Stephen Byers told Parliament:

"It is ultimately for the administrator to assess and make recommendations on proposals for how Railtrack's railway assets are transferred out of administration as a going concern. I will have to approve any such transfer under Schedule 7 of the Railways Act 1993.

As recent press coverage has made clear, there is every possibility that there may be more than one proposal before the administrator.

The Government welcomes this. At the same time however, it would be irresponsible of us to do nothing and leave it to others to work up a viable successor company to Railtrack plc. We are therefore developing what we would regard as an attractive successor vehicle.

We will put a proposal to the Administrator for a Company Limited by Guarantee (CLG) to take over Railtrack plc's railway assets and its role as network operator.

A CLG would be a private sector company run on purely commercial lines but without shareholders and consequently without the need to pay dividends in return for equity funding. Profits from the company would be reinvested in the network. The CLG structure could do much to address current industry problems and could be one way of facilitating increased vertical integration with the possibility of individual train operating companies playing a greater role in maintenance of specific areas of infrastructure, where this was advantageous and appropriate. Any such vertical integration would need to include measures to protect the interests of other infrastructure users.

We anticipate that the board of the CLG would comprise 12 to 15 executive and non-executive directors. The executive directors would include a chief executive officer, and engineering, finance, safety and commercial directors. The non-executive directors could

include a chairman, one director nominated by the Strategic Rail Authority, one director appointed after consultation with both the passenger train operators and freight operators, and up to seven other independent non-executive directors. As is the case with all companies, the directors would owe their first duty to the CLG itself.

This would be a professional board, focused on delivering a quality rail network fit for the 21st century, remunerated and incentivised accordingly, and with corporate governance structures comparable to that of a traditional plc. In its early years the company would clearly face a number of key challenges: maintaining very high standards of safety on the railway; retaining the confidence of customers, employees and contractors; diagnosing the cultural and structural problems of the company and planning the best way of overcoming them.

Stakeholders

Instead of shareholders, a CLG has members. The SRA would be the founder member of this CLG and we anticipate that the majority of the other members would come from the private sector. Individuals drawn from private sector companies with a direct stake in the railways, other interests including passenger groups and employees, and the SRA (or its successor) could all be possible members. Financial interests and construction companies could also be included.

Under this structure the members would have a governance role equivalent to that of shareholders but would have no additional powers. They would be well placed to ensure the high performance and full accountability of the board.

For funding purposes the CLG would have the same sources of revenue as Railtrack had: property income, track access charges and grant. Some 90% of the company income would therefore be covered by stable long-term contracts. Revisions to these contracts, for example to reflect any changes to the regulatory regime, would be subject to independent regulation in respect of the fair price to be paid for the outputs Government wishes to purchase.

The company would have the existing debt from Railtrack transferred to it and would be able to borrow further from the debt markets to the extent necessary. We would expect to put in place an arrangement by which the company could access a standby, subordinated loan facility. It would not amount to a government guarantee of debt, but the repayment of this facility would be "last in the queue" of creditors for repayment. The possible value of this facility would be determined once the administrator has a better understanding of Railtrack plc's true financial position.

Second, although the company would not be distributing profits in the form of dividends, it would earn a surplus over direct costs. This would be sufficient over time to build up a significant reserve.

Together, the company's reserves and the explicit loan facility, would mean that the CLG would have access to sufficient funds to cover foreseeable circumstances.

Under the CLG structure revenues would go further than they would have done with Railtrack. The cost of capital would be lower, there would be no dividends and the company would be able to prioritise cashflows in favour of lenders. In addition the company would operate with much lower risks than Railtrack, concentrating on operating and maintaining the infrastructure as well as undertaking small-scale renewals. The CLG would not undertake major new projects with all their attendant risks of cost overrun. As we announced in April this year, we anticipate that projects such as these, like the East Coast Main Line upgrade, will henceforward be undertaken by special purpose vehicles. These are likely to be bespoke joint venture companies financed by a combination of Government grant and private sector debt and equity.

A CLG company structure could be combined with a different, more streamlined, regulatory regime than the one under which the industry has had to labour to date and this would help to underpin its credit rating. As stated above, transparent independent economic regulation would continue to be an element in the regulatory regime.

Options

There may well be other viable options for the administrator to consider, and we will give any transfer scheme put to us full consideration. Nevertheless, we are confident that the CLG structure we are proposing, along with the associated regulatory changes,would:

■ Produce a focused, professional, private sector company committed to maintaining and improving the rail network;

■ Retain the ability to raise significant private sector investment in the railways at reasonable cost;

■ Rid the industry of the previous tensions between need to generate short-term increases in share price and long-term needs of network;

■ Give those with a stake in our railway infrastructure an input into how that infrastructure is operated and maintained;

■ Allow us to deliver our ten-year plan commitment of some £30bn of public expenditure on the railways but with much improved value for money;

■ Play its role in levering in the matching £34bn of private sector investment identified in the ten-year plan;

■ Put an end, once and for all, to the divisions all too apparent in the industry when the network was under Railtrack's stewardship.

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