

BRUSSELS RAIL TRANSPORT BRIEF: SEPTEMBER-OCTOBER 2020

Date: 27 October 2020

European Regulatory Newsletter

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

ANTITRUST AND COMPETITION

Rail sector receives €4.7 billion in France

On 3 September 2020, the French government announced its intention to provide a €4.7 billion financial support package for the rail sector. The funding package is part of a wider national programme called *France Relance*, a €100 billion investment plan representing the equivalent of one-third of the annual state budget, with €40 billion provided by the European Union. The programme aims at supporting businesses, rethinking production models, transforming infrastructure, and investing in training. With regards to the railway sector, it includes the renewal of the network and more support for rail freight and investment in rural and secondary lines. Almost half of the package will go towards 'accelerated renewal of the mainline network' with a particular focus on switches, crossings, and other assets at key nodes. A further €1.5 billion is to be spent on renewing bridges and structures, and on finding environmentally-friendly alternatives to glyphosates for managing lineside vegetation and weeds.

Alstom-Bombardier acquisition, lower price than estimated

On 16 September 2020, Alstom [announced](#) that it signed the sale and purchase agreement with Bombardier Inc. and Caisse de dépôt et placement du Québec (CDPQ) for the acquisition of Bombardier Transportation with a revised price term. According to that publication the price range for the acquisition of the totality of Bombardier Transportation shares has been set at €5.5 to €5.9 billion, but could drop to €5.3 billion. The previous price range was of €5.8 to 6.2 billion.

The reduction is based on estimated potential post-closing adjustment and obligations linked to the net cash protection mechanism. Under the agreement Bombardier and CDPQ will sell their interests in Bombardier Transportation to Alstom on the basis of an enterprise value of €7.15 billion, reflecting a €300 million price reduction from the previously announced Memorandum of Understanding (MoU), offset by the impact of a more favorable currency exchange rate, Bombardier says. The financing structure remains the same as communicated previously, in particular the size and terms of the rights issue and the reserved capital increases of CDPQ and Bombardier Inc.

Following positive progress on antitrust regulation process (the European Commission [cleared](#) Alstom's acquisition of Bombardier, subject to conditions in July), the closing of the transaction is now expected for Q1 2021 subject to regulatory approvals and customary closing conditions, with an extraordinary shareholders' meeting to be held on 29 October 2020.

Industry concerns raised in China for Alstom acquisition of Bombardier

French train maker Alstom's planned acquisition of Canadian Bombardier's rail business is raising antitrust worries among industry players in China. Third parties have filed a formal complaint with the State Administration for Market Regulation (SAMR).

Concerns are centered mainly around the companies' overlaps in signaling technologies, as well as traction systems, and thereby their increased control of relevant markets following the combination. SAMR's pre-acceptance review of the case began on 3 June, after documents were submitted to the authority. According to recent documentation, the Alstom deal is now in the second phase of SAMR's review cycle.

RAIL REGULATORY AND POLICY

Bratislava–Komárno line now operated by ZSSK and ÖBB

From 13 December 2020, state passenger operator ZSSK and Austrian Federal Railways (ÖBB) will operate PSO-supported services on the 95 km Bratislava–Dunajská Streda–Komárno line for two years. The decision, announced on September 23, has been taken by the Ministry of Transport & Construction, the two operators will replace Czech company RegioJet.

The Ministry had initially called for tenders for a duration of 10 years, but potential bidders declared the conditions were unmeetable and the schedule too tight. An interim two-year contract was therefore tendered in March, to give more time to procure a long-term contract, which will run for 10 years from December 2022.

The Ministry said ZSSK and ÖBB's offer will provide air-conditioned rolling stock, at a lower average price of €9.65 per train-km, reducing the annual subsidy by around €200,000.

Informal deal struck on rail passenger rights reform

On 1 October 2020, an informal deal between the European Parliament and the Council on new EU rail passenger rights rules has been reached. The revised passenger rights rules will give train companies the right to refuse compensation for delays arising from circumstances beyond their control, mirroring similar provisions affecting air passengers.

The reforms are aimed at standardizing rail rights across the EU and introduce new obligations such as:

- All trains will have to be equipped with bike racks.
- Railways will have to reroute passengers for delays of more than 100 minutes and find alternative options for travel, as is the case today for airline passengers.
- Disabled travelers will now only need to prenotify train staff 24 hours before departure of their needs, rather than the 48 hours at present.

