



COLONY AND PROTECTORATE OF KENYA

SESSIONAL PAPER

No. 2 of 1959/60

**Interim Report of the Committee  
Appointed to Examine the Transport  
Licensing Ordinance**

1959

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## FOREWORD

The Government has considered this Interim Report and has accepted it subject to the following qualifications:—

(i) Paragraph 16:

That, whilst the transport of perishables by road should be accepted as falling outside the general policy of protection of the railways from road competition, the Committee's qualification that vehicles transporting vegetables to Nairobi should not be allowed to back haul commodities which carry high transport charges on the railway, is not accepted; but the back haul of commodities which are highly rated by the Railways should be limited to a distance of 40 miles. There are too many transporters licensed in the Central Province to carry perishables to Nairobi and it is considered that the Transport Licensing Board should maintain its present policy of not licensing further vehicles until such time as the number of transporters is reduced to a figure more commensurate with the true demand for their services, not only in the interests of preventing unfair competition between the railway and road transporters but between the road transporters themselves;

(ii) Paragraph 18:

that the beer and soft drinks industries should be permitted without restriction to carry their own products even on routes parallel to the railway provided this is done in their own transport under "C" licence.

(iii) Paragraph 19:

that the necessity for licensing an element of road transport for strategic reasons must depend on the general situation at any particular time; and that the Committee's recommendation in the last part of paragraph 19, to the effect that licences granted to road transport to meet an emergency should be of sufficient duration to ensure recovery of the capital outlay, should apply also to the case of the petrol hauliers, which is referred to in the same paragraph.

(iv) Paragraph 23:

that the body to be appointed advisory to the Minister should meet when invited to do so by the Minister and that its membership should be decided by the Minister on each occasion, having regard to the particular circumstances making a policy review necessary.

2. Effect will be given to the recommendation that there should be a declaration of Government policy governing this aspect of transport licensing by an appropriate amendment to the Transport Licensing Regulations made under powers conferred by section 30 (1) of the Transport Licensing Ordinance.

Ministry of African Affairs,  
Nairobi.

9th December, 1959.

OFFICE OF THE ASIAN MINISTER WITHOUT PORTFOLIO,

P.O. Box 30050,

Ref.: 26/5/12/9/2.

NAIROBI.

7th August, 1959.

The Honourable A. Hope-Jones, C.M.G.,  
Minister for Commerce and Industry,  
Nairobi.

SIR,

ENQUIRY INTO THE TRANSPORT LICENSING ORDINANCE

As notified by Gazette Notice No. 4231 of 25th November, 1958, we were appointed by you to examine the Transport Licensing Ordinance and to report thereon. In the course of our deliberations we are not confining ourselves only to a detailed examination of the Ordinance itself, and the mechanics of transport licensing, but we are also including in our examination the general purposes of this legislation and the definition of the "public interest".

2. Evidence that we have already heard, and memoranda which we have received from Government departments, the East African Railways and Harbours Administration, local authorities, boards and road transport interests, have induced us to make an Interim Report on the subject of the "public interest" in relation to competition between road and rail transport.

3. We are satisfied that an Interim Report recommending the policy to be adopted towards road/rail competition can be divorced from the rest of our task; we are also satisfied that as it will be several months before we will be in a position to present a final report, the submission of an Interim Report is justified.

4. It would seem that legislation for the licensing of all types of road goods vehicles in Kenya originated from the need to provide protection for what has come to be known as the differential tariff adopted by the East African Railways and Harbours Administration. Although this system of differential rating is nowhere defined in legislation, we have accepted that such a rating structure is the inevitable consequence of the Administration's obligations under clause 21 of the East African Railways and Harbours Act, to which we refer later. Legislation for transport licensing certainly serves other purposes, and as road transport develops there will be an increasing need to ensure orderly and economic progress within the road transport industry itself, but we are of the opinion that, at the present moment, the primary difficulty arising from the present legislation, and the greatest difficulty facing the Transport Licensing Board and the Appeal Tribunal in assessing the public interest, lies in the conflict between road and rail interests. The Chairman of the Transport Licensing Board, the Provincial Administration and other bodies have submitted that there is an urgent need for a general declaration of policy within which the Board and the Appeal Tribunal should work. In addition, the Railways Administration have stressed the desirability of such a declaration.

