

## INTERVIEW QUESTION LIST WITH EUROPEAN REPRESENTATIVE BODIES

### Key

Orange = high priority questions

Green = lower priority questions

Blue = Written answer

### Further Market Opening for Rail Passenger Services

1. What do you consider that the impact of market opening for international rail services from 1 January 2010, and the associated cabotage rights (rights to carry domestic passengers on the same trains), is likely to be on the domestic rail passenger market?

We do not anticipate that market opening for international rail services is likely to have a *major* impact in the short term, either in terms of the development of new services, the emergence of new operators or in the exploitation of cabotage rights. This view is based partly on the following observations:

- The major existing flows are operated by railway undertakings that are generally well established in those particular markets thereby increasing the risks for new market entrants;
- The current credit situation, combined with the shortage of spare high-speed rolling stock equipped for international working and the relative immaturity of the international passenger rolling-stock leasing market, present a major obstacle for potential new market entrants. (See, for example, the decision of Air France not to proceed as originally planned with the development of services through the Channel Tunnel. A380 financing was given priority.)
- It currently appears that, if anything, the provision of international services is contracting, partly because of the attempts by some infrastructure managers to secure greater use of their high speed lines (at a higher price) rather than the 'classic' routes in the absence of effective independent regulation. For example, there has been a significant reduction in day trains between Italy and Austria, Italy and Switzerland, services between Italy and Slovenia have been withdrawn and the Milano-Paris service has been retimed to a much slower schedule that denies connectivity with services to other parts of Europe such as the UK.

- It is not clear that existing regulatory arrangements are sufficiently independent or mature to provide the assurances of non-discriminatory access necessary for investors or to deliver clearances in a timely manner, including access to rail related services, safety case approvals, track access agreements, etc.

In some ways this situation may not be wholly disadvantageous to passengers since international rail passenger traffic accounts for an extremely small proportion of the total market. If market opening for international rail passenger services turns out to be something of a non-event it is possible that it will calm down fears about the opening of domestic markets – a development that should yield much more significant benefit for passengers.

In some markets with potentially significant trans-border local flows (e.g. Limburg, Øresund, Luxembourg) appropriate local arrangements are well-established while the work of the ERA on the progressive extension of interoperability to the whole of the conventional rail system should help resolve technical obstacles which have hindered cross-border flows in others, (e.g. local services between Berlin and Gorzów).

2. What form(s) do you think open access for other domestic rail passenger services should take, and how far should it be extended?

EPF would welcome market opening for domestic rail passenger services provided that it was introduced in a way that resulted in an extension of passenger choice (e.g. delivered improvements in service quality either directly or by competitors in response to the competition, opens new flows between points that were not previously linked, etc) and results that were sustainable in the long term. In particular we would note:

- Competition may need to be moderated through regulation by a genuinely independent regulator in order to ensure that it doesn't result in a weakening of the overall service offer to passengers. For example, it should be used to ensure that services are not operated in a way that is designed principally to 'skim' the revenue of the incumbent, thereby under-mining the viability of the basic service. In assessing the potential impact of a new service economic equilibrium impact of existing services we consider that it is essential for transparent and objective economic analysis to be undertaken which is founded on pre-determined and transparent criteria.
- In Britain there has been a practice known as 'fare-box raiding' or 'ORCATS raiding' - ORCATS being the revenue settlement arrangement under

which the ticket income generated by a particular traffic flow is divided between the operators on a route. In the early years of privatisation some operators in England started to compete on other operators' core routes at marginal cost, using rolling-stock would otherwise have been lying idle awaiting its regular peak turns. It led to the introduction of some innovative new routes some of which had little relevance to passenger demand (such as Wessex Train's London Waterloo to Manchester via Salisbury, Bristol and Hereford service) but enabled the operator to claim a revenue share of strong revenue flow on routes served better by more direct services (e.g. London Terminals-Manchester, London Terminals-Salisbury, London Terminals-Bath, London Terminals-Bristol, Bristol-Manchester etc.). As a result, the new entrant was able to claim shares of strong revenue flows under the ORCATS rules, even though the services that it was offering carried relatively few passengers and possibly weakened the viability of the incumbent operator's services. A variant of this is the practice most usually associated with the deregulated bus industry where a new entrant schedules a service to run just a few minutes before that of the incumbent on the same route. It is essential that market opening should not result in revenue being abstracted without proper justification (e.g. demonstrable improvement in service quality/user satisfaction). For it to be otherwise would be to impose unnecessary welfare costs on society.

