

European Commission

Review of the Common Transport Policy

Task 1.1 Market opening, regulation and enforcement

Final Report

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1 Market opening, regulation and enforcement

Executive summary

- 1.1 The opening of the transport market is one of the main objectives of the Common Transport Policy (CTP); it is aimed at establishing an efficient and integrated internal market, allowing free transit of goods and people within the European Union.
- 1.2 From the beginning, the CTP has been structured in two sections which have been applied to all transport modes, aimed at:
 - Eliminating any national bias hindering the free transit of passenger and goods through the European Union.
 - Promoting liberalisation and competition within the national transport markets, in which transport services have traditionally been provided by monopolies or oligopolies.
- 1.3 Before and after the 1992 White Paper, liberalisation was introduced and enforced in transport modes (maritime, air, and road) which, for various reasons, were already exposed to some degree of competition. In the 2001 White Paper, the attention of policy-makers shifted almost entirely to railways, which were seen as a possible solution to alleviating congestion on main trunk roads.
- 1.4 The analysis presented in this report suggests that the CTP has boosted the competitiveness of transport modes and markets in which barriers to entry were mainly administrative.
- 1.5 The CTP has made a substantial contribution to improving the market conditions in the rail sector both in terms of setting the appropriate legislation and creating an internal market for rail. Nevertheless, there is much more that can be done to remove the remaining barriers to entry and to deliver full liberalisation in each Member State. The analysis also showed there is some degree of correlation between the more liberalised markets and the amount of competitiveness and growth in the rail freight sector. Further liberalisation is necessary to ensure that the same level of efficiency and benefits can be delivered as in the air industry. Nevertheless, the market is not yet mature across Europe, and there is bound to be change over the coming years.

Introduction

- 1.6 Market opening and integration policies are those that aim to eliminate or gradually reduce barriers to entry, through legislative or regulatory measures. These policies are complemented by regulation and enforcement initiatives whose actions contribute to the delivery of results across different objectives of the Common Transport Policy (CTP), in particular: the improvement of safety and security

standards and the promotion of transport environmental and socio-economic sustainability¹.

- 1.7 Market integration and regulation aims to build on recent market opening initiatives, seeking to ensure that opened markets function correctly, but also that those markets that for one reason or another (primarily their public service obligations/roles) cannot be fully opened and as such need to be regulated to ensure that all parties behave in the spirit of competition in the market.
- 1.8 Given that some transport markets cannot be opened to competition the aim of regulatory policies is to simulate the effects of market competition. Independent bodies have been established in some countries to provide economic regulation of transport; this is completed in most countries by an independent safety regulator.
- 1.9 The regulations that have been implemented across the transport modes have been implemented across similar lines through the introduction of sector specific safety agencies aimed at reducing technical barriers to entry into the transport modes. Clearly the sectors are at different stages in the liberalisation process and as such the regulations that have been introduced refer to differing levels of technical detail.
- 1.10 In addition to the Regulations that have been introduced, the Commission has in recent years sought to enforce transposition and implementation of Directives. There have been a number of enforcement proceedings in relation to state aid and the non transposition and implementation of EU Directives.

Sources

- 1.11 Besides the 1992 and the 2001 White Papers, and the 2006 Mid-Term Review, the following sources have been consulted for this analysis:
- ‘Policy effectiveness of rail - EU policy and its impact on rail transport system’ - issued by Transport Research Knowledge Centre;
 - ‘Railimplement - Implementation of EU directives 2001/12/EC, 2001/13/EC and 2001/14/EC’ (2006), Directorate-General Energy and Transport;
 - The Commission's Green Paper on Services of General Economic Interest;
 - Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the First Railway Package [COM (2006) 189];
 - Communication from the Commission to the Council and the European Parliament on monitoring development of the rail market - SEC(2007)1323;
 - Maritime Transport Policy: increasing the competitiveness, safety and security of European shipping (2006), Directorate-General Energy and Transport;
 - General rules on granting state aids in transport sector (2008) - Directorate-General Energy and Transport;
 - Flying together - EU Air transport Policy 2007;

¹ Measures specifically targeted at these objectives are described in Task 1.5 “Safety and Security” and Task 1.8 “Environmental sustainability and transport-related energy issues” respectively.

- Report on Competition policy- European Commission;
 - Documents produced by Eurocontrol, the European Railway Agency, EASA, EMSA;
 - A number of Commission communications on Regulations in the various transport sectors.
- 1.12 In addition, the study takes into account the main legislative and regulatory measures issued by the European institutions from 1986 to present day, which are shown in more detail in Appendix A.

Structure for the remainder of the analysis

- 1.13 The analysis of the specific policy area is structured as follows:
- Summary of the policy;
 - Legislative framework;
 - Qualitative analysis;
 - Quantitative analysis;
 - Conclusions.

Summary of the policy

- 1.14 The 1992 White Paper included among its priorities “The completion, reinforcement and proper functioning of the internal market”, aimed at increasing the overall efficiency of the transport sector, allowing the operators to take advantage of the wider European internal market. This was to be done both through market opening as well as through the introduction of appropriate regulations aimed at minimising the impact of technical barriers.
- 1.15 By 2001, market opening measures had already been introduced to a degree in transport sectors except rail and, as a result, these sectors had switched to the introduction of appropriate regulations focused on fine-tuning those parts of the structure which did not work as well as was necessary. Furthermore, regulations were planned with the aim of encouraging the development of Trans European Networks (TEN-T).
- 1.16 This approach, confirmed by the 2001 White Paper, allowed the CTP to gradually overcome resistance from some Member States and incumbent operators to the opening up of the internal markets.

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- 1.17 In the 2001 White Paper, the attention of policy-makers in regard to market opening shifted almost entirely to rail, as this was the last of the principal modes which was not subject to competition. It was believed that the railways could provide a solution to the overcrowded trunk road network. The goal was to revitalise the railways, through the “creation of a genuine internal market in rail transport”². The 2001 White Paper sped up the restructuring process of the rail sector, begun in the 1990s, by promoting open access in rail freight, paving the way for the gradual liberalisation of passenger services and encouraging the entry of new operators by requiring independence of essential functions such as capacity allocation.
- 1.18 The revitalising was to be reinforced by the introduction of appropriate Regulations that reduced technical barriers in the rail sector.
- 1.19 Regulation and enforcement were not limited to the rail sector in the 2001 White Paper and also focused on tackling capacity issues in the sky and at airports.
- 1.20 By the 2006 Mid-Term Review, the legislative and regulatory framework defining the opening up of transport markets was very advanced but by no means complete in some areas such as local public transport and passenger rail services. However, the focus of the CTP moved from the opening of markets to their regulation and enforcement by promoting better regulation in transport markets and ensuring that implementation was enforced correctly. Furthermore, the objective was to develop the experiences and ensure continued leadership in transport sector regulation.

The application of the CTP to transport modes

- 1.21 Given the wide scope of analysis of this task, this section includes a high-level review of the measures taken by the CTP in regard to the opening up of EU and national markets to competition in the following transport modes: air, rail, road, public transport and maritime transport as well as their ongoing regulation.
- 1.22 It is important to note that, while the process and principles of market opening affected all transport modes, the CTP generally seeks to promote two basic models of competition:
- Open access competition (competition in the market), where economic and social considerations suggest that the presence of a number of transport operators in the same market increases efficiency and quality of transport services;
 - Competition for the market (rather than in the market) is preferred when the presence of a sole operator in the market guarantees greater efficiency.
- 1.23 The competition for the market is generally related to the definition of Public Service Obligations (PSO), entered into with public authorities, to guarantee a set of basic standards of carriage to passengers. It should be noted that it is also possible to have PSOs in markets in which there is more than one operator.
- 1.24 The remainder of this section sets out the CTP with regard to market opening and integration in the various transport modes.