5. The responsibility for deciding a policy of major economic consequence to the country should not be placed on the Transport Licensing Board and the Appeal Tribunal. We do not consider that a licensing board or appeal tribunal

should be faced with the responsibility of defining the public interest in the context of road/rail competition. We consider that the matter is of such importance to the country's economy that it warrants regular consideration by Government. We believe that much of the time now wasted, and the frustration caused by the present procedure for hearing applications for Carrier's Licences, would be overcome if both the Board and the Appeal Tribunal were guided by a set of general principles known to the public. We consider that the Government should issue a declaration of policy from time to time, and that the Ordinance or Regulations should be amended to ensure that the Board and Appeal Tribunal are directed to base their decisions on such declarations of policy related to the public interest, when considering applications for licences.

6. Our interim recommendations are outlined below. They are confined to the need for a statement of Government policy on the licensing of road transport for the carriage of goods, and a definition of the policy which we recommend the Government to adopt in the first instance. In this, we have confined ourselves to general principles.

7. In the course of considering the protection required by the Railways Administration, we have tried to ascertain precisely what requires protection, and whether any factors other than competition from road transport should be taken into consideration.

8. Evidence appears to have established that the Railways Administration is not, at present, concerned with competition against its passenger services, which can be met on a straightforward commercial basis; it is also not concerned with the specialized services provided by air transport; it is concerned, however, with the loss of goods traffic to road transport. The case for protection lies in the fact that the Administration is obliged by clause 21 of the East African Railways and Harbours Act to be administered on business principles "and so far as it is not inconsistent therewith or with the principles of prudent finance, cheap transport shall be provided by the Administration to assist agricultural, mining and industrial development in the territories". It therefore seems to us that the provision of cheap transport for certain industries can only be at the expense of higher than average rates for other goods and commodities, and that the Railways Administration is particularly vulnerable to road competition in these higher sectors of the rating system.

9. We have been informed that the Railways Administration operates at an average cost of 20 cents a ton mile, of which 7 cents a ton mile represents running costs, and the balance administrative and capital charges. Under its present rating structure, goods are carried between a minimum of 6 cents a ton mile and a maximum of 40 cents a ton mile. One witness stated to us in his evidence that the minimum at which a three-ton lorry could be operated with an element of profit, and with adequate provision for depreciation, repairs and proper labour standards, is 80 cents a ton mile for a one-way load, or 40 cents a ton mile if a load is carried each way, and that a larger vehicle with a trailer could be operated with a one-way load at 50 cents a ton mile. Another witness submitted to us that a vehicle of this type could be operated as low as 40 cents a ton mile with one-way loads, given continuity of traffic and a higher user factor. On the other hand, a railway engineer writing in the June issue of the *East African Railways and Harbours Magazine* has suggested that road hauliers could, under favourable circumstances, quote rates as low as 25 cents per ton mile. This evidence even at its lowest would seem to bear out the contention that, but for the existence of the policy of the differential tariff the railways, as a commercial organization, do not require protection.

10. We accept that over short hauls road transport provides conveniences and economies, but we are agreed that over long hauls the Railways Administration provides the cheapest form of transport in terms of actual cost to the country, and that the differential tariff requires protection. In this respect, we agree with the following extract from the Report of the Commission of Inquiry into Road Motor Transportation, published in the Union of South Africa in 1945, certain paragraphs of which are annexed as an appendix:—

“It is generally conceded that for the long haul the railway can operate at lower cost than the motor vehicle, and the latter is able to compete with the Railways in this field only when, in pursuance of railway rating policy, railage charges are considerably in excess of the actual cost of conveyance, including a pro rata share of fixed or overhead cost. Your Commissioners do not propose to enter upon a discussion of the economic propriety of the present railway rating system; not only is that field of conflict already overcrowded with combatants but it is one which, having regard to our Terms of Reference, we must hold to be ‘out of bounds’. We propose, therefore, to regard the system of differential rating practised by the Railway Administration as one of the conditions of which we must recognize the existence, and must take into account in making our recommendations, but not as one in which we are authorized to propose any change.”

