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VEHICLE AND ROUTE ACCEPTANCE: COMPLAINT BY ADTRANZ AND ALSTOM

1. This letter sets out my provisional conclusions on the complaint I received from Adtranz and Alstom on 13 October 1999 in respect of Railtrack's procedures for vehicle and route acceptance.
2. I emphasise that nothing in this letter affects Railtrack's responsibilities for the safety of the network in its role as infrastructure controller. The importance of thorough safety acceptance procedures was emphasized in HM Chief Inspecting Officer of Railways' letter of 28 July 1999.

Background

3. On 5 July 1999 Adtranz and Alstom wrote jointly to me, making representations concerning the operation of the vehicle and route acceptance process. On 6 August 1999 I wrote to them asking for more information; they responded on 13 October 1999 setting out a number of matters on which they considered Railtrack was in breach of its network licence. On 8 December 1999 I asked Railtrack for its response on a number of points. A response from Railtrack line was received on 7 February 2000. Railtrack Safety and Standards Directorate responded separately. On 9 May 2000 a formal hearing was held, chaired by Michael Beswick, involving Railtrack, Adtranz and Alstom, with the Health and Safety Executive and the Shadow Strategic Rail Authority as observers. Railtrack also tabled further information at the hearing, and made subsequent written representations dated 22 May 2000.

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4. I recognize that a great deal of work has been done on these issues, and that current problems with introduction of new vehicles are not entirely about vehicle and route acceptance procedures.

Conclusions

5. In considering this complaint, I have been advised by Mr Rhodri Thompson, barrister. A draft of Mr Thompson's report is at Annex A.

6. In the light of Mr Thompson's advice and consideration of the relevant papers by my office I have provisionally concluded that Railtrack is in breach of its network licence in the following respects:

- (a) it is in breach of express or implied obligations contained in Railway Group Standards 2149, 5204 and 3270 in respect of provision of information and criteria for the vehicle and route acceptance process. Thus Railtrack is in breach of paragraph 2(c) of Condition 3 of its network licence;
- (b) to the extent that Railtrack's narrow construction of the information requirement in Railway Group Standard 3270 can be accepted (i.e. that it does not apply to the design stage and does not require detailed information or criteria needed for the design of new trains to be provided at any stage), the Group Standard has not been reviewed for fitness for purpose under the requirements of the Railway Group Standards Code (paragraph 7.2). Thus Railtrack is in breach of paragraph 2(b) of Condition 3 of its network licence;
- (c) likewise, if no such obligations are implicit in Railway Group Standards 2149 or 5204, contrary to Mr Thompson's view, they are not fit for purpose and Railtrack is in further breach of paragraph 2(b) of Condition 3.

7. Before I finalise these conclusions I am seeking representations from Railtrack, Adtranz and Alstom, and those to whom this letter is copied, on Mr Thompson's report and my provisional conclusions.

Next Steps

8. If I consider that Railtrack is contravening, or is likely to contravene, its network licence, section 55 of the Railways Act 1993 requires me to make a final or provisional order requisite to secure compliance. However, section 55(5)(b) provides that I should not make an order if I am satisfied that:

- (a) the duties imposed on me by section 4 of the Act preclude the making of the order;
- (b) Railtrack has agreed to take, and is taking, all such steps as it appears to me for the time being to be appropriate for it to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or

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(c) the contraventions or apprehended contraventions are of a trivial nature.

9. Introduction of new vehicles onto the network is important to passengers, train operators and the Franchising Director, and the failings identified appear, at least in part, to have contributed to significant delays in introduction. Therefore I do not consider that the matter can be regarded as trivial.

10. I do not consider that any of the duties in section 4 of the Railways Act 1993 preclude me from making an order.

11. It is possible that Railtrack is prepared to agree to take, and is taking, appropriate steps to secure or facilitate compliance as in paragraph 8(b) above (paragraph 55(5)(b) of the Act). If, and to the extent that, I am satisfied that this is the case, I would be precluded from making a final or provisional order.

12. I invite representations on these points. In addition, I consider that the following points are of particular relevance to this case, and wider questions of vehicle and route acceptance:

- (a) the adequacy of the steps Railtrack is taking to improve the information available for the process and the nature of Railtrack's commitment to doing this;
- (b) the need to improve the means by which the respective obligations in the process are defined and enforced, and the definition and quantification of the liabilities which may arise;
- (c) Railtrack's policies on harmonisation of the railway infrastructure.

