

RAILTRACK PLC
(the "company")

MINUTES OF A MEETING
OF THE BOARD OF DIRECTORS HELD AT
RAILTRACK HOUSE, EUSTON SQUARE, LONDON NW1 2EE
ON 6TH OCTOBER 2001

Present:

(Chairman)

In Attendance:

(Secretary)

(Merrill Lynch)
(Deloitte & Touche)
(Cazenove & Co)
(Deloitte & Touche)
(Simmons & Simmons)

(Credit Suisse First Boston)

(Deloitte & Touche)

Others as stated in the minutes

MINUTE NO.

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RT.01/5

PROJECT RAINBOW

I. Introduction

The Chairman thanked everyone for attending at short notice. He explained that owing to tight deadlines being imposed by the Government, it would be desirable, in the interests of time, to hold this board meeting concurrently with a board meeting of Railtrack Group PLC. The [REDACTED] would ensure that the separate strands of the meetings were properly recorded in separate minutes for the board of each company. The board **assented** to the proposed arrangement. The Chairman summarised the key issues which the board would have to discuss following his meeting the previous afternoon with the Secretary of State and [REDACTED] a Deputy Secretary at the Department of Transport, Local Government and the Regions (DTLR).

MINUTE NO.**ACTION****RT.01/5****PROJECT RAINBOW (Cont'd)**2. Background and Summary

The Chairman reported first on the meeting on 3rd October, which he and [REDACTED] had had with DTLR officials and representatives of Schroder Salomon Smith Barney (SSSB).

At that stage, he and the other two directors considered that the Project Rainbow proposed still seemed to be on target. The Chairman stated that he had stressed to DTLR the need for celerity in deciding whether or not to pursue the Project Rainbow proposal in view of the announcement of the interim results of Railtrack Group PLC on the 8th November.

The Chairman went on to explain that he had had a further meeting with the Secretary of State and [REDACTED] the previous afternoon, Friday, 5th October. The Secretary of State stated that the Government had reviewed its financial obligations and had formed the view that financing problems for the company would recur, even if an immediate solution could be worked out. It was clear to the Government that the equity model had failed and the Government was concerned that it could not directly control the funding stream into the company because the level of funding was controlled by the Rail Regulator. In the Government's view, therefore, the current arrangement was inherently unsuitable and had decided to discontinue funding support for the company.

Accordingly, the Government had concluded that it should apply to the High Court for a railway administration order under section 60 of the Railways Act 1993 for the appointment of a railway administrator. The Government's objective was to continue the company's business under the control of the administrators with a view, after a period of 90-180 days, to transferring the business of the company to a new company, limited by guarantee, which would operate as a public interest vehicle without any obligation to produce returns for shareholders. This new company would be funded direct by Government, without any regulatory intervention but, in the Government's view, would be able to raise money in the debt markets. The Chairman said that he had stressed to the Secretary of State that the Project Rainbow proposal was a better option but the Secretary of State reiterated that that notwithstanding, the Secretary of State had decided in any event to seek an immediate railway administration order that weekend, with or without the company's support.

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PROJECT RAINBOW (Cont'd)

2. Background and Summary (Cont'd)

The Chairman informed the board that on the previous afternoon the Secretary of State had briefed the Rail Regulator regarding the Secretary of State's plans for a railway administration of the company immediately prior to his own meeting. The Secretary of State had told the Chairman that the Rail Regulator had been asked to agree to the necessary changes in his role although draft legislation was ready if the Regulator did not relent; and that if the Regulator made an interim financial settlement in the company's favour, the Government would bring forward legislation to reverse it.

The Chairman went on to report that the Secretary of State was seeking a seamless transfer of the company's business and its management to the new corporate vehicle that the Government would establish. The employees of Railtrack PLC would transfer to the new company in accordance with the TUPE regulations; and debt providers and creditors would be underwritten.