- It is vital that passengers have access to a full range of transparent information about times, prices and facilities. DB got into trouble seven years ago when it attempted to stifle knowledge of Connex's services on two new long-distance routes (Gera-Rostock and Zittau-Stralsund) by the simple expedient of trying to keep details about times and fares tout of its information systems. That wasn't good for passengers and is a reminder of the sort of thing that the TAP-TSI should overcome. It is also a prompt to ensure that Directive 2001/14, which is supposed to protect access to infrastructure, is fit for purpose in relation to the passenger market and the access to 'rail-related services' necessary for the operation of the passenger market.
- It depends on effective independent regulation. For example, it is absurd that some incumbents have effectively priced any competition off their networks by manipulating access charges. The effects of this can be seen most dramatically with the demise of international night sleeper trains through countries like Belgium. It is not an isolated example. The Trenitalia/SBB jointly operated night train Geneva/Zurich - Rome no longer operates following the introduction of the winter 2009/2010 timetable. CNL (a DB subsidiary) looked into

operating a night train on that route and then commented that the high costs for the paths and locomotives in Italy would have required the trains to be 100% full. (see [http://www.nzz.ch/nachrichten/schweiz/keine\\_chance\\_fuer\\_nachtzug\\_nach\\_rom\\_1.37.14446.html](http://www.nzz.ch/nachrichten/schweiz/keine_chance_fuer_nachtzug_nach_rom_1.37.14446.html))

- The winter 2009/10 timetable between Brussels and Cologne also provides an illustration of the sort of problems that independent regulation should tackle in the context of facilitating arrangements for market opening. Thalys (in which DB is a shareholder) will share use of the HSL between Liège and Aachen with DB's ICE services. At some times of the day Thalys services will operate within about 30 minutes of an ICE service (e.g. 0725 and 0755 ex-Brussels to Köln) while at other times of day there will be a gap of more than two and a half hours on weekdays (e.g. between 0755 and 1128 and or between 1045 and 1443 in the other direction). With nine services a day in each direction it should have been possible to avoid such gaps. The winter timetable is clearly not in the passenger interest.
- Market opening must be rounded off with an effective system of passenger rights - comprehensive in scope (e.g. no derogations) and comprehensible in application (e.g. well publicised and easy for passengers to use). Like the regulatory bodies required to oversee track access, National Enforcement Bodies must be independent of national administrations or incumbents. They should be accessible to users and be obliged to put users' needs at the heart of their work.
- We generally take the view that competition need not be incompatible with cooperation in overall service planning. The essential key is a strong independent regulator with powers to enforce its rulings in the public interest. If national regulatory bodies prove incapable of securing an appropriate non-discriminatory regime it may be necessary to create some sort of over-arching regulatory machinery at EU level in order to promote passengers' interests and remedy instances of market failure.

3. What do you consider that the advantages and disadvantages of further market opening for domestic rail passenger services would be?

In general terms we consider that market opening for domestic rail passenger services is likely to improve the range and quality of services available to users. There is already some limited evidence to support this, for example in Sweden and in Britain. In the latter case we know of clear evidence from the National Passenger Survey managed by Passenger Focus that open access operators'

services appear to increase passenger satisfaction ratings. The disadvantages that may arise have been touched on in our response to the previous question which also seeks to identify appropriate remedies.

4. Do you support further market opening for domestic rail passenger services? (With reasons and conditions that would be needed).

### **Regulatory Structure**

5. Do you consider that the regulatory structures to support market opening for international rail services are sufficiently strong?
6. What do you consider are the strengths and weaknesses of the various regulatory models for domestic rail passenger market opening used throughout Europe?

We are reluctant to prescribe any particular regulatory model.