11. We appreciate that there are various other factors which may militate against the integrity of the differential tariff. Some of these are within the control of the Railways management and some are not. The Railways Administration has for instance been given powers recently to lower individual rates to meet road competition. To this extent the form of the differential tariff and the degree of differential are subject to change, and present difficulties in defining exactly what requires protection. In spite of the statutory injunction to observe the principles of prudent finance, the Administration's policy of capital investment could take advantage of protection by creating additional burdens to be supported by the differential tariff. A loss on the road transport and passenger systems operated by the railways could be reflected in demands for increased protection for overall railway revenue, and lastly changes in the economic pattern of the country's development could lead to a change in the proportion of low rated exports to the more highly rated imports, and a distortion of railway revenue. The latter contingency is out of the hands of the Railways Administration and the Government, but we make certain recommendations below to guard against those other factors which may have an adverse effect on the differential tariff, and a demand for unwarranted protection. We are also conscious of the fact that competition is a spur to efficiency, and that a policy of protection and the creation of a monopoly requires safeguards, which will be discussed later. We cannot leave this aspect of the problem without placing on record the fact that we recognize that we are dealing with a Railways Administration which operates on an East African basis, whereas our Terms of Reference limit us to the problems of Kenya.

12. In addition to the need for protection of the differential tariff, we have also taken into consideration the fact that the railway, which is financed by the public, can provide a public service over long hauls at the cheapest cost to the country. We have already noted in paragraph 9 that any traffic carried by the railway at more than the actual running cost of 7 cents a ton mile contributes to the Administration's overheads. Any traffic carried by road, which could be carried by the railways may be to the advantage of the private user, but is at the expense of unused railway capacity and the Administration's overheads, and

in consequence at the expense of the country as a whole. This aspect of the public interest is clearly stated in the following extracts of the Report of the Commission of Inquiry into Road Motor Transportation in South Africa:—

“It is clear that to allow the carriage by road of any passengers or of any goods that could be carried by rail—and would be so carried if road transportation were denied—does deprive the railways of the revenue which would be derived from the carriage, less the additional expense which the railways would have incurred in their transportation. It is clear, too, that the loss falls on the community as a whole as owner of the railways. . . .”

Over long hauls “the actual cost to the community of the conveyance of the goods, or persons, by rail is less than that of conveyance by motor transport. The railway is available and the overhead or fixed charges must be met whether it is used or not and the actual cost of conveyance is therefore only the running cost—the cost which is saved when the goods are not sent or are sent by another method. Consequently, when goods are sent by road instead of by rail, the railways—and the country—lose the contribution to fixed charges of the amount by which the railrage exceeds the actual cost. The only compensating gain is that accruing to the owner of the goods, being the amount by which the cost of conveyance by road is less than the railrage charge. Not only is that gain much smaller than the loss sustained by the community in general, but when the consignment comprises a large number of articles having a high ratio of value to weight, and intended for separate sale to consumers, it cannot affect materially the retail price of each article. The public has therefore all to lose and nothing to gain from the use of motor vehicle transport in such a case, and the refusal rather than the grant of a transportation certificate is in the public interest.”

13. On the other hand, as the Report of the Commission of Enquiry into Road Motor Transportation in South Africa goes on to say in paragraph 313, the public interest to be regarded is not only that which the people of the country have in the financial stability of the railways; it also includes that which, as being all users of transport, directly or indirectly, they have in the provision and development of efficient, speedy and economical means of transportation.