This provisional agreement is subject to approval by the Council.

Technical Specifications for Interoperability (TSI) certification for the European Sgmmns cars

Following the successful certification testing in Europe, the four-axle Sgmmns flat cars designed by United Wagon Company (UWC), Russia's leading and one of the world's biggest manufacturers of freight cars, have received the certificates proving compliance with TSI standards for car production, allowing UWC to fulfill a previously signed contract on the supply of 200 rolling stock units.

The cars will be used by the Polish logistics company, Laude Smart Intermodal, on the 1,435 mm railway network, improving the efficiency of transport services with intermodal containers, which ensures cross border services between the standard-gauge network and 1,520mm rail network.

The cars have improved technical specifications compared to similar cars currently available on the European market in so far as they have a reduced tare weight of 15.5 tonnes, compared with tare weights of 16 tonnes and higher in standard models widely available on the market.

Proposal to relaunch Trans-Europe Express

On 21 September 2020, Germany's Federal Minister for Transport Andreas Scheuer, at a virtual conference of Europe's transport ministers, proposed a network of international long-distance high-speed passenger services to be launched by 2025.

The plans put forward by Germany aim to relaunch Trans Europ Express (TEE) a former international first-class railway service in western and central Europe that ceased operations in 1995. At the height of its operations, in 1974, the TEE network comprised 45 trains, connecting 130 different cities, from Spain in the west to Austria in the east, and from Denmark to Southern Italy.

The project has been named TEE 2.0, and would set up routes linking at least three or four countries by partnerships between existing rail companies. The TEE 2.0 would link Brussels to Barcelona in 8 hours and to Warsaw in less than 12 hours. And in a further phase to Copenhagen in 8:15 hours and Stockholm in 13 hours. TEE 2.0 would also be complemented by a night-train network.

End of rail franchising in the United Kingdom

UK Ministers have decided to end rail franchising after 24 years as the first step in bringing Britain's fragmented network back together. The new system will end the franchising model and deliver a simpler, more effective model through high performance targets and simplified journeys. This includes the introduction of new 'recovery' contracts that will deliver government commitment to end the complicated franchising model.

The new system will create a simpler, more effective structure. The first stage of the reform is moving operators onto transitional contracts to prepare the ground for the new railway. Franchising is replaced with more demanding Emergency Recovery Measures Agreements (ERMAs), these address the continuing impact of the pandemic on the railway and contain a government commitment to replace the current franchising system.

Management fees are now at a maximum of 1.5% of the cost base of the franchise before the pandemic began. The ERMAs are a transitional stage to the new system.

SNCF sets green targets to cut TER emissions

National operator SNCF has launched an ambitious programme, PlaneTER, designed to reduce the environmental impact of its TER regional services to contribute to the fight against climate change. The programme was announced on September 23 as part of European Sustainable Development Week, PlaneTER aims to reduce annual CO2 emissions from TER services, it includes switching to 'greener' forms of traction and the introduction of a range of measures across the board forming part of the 2021-25 strategic plan for the TER business. The programme is also intended to push passengers towards rail. It includes the following initiatives and projects:

- Attract passengers with special offers with low fares, measure and publicize the environmental footprint of individual routes to sensitize consumers in choosing more sustainable forms of transport.
- Cut fuel consumption by improving driving techniques. The time spent stationary with engines idling will be reduced and heating will be adjusted to suit passenger loadings. Greater efforts will be made to ensure trains run to time, so keeping fuel consumption down by avoiding the need for rapid acceleration and braking to make up lost time. Timetables will also be examined to avoid trains running empty where possible.
- Cut the number of diesel-powered TER services. As battery power, hydrogen power and other new fuels such as biogas are developed, SNCF plans to cut the number of diesel-powered TER services, with the last diesel train due to be operated in 2035.

Regulation establishing measures for a sustainable rail market published

On 7 October 2020, Regulation 2020/1429, which establishes the measures for a sustainable rail market, was published in the *Official Journal of the European Union*.

The new regulation lays down temporary rules on the levying of charges for the use of railway infrastructure as set out in Chapter IV of Directive 2012/34/EU. It applies to the use of railway infrastructure for domestic and international rail services covered by that directive during the period from 1 March 2020 until 31 December 2020.

Regulation 2020/1429 also allows member states to authorize infrastructure managers to reduce, waive, or defer the payment of charges; reassess the ability of the market segments to bear mark-ups; and not to levy reservation charges on any applicants. It also allows member states to compensate infrastructure managers for the specific financial loss.