Arrangements had been made for the Governor of the Bank of England to speak to the chairmen of clearing banks on Sunday evening and for the Chancellor of the Exchequer to speak to the chairman of the European Investment Bank over the course of the weekend. The Minister for Transport would be speaking to the railway trades unions on Sunday afternoon.

The Chairman reported that SSSB had attended a meeting at Railtrack House late on Friday evening, with himself, [REDACTED] and advisers, to explain the proposed administration in more detail. It had been confirmed by [REDACTED] of SSSB, in answer to a direct question, that even if the company did not support the Secretary of State's petition for a railway administration order, the Secretary of State would proceed come what may with his petition on Sunday, 7th October; and that the Secretary of State had given the same message to the Chairman at the meeting on the afternoon of Friday, 5th October i.e. that the decision was a *fait accompli*.

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PROJECT RAINBOW (Cont'd)

2. Background and Summary (Cont'd)

The Chairman then reported on the meeting which he and [REDACTED] had had with representatives of the proposed administrators, Ernst & Young (E & Y), that morning to discuss the process of the proposed railway administration. E & Y had confirmed they wished to achieve continuity of employment and that they wished to defer for the time being implementing any "Simplifying the Centre" proposals. E & Y had confirmed, also, that all current creditors (including lenders) would be underwritten to ensure continuity; initially, the Chairman believed that all programmes would continue.

E & Y had emphasised that they would not be responsible to the Government once they had been appointed as railway administrators. They wished the current management team to remain in place, although there would be a more prescriptive environment with delegations of authority prescribed by E & Y. Safety responsibilities would remain with management and the Health & Safety Executive, which had been consulted already by DTLR because of concerns about ongoing line safety management and would be reviewing the company's railway safety case over the next 28 days.

[REDACTED] went on to explain to the board that the company's funding problems had been exacerbated by the failure of the RenewCo structure which had been agreed as part of Project Endeavour at the beginning of April 2001. This had meant that the flow of government grants had not come through to the company.

In response to questions, [REDACTED] of Simmons & Simmons confirmed that, as a matter of law, the Secretary of State could apply for a railway administration order provided that he could show that the company was or was likely to be unable to pay its debts. The Project Rainbow disclosures to DTLR would likely have revealed enough evidence to persuade the Government that it was in a position successfully to petition for a railway administration order and also noted that the message from SSSB was that the Secretary of State was going to apply for an immediate administration order, with or without the company's support.

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PROJECT RAINBOW (Cont'd)

3. Legal Position

██████████ outlined the legal position to the board. At the moment, the directors could not oppose an application for a railway administration order, since that might be the only solution to the current problem in the absence of a viable alternative to put to the court. Conversely, neither could the directors overtly support a petition, unless the board was sure that there was no viable alternative at that moment. Support could be construed as being contrary to the interests of shareholders of Railtrack Group PLC and of creditors if the action by the Government was criticised at a later date as Government "re-nationalisation" or sequestration. Moreover, and importantly, the directors could not give positive support as there was insufficient information at that time.

He went on to consider whether the company could ask for more time to consider its position e.g. to evaluate possible viable alternatives. The board would need to consider also the likely consequences of gaining more time, including any adverse consequences or detriment to the Railtrack business or safety on the railways. In ██████████ view, it would only be proper for the company to seek more time at the hearing of the petition if it was believed that viable alternatives existed and the business and/or safety was not adversely affected.

██████████ stated that without Government financial support which had been withdrawn, there was no viable debate to be had about the future of Railtrack PLC. The gaining of more time would only destabilise the company's business and compromise health and safety. Having said that, the company should not, in his view, support the Government's petition to the High Court and should tell the Government that that was based on legal advice.

██████████ also noted that alternatives such as a trade sale were not viable, as the Government had, over the last few months, approached other operators who, it transpired, were not interested. ██████████ confirmed that not seeking more time was a proper course for the company to take if the board considered that there was no viable alternative to be considered.