14. For all the foregoing reasons we consider that there should be a general policy of protection against competition by road transport over long hauls parallel with the railway, provided the Railways Administration is able to offer an adequate service, even if at a greater charge in some cases, and provided also that the differential tariff is not unduly modified to the detriment of the more highly rated traffic.

15. With reference to the adequacy of service there are certain goods and routes which should be treated on a special basis.

16. Perishables are an example of such goods, and in particular the delivery of vegetables from the Central Province to Nairobi. We accept that there should be considerable freedom in the carriage of vegetables by road. We cannot accept, however, as has been suggested to us by the Provincial Administration, that vehicles transporting vegetables to Nairobi should be allowed to back haul commodities which carry high transport charges on the railway. We believe that road transport can and should normally charge an economic rate for a one-way load, and the transport of perishables need not and should not be subsidized by the return carriage of those commodities which the Railways Administration is obliged to rate highly to provide preferential rates for the import of fertilisers, for instance, and the export of cash crops.

17. We would not recommend protection for the railways where the direct road route is substantially shorter than the rail route. Obvious examples are the traffic between Thomson's Falls and Nanyuki and Nairobi and Arusha, via Namanga. There may also be cases where the available railway service represents so small a proportion of the total route that it would be unreasonable to require use of that railway service.

18. Again there are some industries, such as beer and soft drinks, whose service to their customers requires the distribution of their products from point to point between terminals. For such purposes the railway may not be able to provide an adequate service, and transport by road may be justified, provided that the distribution en route disposes of a major portion of the total load, and provided further that in the opinion of the Transport Licensing Board the nature of the industry is such, that taking into account all relevant circumstances, the railway is in fact unable to provide an adequate service, and the carriage of the goods by road would be justified.

19. We have also given consideration to the argument that there should be an element of road transport licensed for the carriage of essential commodities between terminals for strategic reasons. We are unable to accept that this is a valid argument for the following reasons:—

- (i) The inability of the railway to carry essential commodities can arise in two ways:—
  - (a) a breakdown in the railway system; or
  - (b) a sudden increase in demand beyond the capacity of that system.
- (ii) As far as a breakdown in the railway system is concerned, we have been assured that the Railways Administration can in fact meet any contingency that might arise within the time limit of up-country stocks.
- (iii) Difficulties created by a sudden increase in demand would be confined to the transport of commodities such as petroleum and oils because of the specialized rolling stock concerned. From figures supplied to us we are satisfied that the Administration now maintains an adequate surplus. It also works closely in conjunction with the companies concerned, whose forecasts of future demand have proved extremely accurate.
- (iv) Despite the flexibility of road transport, a small number of road vehicles licensed to carry a part of the traffic on a permanent basis would be insufficient to meet the country's needs in the event of a complete breakdown in the railway system.
- (v) The Railways Administration would have to maintain surplus capacity to deal with the possibility of a breakdown in the road system.
- (vi) Road transport could only carry highly rated products economically. It would, for example, not require a very large decrease in the present railway rate to make the transport of petrol by road uneconomical.

We can only conclude that the permanent licensing of a fleet of vehicles for strategic reasons is unnecessary and would be wasteful. We do not recommend it. If, however, on any future occasion special types of private road transport vehicles should require to be purchased and licensed in order to meet an emergency (as in 1955), the licences then granted should be of sufficient duration to ensure recovery of the capital outlay. As an example of the kind of case we have in mind we would refer to the special claim of certain petrol hauliers who were licensed in 1955, and whose licences have not been renewed, but we do not think it is within our Terms of Reference to comment on the merits of this or any other individual case.

20. The need to preserve the differential tariff obliges us to take the view that the proper sphere of road transport, where an adequate railway service is available, is in short hauls and distribution to and from terminals on the railway line. We therefore recommend that licences should be endorsed to prevent the carriage of goods parallel with the railway for distances of more than 30 miles, or such greater distance as the nature of the goods or the nature of the service may warrant. The distances involved will vary with the locality and the nature of the product. We have for instance envisaged in the case of beer and soft drinks carriage for longer distances parallel with the railways, provided a considerable part of the load is for distribution to intermediate points.