- First, experience of regulating market opening of domestic passenger rail services in Europe is still limited to a small minority of member states.
- Secondly, we are not satisfied that all member states have bought in adequately to the concept of effective independent regulation that we see as a pre-condition of successful and equitable market opening.
- Thirdly, we do not consider that any existing model of regulation in the rail sector has yet addressed adequately the need for promoting cooperation for the public good between railway undertakings and with infrastructure managers as opposed to merely promoting competition.
- Fourth, the competition in the rail market in European states is frequently complicated by the notion that competition to provide publically procured services is a sufficient assurance of competition in the market place for the provision of services to passengers. While we may welcome competitive tendering for the provision of publically procured passenger services we consider that the principal beneficiary of this is the public exchequer (or taxpayers generally who include corporate entities as well as individual citizens): the effect of tendering is to drive down the cost of procured services. Competition in the market place to provide services is more likely to benefit the passenger since it ensures that there is a financial link between the consumer and the service provider.

Those of our members who are familiar with the detailed market regulation activities of the Office of Rail Regulation in Britain are generally impressed by

the model that it operates in relation to domestic services although less impressed by the effectiveness of independent regulation in relation to the international services for which it shares responsibility with other regulators.

7. From your perspective, what have been the greatest successes of the changes in regulatory regime for domestic rail passenger market opening that have been made?

We consider that the greatest successes are those where there is a demonstrable improvement in the range of choice or the quality of service available to passengers. We think that this is best justified by reference to passenger satisfaction data and to quantified evidence of an improvement in satisfaction ratings.

8. From your perspective, what do you consider are likely to be biggest problems:

- a. With the structures that have emerged?
- b. In making change(s) to them?

We consider that the biggest problems are:

- The failure so far to develop a coherent system of independent and effective regulation in all member states, in particular relating to track access, and the absence of an agreed framework of analysis potential economic impacts based on pre-determined criteria which are transparent and objective.
- The absence, to date, of a transparent market which gives access to a pool of readily available and appropriate rolling stock, whether owned or leased. A few public authorities do own rolling stock which is available to whomever wins their public tender, but in many other places, this is not the case. In the current market, where it is more difficult for operators to get loans, this already leads to fewer operators submitting tenders.
- Insufficient emphasis on the objective of promoting the use of the railway network for the carriage of passengers and of encouraging measures that may support that objective (e.g. ticketing availability, journey-beginning-to-journey end planning facilitation, information provision, access to passengers' rights provisions, etc).
- The culture of incumbent railway undertakings throughout much of the EU. (Even the European Railway Agency described its overall aim as

being “to allow the safe and uninterrupted movement of trains” as opposed to ensuring an increase in user satisfaction!)

- The situation is compounded by the fact that railway undertakings, whose principal skill is in the movement of trains, have also retained the traditional role of acting as retailer. There has been no market opening in the retailing of travel products, in contrast to the way that many other sectors of the European economy have been exposed increasingly to the benefits of a vibrant, competitive and consumer-focussed retail market.

### **Infrastructure Manager**

9. Are there any additional controls and checks on the IM, beyond those already provided by EU legislation, that you consider ought to be provided, and why?

It is assumed that the existing legislation is capable of being enforced in such a way as to ensure that there is no potential for a conflict of interest in an infrastructure manager’s dealings with a railway undertaking (which could arise if there is common ownership, as now, in certain cases.) As noted in our response to 3, the essential key is a strong independent regulator with powers to enforce its rulings in the public interest. If national regulatory bodies prove incapable of securing an appropriate non-discriminatory regime it may be necessary to create some sort of over-arching regulatory machinery at EU level in order to promote passengers’ interests and remedy instances of market failure.

10. Are any further European powers needed to ensure that the IM invests sufficiently in both the renewal and upgrade of the network?

We generally support the notion that rail users’ benefit if infrastructure managers are in a position to plan renewals and upgrades with assurance over a period of years. We therefore support the concept of Multi-Annual Agreements.

11. Do you consider that all IMs are sufficiently independent from all RUs?

No

### **Service Provision**

12. How do you consider that the split between public service contracts and open access should be arranged? Do you consider that any additional measures are required to prevent revenue abstraction from publicly funded services?

