

STUDY ON REGULATORY OPTIONS ON FURTHER MARKET OPENING IN RAIL PASSENGER TRANSPORT

STAKEHOLDER HEARING, BRUSSELS, 10 FEBRUARY 2010 - MINUTES

DG Tren welcomed participants and Consultant presented the Market Analysis.

Session 1 – Market Analysis was presented by the Consultant, and in the ensuing discussion meeting participants believed that passenger satisfaction is one of key criteria that the study should consider as a part of the impact analysis. They expressed a need to consider models that will promote innovation from railway undertakings and generally consider the impact of each model on innovation initiatives in the rail passenger sector. The Consultant highlighted that passenger satisfaction in the sense of passengers' choice of mode is included, and it was explained that the presentation reported on the trends at a European level, which includes big differences between Member States. In the detailed market analysis the development in individual states is also considered.

Some of the meeting participants asserted that the study puts too much emphasis on questions of market entry, and the EC should consider whether companies would actually be interested in providing larger service packages and not just focus on attractive lines and segments. Moreover, some believed that the brief for the study is too limited; it should consider social issues much more strongly. When considering the lessons to be learnt from freight market opening it is important to remember that quick solutions are easier in freight than in passenger transport.

The discussion then moved on the issue of state support where some participants saw a need for an economic analysis of the issues behind this support, as well as the manner in which assets are employed.

One participant mentioned rolling stock as a legacy problem as there is a need for new entrants to use existing rolling stock, compounded by the very long approvals process for new rolling stock. Some participants emphasised the need for access to facilities if any new entrant wishes to enter the market, not only physical facilities but also commercial facilities and customer information systems, which can be difficult to arrange for new entrants.

The Consultant stressed that the focus of the study reflects the central question in the ToR: assessment of different forms of market opening. Admittedly, level of services depends also on several other factors, but these are beyond the scope of the study. USA, Japan and Australia are considered in our regulatory options chapter in accordance with the Terms of Reference.

Participants pointed out that the experience in long-distance is not that bad. The significant growth that had occurred in the UK refers to the three important variables driving ridership: speed, frequency and fare levels. They also wished to emphasise the importance of investing in infrastructure capacity to facilitate volume growth.

The Consultant underlined that these factors are considered in the quantitative model.

It was observed by the participants that the lessons from freight market opening are important to bring aboard, particularly perceived negative consequences of freight liberalisation in Romania. It is important to remember the preconditions that are needed before market opening can take place, in particular the public funding for infrastructure development, the compensation for PSOs, the level of track access charging and the rate of growth.

The Consultant explained that the preconditions for market opening are being considered, as is the impact of infrastructure charges.

It was emphasised that even the implementation of *Railway Package 1* is incomplete regarding the separation of infrastructure and transport (access to RRS) as well as establishment of strong regulatory bodies, and that it is important to bring all states into compliance before one can move forward.

DG TREN concluded session 1 with a sum-up of the discussion to state that the interoperability and safety certifications need to be resolved and that indeed financial arrangements are very different between states. A reference was made to the scope of the Study, and its role to identify and analyse different models of market opening, rather than to advise whether the market should be opened further or not.

Session 2 – German, Great Britain & Swedish Case Studies. The Consultant's presentation was followed by remarks and precisions by RU representatives from the individual national rail markets studied, notably concerning tariff settings and the cabotage dimension.

It was emphasised by a Polish representative that the market position of railways in Central and Eastern Europe is totally different from those in parts of Europe considered in the case studies. A simple opening of the market would place their railway companies at a massive disadvantage compared to those of the countries studied.

Stakeholders considered that the ToR should have included modelling of the impact on employment of market opening and need to include social and quality actions when services are tendered. It was argued that there must be a level playing field in working conditions before markets can be opened.

A participant drew the stakeholders' attention to the ticket prices, transaction costs and access charges, as to his belief it is necessary to look at assimilating the impacts of infrastructure charging and investment into the study conclusions.

A lively debate was sparked by the mention of 'Big Bang' changes and their potential impact on levelling the asymmetries between Member States. It was advanced that longer franchises make the operators feel a stronger incentive to put money into infrastructure.

Another participant considered that an efficiency assessment of the regulatory regime should have been a key criterion in the terms of reference. Moreover, it was stated, studies of passenger satisfaction have identified that performance and reliability (punctuality) are the most important factors for rail users, and that most significant complaints are driven by failure to supply information when things go wrong. Several participants demanded incentives to get operators to run trains on time.

Session 2 was concluded by DG TREN: New rights for rail passengers have been established in Regulation (EC) No 1371/2007, which provides protection for some of the issues discussed herein. A holistic approach is vital to consider the problems of the rail industry; this is the approach that DG TREN is taking. The issue of non-compliance with EU legislation is noted: there is a need for on-going enforcement of EU legislation, a task that DG TREN is and has been undertaking.