21. We would add that we are conscious that the result of our foregoing recommendations will be to exclude hire transport on a Colony-wide basis on routes running parallel with the railway line, except as indicated in paragraphs 16, 17 and 18, but to the extent that our recommendations would affect persons carrying their own goods in their own transport, we make the following further observations.

22. The principle that every citizen should be free to do as he likes with his own transport is a principle which should only, in our opinion, be tempered where it can be clearly shown that it is in the public interest. We have inevitably been faced with the conclusion that the issue of "C" licences without any form of restriction would compromise the general principle of protection for the railways, which we have recommended above, as being in the public interest. There is a conflict between the liberty and the private interest of the individual on the one hand, and the interest of the community on the other. In our opinion the interest of the community should prevail. We are reinforced in this opinion by the evidence which we have heard of the prevalence of abuse of "C" licences, which are used for the carriage of goods for hire and reward. Some unsuccessful applicants for "B" licences take out "C" licences in the knowledge that infringement of the law is difficult to detect and prove. The public interest demands that the activities of such operators be curtailed. For all these reasons we recommend that "C" licences should only be issued for those types of vehicles which are necessary and suitable for the owners' own transport. We also recommend that there should be a general restriction on the radius of action of holders of "C" licences of 30 miles, or such greater radius as may be appropriate having consideration to the particular circumstances of each case, such as those suggested by paragraphs 16, 17 and 18, or where no railway service is available. We recommend further that the use of vehicles with a carrying capacity of less than 15 cwt. should be unrestricted for the carriage of their owners' goods, but we reserve it for consideration later whether such vehicles should continue to be licensed or not.

23. In paragraph 11 of our report, we mentioned that a policy of protection and the creation of a monopoly requires safeguards. Moreover, any general policy statement which Government may issue must be subject to revision in the light of changing circumstances. We appreciate that the Railways Administration is already subject to the control of the Transport Advisory Council, and ultimately the Central Legislative Assembly and the Territorial Legislatures. Nevertheless, we feel that there is a need for a body advisory to the Minister. Such advisory body should include representatives of road as well as railway interests, and would concern itself with a wider sphere than the Railways Administration alone. We appreciate that there are certain difficulties in the way of setting up such a body for East Africa as a whole, but we believe that a start could and should be made for Kenya alone. We would envisage the advisory body concerning itself with the services provided by the Railways Administration, the safeguarding of



railway and road interests against an undue incursion by the one into the other's legitimate sphere of operations, and possibly other matters which may arise out of our final report. Also the advisory body would be responsible for a periodic reappraisal of the Government's declared policy in the light of changing circumstances.

We have the honour to be,  
Sir,  
Your obedient servants,

..... C. B. MADAN (*Chairman*).

..... H. SLADE (*Member*).

..... WANYUTU WAWERU (*Member*).

..... A. J. DON SMALL (*Member*).

..... F. T. HOLDEN (*Member*).

Signed by Mr. H. Slade subject to the reservation contained in the Addendum (pp. 8-9).

..... I. A. C. KINNEAR

..... S. A. COLEMAN

(*Joint Secretaries*).

## ADDENDUM

*Reservation by H. Slade, Esq.*

I am unable to agree entirely with paragraph 22 of this Report, which deals with persons carrying their own goods in their own transport.

2. "Public interest" includes preservation of certain principles of individual liberty; and where those principles conflict with other considerations of "public interest", they cannot, simply by reason of such conflict, be completely brushed aside.

3. The principle to which I now refer is, as stated at the commencement of paragraph 22, that "every citizen should be free to do as he likes with his own transport"; meaning, of course, use of his own transport for his own purposes by way of self help, as opposed to hiring it to others for reward. An obvious example is the man who prefers to travel by his own car, motor bicycle or pedal cycle (or even to walk!), rather than use public transport.

