

BRUSSELS RAIL TRANSPORT BRIEF: MARCH 2021

Date: 21 April 2021

European Regulatory Newsletter

By: Inês Mendes, Alessandro Di Mario, Miguel A. Caramello Alvarez, Philip Torbøl

ANTITRUST AND COMPETITION

German Court asks ECJ About Review of Rail Station Fees

The Berlin Higher Regional Court has lodged a request for a preliminary ruling with the European Court of Justice (ECJ) concerning railway station fees charged by Deutsche Bahn's DB Station & Service.

DB Station & Service was sued by a rail transport company for reimbursement of excessive fees between November 2006 and December 2010. The regional court backed the claim, concluding that the DB subsidiary is obliged to reimburse these amounts.

On 30 December, the Berlin Higher Regional Court referred two questions to the ECJ, asking whether it is compatible with Directive 2001/14/EC concerning railway infrastructure charges for national courts to review fees based on antitrust rules independently of the monitoring carried out by the regulatory body and, if so, whether civil courts are allowed to conduct an antitrust review even when railway undertakings can ask the regulatory body to review the fairness of the price. Lastly, the court asked whether civil courts must wait for the decision of the regulatory body, or if it is contested before court, for that decision to become final.

Czech Agency Fines Firm for High-speed Railway Tender Manipulation

The Czech Office for Protection of Competition has fined Sudop Praha €360,000 for entering into an illegal bid-rigging agreement. It was found that between November 2014 and May 2015, Sudop and Výzkumný Ústav Železniční (VUZ) coordinated their bids for a tender for a technical operational study for high speed railway lines.

The tender was issued by Czech state-owned company Správa železnic. VUZ avoided a penalty under leniency and Sudop's fine was reduced by 20 percent under the settlement procedure.

European Commission Approves Italian Rail Aid Schemes

On 8 March, the European Commission approved an Italian state support scheme of €511 million to help cover the costs of the pandemic for long-distance train operators. The aid will cover services disrupted during the first wave of the COVID-19 crisis, between March 8 2020 and June 30 2020, when travel was restricted by governmental measures and train companies had to cut their capacity by 50 percent to allow social distancing.

On 24 March, the European Commission approved another €270 million Italian measure supporting both rail freight operators and rail commercial passenger companies in the context of the coronavirus outbreak. The measure aims at preserving the competitiveness of rail passenger operations and maintaining a stable, reliable, and sufficient service offer. The financial scheme enables Italy to relieve operators of part of the costs related to track access charges during the period from 10 March to 31 December 2020.

The aid schemes are part of a wider measure designed to compensate providers of commercial rail passenger services for the damage suffered as a direct consequence of the coronavirus outbreak and the resulting containment measures, specifically the operators that are not subject to public service obligations. Under the notified measure, the beneficiaries will be entitled to compensation in the form of direct grants. During this period, passenger numbers fell dramatically, resulting in a significant drop in revenues for rail service providers. At the same time, passengers' operators continued to face other costs, such as the additional expenditures to enhance sanitary and hygiene measures, which led to serious liquidity problems.

European Investment Bank Approves Funding for Sweden Train Procurement

The European Investment Bank has approved a €69 million financing for the procurement of Malab EMU fleet to deliver regional and suburban rail services in the Stockholm-Mälaren region, in Eastern Sweden.

In June 2020, AB Transitio, a company that buys trains to lease them, ordered 12 four-car electric trains from Stadler, under a €120.3 million contract. The trains were ordered on behalf of Mälab, a joint venture created by the transport authorities from Örebro, Stockholm, Sörmland and Västmanland counties.

Belgian Rail Freight Boost

On 12 March, the Belgian Council of Ministers decided to support rail freight transport, just as it has done previously for other economic sectors affected by the pandemic, under the proposal of Belgian Deputy Prime Minister and Mobility Minister, Georges Gilkinet.

In January 2021, there was 12 percent less freight transport in Belgium as compared to the previous year and this decline puts pressure on the activities of various railway companies. However, they are crucial for the mobility of the future, in particular, to achieve the government's target of doubling the volume of rail freight transport by 2030 and to address energy and climate challenges.