Session 3 – Possible Regulatory Models was followed by a theoretical discussion of the proposed models based on experiences and viewpoints from each country. One participant suggested combining the proposed options into more complex ones and then letting each Member State choose its own solution.

The Consortium's brief is to produce a technical report on the available options for further market opening, not to consider whether or not market opening should take place, or the form(s) that it might take.

In the opinion of stakeholders the baseline against which comments are made needs to be clear: modal share is not the objective in itself, passenger satisfaction is the goal.

According to one stakeholder's point of view, the answer lies in a combination of competition for the market and competition in the market, whilst maintaining economic equilibrium to avoid a market dominated by private-sector "cherry pickers" that only operate attractive lines in peak hours and leave the rest to the public sector.

It was stated that the Dutch model is not represented by the scenarios. The consultant explained that the Dutch model is a closed market at present and is not therefore a market opening model; however, an opened version of the Dutch model, featuring competition for public service contracts was included among the models proposed.

A public sector representative assumed that the point that public authorities are not best placed to determine the service that should be offered to users is disputable. The participant did not understand the assumption that (open access) competition can reduce fares since low fares can be imposed in PSC. He wanted to stress issue of underfunding of agreed sums due from governments under public service contracts provided by some railway undertakings, particularly in the newer Member States and did not see how the proposals could help this. In his opinion the analysis were considered too theoretical and failed to reflect the rights of subsidiarity that Member States have, given that "*a one size fits all*" approach is unlikely to be appropriate.

The representative of a European railway association summarised that everything depends on the financial structures and fare levels of each Member State: if open access were to be introduced, 'cherry picking' would occur resulting in the loss of vital cross-subsidies between services that enable the entire system to operate at present.

The consultant answered that cross-subsidy and cherry picking issues have been considered, as will be seen in the full version of the project report.

It was pointed out by one representative that direct awards of public service contracts are important in maintaining the domestic rail passenger system, and it was considered important to maintain the facility to make direct awards in any system of market opening.

The stakeholders suggested that states should be allowed to choose their own solutions to open markets. It is important to remember that exogenous factors (such as road pricing) in the transport market will impact on rail. Moreover, the analysis needs to include an evaluation of the conditions under which model will work best. The Consultant repeated the limits of the project brief in response to this comment.

It was pointed out that the issue of practicality to implement had two dimensions: there is the issue of the practicality to migrate towards the desired solution as well as the practicality of the implemented solution. Cross-subsidy is an important element in the way the current system is financed. It is important that innovation is permitted under any option that is taken forward. It should also be examined which extra incentives can be introduced to encourage the use of green suppliers and climate change mitigation measures.

One RU representative suggested that different models are required for different markets.

In one trade union representative's opinion there is nothing in the evaluation criteria about railway workers: she believed the models should be assessed against security, safety, maintaining jobs, and employment rights. Five years of franchises is not enough for training and incentives as this will create a situation of insecurity among the workers who fear losing their job. It was added that one can reduce the number of models to be considered but they should be assessed in different contexts.

DG TREN summarised Session 3 and invited the stakeholders to provide further written comments.

In **Session 4A – Impact Assessment Processes** the Consultant's presentation led to a debate on aspects such as safety, productivity and unit cost changes as a result of market opening. Belgium was mentioned as an example of a country where significant growth has occurred despite the lack of market opening. A participant considered that this should be factored into the Study. According to one of the opinions the limits of the modelling exercise was underlined.

The consultant explained that the demand modelling work will use the *TRANS-TOOLS* model, which exceeds the requirements of the ToR, and will separately model the traffic and modal split evolution in all thirty target states, using base data that has already been proven on other projects for DG TREN.

One stakeholder advanced that employment effects are not listed amongst the evaluation criteria. Whilst theory suggests increased traffic and more sophisticated services means increased employment, in practice the opposite is occurring. The participant asked how you can cut costs and generate employment.

The Consultant confirmed that social impacts will be taken into account.

According to the representative of a European railway association other criteria ought to be taken into account: the level of PSO, funding of infrastructure costs, and building new lines. He considered that the criteria were confused between inputs and outputs. He offered to give the Consultants a complete set of data from a previous study done by his organisation. Another participant considered that customer approval, environmental and social aspects were missing from the list of parameters. It was added that the target states need to be

representative, and there is an issue of how the results that come out of these should be extrapolated. The problem of differently defined market segments has to be considered, e.g. Member States use different classifications of regional and long-distance services. Thus, extrapolation is quite difficult.

Session 4B – Workplan to Completion was followed by a few comments requesting copies of the Case Studies and of the presentation slides and asked when the EC wants their comments.

Closing Remarks by the DG TREN included a reminder that comments would be required before Monday, 15 February 2010 and the completed case studies will be made publicly available about two weeks later.