² Measure included in the 2001 White Paper

Air

- 1.25 Market opening in the air sector in the EU followed a similar deregulation process to that experienced in the USA in the 1970s. Three liberalisation packages were implemented (in 1988, 1990 and 1992) before the adoption of the 2001 Transport White Paper. These packages established open access competition, both for international and national services in the EU. There were a few exceptions, the most important of which was that Member States could procure services using Public Service Obligations where necessary (according to a set of guidelines)
- 1.26 The liberalisation of air services within the EU contributed substantially to the growth of air traffic, with an increase in the number of routes, a fall in fares and the entry of new operators, most notably the low cost carriers (LCC). These introduced a new business model and made air travel more affordable for many EU citizens.
- 1.27 The success of the CTP exceeded expectations, leading to other problems, in particular capacity issues at major airports and congestion of air corridors. Such problems were exacerbated by the lack of harmonised procedures, which threatened the effectiveness of open access competition. This was raised in the 2001 White Paper. These problems were addressed by reforms in the regulatory environment. One further consequence of the growth in the air market was increased noise pollution and greenhouse gas emissions, as discussed in detail in Task 1.8.
- 1.28 In relation to extra-EU services, following the open skies decision by the European Court of Justice, all bilateral agreements needed to be brought into line with EU law. Furthermore, EU-wide arrangements were necessary with some areas. Regulation (EC) 847/2004 was issued, laying down a set of principles designed to ensure that Member States do not infringe EU law in regard to non-discriminatory market access to routes between Member States and third countries. More importantly, the Court of Justice defined the competence of the EU in relation to:
- direct negotiation of ASAs (Air Service Agreements) with third countries;
 - setting standard clauses to be inserted in any agreement negotiated or in place between a Member State and a extra-EU country.
- 1.29 With Decision 2007/339/EC, the European Union approved the 'Open Skies' agreement concluded with the United States of America. The agreement provides for all transatlantic routes to be opened up to European and American companies. It also includes an arrangement to develop the agreement further on matters such as airline ownership.
- 1.30 Following the liberalisation process the air sector has altered its focus on ensuring appropriate regulation in the market aimed at minimising the remaining technical barriers in place and increasing the efficiency of the market.
- 1.31 In addition to technical barriers, the Commission has started to pursue policies aimed at improving the efficiency of the air sector and reduce its environmental impact. In particular, the Single European Sky (SES) policy has sought to improve the efficiency of the air traffic management system (commonly known as air traffic control) in order to increase capacity, reduce costs, and allow more direct routes (and hence reduce GHG emissions). This was originally articulated through the SES I

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programme. The Commission has recently advanced a reform of the SES programme³ aimed at further increasing efficiency and reducing the environmental impact of the air sector as well as implementing the ‘action plan for airport capacity, efficiency and safety’ and the Air Traffic Management research programme.

- 1.32 Furthermore, the European Aviation Safety Agency (EASA) was set up in 2003 to guarantee a common approach to air transport safety and sustainability and allow for growth and improved safety.

Rail

- 1.33 The liberalisation of the rail market is a significant regulatory policy change in the transport sector in the last decade. The measures introduced by the CTP since 1991, and enforced following the 2001 White Paper, are changing slowly a sector once dominated by state-owned monopolists, for passenger as well as freight transport.
- 1.34 One of the main objectives of the 2001 White Paper was the revitalisation of railways, to be pursued in order to attain modal shift from road, both for passenger and freight transport. In the previous decades, rail volumes were declining and market share was falling. The opening up of rail transport to regulated competition was seen as the fundamental stepping stone to reverse this trend.
- 1.35 Liberalisation was preceded by the restructuring of rail incumbents, prompted by Directive 91/440/EC, which imposed the separation of essential functions, those being infrastructure and operations.
- 1.36 The path chosen by the CTP was aimed at gradually introducing liberalisation and competition with the adoption of several packages of Directives. The CTP initially focused on international freight services on the Trans European Rail Freight Network and then to all international freight services.
- 1.37 Later packages of Directives extended liberalisation to national freight cabotage services from January 2007 and are to be applied to international passenger services, from 2010. National passenger cabotage services have been liberalised only in a small number of Member States and there is no requirement to do so in European law.
- 1.38 Market opening alone was not sufficient to ensure the proper functioning of the European rail market. It was essential also to dismantle the numerous existing technological and other barriers that operators faced when crossing borders and further to this striving to ensure that the various national rail systems became interoperable. This was pursued through the introduction of Technical Standards for Interoperability (TSIs) with the goal of standardising the rail system across Europe and thus decreasing the cost of providing rail services and making it more competitive with road transport. The main aim of these TSIs is to create common, binding standards for the construction of new railways and the renewal of the infrastructure of existing railways. As the TSIs are Commission Decisions, they are mandatory on all Member States the moment that they come into force. It is important to note that the TSIs, although being binding, are only to be applied to new build or renewed infrastructure and rolling stock. They are not retrospective in that existing infrastructure does not need to be upgraded. Clearly it is hoped that

³ COM(2008) 389 final.

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some point in future all infrastructure will need to be renewed and as such at this point the majority of the European infrastructure will be harmonised.

- 1.39 The TSIs initially only focused on high speed railways; however more recently their applicability has been extended to the conventional railway. The legislation section below sets out the individual decisions that have been implemented in terms of TSIs.
- 1.40 Even before the majority of TSIs were introduced, the First Railway Package introduced a number of regulations aimed at reducing administrative barriers to entry into the market by requiring that national governments separate the licensing and safety certification from the operation of train services. Furthermore it set up the obligation for each Member State to introduce regulatory bodies independent of operators and infrastructure managers to ensure that there was no discrimination on the networks.
- 1.41 A further important piece of regulation was the introduction of the European Railway Agency (ERA) with the goal of creating an integrated railway area focusing on safety and interoperability. Its primary role remains the evolution of the TSIs and the publication of updates of these TSIs. It also oversees the various working groups on common standards and coordinates the various national safety bodies.
- 1.42 The second Package of Directives introduced a number of important requirements such as ERA mentioned above, but also the obligation on each Member State to create an independent safety authority. The third package introduced the requirement for common train drivers licences across Member States.

Road

- 1.43 International road haulage activities were liberalised by Council Regulation (EEC) 881/92. Cabotage services followed a year later with Regulation (EEC) 3118/93, modified by Regulation (EC) 484/2002. However just services operated “on a temporary basis” were liberalised, making national road haulage still largely protected.
- 1.44 The market for international passenger services was opened by Regulation (EC) 11/98, while cabotage services were liberalised by Regulation (EC) 12/98, again limited only to services operated on a temporary basis.
- 1.45 Road haulage cabotage legislation is currently being revised, with the aim of merging the two Regulations on access to the road transport market and the Council Directive exempting certain transport. The new legislation (which has been approved but has not as yet entered into force) seeks to introduce the following changes:
- An updated definition of “cabotage”. Cabotage is only to be legal if hauliers conduct no more than three cabotage operations in the country of destination within seven days of completing an international delivery. During the legislative discussions, the European Parliament called for the lifting of all limits on cabotage by 2014.
 - A simplified and standardised format for the Community licence and other documents to reduce delays especially at road side checks.

- Improving current legal provisions requiring a Member State to act when a haulier which it has licensed commits an infringement in another Member State
- 1.46 Regulation in the road sector has focused on the introduction of specific technical regulations aimed at increasing road safety and improving the working conditions of drivers. This was done through the following activities:
- The harmonisation of commercial contracts;
 - Improving social harmonisation in the roads sector;
 - Introducing a digital tachograph on road vehicles⁴.

Public transport

- 1.47 Fewer measures have been taken in public transport, due to the different nature of operations in Member States and the principle of subsidiarity. The White Paper and the Mid-Term Review stated that, for this reason, EU intervention would be limited, primarily to the dissemination of best practice and the promotion of alternative fuels. Other reasons include many operators being owned by public authorities and concerns about the impact of market opening on employment. These issues prevented, until 2007, the adoption of liberalisation measures by the EU, even though some Member States already allowed cabotage.
- 1.48 The main principle set out by the new Regulation (Regulation 1370/2007), which followed the Altmark decision by the European Court of Justice⁵, is that public authorities should be free to choose whether to adopt competitive tenders to award services or not, provided that direct awards do not negatively affect competition in the internal market and as long as the following criteria are met:
- There must be a formal document setting out the public service obligations (PSOs), best organised through Public Service Contracts (PSCs);
 - The subsidy is defined following clear and transparent parameters;
 - The subsidy should only cover the cost of production and a reasonable level of profit;
 - The subsidy can only be applied once there has been a calculation of the costs of an efficient operator.
- 1.49 Despite these strong limitations, and a long transitional period for full integration to national policies, Regulation 1370/2007 should be able to gradually align the pro-competitive legislation of some Member States with those less advanced.

⁴ A discussion of these measures is presented in Task 1.6 report.

⁵ The Altmark decision involved the application of the “services in the general economic interest” (SGEI) principles within the transport context. SGEI are those services where the principle of state intervention is accepted by European authorities. See Case C-280/00 Altmark Trans GmbH judgment of 24 July 2003. This case was in response to an Article 234 reference from the German Bundersverwaltungsgericht.