4. Doubtless every citizen who uses his own transport to carry his own goods on a road parallel to a railway is thereby detracting from the turnover of the East African Railways and Harbours Administration, and thus affecting its economy. Nevertheless, in spite of representations from that Administration, I am not satisfied by the evidence that competition by bona fide owner-transport is at present such as to cause any serious injury to its economy; or likely to do so, if the rates charged by the Administration at the various levels of their differential tariff remain reasonable. For example, the Oil Companies have not yet found it worthwhile to transport their own products from Mombasa to Nairobi, though some of those products are carried by the railway at the highest rates.

5. It seems clear to me, in the light of the evidence that we have heard and read, that the real problem of "C" Licences (i.e. owner-transport licences) lies less in the principle than in the abuse thereof, as described in paragraph 22 of the Report. There can be no doubt that such abuse is widespread, to the great detriment of (*inter alios*) the Railways Administration. There is always the danger that a desire to prevent abuses may result in subordination of sound principles to expediency; but, in this case, I have to recognize that a measure of restriction, though theoretically undesirable, is practically inevitable, even for true application of the principle.

6. In view of these considerations, my recommendations are as follows:—

- (a) I agree that there must be some restriction of owner-transport in competition with the railway.
- (b) I agree that there need be no restriction of the use of vehicles of less than 15 cwts. capacity for carriage of their owners' goods.
- (c) As regards vehicles of 15 cwts. capacity or more, I agree that, in general, "C" Licences should be restricted to the extent proposed by paragraph 22 of the Report; *but* I consider that there should be no restriction of the radius of action of owner-transport where the applicant can show—
  - (i) that his own transport by road is more economic, or more convenient to himself or his customers, than transport by rail; *and*
  - (ii) that the goods which he wishes to transport by road are so easily identifiable as his own goods, or else such low-rated goods on the railway, that risk of abuse (by carriage of other people's goods for hire) is negligible.

7. I might add that preservation of this measure of freedom of owner-transport will constitute an additional safeguard, by way of competition, against the danger of imposition by the East African Railways and Harbours Administration of excessive charges at the higher levels of its tariff, to which paragraph 11 of the Report refers. Such charges will have to rise well beyond those which invite competition by hired transport on the road, before inducing the majority of commercial undertakings to provide such transport for themselves.

8. In conclusion, I must declare an interest; in that I am a Director of a Brewery Company and of a company manufacturing mineral waters, both of which at present carry their own produce by road, between various railway terminals, and bring back "empties" in the same way. I like to think that the foregoing recommendations are in spite, rather than because, of that interest.

EXTRACT FROM THE REPORT OF THE COMMISSION OF ENQUIRY  
INTO ROAD MOTOR TRANSPORTATION IN SOUTH AFRICA (1945)

*Protection of Railways Against Competition.*

312. This question of the extent of the protection to be afforded to the railways against competition is one of the most important—if not the most important—with which your Commissioners are required to deal, and we think it necessary to define as explicitly as possible the policy which ought, in our opinion, to be pursued. As we have already said, the object to be attained is the prevention of competition which is harmful to the community, and we wish to emphasize that in considering whether competition is harmful regard must be had not only to its effect on the finances of the railway but to its effect on the public as a whole; and not only to its immediate consequences but to its eventual consequences.

313. It is clear that to allow the carriage by road of any passengers or of any goods that could be carried by rail—and would be so carried if road transportation were denied—does deprive the railways of the revenue which would be derived from the carriage, less the additional expense which the railways would have incurred in their transportation. It is clear too, that that loss falls on the community as a whole as owner of the railways. But that does not conclude the enquiry. The public interest to be regarded is not only that which the people of the Union and South-West Africa have in the financial stability of the railways; it includes also that which, as being all users of transport, directly or indirectly, they have in the provision and development of efficient, speedy and economical means of transportation. Parliament may well set up here a groyné and there a breakwater to protect existing institutions against the onrushing tide of advancement and to guide it into channels of steady progress, but no more than Canute can it stay, nor should it seek to stay the tide's general onward movement.