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PROJECT RAINBOW (Cont'd)3. Legal Position (Cont'd)

██████████ confirmed that it was clear that there was no alternative source of funding available, apart from the Government, who had now made its position clear. It was also noted that it was far from clear whether the banks would, on Monday (assuming no administration order was made that weekend) allow the company to draw on its existing facilities, given the press coverage and the Government's public announcement regarding its intentions for the company, and even if it could draw on those facilities, whether it would be able to repay those liabilities given the severe undermining of the company's prospects of raising medium term refinancing.

Nor was there any evidence of any possible purchaser of the company or of the Railtrack Group. ██████████ confirmed to the board that a range of alternative proposals (financing and other) had been considered and rejected in developing the Project Rainbow proposal.

██████████ asked whether the company should apply now to the Rail Regulator for an interim review, as envisaged in the Project Endeavour settlement which provided that an interim review could be sought if the RenewCo arrangements had not been established by 30th June 2001. He wanted to know whether the board could demonstrate that it had done everything that it ought to have done if an approach had not been made to the Rail Regulator to enquire whether he would entertain an application for an interim review. The legal advice from ██████████ and ██████████ was that the Regulator should be approached at the earliest opportunity. Accordingly, it was agreed that, following the meeting, the Chairman would raise with the Rail Regulator the issue of an interim review.

The board agreed with ██████████ point, which had been raised earlier in the day with E & Y, that the directors of the company would require indemnities in return for co-operating with the Government's proposals.

The Chairman went on to ask the advisers who were present whether, in their opinion, the board had followed due process in reaching its decision that Railtrack PLC should neither oppose nor support the Government's forthcoming petition for a railway administration order.

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PROJECT RAINBOW (Cont'd)3. Legal Position (Cont'd)

On behalf of CSFB, [REDACTED] stated that he was satisfied that the board had properly addressed all the relevant considerations. On behalf of Simmons & Simmons, [REDACTED] confirmed that, in his opinion, the board had asked itself and considered the right questions and had addressed the relevant interests which could be affected.

On behalf of Deloitte & Touche, [REDACTED] said the board had not had enough information to support or oppose, as it had not had the due process available to it to do either.

Following further discussion, it was agreed that the board would, as a matter of urgency and, in addition to approaching the Regulator for emergency funding, seek clarification from the Government on (1) whether the Government would agree to a concession that the CTRL licence could not be revoked or adversely affected by the administration of the company; and (2) how the proposed administration would protect the interests of members and creditors as required by section 59 (1) (b) of the Railways Act 1993.

[REDACTED] said that it was also necessary to consider the operational consequences of an administration order, which was not a legal question as much as one for the executive directors. The board considered this and concluded that in the special circumstances forced upon the company, and because of the importance of keeping the national rail network fully operational, the company should neither oppose nor support the making of the proposed railway administration order.

The Chairman then summed up the discussion. His recommendation to the board was that Railtrack PLC should neither oppose nor support the Government's proposed application to the High Court

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PROJECT RAINBOW (Cont'd)3. Legal Position (Cont'd)

Following further discussion the board **resolved** that the company should neither oppose nor support the making by Secretary of State of a petition to the High Court for a railway administration order in relation to Railtrack PLC. It was **agreed** that the board would not insist on strict time limits as required by the legislation and would, if asked, agree to abridge the time limits to enable a hearing to take place over the weekend, absent any viable alternative and given the likely severe detriment to the business and/or health and safety if this had not been resolved over the weekend. The board **agreed** also that the Chairman, [REDACTED] and [REDACTED] should deal with issues relating to the matter as they arose.

4. Indemnity

The board **resolved** that the company should indemnify the directors individually (to the extent that such an indemnity was legally permitted) in respect of all reasonable costs and expenses of any defence of any claim (excluding claims for deliberate wrongdoing or fraud) by a third party against a director in respect of action taken by directors (whether individually or collectively) leading up to the administration of the company.

There being no further business the Chairman declared the meeting closed.