Waterborne transport

- 1.50 Liberalisation of sea transport services occurred in parallel with air services. The first Regulations on international transport services were issued in 1986, while cabotage services were liberalised in 1992.
- 1.51 While the model adopted for international services is free competition in the market, Member States are allowed to impose PSOs for routes connecting the mainland to islands; although they must be awarded through a public tender ensuring equal and non discriminatory treatment regardless of the operators' nationality.
- 1.52 By the 2001 White Paper, the market for sea transport services was fully open; some difficulties remained in specific areas that prevented the effective competition for PSO services, as existing long term concession agreements between Member States and transport operators signed before the commencement of Regulation (EEC) 3577/92.
- 1.53 Inland waterways represent an exception to the rule mentioned above, as market opening of cabotage services, set out by Regulation (EEC) 3921/91 was limited to services operated on a temporary basis, and actually occurred before the liberalisation of international services, set out by Regulation (EEC) 1356/96.
- 1.54 Following the Green Paper on seaports and maritime infrastructure issued in 1997, the 2001 White Paper included a proposal aimed at allowing service providers to go to the open market for port services (piloting, cargo handling, etc.).
- 1.55 In 2001 and 2004, the Commission submitted two proposals on market access to port services. The first one was rejected by the European Parliament, whilst the second one was withdrawn by the Commission, in both cases because of social concerns and resistance by Member States.
- 1.56 The Commission has tried to reduce the remaining technical barriers that are hindering the growth of the maritime sector to further aid market integration. It has sought to promote short sea shipping; simplify the regulatory framework in maritime and inland waterway markets (following the better regulation objective in the Mid-Term review document); harmonise boatmasters' certificates; and, transfer the ships register (from national registers to a Europe wide register). It has also recently proposed an action plan with a view to establishing a European maritime transport space without barriers⁶.

State aid in transport sector

- 1.57 State aid is defined as an advantage conferred in any form on a selective basis to undertakings by national public authorities. The EC Treaty generally forbids state aid when it can distort competition and negatively affect trade between Member States. Not all state aid falls within this category and in the case of transport is sometimes allowed if it facilitates the coordination of transport or if there are payments related to carrying out of a public service.⁷

⁶ COM(2009) 10 final

⁷ Article 73 of the EC Treaty.

- 1.58 In principle, all such aid to companies in the transport sector must be notified to the Directorate-General Energy and Transport (DG TREN). Nonetheless, there are a number of exceptions to the rule of compulsory notification.⁸
- 1.59 In addition, generally following the opening of the relevant market, the European Commission issued sectoral guidelines dealing with State aid in air sector (1994), maritime sector (2004), airports (2005), railways (2008).

Legislative framework

- 1.60 Appendix A to this document sets out by transport mode the legislative interventions dealing with market opening and integration.

Qualitative analysis

- 1.61 The table below includes a synthesis of the outcome of CTP in regard to market opening. Two general issues need to be highlighted:
- the very broad scope of these policies, which include all transport modes; and
 - the long period of time over which these were implemented, both before and after the 1992 and 2001 White Paper.
- 1.62 The table shows whether the measures planned to facilitate the policies mentioned in the table have actually been taken forward and completed. The evaluation of the actual implementation is set out in the conclusion and also takes into account the SWOT and PESTELI analysis set out below.

TABLE 1.1 ASSESSMENT OF MEASURES FOR MARKET OPENING

Measure	Introduction of legislation or other initiatives
Improving the framework conditions for market opening in rail freight transport	<p>Done. The Rail Packages of Directives removed most legislative and regulatory barriers to the entry of new operators as well as introducing the independence of essential functions, licensing and safety certification provisions both for operators and their drivers. The Commission has successfully set up the framework for market opening and cabotage on freight services is allowed in all Member States.</p> <p>However, in a number of Member States there has not been full and appropriate implementation of the requirements so while the framework has been set up as required, there is still some way to go for its effectiveness to become a reality. However, not all barriers to entry have been removed and so there is still some ongoing work to ensure that the full potential benefits of the setting up of this framework are achieved.</p>

⁸ Examples: public compensations for PSO services, *de minimis* aid (aid of minor importance).

Measure	Introduction of legislation or other initiatives
<p>Opening up the national and international rail freight market</p>	<p>Done (at an EU level). The market for rail freight services is fully liberalised, both for national and international service. However, the high number of newcomers should be put in the context of an initial fall in rail market share which then stabilised post 2002, and signs of recovery were noticeable in more recent years. In a number of Member States the new entrants that have taken market share have done so by identifying the most profitable of existing services and only a small number of their services have actually been incremental.</p> <p>As is the case above, appropriate national implementation is hindering the full achievements of the benefits of opening up these markets with a number of barriers still remaining on the technical as well as operational side (for example access to rail related services).</p> <p>So while the markets are open, further action needs to be taken at EU level to encourage appropriate implementation of the market opening measures at the national level to provide:</p> <ul style="list-style-type: none"> ■ degree of independence between infrastructure managers and rail undertakings; ■ access to rail related services; ■ availability of dedicated infrastructure (something that is now being addressed by the Commission policy aimed at setting up corridors that give priority to freight).
<p>Opening up the international rail passenger market</p>	<p>Done. Directive 2007/58 set January 2010 as the date for the opening of the market of international rail passenger services. Although this fundamental step has been achieved, given experience with rail freight liberalisation it will be a challenge to see when and in what format each individual Member State will implement these Directives at a national level.</p> <p>While interoperability restrictions will still have an impact on the possibility of undertaking international services, many potential new entrants are acquiring multi tension locomotives and trains that provides them with the means to compete with current operators.</p>
<p>Updating interoperability directives on high speed and conventional railway networks</p>	<p>Done (but ongoing). The aim of the CTP was to update the TSIs originally prepared only for the high speed railway network in 1996 and the conventional network in 2001 to ensure that they were consistent with the requirements of the railways. This has been done through the Directives within the second railway package and other subsequent directives. Furthermore, a number of specific TSIs have been published that focus exclusively on certain sub systems within the conventional and high speed rail environment. It is clear however that these TSIs are in continual evolution with the upcoming introduction of such things as the Technical Applications for Freight TSI.</p>
<p>Creation of the European Railway Agency (ERA)</p>	<p>Done. ERA was set up with Regulation 881/2004 to help create an integrated railway area focusing on safety and interoperability. The Agency itself opened in 2005 and was fully operational in 2006 with about 100 employees.</p>
<p>Standardise certification of train crews and trains on the rail network</p>	<p>Done. The third railway package contains the requirement to do so, but many Member States have not implemented the requirement.</p>

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Measure	Introduction of legislation or other initiatives
Harmonise minimum clauses in commercial road transport contracts	Not done. A proposal is currently being prepared by the Commission, to harmonise minimum clauses to allow the pass through of such things as fuel prices but it has not been taken to the next stage by the Commission as discussions are still ongoing.
Entering into air service agreements with third countries	Some progress. The ECJ decision in 2002 paved the way for the updating of bilateral agreements and the entering into of EU-wide agreements with third countries through Regulation 847/2004 Over 700 such agreements have been updated and a number of EU wide agreements have been entered into while others have negotiations ongoing.
Propose a common legal framework for the provision of port services	Not done. The two proposals adopted by the Commission were abandoned due to the lack of political consensus; it is difficult to see how these will be resurrected in the near future.
Monitoring of state aid in transport sector	Some Progress. The guidelines developed by the European Commission in most transport modes contribute to increasing the certainty of the legislative framework on State Aid. It is important to develop similar guidelines for the road sector, taking into account at the same time the social aspects related to State aid in this sector and the need to ensure fair intermodal competition.
Single European Sky	Some progress. The original Single European Sky (SES) legislation was passed in 2004. Regulation 549/2004 laid out the framework for the SES and was accompanied by 3 technical regulations with the aim to enhance safety and efficiency for air traffic in Europe. Implementation rules are being developed to facilitate the SES. The Commission published a communication in 2007 (COM/2007/45) setting out the progress with the implementation of the Regulation: some areas remain outstanding.
Improve capacity allocation in the air sector (common rules for slot allocation)	Some progress. The Commission published Regulation 95/93 in which it set out the common rules for slot allocation. This regulation addressed the concerns of the time although it had to be modified with Regulation 793/2004 addressing specific technical issues. In addition the Commission published COM 2008/227 to provide guidance on the application of regulation 95/93 as a result of: insufficient application in some Member States, new entry, information transparency, the application of local guidelines, and the exchanging of slots at some airports. The ultimate aim is to introduce structural changes in the allocation system; this will be done in further legislation.
Protection against subsidisation and unfair pricing practices in the supply of air services from third countries	Done. The Commission adopted Regulation 868/2004 to provide such protection. This Regulation sets out the procedures that will be pursued by the Commission in the event that such actions are alleged with reference to a non-EU carrier. The Regulation also sets out the punitive measures that should be taken in the event that the allegation is proved.