314. It is generally conceded that for the long haul the railway can operate at lower cost than the motor vehicle, and the latter is able to compete with the railways in this field only when, in pursuance of railway rating policy, railrage charges are considerably in excess of the actual cost of conveyance, including a *pro rata* share of fixed or overhead cost. Your Commissioners do not propose to enter upon a discussion of the economic propriety of the present railway rating system; not only is that field of conflict already overcrowded with combatants but it is one which having regard to our Terms of Reference, we must hold to be "out of bounds". We propose therefor to regard the systems of differential rating practised by the Railway Administration as one of the conditions of which we must recognize the existence and must take into account in making our recommendations, but not as one in which we are authorized to propose any change.

315. In the case postulated the actual cost to the community of the conveyance of the goods, or persons, by rail is less than that of conveyance by motor transport. The railway is available and the overhead or fixed charges must be met whether it is used or not and the actual cost of conveyance is therefore only the running cost—the cost which is saved when the goods are not sent or are sent by another method. Consequently when goods are sent by road instead of by rail, the railways—and the country—lose the contribution to fixed charges of the amount by which the railrage exceeds the actual cost. The only compensating gain is that accruing to the owner of the goods, being the amount by which the cost of conveyance by road is less than the railrage charge. Not only is that gain

much smaller than the loss sustained by the community in general but when the consignment comprises a large number of articles having a high ratio of value to weight and intended for separate sale to consumers it cannot affect materially the retain price of each article. The public has therefore all to lose and nothing to gain from the use of motor-vehicle transport in such a case; and the refusal rather than the grant of a transportation certificate is in the public interest.

316. As many witnesses have insisted, the direct cost of one or other method of transportation is not alone to be considered. Speed of transit, the avoidance of repeated handling of goods (with its attendant increased risk of damage and need for expensive packing), ability to assign responsibility for damage to or loss (by theft or otherwise) of goods. These are all factors of importance varying according to the character of the goods conveyed; and their consideration may well justify the use of one form of transportation in preference to that of another notwithstanding that the direct cost of the former is higher. It was strongly urged by the Associated Chambers of Commerce and other witnesses that in all these respects, save only that of direct cost, motor transport has the advantage as a means of conveyance of everything but heavy goods in bulk over long distances, but though that may be conceded to be the general rule it is not without its exceptions. It is clear to us that the Railway Administration has been giving careful attention to methods of accelerating goods delivery service and of avoiding loading and unloading during transit. Some improvements, notably in the collection and delivery of milk and in the rapid movement of perishable foodstuffs, have already been effected, and the introduction of others, which has been delayed by war conditions may be expected in the near future.

317. *The practice which transportation boards should adopt is stated with admirable conciseness in subsection (3) of section 13 of the Act of 1930 though it is thought desirable that the injunction which it contains should be so phrased as to be strongly directory rather than absolutely prohibitive.* The section reads:—

“(3) Whenever any transportation facilities in existence within any area or over any route, are in the opinion of the Board or a local board concerned, satisfactory and sufficient to meet at a reasonable charge the transportation requirements of the public within that area or along that route, the Board or such local board shall not grant any motor-carrier certificate in respect of any motor-carrier transportation within substantially the same area or over substantially the same route in competition with the said transportation facilities.”

318. The meaning and effect of this provision are unmistakable. It prohibits the grant of a transportation certificate for new or additional services only when the existing services are “satisfactory” and “sufficient” and meet requirements “at a reasonable charge”. Whether the service is “satisfactory” must of course be judged according to a standard which is constantly changing, and rising, with the development of means of transportation. Forty years ago the conveyance in rural areas of persons by coach and cape-cart, and of goods by mule or ox-wagon, was properly thought to be “satisfactory”; it would hardly be so regarded today. A service cannot be deemed “satisfactory” if a much better one can be provided; and it is important that neither in this subsection, nor elsewhere in the statute, is there any suggestion that in judging the satisfaction of requirements by the railway and by other methods of transport different standards must be used.

