

**Speech Henk Don (Chair IRG-Rail 2015)
for DB Symposium 'Assessing competition in the European Railway Market'
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Dr. Grube, Ladies and gentlemen,

Today, I am travelling from my hometown The Hague to Berlin and back on the same day. This is a total distance of 1,400 kilometers, which is quite a distance to cover in a single day. I considered taking the train. But to be frank, airplanes are a better alternative for such a distance. I also checked the bus, but the prospect of a bus trip that would take more than 15 hours roundtrip was not very attractive. Actual flying time by plane this morning was 50 minutes one-way.

One thing is clear, the competition of low-cost air and bus transport is on the rise, which stresses the importance of a well-functioning railway market. At the same time, the air and road sectors show that competition is a forceful driver for innovation and efficiency - much more effective than regulation, to follow-up on a question in the first session morning. Hence, I will focus on some important measures that need to be taken in order to increase competition in the railway market.

Last year, I had the honor of chairing IRG-Rail, the cooperation of national rail regulators in Europe. Actually, this speech of mine is given in injury time, because this year, IRG-Rail is chaired by Krzysztof Dyl, the chairman of the Polish rail regulator.

I am grateful to the organizers for this opportunity to tell you what IRG-Rail is and does. IRG-Rail is short for the Independent Regulators Group Rail. It has 26 members, including several non-EU members.

The idea of IRG-Rail is that we can be more effective as national rail regulators if we learn from each other, cooperate in particular cross-border issues, and define common positions on drafts for new European legislation. In this way, we contribute to the European goal of having a single effective, competitive and sustainable railway market in Europe: The Single European Railway Market. For the benefit of the customers: the passengers and the freight transporters.

The current priorities of IRG-Rail are:

- Effective liberalization of national passenger transport to enhance efficiency and innovation
- Safeguarding access to rail services to provide for competing transport companies, and
- Eliminating barriers to international freight transport to strengthen its role in Europe.

As part of its activities, IRG-Rail assesses competition in both the freight and passenger markets. Monitoring is an important task of IRG-rail. By monitoring, we are able to get insight into the most important barriers to competition.

Every year, IRG-Rail publishes a market monitoring report. In 2015, IRG-Rail also published 5 position papers about new European legislative proposals for the passenger and freight markets, to promote fair, sustainable and transparent competition on the market. All such reports and papers can be found on our website, www.irg-rail.eu.

In the freight market, we must stimulate the utilization of the Corridors to eliminate barriers for international freight transport. Whereas opening the domestic passenger market is a vital step in creating a truly single European Railway area.

Let me first discuss the freight market.

Freight market - improving the corridor model

The creation of an internal rail market for freight transport is important in order to be competitive with other modes of transport. The establishment of the nine EU freight corridors is an important step forward for the rail freight market, so that freight can easily pass from one national network to another. But the concept itself and the performance of the corridors still have room for improvement.

Member states and infrastructure managers, notably Deutsche Bahn Netze, have already put a lot of effort into the establishment of corridors, the harmonization of the framework conditions for capacity allocation and the creation of the Corridor-One Stop Shop model. This simplifies the application for international freight paths.

For us as regulators, it was useful to have constructive meetings with members of the executive boards and management boards of all corridors. These meetings take place in a good atmosphere.

So far, so good. However, there is more work to be done.

An important issue for path applicants is that the current methodology of annual allocation in Pre-Arranged Paths appears to be only suitable for a small part of the rail freight market. The actual take up in usage of the Pre-Arranged Paths is rather limited.

The pre-arranged paths that can be booked at the Corridor One Stop Shop do not sufficiently meet demand for short-term capacity for a lot of freight operators, which is fundamental to the rail freight sector given the fluctuating needs of its customers. Let me explain.

Pre-arranged paths for the annual timetable that takes effect in December, are offered in January by the Corridor One Stop Shop and can be requested until mid-April. This is too early for most freight operators if you take the fluctuating needs of its customers into account. And the amount of reserve capacity that can be booked after mid-April is limited. The current allocation process for the pre-arranged paths might also be too early for infrastructure managers themselves since it deviates from their national schedules. This is likely to complicate efficient allocation.

Late requests could offer a solution, but in the current setup these also have disadvantages. First, late requests must be filed directly with the various infrastructure managers, as the One Stop Shop does not act as a single contact point for handling them. Second, modifications cannot be executed by the One Stop Shop but must be handled directly by infrastructure managers. Third, the risk of not getting the preferred path is higher due to scarcity in capacity in certain areas.