Measure	Introduction of legislation or other initiatives
Maritime: Transfer of ship register	Done. The Commission adopted Regulation 789/2004 on the transfer of ships between registers. This Regulation removes a substantial technical barrier to the development of this market while at the same time ensuring maritime safety and environmental protection by ensuring that the ships have been certified and comply with the relevant European and IMO Regulations. This Regulation is the culmination of a number of initiatives aimed at improving safety without which such a Regulation on transfers would not be possible.
Simplify the regulatory framework for maritime and inland waterway transport	Some progress. This was a very ambitious target which has been partially achieved through Directive 2002/6/EC on reporting formalities for ships arriving in and/or departing from ports in Member States. This was then supplemented by Decision 253/2003/EC adopting an action programme for customs in the Community as well as COM(2003)452 on the introduction a simple and paperless environment for customs and trade, but in a number of areas of waterborne transport the regulatory environment remains very complex.
Greater harmonisation of boatmasters' certificates	Done. Directive 96/50/EC introduced the harmonisation of these certificates for the carriage of goods and passengers by inland waterway. It applies to all vessels greater than 20m in length and/or carrying more than 20 people.
Improve regulatory framework for local transport (Public Service Contracts)	Done. A new Regulation (1370/2007) has been introduced that sets out the requirement for public service contracts following the Altmark decisions. It comes into force in December 2009.
PSO to grant access to public transport for social purposes	Done. The new Regulation (EC) 1370/2007 broadened the scope of PSOs and PSCs, which are now compulsory whenever an entity wants a transport operator to provide a public service. PSCs have to define clearly the scope and the subject of PSOs, and must specify clearly any quality standard the operator is required to meet. Given the authorities setting the PSOs are usually elected by the users of the services, this ensures that passengers best interests are given the appropriate attention in the definition of PSOs and quality standards within PSCs.

SWOT analysis

1.63 Table 1.2 sets out a SWOT analysis relating to market opening and integration.

TABLE 1.2 SWOT ANALYSIS – MARKET OPENING AND INTEGRATION

Strengths	<p>In markets where liberalisation has been introduced successfully, customers have often benefited from lower fares and better service.</p> <p>As market opening encourages more operators to enter into the market, incumbent operators are incentivised to improve efficiency in order to keep up with new competition. This has been done with various degrees of success in the airline sector.</p> <p>Consumers in these transport markets now have increased choices and are able to select from a wider variety of suppliers; this competition should lead to reduced costs.</p> <p>PSOs and PSCs are efficient and transparent instruments to improve the quantity and quality of transport services and to safeguard services in times of economic downturn.</p>
Weaknesses	Some Member States have implemented the letter but not the spirit of

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	<p>the law; in a small number of cases they have just not implemented all of the necessary provisions.</p> <p>Lack of interoperability and the existence of other forms of barriers to entry and exit still limit the benefits of market opening particularly in the rail sector.</p> <p>There can be increased noise and air pollution as a result of the growth in volumes and traffic.</p> <p>Economies of scale have not yet been achieved by suppliers (for example rail manufacturers are still producing Member State specific equipment)</p> <p>Introducing regulations are always small steps which may not address larger problems and it is not always simple to navigate through the myriad of regulations, thus in itself providing increased costs to operators and a barrier to entry.</p>
Opportunities	<p>Market opening and the introduction of industry specific regulations can lead to further innovation and the development of niche markets as well as to standardisation that has the potential of decreasing entry barriers.</p> <p>The rail sector has potential for substantial growth when liberalisation is extended to the passenger market and with the introduction of further standardisation in practices and infrastructure.</p> <p>New entry into the rail market will push existing operators to increase efficiency in order to compete.</p> <p>Liberalisation may increase the competitiveness of more environmentally-friendly modes.</p> <p>The introduction of appropriate regulations should improve the working conditions in the transport sector.</p> <p>Market opening and integration facilitates migration.</p>
Threats	<p>Recession could further encourage incumbents to argue for policies that reduce the impact of market opening. The recent Regulation on airport slots relaxing the ‘use-it-or-lose-it’ rule⁹, is an example of this - incumbent operators are able to keep unused slots at congested airports such as Paris Orly and Rome Fiumicino, even though new entrants would like to obtain the slots to operate competing services.</p> <p>The slow progress with liberalisation in some sectors (and Member States) may lead to a gap developing between the efficiency of different sectors.</p> <p>There may be risks of “social dumping” in the road sector following greater opening of road freight and passenger market.</p>

Results

- 1.64 It is clear that substantial progress has been made in the creation of an internal market for transport services through the introduction of a number of directives. It is also clear that there is also much work remaining in order to create full liberalisation.
- 1.65 While the Common Transport Policy in respect to market opening is very similar across different modes, it is still not clear whether the positive results obtained in some sectors such as aviation, which has seen an increase in the number of passengers and a generalised fall in fares, can be replicated in sectors with more rigid structures and other constraints such as the existence of network monopolies and public service obligations.
- 1.66 In the rail sector, freight has now been liberalised, but liberalisation of international passenger services will not commence until 2010 and there are no

⁹ Regulation (EC) 545/2009

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definitive plans as yet for liberalisation of domestic markets. There are still barriers to market entry as a result of the industry structure, and technical restrictions. Furthermore, although the legal framework has been set up, the Railimplement and Servrail projects showed that some Member States had not implemented the rail liberalisation Directives. Much of this has now taken place, but there are still many countries that have still failed to complete the implementation of the First Railway Package (for example Italy in relation to charging framework for rail related services such as access to maintenance and deposit infrastructure).

- 1.67 The progress of liberalisation in the rail sector has also been assessed on a regular basis by the Rail Liberalisation Index (produced by IBM for Deutsche Bahn AG)¹⁰. This index compiles a ranking of the level of liberalisation taking into account both legal implementation and an assessment of the relevant access restrictions in the national market. Based on this study there are some Member States that are classified as advanced (Great Britain, Germany, Sweden and the Netherlands); some that are delayed (Luxembourg, France, Greece and Ireland) and the rest that are on schedule.
- 1.68 In the air sector, market opening has been a great success in terms both of economic efficiency and benefits to the final users. Average fares have dropped, new services have started and innovative solutions have been adopted that have put the industry at the forefront of international transport.
- 1.69 However, some of the other measures taken in this sector have had limited success to date. For instance, the system of slot allocation at congested airports protects the position of incumbent carriers, as slots are allocated on the basis of grandfather rights and although bilateral Air Service Agreements with some third countries have been amended in order to open the market to competition, others have been not as yet. This is in any case constrained by the policies of the third countries: some, for example Russia, impose market restrictions in order to protect their own national carriers from competition from more efficient EU-based carriers.
- 1.70 In the road sector liberalisation has been successful in achieving the goal of creating a competitive internal market for road transport in the EU15, subject to the conditions set out by the Directives relating to cabotage within Member States. For a transitional period, these provisions did not apply to operators from 7 of the 10 Member States that joined in 2004. Since 1 May 2009 these limitations have been lifted for these seven States but they continue to apply to Romanian and Bulgarian hauliers.
- 1.71 In the maritime sector, liberalisation was already well entrenched in the majority of areas. However the further steps in the liberalisation process aimed at creating a common legal framework for the provision of port services has not been achieved as a result of the Commission proposals being rejected by the European Parliament as set out in paragraph 1.55 above. A number of measures introduced by Member States, in line with the Community Guidelines for State aids for maritime transport, have contributed to keeping part of the fleet on European registers and generating jobs for European seafarers¹¹.

¹⁰ Rail Liberalisation Index 2007 Market Opening: Rail markets of the Member States of the EU, Switzerland and Norway in Comparison. 2007. IBM Global Business Services.

¹¹ COM(2009) 8.