The two temporary measures agreed upon to support rail freight operators were the linear reduction of €0.75 train/km in the fee for commercial freight traffic for actually performed transport between 01 January 2021 and 30 June 2021; and a cancellation of the 'cancellation and reservation costs' for the train paths, from 01 January 2021 to 30 June 2021.

The support will amount to a total of €6.8 million, for the January-June 2021 period.

Approval of Greek Scheme to Support Operators Affected by COVID-19

On 23 March, the European Commission approved a €21 million Greek scheme to support operators of tourist buses and trains affected by the coronavirus outbreak. Under the state aid Temporary Framework, the support intends to mitigate the impact on the beneficiaries of the restrictive measures that the Greek government had to implement to limit the spread of the virus. The support will be given in the form of direct grants.

According to the Temporary Framework, targeted and proportionate application of EU State aid control serves to make sure that national support measures are effective in helping undertakings during the COVID-19 outbreak but also that they allow them to bounce back from the current situation, keeping in mind the importance of meeting the green and digital transitions. Likewise, EU State aid control ensures that the EU Internal Market is not fragmented and that the level playing field stays intact.

Calais – Mediterranean Rail Motorway Bids Called

The French government has called for expressions of interest to operate a lorry-carrying train service between the English Channel port of Calais and the Mediterranean port of Sète south of Montpellier.

The announcement was made on 2 April, and it follows the government's earlier decision to reintroduce a fast rail service for fresh fruit and vegetable traffic between Perpignan and Rungis in the Paris suburbs.

Initial expressions of interest in running the service were already sought on 15 December 2020, with responses reportedly received from the French Fret SNCF and one other operator. The government hopes the service can be relaunched later this year.

The plans expect the service to start no later than 2022. Potential operators may qualify for government funding during a start-up phase, and submissions are required by 16 May.

RAIL REGULATORY AND POLICY

Urban Mobility Package: Evaluation Confirms Importance to Adapt Urban Mobility Planning to Today's Reality

On 26 February, the European Commission (EC) published a Staff Working Document on the Evaluation of the 2013 Urban Mobility Package (UMP). The evaluation found that the UMP's goals were appropriate to meet the identified needs, but numerous technological, social, political, environmental, and health-related developments have affected urban mobility since 2013 (e.g. digitalisation).

In addition to challenges with regard to the resilience of urban transport networks and the challenges linked to tackling congestion, it also concerns the climate change's speed.

This topic is now a priority and new facts will be taken into account, with the ambitious objectives of the European Green Deal, the Climate Target Plan 2030 and the Sustainable and Smart Mobility Strategy. The consulted stakeholders identified that these areas should have been better considered in the Package and in result, for the UMP objectives and measures to remain fully relevant, these new facts and developments have to be taken into account.

Agreement on the Connecting Europe Facility

The second edition of the EU's flagship program the "Connecting Europe Facility"(CEF 2.0) will have a budget of €33.71 billion, of which €25.81 billion will support the transport sector, including €11.29 billion for cohesion countries. This was agreed on 11 March, by the negotiators from the Council and the European Parliament.

The call for proposals will be launched during the second quarter of 2021 and will include an important part for the modernisation of the TEN-T networks, in particular, through the support of the large-scale deployment of alternative fuel infrastructure.

It will support the goals of the Smart and Sustainable Mobility Strategy laying the foundation for how the EU transport system can achieve its green and digital transformation. The program will help develop innovative digital infrastructures, to enable digital networks and services to grow and support Europe's vision in the Digital Decade for 2030, building on the 2025 Gigabit Society goals.

Lyon-Turin Rail Controversy

Twenty-one Members of the European Parliament asked the European Commission to pause EU funding for a planned high-speed rail link between Lyon and Turin in a joint letter of 15 March, addressed to Frans

Timmermans, Executive Vice-President for the European Green Deal and Virginijus Sinkevičius, Commissioner for the Environment, Ocean and Fisheries.

According to the letter, this project has become famous for the lack of involvement of local populations and repression of opposing views and several concerns have also emerged with regards to its carbon balance. Independent studies point to the worrisome scenario that the Lyon-Turin high-speed rail will produce emissions at least until 2055, as outlined in the Special Report no. 10/2020 of the European Court of Auditors.

