

CHAPTER 2

Introduction

2.1. On 17 September 1984 the Department of Trade and Industry sent the following reference to the Commission:

The Secretary of State, in exercise of his powers under Section 11(1)(a) of the Competition Act 1980, hereby refers to the Monopolies and Mergers Commission the questions set out below relating to the efficiency and costs of the British Railways Board in its property activities.

For the purposes of this reference—

- (a) 'land' includes buildings on and air space over land; and
- (b) 'property activities' means activities in the acquisition, management, development and disposal of land, whether or not owned by the Board, but excluding land forming part of the estate of any enterprise of the Board or of any of its subsidiaries which is an enterprise whose proposed sale has been announced.

The Commission shall upon this reference investigate and report on the following questions—

- (i) whether the Board could improve its efficiency and thereby reduce its costs in the exercise of its property activities, with particular reference to:
 - (a) the criteria according to which and procedures by which decisions are taken in the exercise of those activities, including the criteria according to which land is made available for development and/or disposal;
 - (b) the scope for development and/or disposal of land in respect of which it exercises those activities;
 - (c) the scope for increased private sector finance for and participation in those activities;
 - (d) its policy in relation to charges made in the exercise of those activities;
 - (e) the Board's internal management information systems, including those for attributing to a particular part of the enterprise of the Board and its subsidiaries the cost of land used in that part;
 - (f) whether the present manner of exercise by the Board of those activities and relationship between that exercise and the exercise of the other activities of the Board and its subsidiaries is in the best financial interest of the Board and its subsidiaries taken as a whole;
 - (g) the scope for increased commercial use of sites on stations; and

(h) its policy in relation to and management of non-operational land which, by reason of its physical characteristics or location, has little or no development potential; and

(ii) whether, in relation to any matter falling within the question set out above, the Board is pursuing a course of conduct which operates against the public interest.

The Commission shall report upon this reference within a period of six months beginning on the date hereof.¹

(signed) M J Vile

An Assistant Secretary

Department of Trade and Industry

17 September 1984

2.2. On 18 September 1984 the Chairman of the Commission, in pursuance of the powers vested in him by section 11(9) of the Competition Act 1980 and Part II of Schedule 3 to the Fair Trading Act 1973, directed that the functions of the Commission in relation to this reference should be discharged through a group of six members under the chairmanship of Sir Alan Neale, a Deputy Chairman of the Commission. The composition of the group is indicated in the list of members which prefaces this report. We record with regret that one member of the group, Professor Alan Prest, died on 22 December 1984 during the course of the inquiry.

2.3. We were assisted in our inquiry by members of the partnership of Drivers Jonas, Chartered Surveyors and Planning Consultants, who provided us with specialised property advice in connection with selected areas of our investigation.

2.4. As part of our inquiry members of the Commission visited a number of British Rail properties in the London area including some which had been, or were about to be, developed. They were accompanied on these visits by members of the Commission's staff, who also visited a number of British Rail offices and properties throughout the country.

2.5. We received a considerable amount of written evidence from the British Railways Board and the British Rail Property Board. Members of both boards, and senior officials, gave evidence at two hearings.

2.6. The reference was advertised in the following publications:

Architects' Journal

Financial Times

Chartered Surveyor Weekly

Investors Chronicle

Edinburgh Gazette

London Gazette

Estates Gazette

We also wrote to a number of organisations which seemed likely to have an interest in our inquiry. As a result we received a substantial body of written evidence from those listed in Appendix 2.1 which also indicates those who attended hearings. A summary of parts of this evidence is at Appendix 2.2.

2.7. We should like to take this opportunity of thanking all those who helped us, in particular the representatives of the BR Board and the Property Board on whom the burden of our enquiries inevitably fell.

¹ On 4 March 1985 the Commission were granted an extension from 16 March to 16 April 1985.

The Commission's treatment of the reference

2.8. We are required by our terms of reference to investigate the efficiency and costs of the BR Board 'in its property activities'. These are defined in the reference as 'activities in the acquisition, management, development and disposal of land'; 'land' is defined as including 'buildings on and air space over land'. We have distinguished two kinds of activity involving property which are carried out by British Rail.

2.9. The first comprises all those activities which are an essential part of the running of the railway. These would include, for example, the development of land by the erection of purely operational buildings; the laying of track, power lines and signalling apparatus; the construction of bridges, tunnels, viaducts and crossings; and the subsequent management (including maintenance) of all these. The primary emphasis in all these activities is on the operational needs of the railway, and all are carried out by the engineering and other operational divisions of British Rail.

2.10. The second comprises all those property activities where the primary emphasis is on the commercial use of property. While decisions as to the availability of land for disposal or development require assent by the various operational interests, all transactions are carried out by the Property Board acting as the property arm of British Rail. These activities would include, for example, the purchase and sale of land, the development of land by the erection of non-operational buildings and their subsequent management (including maintenance), and the leasing of land (some of which may be operational) for commercial use and station trading. Some developments are such as will actively support the railway, as for example when land alongside the track is leased to somebody who will generate rail freight, or when an air terminal is constructed on a station in order to capture passenger traffic between city and airport. Others may be largely independent of the railway business, earning revenue by making dual or secondary use of operational property where this can be done without interfering with the operation of the railway, as by the leasing of station kiosks or the erection of office blocks at stations.

2.11. If we were to inquire thoroughly into the operational activities described in paragraph 2.9 we would find ourselves investigating virtually every aspect of British Rail. We have therefore confined the main thrust of our inquiry to the property activities described in paragraph 2.10, including the Property Board's participation in mixed operational/commercial development. In particular we have concentrated on 'the criteria according to which and procedures by which decisions are taken in the exercise of these activities.