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- 1.72 In relation to inland waterways the measures taken have improved the regulatory framework to create an integrated EU internal market, but the impact of this has, to date, been limited in terms of increased market share for this transport mode. This may be partly due to administrative and regulatory barriers which limit the scope for new entry to the market.
- 1.73 One area not specific to individual transport sectors but something relevant to all sectors is EU enlargement. The enlargement of 2004 and the subsequent enlargement in 2007 led to the introduction of a number of additional players in the markets in western Europe, contributing to further competition in the markets of the former EU15 countries. This is true for all transport sectors except for the road sector where cabotage has been limited as mentioned above.
- 1.74 More importantly, enlargement has led to substantial improvements in competitiveness and services offered in the 10 Member States that joined the EU in 2004. Here the markets have had to change radically to meet the requirements of accession and as a result have seen substantial strides in domestic competitiveness, generally to the benefit of transport, and its users in those Member States.
- 1.75 Finally, it needs to be highlighted that PSOs have been introduced with the aim (i) to grant optimal accessibility to remote, peripheral or poor EU regions, or (ii) to grant the provision of adequate services from a social point in urban areas. PSOs exist in all transport modes, however there are differences in the manner they are applied. PSOs are an exception in competitive markets such as air and sea transport, where they are used to assure a certain level of service; by contrast, they are widespread for services that can hardly be operated on a commercial basis, such as local public transport.
- 1.76 Overall the CTP has successfully introduced a number of regulations aimed at integration which, in turn, have helped in reducing technical barriers in all transport modes. The actions that have been taken to date are a step in the right direction that need to be continued to ensure that the full benefits of an internal market can be achieved.

Quantitative analysis

- 1.77 The qualitative assessment set out above can be supplemented by the quantitative assessment included in this section. As most of the objectives identified within the 2001 White Paper apply to the liberalisation of railways, the analysis will be mainly focused on the evolution of the rail market and will build on the qualitative analysis by comparing the results with the contents of the Rail Liberalisation Index, but will also briefly look at capacity in the air sector.

Analysis

- 1.78 Table 1.3 below shows the number of rail licences and safety certificates issued in each EU Member States, as a proxy for assessing the number of operators in each country.
- 1.79 As stated in the First Infrastructure Package of Directives, a licence obtained in one country (for freight transport) must be valid in all Member States, a requirement that has now been implemented in all Member States. This implies that number of licences by country shown below could potentially underestimate the number of

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operators effectively present in each country. In reality, however, the majority of operators operating in more than one market have opted to obtain a licence in all the markets in which they operate, also to facilitate their interactions with the local railways.

- 1.80 Safety certificates however are a better proxy for the number of new entrants as they are State specific.
- 1.81 These figures are an indicator for market opening in the rail sector as they show the number of new entrants in the market. They show that in a large number of Member States there have been a substantial number of entrants, but in some countries there is still much progress to be made.¹² When compared to the Rail Liberalisation Index, the Advanced Member States have a total of 403 safety certificates, the On schedule Member States have a total of 254 safety certificates issued and the Delayed Member States can only count 11 safety certificates, which seem to point to the entry barriers that still remain in those Delayed Member States

TABLE 1.3 NUMBER OF LICENCES AND SAFETY CERTIFICATES ISSUED IN THE EU MEMBER STATES (2006)

Country	No. Licences	No. Safety Certificates	Country	No. Licences	No. Safety Certificates
AT	15	15	IT	40	16
BE	4	6	LT	7	5
BG	21	21	LU	2	3
CZ	19	19	LV	6	8
DE	355	274	NL	16	14
DK	11	14	PL	62	72
EE	23	22	PT	1	0
EL	n.a.	0	RO	27	27
ES	7	2	SE	19	19
FI	1	12	SI	1	1
FR	8	8	SK	n.a.	0
HU	15	0	UK	56	96
IE	n.a.	0	-	-	-

Communication on monitoring development of the rail market - SEC (2007) 1323

- 1.82 The table below provides further information on the numbers set out above. It shows the market shares of non incumbents in the freight and passenger market, and a market opening score, with a Herfindahl-Hirschmann index for these markets¹³.

¹² Although clearly, some rail markets are more attractive in terms of entry than others.

¹³ The Herfindahl-Hirschmann index is defined as the sum of the squares of the market shares of the largest firms within an industry, where the market shares are expressed as percentages. A value closer to 0 (or 1) shows highly fragmented (or concentrated) markets.

TABLE 1.4 THE OPENING OF RAIL FREIGHT AND PASSENGER MARKET IN THE EU MEMBER STATES (2006)

Country	Share non incumbents Freight (% of tkm)	Rail Freight Market opening score (H-H index)	Share non incumbents Passengers (% of pkm)	Rail Passenger Market opening score (H-H index)
AT	10.0	0.81	6.5	0.87
BE	0.1	0.94	0	1.00
BG	3.2	0.94	0	1.00
DE	16.4	n.a.	3.8	n.a.
DK	n.a.	n.a.	n.a.	n.a.
EE	30.6	0.52	40.0	0.48
EL	0.0	1.00	0.0	1.00
ES	4.9	0.90	8.4	0.84
FI	0.0	1.00	0	1.00
FR	0.6	0.99	13.0	0.77
HU	9.0	0.83	1.4	0.97
IE	0.0	1.00	0.0	1.00
IT	11.5	n.a.	9.8	n.a.
LT	0.0	1.00	0.0	1.00
LU	0.0	1.00	0.0	1.00
LV	10.6	0.80	10.1	0.81
NL	18.0	n.a.	1.9	n.a.
PL	16.9	0.69	9.2	0.83
PT	0.0	1.00	0.0	0.83
RO	26.7	0.55	0.5	1.00
SE	32.5	n.a.	19.0	n.a.
SI	0.0	1.00	0.0	1.00
SK	2.9	0.94	0.0	1.00

Communication on monitoring development of the rail market - SEC (2007) 132314 Note: No values for UK and CZ.

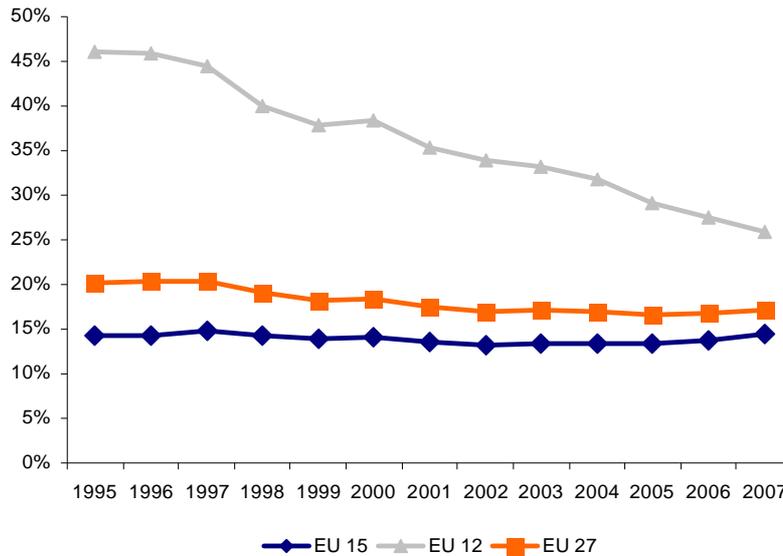
1.83 Somewhat in contrast to the Table 1.3, Table 1.4 shows that national markets still tend to be highly dominated by incumbents. This suggests that newcomers are

¹⁴ Original Source: RMMS questionnaires filled in by Member States in May/June 2007,

positioning themselves in market niches. Again, comparing these results to the Rail Liberalisation Index figures, the Advanced markets have averaged a higher amount of non incumbent operations in the freight and passenger sectors (22.3% and 8.2% respectively excluding the UK) compared to the average level for the On Schedule (8.4% and 5.7% respectively) and Delayed (0.2% and 3.3% respectively) Member States.