They have argued that “a serious and coherent implementation of the European Green Deal” calls for a suspension of the project. The MEPs want a revision of Trans-European Transport Network rules to include a life-cycle assessment. They have also asked whether the European Commission would look into the impact on biodiversity in its assessment for EU funding of projects.

TEE 2.0 Part in Reviving Passenger Rail Post-COVID-19

According to the Platform on International Rail Passenger Transport (IRP), a platform set up by the European Union to examine ways to improve cross-border passenger rail travel, the proposal to revive the Trans Europe Express network (TEE 2.0) could be one of the most significant projects to revitalize passenger rail following the COVID-19 pandemic.

The IRP is currently working on four areas: customer experience and digitalization, network of international passenger services, EU Green Deal infrastructure bottlenecks and interoperability issues, and regulatory framework.

On 29 March, while providing an update on its progress during the launch of the 2021 European Year of Rail event, the platform said the expansion of cross-border express services could have a major role to play. “The European Year of Rail 2021 as well as the European Green Deal present the appropriate timing for in-depth consideration of the means for a broad revitalization of the European rail passenger market,” IRP said. “Within that, the current initiative on the TEE 2.0 concept might be one of the significant frontrunners.”

The TEE 2.0, an initiative set up during the German presidency of the European Council and presented on 20 September 2020, led to the publication of a letter of intent this March. The letter highlights around 40 new and existing passenger rail services that could form the basis for the TEE 2.0.

Rail Cybersecurity Platform

RazorSecure, a company offering products and services to enhance railway cybersecurity by protecting networks and monitoring key systems, has launched a new security gateway that has been developed specifically to mitigate the risk of cyberattacks on railway infrastructure or rolling stock data networks.

The new network security service is fully configurable for use with a range of different virtual machines to identify, detect, and respond to new threats. Based on public information, what the service does is separate critical networks and analyze traffic in real time to prevent unauthorized network access, ensure all network communication is controlled and permitted, aggregate cybersecurity data for fleet monitoring in real time, and maintain a consistent security profile for the entire life of assets. Its flexible design is intended to allow for the deployment of other future technologies and protocols.

PUBLIC PROCUREMENT AND NEW PROJECTS

ÖBB and Siemens Mobility Announce Nightjet Trains

ÖBB, the Austrian federal railways, has announced a new cooperation with Siemens Mobility, for the launch of new nightjet trains. The company currently operates 19 lines in western and central Europe. In three years, ÖBB aims at having 23 nightjet trains. The services providing night time connections are expected to commence by the end of next year and the seven-car Nightjet will comprise two coaches, three couchette cars and two sleeping cars.

The new trains will initially be used on rail routes from Austria and Germany to Italy. ÖBB has already called up the first 13 trainsets, in a framework agreement with Siemens Mobility, the other 20 trains are expected to be called up this year.

Swedish Ticket Offices to Close

From 1 March 2021, Swedish national passenger operator SJ AB will be closing its remaining travel centers at the main stations in Stockholm, Göteborg, and Malmö. The operator announced that its customer service staff will instead be deployed around the stations to provide information and assist passengers with using ticket machines, digital purchases, and rebooking.

The choice to close travel center comes as a decision to follow customer's behavior, customers are increasingly choosing to use digital services and therefore the need for a physical location at stations has significantly decreased. SJ AB had already closed its ticket offices outside the three big cities.

DB and SNCF Renew Digitalisation and Technology Cooperation

On 5 March 2021, it was announced that SNCF President and the CEO of Deutsche Bahn, together with the SNCF Director for Technologies and Innovation and DB board member for digitalisation and technology, renewed the digitalisation cooperation, after the initial agreement, signed four years ago.

The focus of the ongoing initiatives is the common architecture of the future European rail system with the technological modules of autonomous trains, reliable train location, communication systems of the future 5G technology as well as intelligent rail operations using simulation methods and artificial intelligence. Through the digitalisation cooperation in the areas of research and development, the two companies are reaffirming their goal of jointly setting new standards.

The agreement focuses on seven specific areas to increase automation, quality, performance, and attractiveness of rail transport. Energy management and carbon emissions are also among the subjects of the digitalisation cooperation, in order to meet the objectives of the European Green Deal and speed up the transition and implementation of new solutions.