Information

13. I note that, at the hearing, and in the other documentation provided, Railtrack outlined the National Gauging Project, the Industry Data Initiative and the Railtrack Asset Register. It appears to me to be possible that the successful completion of these initiatives could go some appreciable way towards addressing a number of the concerns raised in Mr Thompson's report. I invite representations on this point.

14. In particular, I have asked Railtrack to:

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- (a) confirm to me the planned dates for delivery of the National Gauging Project, the Railtrack Asset Register and the Industry Data Initiative insofar as they relate to issues of vehicle and route acceptance, and the key intermediate milestones against which the projects are being monitored;
- (b) set out the key deliverables from these projects and how and to what extent they address the points in Mr Thompson's report;
- (c) set out what analysis Railtrack has done to establish that it is not reasonably practicable to accelerate delivery of these projects.

My office has been in correspondence about a proposed asset register licence condition, but I am asking specifically what Railtrack is doing in respect of vehicle and route acceptance information.

Definition and enforcement of obligations

15. Currently, in most cases, the respective obligations of the parties in the vehicle and route acceptance process derive from Railway Group Standards and Part F of the Track Access Conditions. The present complaint concerns Group Standards. Insofar as Group Standards impose obligations on Railtrack, they can be enforced by the Regulator through the network licence. If they deal also with matters covered by safety obligations, those obligations can be enforced by the HSE as well. As noted above and in Mr Thompson's report, the position in respect of the design and development stage of new vehicles needs to be clarified. To the extent that anything Railtrack does relates to its role as infrastructure controller under safety legislation, this would need to be done through the applicable Group Standard.

16. On the basis of Mr Thompson's report, my current view is that Group Standards already impose more extensive obligations on Railtrack than those it currently recognizes. In any event, given the practical criteria in the Railway Group Standards Code, I consider that it is appropriate that this matter is made clear if it is not already accepted by Railtrack. In this way it would be clearly established that the Railway Group Standards cover a more extensive range of procedural matters in respect of vehicle and route acceptance and thus address the legitimate concern of the manufacturers and operators about the design and development stage. However there is an alternative route which I strongly believe Railtrack should consider. That is one based on the vehicle and route acceptance contracts which Railtrack entered into in May 1998 with West Coast Trains Limited and Cross Country Trains Limited. One consequence of this approach is that enforcement of procedural and timetable obligations would be via the parties, rather than the Regulator, and that it would be possible to establish clear individual accountabilities and liabilities in the process.

17. When Railtrack entered into the vehicle and route acceptance contracts in 1998 it

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told this office that “to the best of Railtrack’s knowledge and belief, it would be able to offer similar agreements to other operators”. Given the developments in the rolling stock market since May 1998, and the tendency of manufacturers to build for a wider market rather than just the requirements of a specific train operator, this would need to be extended beyond operators to manufacturers and ROSCOs.

18. I am telling Railtrack that I consider that a commitment by Railtrack to the timely development and implementation of this approach, possibly via amendment to the Track Access Conditions, might address some of the specific concerns raised by this complaint, and could also provide a much more robust set of arrangements for the future. I emphasise that Railtrack’s duties as infrastructure controller would take priority.

Harmonisation of network assets

19. My understanding is that the cost submission Railtrack has put in for the periodic review does not allow for any unanticipated change in Railtrack’s obligations in respect of the standardization of network dimensions and equipment types.

20. Within this framework, I consider that in targeting renewal, and in terms of how it renews, Railtrack should be seeking greater harmonisation of the network. For instance, signalling renewal could give the opportunity to standardize track circuits and reduce the problems caused by the current multiplicity of types. One of the most troubling issues raised by the complaints is the extent to which Railtrack continues to view individual problems in isolation, rather than seeking to harmonise standards across the network. It is now time for Railtrack to set out more explicitly its policies to achieve a more general improvement in the degree of harmonisation, and how they relate to its Group Standards and Condition 7 obligations. This will of course involve discussion with other industry parties, not least with train manufacturers about any emerging standardization of traction packages.

21. I propose to cover the latter two issues in more detail in a consultation document on vehicle and route acceptance issues, but have told Railtrack that I would welcome any statement of policy from Railtrack to inform my decision on the Adtranz/Alstom complaint.

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22. I am writing in similar terms to Gerald Corbett (Railtrack) and Martyn Vaughan (Alstom). The correspondence is copied to Mike Grant and David Humphrey (sSRA) and Vic Coleman (HSE). Please would you let me have a response by 22 September 2000.

TOM WINSOR