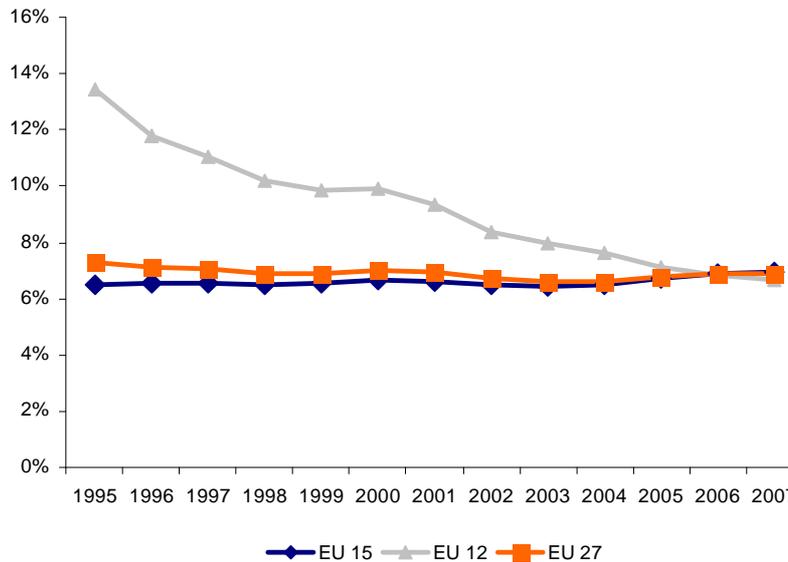
1.84 The following figures show the evolution of rail market share compared with the other inland modes between 1995 and 2007, for freight and passenger transport, in the EU27, EU15 and EU12 (new Member States)¹⁵.

FIGURE 1.1 RAIL FREIGHT MARKET SHARE BETWEEN 1995 AND 2007



Source: Transport Statistics Pocketbook 2009 - Directorate-General Energy and Transport

FIGURE 1.2 RAIL PASSENGER MARKET SHARE BETWEEN 1995 AND 2007

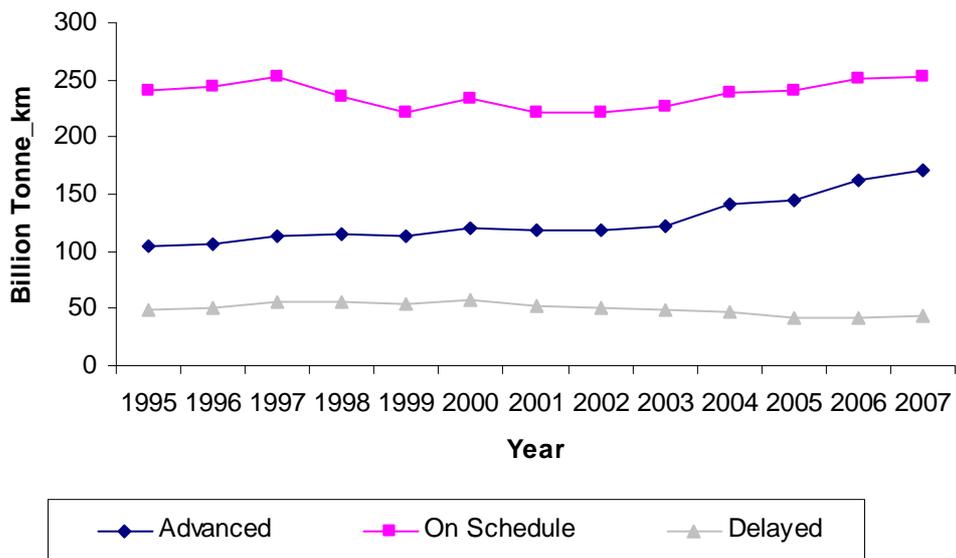


Source: Transport Statistics Pocketbook 2009 - Directorate-General Energy and Transport

¹⁵ The decline in rail market share in the EU12 States partly reflects issues with the reported statistics. See paragraph 1.86 below.

- 1.85 Both market shares in EU27 are essentially stagnant between 1995 and 2005 with some signs of recovery since 2005, mainly passenger transport.
- 1.86 In the new Member States, rail market shares are rapidly falling, as an effect of the transition to market economies and the poor state of repair of their railways, which hinder their competitiveness compared to road haulage. However, the EU12 states seem not to influence greatly the EU27 trend, as a result of the large gap in transport volumes between EU15 and EU12. It should be noted that the apparent fall in the share of rail freight in the EU12, and the rise in the share of road freight, is exaggerated because EU12 operators undertake significant operations within EU15 States. Road freight activities are reported on the basis of the State of registration of the vehicle rather than the actual location of the transport being undertaken.
- 1.87 In the period up to 2002 there was a slight decline in freight tonnage. From 2002, shortly after the adoption of 1st Infrastructure Package, there was an upturn in freight volumes, but this was at least in part related to growth in economic activity.
- 1.88 The figure below shows that in those Member States that were advanced or On Schedule with implementation when the latest Rail Liberalisation Index was prepared have seen an upturn in freight growth which is often attributed to the relative openness of their markets. This seems to be made even clearer when compared to the Delayed Member States that have seen continual decline. While this is not a direct correlation, there is clearly some positive impact resulting from liberalisation.

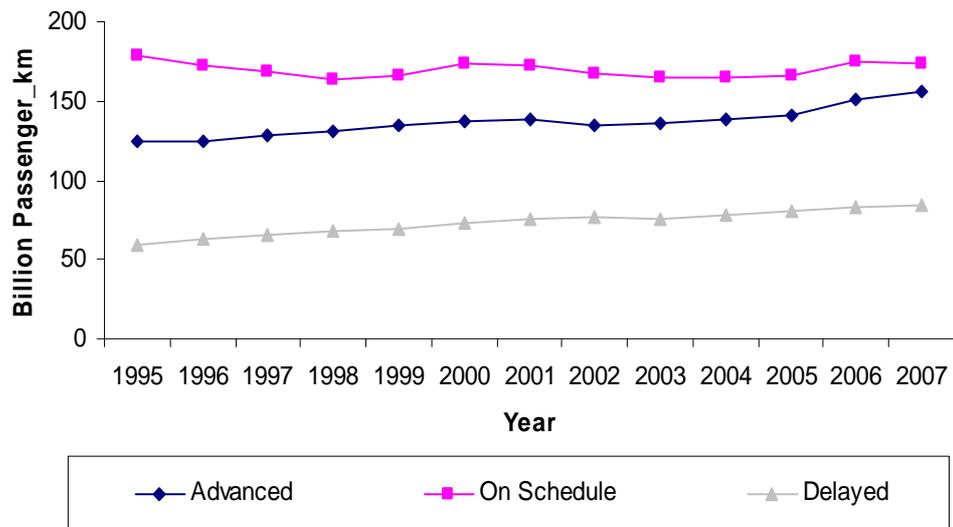
FIGURE 1.3 RAIL FREIGHT VOLUMES BETWEEN 1995 AND 2007



Source: Transport Statistics Pocketbook 2009 - Directorate-General Energy and Transport

- 1.89 The same is not as clear in the passenger rail market, but it is also true that there has been limited liberalisation in this market to date, although the Advanced countries in this case still did well compared to other two categories.

FIGURE 1.4 RAIL PASSENGER VOLUMES BETWEEN 1995 AND 2007



Source: Transport Statistics Pocketbook 2009 - Directorate-General Energy and Transport

Other rail measures - number of TSIs issued per year and the train drivers directive

1.90 Since the mid 1990s, a number of TSIs have been issued firstly by the European Commission and then subsequently by the European Railway Agency. Over this period, a total of 20 TSIs have been published (of which 3 are actually revision of previous versions):

- 5 were published in 2002;
- 7 were published in 2006; and
- 8 were published in 2008.

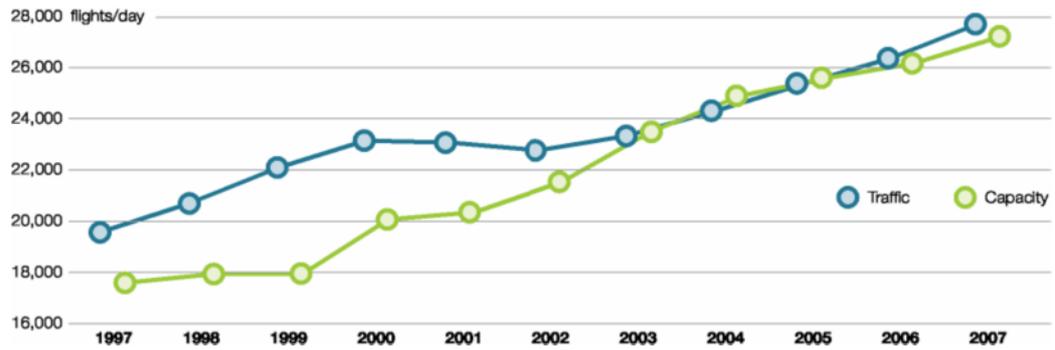
1.91 In addition to these TSIs, the European Railway Agency is currently working on a number of other TSIs. There has been substantial progress in the introduction of regulations necessary to ensure standardisation and to reduce technical barriers to entry, and it is recognised that more is necessary.