The future European rail system with autonomous trains, reliable train location, and communication systems of the 5G technology as well as intelligent rail operations is the main focus.

New Deutsche Bahn and Lufthansa Connections to Frankfurt Airport

On 8 March, in Frankfurt, Deutsche Bahn and Lufthansa presented their plans for a joint product offensive. The Lufthansa Express Rail network is being expanded to include five new cities, Berlin, Hamburg, Bremen, Münster and Munich.

With the expansion of their cooperation, Lufthansa and Deutsche Bahn are setting a new standard in the environmentally friendly networking of modes of transport. DB board member Berthold Huber claimed that a former good cooperation is now turning into a comprehensive partnership that has never existed between Lufthansa and Deutsche Bahn before. At the end of the year, Deutsche Bahn will connect the largest German airport locations even more closely and traveling by train will be faster and more comfortable.

Alstom Acquires Dutch Maintenance Service Provider

Alstom has signed a purchase agreement for the acquisition of Shunter. The Rotterdam-based company offers a broad and integrated package of services in the field of management and rolling stock maintenance for freight and passenger transport and on-board signaling solutions. It has 110 employees across three maintenance workshops and three services locations and the activities are performed both in the workshops and on location.

The completion of transaction is subject to the satisfaction of mutually agreed conditions. It is expected to occur by the second quarter of 2021.

Renfe Awards Alstom and Stadler Contracts with a Multibillion EUR Volume

After a tender launched in 2019, the Spanish state-owned operator Renfe awarded Alstom and Stadler contracts with a total value of €2.445 billion to supply 211 large-capacity Cercanias trains for rail commuter services.

The contract is divided into two lots. Alstom will deliver 152 100m-long trains under a €1.45 billion contract and Stadler Rail Valencia will deliver 24 100m-long trains and the 35 160-240m-long double-deck trains, with a total value of €998 million.

The new trains will increase the capacity by 20%, adding at least 900 additional seats and will also minimise the waiting time, through an advanced design with a minimum of 10 doors and large lobbies.

In the recent years, Renfe has invested in rolling stock procurement to boost the economic recovery. In December, Renfe and CAF signed a €258 million contract for the supply of 37 trains, including the maintenance services for a period of 15 years and in the next months, Renfe plans to award two contracts for the procurement of 43 medium-distance and 38 Cercanias hybrids trains which will be used for service in different autonomous communities. In addition another award of a contract for the acquisition of 40 high-speed trains is planned for this year.

Renfe to Take Stake in Leo Express

In support of its internationalisation strategy, the Spanish operator Renfe announced, on 9 March, its intention to acquire a 50% stake in Leo Express, a central European open access operator. The acquisition is pending until authorisation by the Ministry of Finance.

Renfe already has a contract to operate Haramain High Speed Rail services in Saudi Arabia and is acting as shadow operator for the Texas Central high-speed rail scheme in the USA, and supporting the development of Mexico's Tren Maya project.

Leo Express began operating in the Czech Republic in 2012 and has a network of rail and coach routes serving more than 100 cities in the Czech Republic, Slovakia, Poland, Austria, Croatia, Hungary, and Ukraine.

Scottish Government to Take Over ScotRail

Scotland's Transport Secretary, Michael Matheson, has confirmed that in March 2022, after the expiry of the current contract, ScotRail's franchise will be taken over by the Scottish Government.

The franchise is currently held by the Abellio subsidiary of Dutch state train operator Nederlandse Spoorwegen. The contract which started on 1 April 2015 included a minimum term of seven years, plus an option to extend it to 10 years by mutual consent after five years. This extension option shall apparently not be used.

The Secretary has also announced that work to put in place further Emergency Measures Agreements to ensure the provision of ScotRail and Caledonian Sleeper services between 1 April and 19 September 2021, is underway, at an estimated additional cost of GBP 173.1 million.

ADIF Expands Galicia Upgrading Programme

On 12 March, ADIF revealed its plans to invest €546 million in modernising two rail corridors across Galicia, linking the junction at Monforte de Lemos with Ourense and Lugo.

The plans were unveiled at an event in Lugo attended by ADIF President Isabel Pardo de Vera and representatives from the transport ministry and are built on existing proposals to electrify at 25 kV AC the 73 km mostly single-track route between Monforte and Lugo, for which ADIF called tenders in January.