Member states need to inform the European Commission on the measures taken no later than three months from the date of entry into force of the regulation and should inform the European Commission of subsequent measures or changes. The European Commission will make this information publicly available.

The COVID-19 pandemic led to a decrease in passenger services by up to 90 percent compared to 2019, and many insolvencies and liquidity shortages within the railway sector have been reported. The new regulation has been welcomed and will allow for swifter recovery of the railway industry.

North Sea-Baltic RFC welcomes Latvia and Estonia

On 12 October 2020, Latvia and Estonia officially joined the Rail Freight Corridor North Sea-Baltic (RFC NS-B). The RFC NS-B, established in November 2015, is a European project with the aim of improving the attractiveness and efficiency of rail freight. The RFC NS-B is currently running through eight EU member states.

The connections to Riga, in Latvia, and Tallinn, in Estonia, have now become part of the European rail freight corridor network, strengthening the existing freight transport routes across the continent. The strategic location of Latvia and Estonia will contribute to a better connectivity of the EU with Asia, as well as open multimodal transport opportunities from the Baltic Sea ports to the northern seaports. The RFC NS-B belongs to the corridors with the greatest potential for growth by providing high-capacity transport services.

PUBLIC PROCUREMENT AND NEW PROJECTS

New digital tool launched by ÖBB Rail Cargo Group

ÖBB Rail Cargo Group, the Austrian Federal Railways, has made available its SmartLink digital service. The tool provides access to the existing services and offers a clear overview of all combinable elements required for rail freight transport.

The new tool guides customers through four areas: Customers choose from scheduled or individual TransFer connections. They can access information about the equipment available as well as about the services and add-ons relevant to them. The customer journey then ends with contact to customer advisers, who work with customers to create specific offers.

In the last years, ÖBB Rail Cargo Group has been focusing on the development of digital technology. Investments in innovation and digital solutions have allowed ÖBB Rail Cargo Group to make rail freight transport simpler and more transparent, and to respond quickly to the demands during pandemics.

One billion Euro Framework Agreement signed between DB Cargo and Siemens Mobility

On 8 September 2020, DB Cargo, rail freight management company for Deutsche Bahn and Siemens Mobility signed a framework agreement for the supply of 400 Vectron Dual Mode dual-power locomotives. This type of locomotive combines diesel engines with electric systems significantly reducing pollution levels. With these new locomotives, it is estimated that DB Cargo will save around eight million liters of fuel and 17,000 tons of CO₂ every year. The final goal of the company is to equip 70 percent of diesel locomotives with this new technology by 2030.

Albrecht Neumann, CEO of Rolling Stock at Siemens Mobility announced that: “with the Vectron Dual Mode, DB Cargo is investing in future-proof, sustainable, and economical railway freight transport. As an alternative to the conventional diesel locomotive, the Vectron Dual Mode offers the best of both worlds: on electrified sections of the route, it is purely electric to save fuel and reduce maintenance costs. It is possible to switch to diesel operation without changing locomotives on overhead line sections.”

Dresden–Prague rail tender on planning services launched

On 10 September 2020, DB Netz the German railway infrastructure manager, and SZ, the Czech railway infrastructure manager, have jointly announced a public tender for design work of the zoning decision documentation under the Dresden–Prague railway project. In May, the agreement on the construction of the new railway connection was signed.

The tender for the documentation of the zoning decision is based on the main agreement and involves the railway tunnel to be built through the Ore Mountains, the twin-tube tunnel will have a length of 26 km crossing the two countries, 15 km will be on the German territory, while 11.4 km in the Czech Republic.

The new railway line, Dresden–Prague railway, will increase the offer of regional passenger railway transport thanks to significantly shorter travel times, it will shift a large part of freight transport from road to rail and will connect the Czech Republic to the Western European high-speed rail network.

Asia-Europe first fully digitalized container transport launched

On September 10, the first fully digital China-Europe intermodal container transport arrived. The initiative is part of the Intertran project, which aims for effective digital interaction between railway, seaports and regulatory

authorities. The service reduced the time required for processing freight documents by four days by using electronic transport documents, transit declarations and electronic customs clearance.

Members of the project are the Russian Railway, Belarusian Railways, and the FESCO Transport Group. The test was carried out at the beginning of September from the Port of Ningbo in China through the Port of Vladivostok in Russia.

