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The Rail Liberalisation Index

paper submitted to the
First Conference on Railroad Industry Structure, Competition and Investment
Toulouse, November 7-8, 2003

1. Introductory Remarks

The Rail Liberalisation Index is a tool for analysing comparative market entry barriers to European railway markets. Better understanding the relative openness of such markets is necessary in order to liberalise and integrate these markets. Before the Rail Liberalisation Index of 2002 is being presented some background information on liberalisation of railway markets in Europe appears to be helpful.

The paper will be structured as follows: After a short introduction into the process of European rail liberalisation the Rail Liberalisation Index will be demonstrated. The third part of the paper then will provide an outlook of what has to be done in 2004.

2. Rail Liberalisation in Europe

2.1 Introductory Remarks

Railway markets have long been regarded as natural monopolies. National railways have been the predominant players in most European markets. In order to open up these markets – which constitute so-called network industries – it is necessary to distinguish between two market levels: infrastructure (railway nets) and rail transport services for freight and passengers. Open access to such parts of infrastructure which constitute bottlenecks is the prerequisite of utmost importance.

Railway markets have been *national* markets in Europe impeding the formation of integrated transport markets for freight and passengers. In order to achieve a single European transport market integration of national railway markets is mandatory. Liberalisation of national railway markets may be viewed as one step in the formation of a single European railway market. Only if railway undertakings from all Member States of the European Union are granted free access to all railway nets in the European Union the goal of a truly single market can be attained. Integration and liberalisation are thus two sides of one identical coin.

Liberalisation and opening of railway markets appears to be a task which can be achieved by creating such legal tools which grant access rights to new entrants and which harmonise existing technical standards (including safety standards) to a degree that trains can move freely from one country to another. But in practice liberalising and opening up railway markets is much more demanding than just promulgating the necessary legal norms and rules. All existing barriers have to be reviewed; their factual impact on closing or impeding market access has to be analysed, so that such barriers can be eliminated or at least been reduced in order to open up former national railway markets and achieving the goal of a single European railway market.

The *Directives and programmes of the European Union* may be viewed as a necessary starting point for the liberalisation process. But in order to be able to evaluate that liberalisation process it is necessary to analyse the *factual openness of the various national railway markets in Europe*. The combined knowledge on legal prerequisites and factual barriers then allows to make certain predictions on the future development of the railway sector in Europe.

2.2 Rail Liberalisation: Directives and Programmes of the European Union

Liberalisation of railway markets in Europe has been on the agenda of the European Union for several years. Several directives on railway market liberalisation have paved the way for reforms and liberalisation programmes in many European countries. Probably the single most important piece of legislation was the 1991 European Council Directive 91/440 EC. This directive states the promotion of the single European market and an increased efficiency of Europe's railways as prime objective. In June 1995 Directives 95/18/EC and 95/19/EC complemented Directive 91/440/EC. Their prime objective was to ensure an effective enforcement of access rights to the railway infrastructure.

Supplementing the directives, the European Commission issued a White Paper in 1996, [COM (96) 421 final] outlining a strategy to revitalise Europe's railways, acknowledging that railways has been insulated from the effects of market forces. The Commission's approach was a twofold one: First, the Commission suggested government support to relieve the railways of their debts. Second, access provision to the railway infrastructure was to be extended to benefit from the expertise of market entrants and their positive effects on railway services. The Commission identified a network of Trans-European Rail Freeways for Freight as priority action and envisaged a single European railway market.

In 2001 the infrastructure package, Directives 2001/12/EC, 2001/13/EC and 2001/14/EC amended Directive 91/440/EC. Directive 2001/14/EC superseded and repealed Directive 95/19/EC on infrastructure access. Articles 7 and 8 of Directive 2001/14/EC inject essential new principles of charging. The directive was strongly inspired by the 1998 White Paper of the European Commission on infrastructure access pricing.

Besides the directives on railway market liberalisation it has been the competition law of the Community (namely Art. 81 and 82, 86, 87 and 295 EC) which has an overriding impact with regard to the transport market liberalisation. The enforcement of Art. 81 EC has been vital in the initial phase of liberalisation. But Art. 86 and 87 EC set limits to Community competition law in governing public companies. But, on the other hand, it has to be taken into

account, that – according to Art. 295 EC – competition law of the Community is indifferent towards public or private ownership.

On 23 January 2002 the Commission has adopted a Communication to the Council and the European Parliament "Towards an integrated European railway area" [COM (2002) 18 final] – known as the second package for the railway sector - , containing five proposals: (1) developing a common approach to rail safety, (2) bolstering the fundamental principles of interoperability, (3) setting up an effective steering body: The European Railway Agency, (4) completing the internal market in rail freight services, and (5) clarifying the role of the Community in the OTIF. For liberalisation purposes item (4), the proposal for a "Directive of the European Parliament and the Council on safety on the Community's railways and amending Council Regulation 95/18/EC on the licensing of railway undertakings and 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" [COM (2002) 21 final] is of utmost importance.

On 14 January 2003 the European Parliament welcomed further liberalisation of the European railways [Daily Notebook of the European Parliament: 14-01-2003, pp. 4 –6]. A large majority of the Members of European Parliament was in favour of a far-going liberalisation of the European railway network. The "Report on the proposal for a European Parliament and Council Directive amending Council directive 91/440/EC on the development of the Community railways (COM (2002) 25 – C5□0038/2002 – 2002/0025 (COD))" of the Rapporteur of the Committee on Regional Policy, Transport and Tourism, Georg Jarzembowski has been adopted with 405 votes in favour, 113 against and 9 abstentions. The Parliament voted for a complete liberalisation of the international railway network – goods and passengers – by 1 January 2006. It was also recommended that the national railway passenger services to be opened up by 1 January 2008. A majority of MEPs took the view that the opening of the cross-border passenger sector should preferably be introduced as soon as possible with 1 January 2006 as the possible date of entry into force. The first reaction from the Commission has been positive. Commissioner de Palacio welcomed Parliament's support; she could accept most of the amendments which, as she puts it "go further and faster" on the road of liberalisation than the Commission was proposing. But as far as passenger transport is

concerned she pointed to the fact that the Commission would present its own proposals which should be not as bold as those of the European Parliament.

3. The Rail Liberalisation Index 2002

(Powerpoint-presentation: Lib-Index-2003.ppt)

Summary: Source: www.bahn-net.de/Presse/pdf/LIB_INDEX-engl.pdf

4. Outlook and concluding remarks

In spring 2004 a revised version of the Rail Liberalisation Index will be prepared for the following reasons:

- (1) New developments between fall 2002 and spring 2004 have to be taken into account.
- (2) The methodology of the liberalisation index will be further developed in order to make use of many useful comments by various experts of the railroad transport sector and of other network industries.
- (3) Railway markets of Central and Eastern European Countries will be integrated into the index.

The liberalisation of European railway markets is a lengthy and cumbersome process. Even in cases where all legal prerequisites are fulfilled factual barriers may continue to impede access for a long period. Even if all factual barriers are eliminated access rights of new railway undertakings are not unlimited in the light of competition from experienced incumbents which – under the new incentive structure of enhanced competition – enjoy the advantage of long-proven expertise and newly gained efficiency. Even in a scenario of full liberalisation these enterprises may be dominant players. But in the light of contestable markets they are under steady pressure to improve their services. New railway undertakings are in a good position to compete in certain sub-markets and even on major traffic lines, in passenger traffic, but especially in the sector of freight transport.