There will be instances where rail passenger market opening will impact on the revenues that an operator may expect to derive from a public service obligation contract, thereby compromising the equilibrium of the public service operator's relationship with government. We do not consider that this is sufficient reason in itself for denying market opening. Rather, an attempt should be made, first, to see how any new service that is derived from market opening might be planned with the services offered by the incumbent operator to provide a better overall service to passengers through cooperation; secondly, a view needs to be taken on the likely sustainability of any new service (e.g. is there a risk that it would displace an existing service before itself being abandoned?); thirdly, a view then needs to be taken as to what is the necessary level of future service provision to be sought under the public service obligation contract.

**13. Who should take the revenue risk, and how should this be managed?**

Revenue risk should be taken by the new entrant for the services which they are seeking to provide and by the public service obligation contractor for the services for which they have contracted. Track access charges should reflect the variance in risk: one is operating on a purely commercial basis while the latter has the benefit of an assured contract.

**14. What should be defined in public service contracts with national/local government (e.g. fares, service frequency, full timetable, service standards, such as punctuality, cleanliness, absence of complaints, etc)?**

There should be a form of consultation of passenger representative bodies and an obligation to consult them on a number of subjects, such as timetable and fare changes.

**15. Do you consider that any measures should be put in place to maintain the range of services required (e.g. classes of travel, sleeping car accommodation, on-train catering, provision for children's push chairs, etc)?**

**16. How should a distinction be made and identified between services requiring public support and those able to be run commercially?**

**17. Should details of all train services be shown in a single source (web document, printed timetable, etc), if so who should be responsible?**

Yes. Passengers expect complete information. Responsible could be the national ministry of transport or the national infrastructure manager.

**18. Should there be a common national train enquiry service, if so who should provide it?**

There should be a national public transport enquiry service, which not only gives information on train services, but rather on all public transport. Operators should be obliged to deliver their data and share the cost of this service.

Alternatively, for train services, such a service could be seen as part of the national infrastructure and financed out of the infrastructure changes for passenger trains. The transport ministry could be in charge of such a service, or a cooperation of public transport operators.

19. What rights of access should RUs have to essential ancillary services required to provide a service (e.g. access to sales channels, station announcements, publicity at stations, etc?). Who should provide these services?

As noted above, we consider it essential from the users' perspective as well as in order to enable successful new entrants to the provision of rail passenger services that all undertakings should have access to the ancillary services essential to make a reality of opening the rail passenger market. These services should be available on a "willing-seller, willing-buyer" basis, enforced, if necessary by the independent regulator. We consider that EU action to secure the opening of the retail market for domestic rail travel products would facilitate access and benefit users.

### **Service Co-ordination**

20. What arrangements should exist to coordinate the services of the various railway undertakings to provide appropriate train frequencies and stopping patterns, and to provide timetabled connections between services?

We would recommend some type of clearing system, overseen as necessary and if required by the independent regulator in a way that reflects the principle touched on in our response to question 8, namely by emphasising the objective of promoting the use of the railway network for the carriage of passengers and of encouraging measures that may support that objective.

21. Should there be mandatory arrangements to provide ticketing inter-availability and associated revenue allocation? If so how should this be administered and by whom?

Yes. As with our previous responses we foresee some type of clearing system, overseen as necessary by the independent regulator and reflecting the objective of promoting the use of the railway network for the carriage of passengers and of encouraging measures that may support that objective. We believe that opening of the retail market for rail travel would facilitate this combined with the development of modern ticketing technologies (e.g. smart cards, etc.)

### **Study Methodology**

22. Do you have any suggestions to make in respect of the study methodology that you consider would help the issues at stake to be addressed efficiently?

Three principles appear to stand out. The issues at stake need to be evaluated against:

- The objective of promoting the use of the railway network for the carriage of passengers and of encouraging measures that may support that objective.
- The ability to prescribe a methodology that is seen as transparent and that lends itself to objective analysis based on pre-determined criteria.
- The likelihood that the measures selected would enhance passenger satisfaction if carried through.