The work includes the modification of the overhead line equipment to provide both 3 kV DC and 25 kV 50 Hz; gauge clearance on both routes to support new or modified catenary; repairs and refurbishment of 104 bridges, nine stations and 21 tunnels; renewal of track and ballast on both routes; and the elimination of 35 level crossings at a cost of around €30 million.

The signalling equipment and telecoms will be modernised with new interlockings, ASFA Digital train protection and an optical fibre transmission network. Point motors will be replaced, axle counters installed, and signal heads fitted with LEDs.

Barraqueiro Creates Open Access Operator

Portuguese bus and coach group Barraqueiro has established B-Rail as a subsidiary to run open access passenger train services linking cities in the north and south of the country as part of an integrated multi-modal transport strategy.

Barraqueiro already holds the concession to operate Fertagus suburban services in Lisbon, but it wants to develop rail operations further, to complement its strong position in the road transport market.

Once the operating license and the necessary authorizations have been obtained, B-Rail intends to apply for train paths on the Braga–Porto–Aveiro–Coimbra–Lisboa–Faro axis. Before awarding any paths, the Portuguese paths regulator is required to verify whether the proposed services would hinder the economic balance of current state operator Comboios de Portugal, which holds a public service contract from the national government.

According to Barraqueiro, B-Rail does not intend to compete with Comboios de Portugal in terms of infrastructure tariffs or slots, but it is looking into using paths that are already available.

Medway Plans to Launch Train Linking Portugal to Germany

Medway, the Portuguese private freight operator plans to launch a direct daily intermodal train from terminals in Portugal to Stuttgart in Germany in the fourth quarter of 2021. The train will be named Vasco da Gama.

Previous attempts to launch freight services between Portugal and Germany have been interrupted due to problems in acquiring paths through France, however Medway believes that improvements in the pan-European path allocation process should increase the chance of success for this latest initiative.

Dutch Modal Shift Plans

On 1 April, the Netherlands announced its €2.5 million investment to move freight transport from road to water or rail. The Dutch government wants to shift 2,000 containers every day to inland waterways, which could remove 1,000 trucks from traffic daily, according to Transport Minister Cora van Nieuwenhuizen.

The announcement comes one day after the Port of Antwerp, in Belgium, presented its plans to boost a modal shift, together with Belgian rail infrastructure manager Infrabel and port-based industry group Railport.

Businesses can get up to €500,000 in support if they can present a structured proposal on how the goods will be shifted. From the remaining investment, €1 million will be used for a national shift from road to rail, and €1.5 million goes to shift to inland waterways between Rotterdam and Germany via Venlo or via Arnhem and Nijmegen.

The Connecting Europe Express Train

As of September 2021, the Connecting Europe Express train will travel across the European Union to promote the many benefits of rail for passengers, freight, and the environment. The schedule foresees stops in most European capitals, with events and other activities planned at the local level, taking into account local COVID-19 measures.

The project will also raise awareness of the importance of financing sustainable infrastructure, such as rail, and EU support for such investment, including through the recently agreed-upon new Connecting Europe Facility as part of the next long-term EU budget 2021–2027. The premise is that rail is not only sustainable, it is also safe and innovative and it connects people, cities, and regions all across the European Union.

Coordinated by the Community of European Railway and Infrastructure Managers, the project will be run not only in cooperation with European rail operators, but also infrastructure managers. Railway companies from different EU member states are providing rolling stock to configure this train.

Siemens Mobility Launches MoComp Initiative

Siemens Mobility, a German separately managed company of Siemens, has launched the MoComp initiative, a consolidated and single source software solution?/ portal? that will for the first-time display and make available to all customers the diverse Siemens Mobility portfolio of rail vehicle components.

The initiative offers a complete range of electrical and mechanical components, as well as system solutions for modern rail vehicles, which include pantographs and traction converters, propulsion systems, bogies and brake systems, and onboard power supplies.

The assortment will provide rolling stock producers, original equipment manufacturers, and operators the opportunity to take advantage of the very best products on the market as they look to maintain their rail vehicles over the entire life cycle.

Siemens Mobility's regional framework and familiarity with specific transport systems and regulations will allow customers to customize components that meet all market–relevant certifications and standards.

