



OUTLINE LEGAL INPUT

EDINBURGH TRAM NETWORK - GOVERNANCE RESTRUCTURING MODELS

ISSUE	MODEL A TEL SINGLE ENTITY (tie collapses into TEL)	MODEL B tie SINGLE ENTITY (TEL collapses into tie)	MODEL C NEWCO ENTITY (tie and TEL collapse into NewCo)	MODEL D (TEL owns tie)
Tram Implementation Contracts	Infraco Contract, DPOFA,) provide for an assignation by tie to TEL provided CEC covenant remains in place.	No issue.	Assignation of tram contracts require BSC prior consent.	If TEL Ops is counterparty to DPOFA, assignation will require Transdev consent. TEL ops interface with tie requires a protocol. between the sister companies if tie continues to hold the Infraco contract.
Collateral Warranties	As for the main tram implementation contracts	As for main tram implementation contracts.	Assignation the same as for main tram implementation contracts.	As for main implementation tram contracts. CAF sensitivity about relationship with tie/TEL management requires attention.

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Third Party Agreements and Interfaces	Major third party agreements prepared during promotion phase do not uniformly provide for tie/CEC discretion to assign. Utilities/NR contracts reflect Infraco Contract position. Requires analysis regarding exposure to Infraco/third party claims	No issue.	As for Model A but probably restricted assignation rights under utilities/NR contracts in same way as Model A.	No immediate issue issue.
Tram Acts	Potential need for notification on futher delegation of authorisation to implement and statutory powers.	No issue.	As for Model A.	No apparent issue; however, Tel is not Authorised UNDretaker for the purposes of the Tram Acts. tie is CEC's delegated agent. Tel status requires consideration t ensure that TEL's function benefits from the statutory protections enjoyed by CEC under the Tram Acts.

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Competition Law and State Aid	No new issues.	No new issues.	No apparent issues.	No new issues.
Transport Act 1985	No legal issues different to those in play for Model B.	Queen's Counsel opinion confirmed: no legal impediments to LB share transfer to TEL (or another CEC entity; the TA 85 does not prevent CEC in any way from exercising shareholder controls over LB and from transferring the LB shares as envisaged under LB Articles; the fact that CEC may have in the past behaved in a relatively passive way towards LB, its subsidiary, does not constrain CEC to continue act in that way; if CEC consider that a transfer of LB ownership to another CEC owned entity, this is not inconsistent with the TA 85; a strong argument is there that the TA 85 needs to be interpreted as a 'point in time' .	No apparent issues different to those in Model B.	As for Model B

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Grant Funding CEC Funding	Requires more detailed analysis regarding permissions on control of funds.	No issue.	Requires analysis and potentially consent from TS.	No obvious issue.
LB Share Transfer	Transfer to TEL does not raise any immediately different issues to those that are in play with tie.	Treatment of council minority shareholders. Refresh on examination of LB articles required. Ministers' consent to transfer required, along with preparatory briefing.	As for Model A.	As for Model B if transfer of shares is to new TEL Ops. as opposed to TEL. Consideration of briefing for competition authorities (QC's view).
Operating Agreements	TEL Operating Agreement will require restructuring.	No issue.	New Operating Agreement or assignation of Operating Agreement(s).	TEL Ops function requires definition in Contract/protocol.
Mem and Arts	No issue.	No issue.	No issue.	No issue to create TEL Ops.

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HR and TUPE Issue	Transfer of staff requires legal considerations.	No issue.	As for Model A	No issue.
Procurement Law	No issue.	No issue.	Requires analysis as to use of "in house" provided exemption in terms of NewCo but essentially a substitute for tie and TEL so likely to be no issue..	As for model C but potential procurement issue if TEL Ops were to manage Transdev under DPOFA.
MUDFA	assignment at tie's discretion(whole or part)	No issue	Assignment at tie's discretion provided Newco has same financial covenant as tie	No issue as no assignment required.
H&S	TEL would require to beef up its policies on inheriting tie's policies and plans.	No issue.	NewCo inherits tie's resource and policies and plans.	No apparent issue.