



Burges Salmon UK Transport Overview

The last year in transport has seen the established order challenged in a number of ways – including sharply rising fuel prices; the 'credit crunch' impact on the wider economy; the increasing pressure on emissions and environmental performance and changes in working patterns.

The dominant theme has been infrastructure capacity: best use; where to develop; funding allocation between modes; immediate needs versus longer term planning.

The DfT published its vision in "Towards a Sustainable Transport System", identifying five challenges: economic competitiveness and productivity; climate change; safety, security and health; quality of life; equality of opportunity. This echoed the theme of the Eddington Review: the UK transport system has connections to the right places but delays and unreliability inhibit productivity and innovation.

Growth in travel demand is densely concentrated on certain parts of the network at certain times of the day. The proposed solution is to improve the performance of the existing network focusing on the most unreliable, congested and crowded sections to produce predictability in both domestic and international travel.

These themes are evident in the patterns of legal work within the main modes.

Rail

The structures of the 2004 Rail Review are consolidating: Franchising has been absorbed into DfT Rail; the Office of Rail Regulation has brought together economic and safety regulation; Network Rail has taken on increased responsibility for performance. In parallel, twelve years since privatisation, all key parties are more established. The industry is moving from its turbulent early years when change was the only consistent factor into a period when structures and expectations are clearer and relationships are maturing. No surprise perhaps that there has been a significant growth in the number of passengers (now consistently over 1 billion per year) and a continuing pattern of improvement on safety and other issues.

Increasing industry maturity is reflected in the patterns of legal work. Franchise bidding remains, although many larger franchises have been recently re-let. The major players are now established with a number of recognised owner groups and jvs. The big news of the last twelve months has been the emergence of Deutsche Bahn, the German State Railway, which acquired Laing's rail operations including Chiltern and London Overground as well as the UK's largest freight operator, EWS. Expect to see them bidding for other passenger franchises.

With re-franchising relatively quiet, the focus has moved to enhancements and projects (physical and legal). Implementation of European legislative packages continues with the move towards interoperability. Cross network projects are underway for the implementation of GSM-R (a radio system) and the European Rail Traffic Management System (ERTMS). Rolling stock remains high profile, in part because of specific projects such as the expansion of the Pendolino fleet and the 'InterCity Express Passenger' project to replace the HST fleet, in part because of the wider Government commitment to '1300 new vehicles' across the network. Meanwhile the rolling stock owning companies spent much of the year the subject of inquiries by the competition authorities, whilst their owning banks have been looking to realise their interests in the wake of the credit crunch.

Infrastructure projects continue to relieve pinch points. Crossrail is to proceed and other major projects underway or in planning include Reading and Birmingham stations and the Thameslink Programme. Provided the new Planning Bill passes through Parliament, it is likely that such schemes will come on stream much quicker with rail related projects of this nature being dealt with by the proposed new Infrastructure Planning Commission.

Initiatives continue to grow rail freight. In April 2008 Network Rail published a paper setting out industry plans for creating a Strategic Freight Network. The rail freight market continues to diversify its ownership and experiences increasing competition.

Burges Salmon LLP, Narrow Quay House, Narrow Quay, Bristol BS1 4AH

Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB

Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: Narrow Quay House, Narrow Quay, Bristol BS1 4AH.

Thinking has shifted in response to emissions challenges and fuel prices. This has put electrification back on the agenda challenging the convention that diesel dominates because electrification projects are uneconomic. Electrification of the West of England main line is mooted, whilst Eurostar's transfer to St. Pancras and the realisation of High Speed 1's full capabilities has reignited interest in new High Speed lines.

On the contentious side the shift away from major incidents (happily receding in number) continues. There remains, however, a steady core of specialist access and liability disputes which are often resolved through the industry's bespoke dispute ADR, arbitration and appeal systems

There is an increasing focus on London, partly driven by the Olympics and the need for the necessary infrastructure in place to deliver the Games on time, partly reflecting the economic strength of London and its increasing political autonomy. The approval for Crossrail, TfL's 'London Overground' services and the extension of the 'Oyster' card to outer-suburban services all reflect this trend.

There have also been significant developments on the London Underground with the collapse of the two Metronet Infracos but the relative success of Tubelines.

Finally, the Office of Rail Regulation continues to progress the Periodic Review 2008. With DfT Rail having published its High Level Output Specification (HLOS) and Statement of Funds Available (SoFA) in Summer 2007, ORR continues with the process of assessing the amount of money that Network Rail should earn between 2009 and 2014. The temperature around that issue is increasing between ORR and Network Rail.

Road

Capacity is also a dominant theme in road planning, with initiatives to cut road use by private vehicles, to streamline traffic flows and to enhance infrastructure at pinch points.

Congestion charging schemes on city roads in Manchester and Cambridge are underway with many other local authorities standing by. Other initiatives include the M42 pilot using the hard shoulder as an additional lane. The potential for monitoring or automatic control of private vehicles remains live but the political, legal and civil liberties impacts are intense.

£1.3 billion is being spent on pinch-point enhancements on the roads with 29 schemes currently under construction.

Fuel prices may need to change the modelling around capacity and has already led to switches from private car use

to public transport. UK bus companies are more profitable despite the rises in fuel prices and sales of new buses are at an historic high. Property deals and developments now routinely have bus requirements in terms of funding and infrastructure as part of a condition for planning permission and development potential. Even light rail is back with Manchester extending its Metrolink system.

Safety in work related road transport is becoming a high profile issue. Recent research has cast doubt on the safety of even hands free calls. New increased driving sentences and potential corporate manslaughter liability for organisations of up to 10% of turnover are [utting this on the corporate risk agenda.

Aviation

The aviation sector has been hard hit by the rising cost of fuel and the continuing effect of counter-terrorism/security measures. The belief that air had won the competition with rail for domestic long distance travel is coming under threat. In parts of Europe some carriers have already struck deals to replace some of their internal air services with high speed rail services. If rail plays the environmental card intelligently there may be hard times ahead for domestic air businesses.

The Heathrow third runway proposal may be turn into a key legal and policy crucible involving questions on conventional transport growth modelling, the weight of government commitment and the new Planning legislation all in the mix.

In the air freight market economic factors have brought the once lucrative passenger to freight conversion market to a standstill. However, whilst the credit crunch and slowing global economy coupled with the high fuel costs have brought enormous challenges for airlines in 2008 the long term forecasts from both Airbus and Boeing predict significant growth in the world fleets of both passenger and freighter aircraft underpinned by demand from emerging economies.

With airlines coming under increasing pressure to remain competitive and respond to environmental challenges airlines are accelerating their fleet replacement plans to bring new, more efficient aircraft into service at the earliest opportunity.

Airbus has forecast that 13,772 aircraft or 92% of current global fleet will be replaced by more eco efficient models by 2026. In addition, current market pressures has triggered consolidation amongst airlines in addition to more conventional cost saving initiatives.

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

© Burges Salmon LLP 2008. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.