Krusnohorsky Tunnel Planning Construction

Správa železnic, the Czech railway infrastructure manager, and DB Netz AG, a subsidiary of Deutsche Bahn, concluded an agreement with the engineering companies IMM Maidl & Maidl Beratende and Ingenieure GmbH & Co for accompanying planning expert activities during the construction of the Ore Mountains tunnel (the Krusnohorsky rail tunnel), part of the Prague-Dresden high-speed railway line.

The two rail infrastructure managers announced that they have completed another of the planned public contracts to ensure project preparation for the cross-border part of the new Dresden-Prague railway connection.

During the construction works for Ore Mountains rail tunnel, the contractors will prepare an evaluation of the scope of performed surveys and analytical activities, evaluate these outputs, and make recommendations for the design of the underground work. The contractors will also compare the advantages of using possible excavation methods, such as different types of punching shields or the possibility of conventional excavation with shotcrete for individual parts and variants of the tunnel.

Night Train Plans

On 6 April, European Sleeper, a startup launched by private entrepreneurs and the private Czech railway RegioJet, announced its plans to launch a service between Brussels and Prague via Amsterdam and Berlin in April 2022.

The company is aiming to raise €400,000 to cover the costs of the operation and has already started negotiations on obtaining the scheduling slots with the four national track managers. The main issue appears to be finding carriages that are satisfactory for business travelers. After years of underinvestment, Europe is running out of even rusty old sleepers—and it can take years to upgrade those that are available.

ÖBB, the Austrian Federal Railways, is also looking at adding its own Brussels-Berlin service, while the Belgian startup Moonlight Express has also proposed a separate direct link running through the Belgian city of Liège to Germany.

Cross-Border Irish Rail Review

On 8 April, Irish Minister for Transport Eamon Ryan and Minister for Infrastructure Nichola Mallon announced that a strategic rail review is to be commissioned in order to examine the potential for enhancing and expanding Ireland's rail networks. Welcoming the announcement, Martina Anderson, from the Sinn Féin party, called for a feasibility study into an extension of the network to Letterkenny and beyond, improving access to the northwest region.

Both the Department of Transport and Department for Infrastructure have jointly issued an OJEU notice inviting expressions of interest from external consultants to undertake the review. The consultants will be supported by key stakeholders, including the Commission for Rail Regulation, the National Transport Authority, Iarnród Éireann (the Irish rail), and Translink, a public corporation in Northern Ireland that provides public transport in the region.

RDC Delays Launch of Summer Overnight Service

The German operator RDC has announced on 9 April that it is postponing the introduction of its summer overnight services linking Northern Germany with Salzburg, Austria, and Lake Constance.

The Alpen-Sylt Night Express between Westerland (Sylt)/Hamburg and Salzburg/Konstanz is now due to start on 15 July, after RDC originally planned to start the service on 25 March. The service was intended to run once or

twice a week between 20 May and 7 November, but the COVID-19 restrictions across Germany to reduce the spread of a third wave of infections have halted the plans.

RENFE Announces Possible Expansion The Spanish operator RENFE announced on 8 April that its new Avlo low-cost high-speed service, which is due to launch on the Madrid-Barcelona route on 23 June, could be expanded to add a Madrid-Seville service in 2022.

Five class 112 Talgo AVE trains have been converted to the new Avlo specification. The conversion includes 20 percent more seating with 438 seats per train and vending machines replacing the previous buffet bar service. A demonstration service for the Spanish media has already been operated between Madrid and Barcelona in late March.

German Expansion Program

German DB Cargo, a state-owned rail freight company, and German intermodal operator Kombiverkehr have agreed to an expansion program to move more freight by rail rather than road. The program includes new products and network expansion, joint terminal activities, and digitization.

The plans, which have the backing of the German federal transport minister, Andreas Scheuer, are expected to lead to CO₂ reductions of 50 million tons over the next decade.

The German government considers intermodal transport as key to switching freight from road to rail for longer distance movement, thus reducing carbon emissions. According to the German Federal Statistical Office, rail has a 36 percent share of German intermodal transport. The government hopes moving more freight by rail rather than road will reduce CO₂ emissions by 50 million tons in the next decade.

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.