319. As to the meaning of “sufficient”, little question can arise. The service must provide for the conveyance of all persons, or all goods, of whom or of which, and at a time when, it is reasonably required. But it should be stressed

that here, as elsewhere, in deciding what requirements are reasonable any doubt should be resolved in favour of the public to be served rather than in favour of the operator.

320. The stipulation that an existing service, if it is to deserve protection, shall meet requirements "at a reasonable charge" is one which raises an important issue. It is a direct injunction to a board, in coming to a conclusion whether a motor-vehicle service should be allowed in competition with an existing service—whether it be another motor-vehicle service a tram service, a trolley-bus service or a rail service—to consider whether the charges made by the existing services are reasonable. Some doubt has been expressed whether a transportation board is not debarred from considering whether rail charges are reasonable, but we have ourselves no such doubt. As we have said, we have not regarded it as our function to enquire into the propriety of the Railway Administration's rating system and it is certainly not the function of transportation boards to make that enquiry. But though the boards are not concerned with the merits and demerits of the rating system, they are bound to take cognizance of its consequences when the consequences are material to applications which are before them for consideration. It cannot reasonably, we think be contended that in considering whether a motor-carrier service should be permitted to operate in any area or on any route, already served by the railway, a board must disregard entirely the cost to the local public of the use of the existing service, and any reduction in that cost which might result from the operation of a competitive service, and must consider only whether the railway service is in other respects satisfactory and is sufficient. Our considered opinion is that a transportation board not only may but must consider the charges made by the existing service, whether it be a railway or a road motor service in comparison with the charges which would be made by a competitive service. Assuming that it appears that the competitive service would be less costly to the public to be served, that greater cheapness is an argument in its favour to which due weight must be given. It is not, as we have stressed earlier in this Report, a conclusive argument; and it may well be outweighed by consideration of the extent to which the public interest is concerned in the protection of the existing service, but it cannot be completely disregarded. Transportation boards cannot of course be empowered to prescribe railway rates or tram fares, as they can prescribe the rates to be charged by motor carriers but, on the other hand, they cannot be expected to, and should not, create or preserve monopolies for the railways or for tramway operators within the scope of which the management may fit rates at whatever level it thinks fit.

#### *Protection of Operation Generally*

321. From the evidence which your Commissioners have heard, both from transportation boards and from their critics, *we have come to the conclusion that some boards have failed to appreciate that the whole intent and purpose of the Act is to serve and protect the interests of the public and those interests only.* Wherever the effect of the provisions of the Act and of their administration is to afford protection to an operator and to create for him a limited monopoly of operation, the clear intention of the provisions is—and the purpose of their administration should be—to afford the protection and maintain the monopoly only so far and for so long as serves the public interest. One of the consequences of affording protection to an operator is that he derives financial benefit just as any other would-be operator who is able and willing to undertake the same service suffers loss through his exclusion from the field, but though this is a consequence of protection it is not its object.

322. We think it necessary to state this view with some emphasis because the boards to which we have referred are apparently of opinion that the statute vests in the operator a right to protection of his own interests apart from any question of the interests of the public. In support of this opinion there has been quoted subsection (2) (d) of section 13 of the Act which requires a board, in deciding on an application for a transportation certificate to take into consideration whether transportation sought to be authorized will "adversely affect . . . any other transportation facilities". This has been read as being to some extent an interdict against the grant of a certificate which will make the conduct of operations under an existing certificate less profitable to the operator; but we interpret it as an injunction to take into account the possibility that existing facilities may, by the grant of another certificate, be made less serviceable to the public. Having ascertained whether, and in what degree, this will follow, the board sets off this disadvantage against the advantages offered by the new service and its decision is guided by the result.