1.92 The train drivers directive has not been implemented in any Member State. Given that it was only adopted in 2007, this is not necessarily a particularly negative sign.

Usage of allocated air sector slots in Member States

1.93 As mentioned above, capacity allocation in this sector is a major issue that the Commission is attempting to deal with in order to make the market more efficient and to reduce the environmental impact of the air sector. Since 2000 the gap between traffic and capacity has decreased substantially and in 2004 there was a small degree of excess capacity before demand once again outstripped supply as set out in the figure below. The policy aimed at developing a Single European Sky and common rules on capacity allocation should ensure that in future there is sufficient capacity to meet demand.

FIGURE 1.5 TRENDS IN TRAFFIC AND CAPACITY OVER THE PERIOD 1997-2007

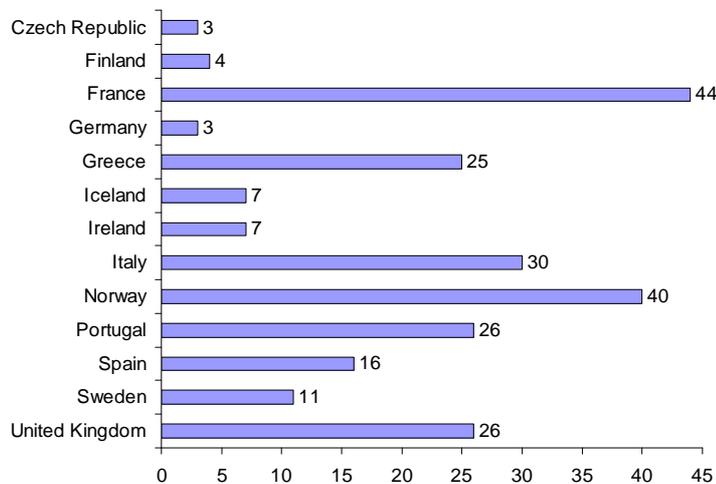


Source: Eurocontrol Annual Report 2007

Number of PSO in the air sector

- 1.94 In order to maintain appropriate scheduled air services on routes which are vital for the economic development of the region they serve, Member States may impose public service obligations on these routes.
- 1.95 All impositions, modifications and abolitions of PSO as well as the corresponding calls for tenders must be announced in the Official Journal of the European Union.
- 1.96 The following graph reports the number of routes concerned with PSO in the aviation sector by Member State, as reported by the PSO Inventory Table published on the Directorate-General Energy and Transport website.

FIGURE 1.6 PSOS IN THE AIR SECTOR: NUMBER OF ROUTES WITH PSO BY COUNTRY



Source: Steer Davies Gleave elaboration on Directorate General Energy-Transport data.

- 1.97 The number of routes with PSO is generally higher where connections with islands or remote areas of the country (e.g. French overseas departments) need to be granted. This explains why a high number of PSO is present in France, Norway, Italy and the United Kingdom. In France, several routes with PSO are related to connections between Strasbourg and other European capitals, designed to facilitate access to the institutions of the EU.
- 1.98 Finally, it must be highlighted that for some routes no contract has been signed because the tender process was unsuccessful in finding an operator.

Conclusions

The overall impact of the policy

- 1.99 Taking the qualitative and the quantitative analysis, set out above, it is clear that the CTP has been largely successful in opening up the internal market in the majority of sectors. A number of barriers to entry have been removed at the national level, but further legislation is needed in Member States to ensure that the remaining barriers are removed.
- 1.100 There are signs that market opening in the rail sector is starting to bring some success. Customers now have more choice in the freight sector and for example in the UK often switch between operators if they are not happy with one supplier. Furthermore competitiveness has increased as the market share of new entrants has slowly increased, such as on the Brenner corridor. This has added a significant stimulus towards encouraging the achievement of economies of scale as well as encouraging the incumbent operators to strongly rethink their approach to the market and improve their competitive position. Two examples of these are the withdrawal of Trenitalia from a number of freight markets nationally, together with the restructuring of SNCF's freight business.
- 1.101 Furthermore, this had led to international consolidation in the industry: the main example of this is DB and their acquisition of the Danish and Dutch national freight operators and more recently through their acquisition of EWS in Great Britain.
- 1.102 Furthermore, new entrants are not only undercutting incumbent providers, but are also diversifying into other areas that had long been abandoned by operators such as food transportation.
- 1.103 Anecdotal evidence shows that the economic boom experienced in past years has led to a substantial increase in demand, increased road congestion and a greater awareness of environmental impact. This has led some customers to choose rail over road and start the process of modal shift that the Commission's policies have been advocating. In passenger transport, progress has been achieved where Member States have adopted measures that have improved the quality of the rail service or have increased the cost of road transport (like Germany which increased fuel taxation). However, despite these promising signs, the liberalisation of the rail sector has not as yet, in aggregate, resulted in the achievement of the objective of the 2001 White Paper of modal shift to rail although the relative decline of rail freight seems to have halted.
- 1.104 From the analysis set out above, it is also clear though that there are varying degrees of implementation of the EU legislation and that although there has been some improvement in the situation, there remain a number of barriers to entry that result from the incomplete or inappropriate implementation of the Directives which still have a negative effect on efficiency and market integration. The Commission has recognised these missing components and has written to the various Member States setting out where they are lacking in implementation.
- 1.105 Other transport sectors have already been through liberalisation and have had subsequent regulations introduced to mitigate the mismatch between the implementation of the letter and the spirit of the law. It is necessary to ensure that this is replicated in the rail sector. Furthermore, the railways have made substantial steps forward in the preparation of TSIs and more of these will be published soon.

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- 1.106 The figures in the previous section also show that those Member States that have liberalised first have had a better result from the point of view of new entrants and freight growth when compared to the results of the Rail Liberalisation Index. But it is also important to note that rail liberalisation is still in its early stages.
- 1.107 In other sectors, some of the Regulations such as the SES have only partially resolved the problems relating to the fragmentation of airspace and are therefore being renewed through the SES II to further facilitate the development of an internal market by regulating performance. This will create a single safety framework, opening the door to new technologies and managing capacity on the ground, all of these to create a truly single sky by 2012.
- 1.108 While the policy has in general been successful in reducing the barriers at an EU level that were inherent in the various transport sectors, the number of enforcement proceedings that have been initiated by the European Commission (since 2005, 40 in the maritime sector, 35 in the roads sector, 6 in the rail sector and 18 in the air sector) is evidence of how national governments are still resisting much of the market opening and reduction in barriers in all forms of transport.
- 1.109 Finally, the introduction and refinement of PSOs across modes and services has delivered significant achievements to ensure quality of service for passengers. This has enormous social benefits for society at large, but especially for disadvantaged social groups who rely on these forms of transport.

Current developments

- 1.110 The current economic crisis may slow down further actions aimed at accelerating the introduction of competition in markets in which market opening is ongoing or in liberalising still protected sectors, such as port services.
- 1.111 In addition, Member states may grant more State aid to transport operators, especially in those markets more exposed to competition, such as the road and air sector¹⁶. On the other hand, for these sectors, the crisis may cause the exit of more inefficient operators and favour market consolidation aimed at taking advantage of economies of scale and scope.
- 1.112 In the rail market, the crisis may deter further entry and, as far as incumbents are concerned, reduce the accessibility of rail freight and passenger services in the remote areas of the European Union, as a result of possible withdrawal of unprofitable services.
- 1.113 It may also encourage further consolidation in the industry in the manner that has already taken place in recent years (c.f. Railion's expansion in other European markets). Some Member States may consider the extension of PSO services as a possible answer, and also ask for the exemption of compensations to freight operators from the general prohibition of State aid.
- 1.114 From a policy standpoint the Commission is currently pursuing policies aimed at creating a railfreight-oriented network on certain rail corridors as well as progressing with a recast of the First Railway Package, aimed at improving the efficiency, transparency and effectiveness of the freight market. It is also pursuing

¹⁶ There were already requests to raise the threshold for *de minimis* aid in road sector.

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policies in the rail sector aimed at developing appropriate multi-annual contracts and relevant infrastructure charges.