In October 2018, the Intertran project was initiated by the Russian Railways in the framework of the UIC Asia-Pacific Regional Assembly strategic action plan. It enjoys the funding of all UIC members of the region and the support of the United Nations Economic and Social Commission for Asia and the Pacific. The technology has already been replicated throughout the Russian Railways network, and over 6,000 containers have been transported with this service. This latest shipment was the first time that a complete journey from China to Belarus was carried out digitally.

First next generation RER train announced

Alstom-Bombardier consortium has introduced a new RER train in Paris. These new trains, called RER Next Generation, will enter passenger services starting at the end of 2021 and will also be deployed at the end of 2022 on the new western section of Paris RER E line extension to Nanterre. The trains are expected to reduce the pressure on other lines by 10 to 15%.

The new trains are part of a framework contract valued to € 3.75 billion signed in 2017 for the supply of 255 trains between SNCF and an Alstom-led consortium which includes Bombardier.

Bucharest air-rail link trials officially start

Romania's President Klaus Iohannis, the Prime Minister Ludovic Orban and the Minister of Transport Lucian Bode, officially inaugurated the Gara de Nord-Otopeni airport line track tests. Two units will perform track tests on the new Bucharest air-rail link which will provide a transport connection between the Henri Coanda International Airport and the city's main railway station. According to local news, the new line will enter commercial services in December 2020. The travel time to the airport will take 17 minutes. The project for the modernisation of Gara de Nord-Otopeni railway to connect to the airport's T1 terminal involves the construction of a 2.95 km single track, three bridges, and a 1.52 km viaduct. The total value of the project is RON 463 million (EUR 95 million) and has also received European funding.

HydroFlex, Britain's first hydrogen train, enters operational trials

The trials of Britain's first hydrogen train, HydroFlex have started, the UK Secretary of State for Transport Grant Shapps has inaugurated the first operational trials.

After two years of development work and £1 million investment, operational testing has started. Rolling stock solutions provider, Porterbrook, and the University of Birmingham's Centre for Railway Research and Education are responsible for the project and have developed a hydrogen and battery power module that can be fitted underneath the production version of the train, which will create increased capacity for passengers.

Norske tog to acquire long-distance trains

State-owned rolling stock leasing company Norske tog has announced its intention to acquire new long-distance trains. These will operate the Dovre, Sørland, Bergen, and the Nordland railway routes, replacing the current

trains. Norske tog owns and manages the rolling stock fleet for rental for passenger train operators and plans to acquire up to 100 long-distance trains, which will also provide night train services.

The new trains are expected to be put into service in the period 2025–2033. Regarding procurement procedures, Norske tog will listen to interested parties in order to develop a requirement specification that can cater appropriately to the needs of different stakeholders and user groups. A meeting is set to take place on 28 October in Oslo to collect ideas from the participants re the requirements of the new train fleet.

Funding for Leskovac–Karlovac project approved by EIB

On 5 October 2020, the European Investment Bank approved a €55 million loan for Croatia's Leskovac-Karlovac rail project. The loan is aimed at supporting the upgrade and construction of a second line of the railway section from Hrvatski Leskovac to Karlovac, part of the M202 Zagreb Main Railway Station-Rijeka railway line.

The project, which has a total cost of €409 million, also involves the reconstruction of the existing railway line, the construction of a 44.02 km second track, and three new stations. The M202 line, part of the TEN-T Mediterranean Corridor, is a 229 km-long railway connecting Zagreb with Rijeka. By improving transport links from Central Europe to the Port of Rijeka, the completion of the project will increase the competitiveness of the Port of Rijeka and will also contribute to the improvement of suburban traffic in the cities of Zagreb and Karlovac.

Siemens signs MoU for the development of hydrogen solutions for rail transport

Siemens Energy and Siemens Mobility signed a memorandum of understanding to jointly develop hydrogen systems and solutions for railway transport. Siemens Energy and Siemens Mobility plan to jointly develop a standardized hydrogen infrastructure solution for fueling the hydrogen-powered trains of Siemens Mobility.

Thousands of diesel-electric multiple-unit trains shall be replaced in Europe with more environmentally friendly alternatives. Diesel-powered trainsets are still in service today on nonelectrified rail routes. In Germany, for example, these routes account for around 50 percent of the country's entire rail network. The European Commission has presented a hydrogen strategy for a climate-neutral Europe, using hydrogen drives as a replacement for the diesel units would contribute to decarbonisation in the mobility sector.

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.