

BRUSSELS RAIL TRANSPORT BRIEF: JUNE 2020

Date: 7 July 2020

European Regulatory Newsletter

By: Miguel A. Caramello Alvarez, Philip Torbøl, Alessandro Di Mario, Francesca Lai, Giulia Marino

ANTITRUST AND COMPETITION

Achilles and Network Rail Infrastructure: A Second Court Trial on Antitrust Lawsuit

Achilles Information and Network Rail Infrastructure are expected to face a second court trial in 2021 concerning the UK rail infrastructure owner's use of a single program to scrutinize suppliers of rail contracts. According to an order issued by the Competition Appeal Tribunal, a five-day trial will decide upon matters of abuse of dominance, loss, and damage.

Mitsubishi Electric Corp Acquires Stake in EKE Group

Mitsubishi Electric Corp, has acquired a 34 percent stake in EKE Group's train automation and management systems business EKE-Electronics and signed a wide-ranging co-operation agreement, which provides EKE-Electronics with access to fast-growing markets, such as the Asia Pacific area and the United States, and the capability to expand its strategic portfolio with the possible integration of EKE-Electronics' train control and management systems with Mitsubishi Electric's propulsion systems.

VTG Rail Logistics Acquires a Majority Stake in Freight Operator Carbo Rail

Following the announcement of the regulatory approval in February, VTG Rail Logistics completed the acquisition of a majority stake in Bratislava-based freight operator Carbo Rail.

Carbo Rail, owner of 25 locomotives, will be integrated into VTG's Retrack freight business with the name of 'Retrack Slovakia'. The acquisition is expected to reinforce VTG Rail Logistics presence in Central and Eastern Europe.

TMH Finalizes DJJ Acquisition

With the aim of becoming market leader in Hungary, Transmashholding (TMH) has finalized the acquisition of Dunakeszi Járműjavító-DJJ (DJJ). Through the transaction, TMH Hungary has acquired the management of DJJ, now owning 90 percent of the shares in the DJJ business.

TMH and DJJ will build 680 passenger coaches for the Egyptian National Railways at the DJJ plant. To pursue the project, a transfer of production and technology will begin between the DJJ and Tver Carriage Works (TVZ) factory in Russia, where the second half of the coaches is going to be produced.

General Court Hears Lower Saxony Transport Operator's State Aid Appeal

On 16 June 2020, the EU General Court heard an appeal by Gesamtverband Verkehrsgewerbe Niedersachsen brought against the European Commission's decision on its state aid complaint.

The complaint asserted a failure by German authorities to notify an aid program established under the law of Lower Saxony in relation to local transport. The European Commission decided that the measures did not constitute state aid. The full text of the report for the hearing in case T-583/18 Gesamtverband Verkehrsgewerbe Niedersachsen (GVN) v Commission is now available in German.

Alstom to Acquire Bombardier's Rail Unit, Seeks EU Approval

On 12 June 2020, Alstom notified the European Commission (Commission) of its plan to buy Bombardier's rail business. The European Union has set an initial deadline on 16 July. The French railways company had announced in February that it had agreed to buy Canada's Bombardier Transportation. The decision comes a year after the previous acquisition attempt by Alstom of Siemens was blocked by the Commission. The block received a fair amount of criticism, France highlighting a need for European Champions. The Commission, however, found that the deal would have harmed competition in markets for signaling systems and high-speed trains.

Rail-Freight Companies Fined in Czech Republic for Cartel Agreements

AWT Čechofracht, Interfracht, Argo Logistics and Spedica have been fined 18.4 million Czech koruna (€690,000) by the country's competition authority for cartel agreements. The companies were sharing customers and freight contracts, coordinating prices and exchanging sensitive data on the market for international rail-freight transport and forwarding. Rail Cargo Austria escaped the fines, having reported the cartel. Interfracht and Argo Logisticis have filed an appeal against the decisions.

RAIL REGULATORY AND POLICY

European Commission Adopts a Proposal for a Regulation Establishing Measures for a Sustainable Rail Market in View of the COVID-19 Pandemic

On 19 June 2020, the European Commission (EC), adopted a proposal for a Regulation of the European Parliament and of the Council establishing measures for a sustainable rail market in view of the COVID-19 pandemic. The new Regulation will allow Member States and Infrastructure Managers (IMs) to waive or reduce track access charges as well as reservation charges. The Regulation, complementing the existing allocation and changing framework Directive 2012/34/EU, will aim at making sure that appropriate and necessary measures are taken to support the rail freight industry in an open, non-discriminatory and transparent manner.

The measures concern the waiver, reduction or deferral of track access charges for the use of rail infrastructure, as well as the waiver of reservation charges. They cover a reference period from 1 March 2020 until 31 December 2020. The new Regulation will have impacts on the following:

Track access charges: The EC proposes derogation from Article 31 (3) of the Directive, which requires that charges for the minimum access package are set at the level of cost directly incurred as a result of operating the train service. During the current crisis, the provision is hindering infrastructure managers and Member States, being unable to set charges at a lower level.

Mark-ups: As the legal framework currently stands, amendments to mark-ups are in principle not possible in the course of a given working timetable period. The EC proposes with this new Regulation to offer member states greater flexibility to allow immediate downward adjustments.

Reservation charges: Reservation charges are intended to discourage railways from cancelling train paths at short notice to promote the best and full use of capacity with the level of charge increasing the closer the cancellation is to the time of operation. The EC argues that the current legal framework is no longer relevant and proposes that Member States lift the obligation. The regulation also proposes refunding of the infrastructure managers takes place by December 31 in the year after the loss incurred.

Adjustments of the network statement: The proposal states that network statements should be kept up-to-date and amended without delay.

The Council Adopts Relief Measures for Railways to Face the Current Crisis

On 25 May 2020, the Council of the European Union adopted an extension to the transposition deadline for the rail safety and interoperability directives of the fourth railway package. The act is part of the Transport Emergency Package that was presented by the European Commission in April 2020. The aim of the measures is to provide the rail industry and the authorities with the flexibility and legal certainty they need to address the current extraordinary circumstances.

The deadline to transpose the rail safety and interoperability directives of the fourth railway package, originally set on 16 June 2020, has been extended to 31 October 2020.

“Next Generation EU” Recovery Plan to Support Sustainable Transport

On 27 May 2020, the European Commission has proposed a €750 billion for a major recovery plan the “Next Generation EU.” European Commission President Ursula von der Leyen has announced that the new recovery instrument is aimed at building “a green, digital and resilient future,” and support the European Union to recover from the coronavirus pandemic.

In total, this European Recovery Plan will put €1.85 trillion to help kick-start the European economy. €500 billion of these bonds would be spent as grants on national projects that could help accelerate the green transition. The plan would also give €250 billion in loans for projects like green infrastructure and technologies and support cleaner transport and logistics. The plan will also increase rail travel and clean mobility. Additional €1.5 billion from the Connecting Europe Facility will be granted to the transport sector to facilitate cross-border connections, such as Rail Baltica linking the Baltic States and Poland.

EU Member States United to Improve International Rail Travel

On 2 June 2020, a European Coalition comprising most EU member states and Switzerland expressed their willingness in a political statement to co-operate to increase rail's share of the international passenger market. The European Coalition commits to support 'a European agenda for international passenger rail', by facilitating co-operation between member states and third countries to improve services; assessing the functioning of the market and to co-operating closely with infrastructure managers, operators, and sector representatives.

Fret Ferroviaire Français du Futur Alliance to Double Freight Market Shares in France

The Fret Ferroviaire Français du Futur alliance (4F Alliance) is finalizing its formal presentation to the government to relaunch the rail freight business. The proposal ambitiously aims to double rail's share of the freight transport market in France by 2030, ensure economic recovery, and reduce carbon emissions.

4F Alliance is especially calling for action on three fronts: towards the operators, ready to innovate and take the commercial risk of recapturing freight in France; towards infrastructure manager SNCF Réseau, which should

invest in renovation of the network; and towards the state, which should ensure decarbonisation of the transport sector and support competition within the rail business as part of more sustainable logistics chains.

PUBLIC PROCUREMENT AND NEW PROJECTS

Germany Encourages Funding Applications on Freight Innovation

The German Federal Ministry for Transport & Digital Infrastructure has encouraged applications for funding of projects aiming to optimize the efficiency of rail freight.

Proposals should focus on digitalization, automation, and vehicle technology. Applications should be presented to the Federal Railway Office located in Bonn.

On 19 May 2020, application guidelines were published in the Federal Gazette, laying down a two-stage process for submissions. Up to €30 million grants per year will be made available by the federal program sponsoring innovations in rail freight, which is part of the Master Plan for Rail Freight issued in 2017.

A New Route for the Transport of Sanctioned Goods

RZD Logistics has operated a trial service transporting EU goods subject to Russian sanctions in transit from Germany and Estonia to China via the Zabaikalsk border crossing. In addition to the southern transit route via Kazakhstan, the northern route is expected to open additional opportunities, particularly to increase the transit flow of goods from European countries in the eastern direction.

Czech Republic Approves Additional Funds for the Railway Sector

In order to help reconstruction, repair, and maintenance of rail lines, the Czech government has increased the railway investment budget by €128.6 million to €1.7 billion.

€10.3 million will be allocated to repair the track on the Děčín-Prostřední Žleb and Dolní Žleb railway sections, while €7.3 million will be used to repair unstable embankments on the Hájek – Dalovice line. Additional €5.5 million will support a €8.9 million project aiming to reconstruct the Mostek – Horka u Staré Paky line in Bohemia.

Another part of the budget is dedicated to a station modernisation programme and will include the Litoměřice, Hronov, Potštejn, Sedlčany or Nová Ves stations near České Budějovice.

Bulgarian State Railways and Siemens Mobility Signed a Contract for the Supply of Locomotives

On 25 May 2020, the Bulgarian State Railways and Siemens Mobility signed a contract for the supply of 10 Smartron locomotives by May 2021. The new locomotives aim to offer rail passenger transport services across the country.

The contract has a value of €28.4 million and covers technical support and all necessary spare parts and consumables for a three-year period and 600 thousand km, as well as transport, insurance, and commissioning.

First Regional Passenger Automatic Train Operation Test to Start in Germany

On 28 May 2020, Alstom has announced that the first regional passenger Automatic Train Operation (ATO) trials will be carried out in Lower Saxony. The research project will be done with two Coradia Continental trains owned by the Regionalbahnfahrzeuge Großraum Braunschweig GmbH and operated by Metronom. The research project will start next year and will test operation for first automated trains in early 2023. This new technology of ATO will

be a world-first for regional passenger trains. For this project, the two trains will be equipped with a European Train Control System and additional ATO equipment. The equipment will allow the trains to operate automatically. The first system allows a fully autonomous train journey, but with an attendant who can intervene in case of emergency. The second system will be an unattended operation with no staff aboard, but with the possibility of remote control. The findings of the project will contribute to the development of the legal and regulatory framework that will regulate ATO.

New Agreement Between SŽ and SNCF on High-Speed Network

In order to further develop the national network of high-speed lines, the Czech infrastructure manager SŽ has finalised a new agreement with SNCF International.

SNCF's assistance to SŽ started in 2019 with the aim of drawing up technical standards and design documentation for the future high-speed network, when the country was preparing its legislative and technical environment for such development.

The new agreement provides that SNCF International will oversee and support the development of land use and planning documentation and will advise on proven technical solutions, including all aspects of construction, commissioning, operation, and maintenance.

European Investment Bank Signs Loan for Track and Signaling Renewal in Estonia

The European Investment Bank (EIB) and Eesti Raudtee have signed a € 95 million agreement for the modernization of Estonian railway network. The project is estimated to be worth € 205 million and it consist of infrastructure and signaling works to modernize the tracks and the control-command and signaling systems on the country's network as well as carry out the digitalization of the train management systems of the Tallinn-Tartu line and Tapa-Narva line. The project is aimed to drastically improve railway services for both passengers and goods, to allow modal shift from road to rail and consequently reduce energy consumption, noise, and emissions of pollutants and CO2.

Loan Agreement Signed for Trenitalia

A € 300 million loan agreement with a three-year tenure was signed with UniCredit by Trenitalia and Rete Ferroviaria Italiana. Part of the loan is aimed for the financing of electric rolling stock and sustainable activities. The loan will also be used to finance the investments into electric locomotives, operated for regional passenger transport, and coaches for long-haul public service passenger transport.

German Railway Authority Grants Authorization for Mireo Trains

The German Railway Authority has granted its initial authorization for Mireo trains for the timetable change in June 2020 when these are expected to start operating regional service on the Offenburg—Freiburg—Basel/Neuenburg route.

The authorization follows the award to Siemens Mobility of a contract for the supply of 24 Mireo trains and 15 Desiro HC double-decker trains to be operated by DB Regio.

Rail Baltica Contract Awarded for Pärnu – Latvian Border

RB Rail has awarded a €10.8m contract to provide design and construction supervision services for the 93.5 km section of the double-track route between Pärnu and the border with Latvia.

This section will include three passenger stations, one freight facility, nine railway bridges, 15 road overbridges, 148 culverts, and 11 'ecoduct' overpasses to allow animals to cross the line.

The design phase will last 27 months and will include geotechnical investigations and detailed technical design. This will be followed by 60 months of monitoring during the construction phase and will include the approval of any modifications to the original design.

European Coordinators for the TEN-T Core Network Corridors Reply to the European Court of Auditors Report

Following the report of the European Court of Auditors on eight cross-border transport projects, the nine European Coordinators for the TEN-T Core Network corridors affirmed that the completion of the network by 2030 is "indispensable" for the European recovery.

"All Member States have committed to realizing the TEN-T Core Network by 2030. This means addressing important bottlenecks and key missing links across Europe, especially where cross-border connections are inexistent or unable to cater for modern transport needs. The crisis demonstrated the importance and value of those cross-border connections and transport infrastructures have a key role to play in the economic recovery" the statement reads.

The coordinators confirmed that the projects are progressing and that they have already received the decisive European funding. Collaboration with the national authorities and project promoters will continue to ensure the timely and budgetary delivery of the TEN-T projects to create the TEN-T Core Network by 2030, which will allow continuous transport services across the European Union for passengers and freight.

KEY CONTACTS



MIGUEL A. CARMELLO ALVAREZ
COUNSEL
BRUSSELS
+32.(0)2.336.1946
MIGUEL.CARMELLOALVAREZ@KLGATES.COM



PHILIP TORBØL
PARTNER
BRUSSELS
+32.(0)2.336.1903
PHILIP.TORBOL@KLGATES.COM



ALESSANDRO DI MARIO
SENIOR ASSOCIATE
BRUSSELS, MILAN
+32.(0)2.336.1938
ALESSANDRO.DIMARIO@KLGATES.COM



FRANCESCA LAI
ASSOCIATE
BRUSSELS
+32.(0)2.336.1924
FRANCESCA.LAI@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

K&L GATES HUB