- 1.115 Furthermore, the Commission is also aiming to improve logistics with the “Keeping freight moving” policy and reducing the environmental impact of transport through its “Greening transport” initiatives.
- 1.116 In all sectors, infringement proceedings are being launched to ensure full implementation of the Directive and the technical requirements included in Commission regulations.
- 1.117 In the context of PSOs, Regulation (EC) 1370/2007 will enter in force in December 2009, and PSCs will be compulsory for any competent authorities willing to set PSOs. Although the criteria for the award of PSCs will not enter in force until December 2019, this represents a positive step towards a more efficient and transparent safeguard of social requirements for transport services.
- 1.118 Furthermore PSOs and sign PSCs with respect to freight transport services can only be entered into until December 2012. This requirement will favour market opening, but it might result in lower levels of accessibility for remote and peripheral areas of the European continent.

Lessons learnt and going forward

- 1.119 In the majority of these transport sectors, the CTP has not finished its market opening cycle and more is planned in the coming years to facilitate market integration (for example developing dedicated freight corridors for rail, or port liberalisation as mentioned above). It is important to ensure that these policies are carried forward so as not to stall the progress achieved to date.
- 1.120 The major lesson learnt from this market opening is that high level legislation does not always guarantee an appropriate level of integration to ensure an internal market for the EU. In the railways where the initial attempts at liberalisation had little impact on the market and only in recent years has there actually been an increase in competition albeit in niche areas.
- 1.121 In future, the Commission needs to continue with its market opening strategy, in particular focusing on the rail sector where the final hurdle remains full passenger liberalisation. It also needs to ensure that countries implement the provisions that have been included to date within the Directives by the deadlines required. Furthermore it needs to concentrate on ensuring that it enforces the correct implementation of its Directives and that this is done quickly to ensure that progress is made with market opening. In the rail sector, there are elements of best practice in some countries that can be drawn on to facilitate market opening in the remaining Member States, for example the information that is available in the Norwegian network statement shows a high degree of transparency and substantially decreases the barriers to entry for rail freight companies, as well as the domestic passenger cabotage available in Great Britain, Germany and Italy (although with reciprocity rules) are also examples of good practice in market opening.
- 1.122 Other than the rail sector discussed above, the other transport sectors already find themselves in an advanced state of liberalisation, thanks to the efforts set out above which in general came before the activities in the rail sector. Now that the foundations for a single market in these sectors have been laid, attention needs to switch to ensure that any barriers that remain in these sectors that are restricting

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the market from approaching efficiency are removed. This means focusing in greater detail on micro aspects of the market such as improving capacity allocation at airports and in the sky and simplifying regulation in the maritime sector, something that the CTP has started to do, but as mentioned above has struggled to complete.

- 1.123 The role of PSOs and PSCs in guaranteeing adequate transport services and high mobility to all EU citizens, regardless of their place of residence and wealth, is an important building block for the furtherance of a 'social Europe'.
- 1.124 On the other hand, their scope must be constantly monitored in order to prevent excessive restrictions to competition and, most of all, their obsolescence due to innovation and technological progress.
- 1.125 In addition, further attention could be given to the development of instruments suitable to assess the economic benefits from PSOs and situating them within the context of a quantitative framework for evaluation. To date, most of the justification for these transport contracts between operators and authorities tend to have been based on the historic provision of a transport service. When the operation of these services was delegated to the private or quasi-private sector, the acceptance of route and operation was often left unquestioned. There is limited revision of PSO routes (unlike in the free market), although routes must still be within the budgetary constraints of the authority. It is, however, difficult to see any systematic analysis of the benefits of these routes. Provision of PSCs tends to be based on political weight of rationale rather than a robust evaluation framework for the social benefits of PSOs and PSCs.
- 1.126 This also means that it will always be necessary to fine tune the market to ensure that any lingering technical barriers are removed. Furthermore, the challenge remains to ensure that once the appropriate regulations have been introduced, they are respected and applied to ensure that there is minimal recourse needed for infringement proceedings.

APPENDIX

A

FULL LIST OF LEGISLATIVE MEASURES CONSULTED

A1. FULL LIST OF LEGISLATIVE MEASURES CONSULTED

This Appendix includes, for each transport mode, the full description of the legislative texts used in the analysis.

Air

- Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports
- Directive 96/67/EC access to the ground handling market at Community airports;
- Communication from the Commission of 1 December 1999 to the Council and the European Parliament - The creation of the single European sky [COM(1999) 614 final]
- Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky ('Framework Regulation')
- Regulation (EC) 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries.
- Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community
- Decision 2007/339/EC of the Council and the Representatives of the Governments of the Member States of the European Union meeting within the Council on the signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand.
- Regulation 1008/2008 on Common rules for the operation of air services in the Community.

Inland waterways

- Regulation (EEC) 3921/91 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State;
- Council Regulation (EC) 1356/96 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services.
- Council Directive 96/50/EC of 23 July 1996 on harmonizing the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway within the Community.

Rail

- Council Directive 91/440/EC on the development of Community's railways;
- Directive 95/18/EC on the licensing of railway undertakings;

- Directive 95/19/EC on the allocation of railway infrastructure capacity and charging of infrastructure fees;
- Directive 2001/13/EC on the licensing of railway undertakings;
- Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification;
- Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the conventional rail system
- Directive 2004/49/EC on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and levying of charges for the use of railway infrastructure and safety certification;
- Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways.
- Corrigendum to Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system
- Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency
- Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and levying of charges for the use of railway infrastructure.
- Directive 2007/32/EC of 1 June 2007 amending Annex VI to Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Annex VI to Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system
- Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the Community's rail network.
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast)
- DIRECTIVE 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive)
- REGULATION (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation)

TSIs

- Commission Decision 2006/920/EC of 11 August 2006 concerning the technical specification of interoperability relating to the subsystem Traffic Operation and Management of the trans-European conventional rail system (notified under document number C(2006) 3593)
- Commission Decision 2006/861/EC of 28 July 2006 concerning the technical specification of interoperability relating to the subsystem rolling stock - freight wagons of the trans-European conventional rail system (notified under document number C(2006) 3345)
- Commission Decision 2006/679/EC of 28 March 2006 concerning the technical specification for interoperability relating to the control-command and signalling subsystem of the trans-European conventional rail system (notified under document number C(2006) 964)
- Commission Decision 2004/447/EC of 29 April 2004 modifying Annex A to Decision 2002/731/EC of 30 May 2002 and establishing the main characteristics of Class A system (ERTMS) of the control-command and signalling subsystem of the trans-European conventional rail system referred to in Directive 2001/16/EC
- Commission Decision 2004/446/EC of 29 April 2004 specifying the basic parameters of the Noise, Freight Wagons and Telematic applications for freight Technical Specifications for Interoperability referred to in Directive 2001/16/EC
- Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system
- Commission Decision 2001/260/EC of 21 March 2001 on the basic parameters of the command-control and signalling subsystem of the trans-European high-speed rail system referred to as "ERTMS characteristics" in Annex II(3) to Directive 96/48/EC.
- Commission Recommendation of 21 March 2001 on the basic parameters of the trans-European high-speed rail system referred to in Article 5(3)(b) of Directive 96/48/EC.
- Commission Decision 2008/217/EC of 20 December 2007 concerning a technical specification for interoperability relating to the infrastructure sub-system of the trans-European high-speed rail system
- Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system
- Commission Decision 2008/163/EC of 20 December 2007 concerning the technical specification of interoperability relating to safety in railway tunnels in the trans-European conventional and high-speed rail system

Road

- Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport

- Council Regulation (EEC) 881/92 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member States or passing across the territory of one or more Member States;
- Regulation (EEC) 3118/93 laying down the conditions under which non resident carriers may operate national road haulage services within a Member State;
- Regulation (EC) 11/98 amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus.
- Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport

Sea

- Regulation (EEC) 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport;
- Regulation (EEC) 4057/86 on Unfair Pricing Practices in Maritime Transport;
- Regulation (EEC) 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).
- Proposal for a Directive of the European Parliament and of the Council on market access to port services - COM (2001) 35 and COM (2004) 654.
- Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency
- Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21 April 2004 on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No 613/91
- Communication from the Commission: Programme for the Promotion of Short Sea Shipping [COM(2003) 155]

State aid

- Council Regulation (EEC) 1017/68 applying rules of competition to transport by rail, road and inland waterway;
- Commission Regulation (EC) 69/2001 and Regulation (EC) 1998/2006 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid.
- Regulation (EC) 1370/2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1191/69 and 1107/70.

Public transport and Public service obligations

- Regulation (EEC) No 1191/69 of the Council on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway;
- Regulation (EEC) No 1107/70 of the Council on the granting of aids for transport by rail, road and inland waterway;

- Council Regulation (EEC) No 1893/91 amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway;