

Taxpayer interest in Eurostar could sidetrack chances



The taxpayer's stake in Eurostar could be seen as a conflict of interest, lawyers warned Lennart Freiss/AP

Robert Lea Industrial Editor
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Eurostar's ambitious attempt to run trains from London to the North and Scotland could be halted at a red light after lawyers warned that its part-ownership by the British taxpayer could count against it.

The company, which runs high-speed services from London St Pancras through the Channel Tunnel to Paris and Brussels, announced plans this week to apply to run the trains of the Kings Cross-to-Edinburgh East Coast Main Line.

It is its first attempt to enter the regional train franchising market and prompted speculation that it would seek to run high-speed services from Scotland to France direct.

However, procurement law specialists are warning that the 40 per cent ownership of Eurostar by the Government could raise conflict-of-interest issues when the Department for Transport comes to make its decision on the East Coast. It could, it is suggested, lead to an embarrassing legal impasse, such as that in Virgin Trains' challenge of the DfT's award last year — since withdrawn — of the West Coast Main Line franchise to FirstGroup.

"There is no restriction on a publicly funded body bidding for a public service concession," Martin Vincent, of Weightmans, the law firm, said. "Such processes must, however, respect EU treaty principles, such as transparency and equality of treatment. A publicly owned bidder will be particularly vulnerable to allegations of favourable or unequal treatment.

"As we found with the judicial review of the West Coast Main Line award, a decision can also be challenged on the grounds of a disproportionate or illogical approach to the assessment of a fundamental part of a bid."

The potential for the British taxpayer's interest in Eurostar to derail its interest in the East Coast Main Line would be an irony, as its bid was reckoned to have had a distinctly French accent. Of Eurostar's other shareholders, it is 55 per cent owned by SNCF, the French state railway, which also has 70 per cent control of Keolis, the company with which Eurostar is joint-venturing on the East Coast bid. Keolis is best known in Britain for being the joint venture partner of Go-Ahead Group, the operator of the Southern, Southeastern and London Midland services.

A spokesman for the Keolis-Eurostar joint venture said: "It wouldn't be appropriate for either party to comment on any matter relating to how the competition is run."

The Eurostar stake remains one of a hotchpotch of assets sitting in the Government Shareholder Executive — such as Channel 4, the Royal Mint and the Met Office — waiting for ministers to decide whether to sell them. Eurostar, for the first 16 years of its existence, was run as different companies in the jurisdictions in which it operates. Its ownership was restructured to its present state three years ago, with SNCB, the Belgian state railway, the remaining 5 per cent shareholder.

Operation of the East Coast Main Line, Britain's only railway in public hands, is to go out to competition to put it in the hands of the private sector in the coming weeks. It has been run directly by the DfT since 2009.

Tunnel vision

677 miles distance between Edinburgh and Paris by road and rail

543 miles distance between the two cities as the crow flies

Source: Times research

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Let's hope that Government lawyers find a way round this potential obstacle - it is not in Britain's (or the passenger's) for this franchise to go to the under-performing Virgin trains by default. We need more competition in our rail networks, not less....

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