In order to improve utilization of the corridors, we think that the One Stop Shop should develop towards THE booking-office for the allocation of international capacity in corridors. This One Stop Shop should be the central office and contact point for customers and deal with the requests and coordination of all international capacity in corridors, both the annual and the late requests.

In this context it was with great interest that I learned that Forum Train Europe¹ and Railnet Europe² have launched a project to rethink the timetabling process in order to get a better match with the requirements of freight operators and infrastructure managers.

The recast of the freight corridor regulation needs to include the recognition that the nine corridors taken together constitute a network, and requires that the governance and oversight of each corridor is managed in a uniform manner. This will contribute to the efficient use of corridors.

As you may have noticed, I have not yet spoken about regulation. The reason is that there is not enough market yet to regulate. A perfect regulatory regime is not worth much if the market is not sufficiently developed.

While more effort may be needed to ensure implementation of the existing legislation across member states, new legislation has to set out uniform and clear legal competences for all stakeholders.

This brings me to the second topic I would like to discuss today: the fourth Railway Package.

Passenger Market – Concerns about weakening Fourth Railway Package

I mentioned the European objective of a well-functioning Single European Rail Market.

With the Fourth Package, the European Commission has put forward proposals to move the passenger market towards that objective by the liberalization of national rail markets and harmonizing technical standards and requirements.

The technical pillar is largely agreed upon by all stakeholders. But the market pillar, or political pillar, which contains the liberalization rules, is still hotly debated. In this respect, we as regulators of IRG-Rail, have serious concerns about the effect of weakening several key provisions.

The attempt to reach a compromise agreement on the package should not mean conceding the principles of competition, transparency and non-discrimination.

The current compromise weakens several key provisions that were intended to secure a level playing field for new entrants and foster new business opportunities. Our primary concerns relate to:

- The exceptions to public tendering;
- The governance provisions for infrastructure managers; and
- The access to rolling stock

IRG-Rail supports the original proposal for the tendering of public service contracts, in which direct awards would only be allowed in situations where there is only one interested party, in emergency situations, in small concessions, and in case of highly complex technical specifications.

¹ European Association of railway undertakings that promotes cross border rail freight and passenger traffic in Europe.

² RailNetEurope (RNE) is an association set up by a majority of European Rail Infrastructure Managers and Allocation Bodies to enable fast and easy access to European rail, as well as to increase the quality and efficiency of international rail traffic

However, in the current proposals the exemptions for direct award have been extended. The new exemptions are too broad and vague, if they would prevail then reasons can always be found to exploit that exemption.

The governance provisions for infrastructure managers have been watered down. To ensure non-discriminatory treatment of railway undertakings, the independence of the infrastructure manager must be safe and sound.

However, a number of independence requirements for infrastructure managers have been removed or substantially weakened. As a result, it will be almost impossible for the regulators to assess possible violations of non-discrimination or cases of cross-subsidization.

Finally, IRG-Rail has concerns about the removal of the initiative to facilitate access to rolling stock. A recent IRG-Rail survey showed that non-incumbents find it extremely difficult to gain access to rolling stock if no facilitating measures are taken. Facilitating easy access to finance could be one method to mitigate the current impasse.

Allow me one further remark on the fourth package.

In the debate about new legislation for freight and passenger transport, it seems there is this idea that many problems will be solved if only there is a strong regulator. I want to be very clear on this: having a strong regulator alone is not enough. To be effective, a regulator needs clear standards in the legal framework and effective instruments to enforce them. Otherwise, the regulators will not be able to deliver on the promises and expectations of the politicians.

Service facilities

A good example of the need for clear standards are the rules concerning access to service facilities, the third priority of IRG-Rail.

Service facilities include space and utilities at stations, ticketing machines, travel information, washing facilities, and maintenance facilities. The European Recast directive regulates much more than is currently regulated in existing rules, and the new regulations are currently being implemented in national law.

However, that is not the end of it.

Next to the rules in the Recast, the Commission is planning to write an Implementing Act to formulate additional rules and specifications, based on the experiences of regulators. The additional rules relate to the procedure by which one can obtain access to the service facilities and to further criteria for granting access. This process is currently underway, IRG-Rail published a position paper for it last September.

The right of access to service facilities is among the preconditions for liberalized markets. That, too, is a key priority of IRG-Rail in 2016.

The conditions for access to services that railway undertakings need in order to be active in the market must be transparent and easy. In practice, however, it turns out that new entrants on the rail market are dependent on competitors for essential facilities such as access to stations, ticket machines, maintenance workshops and cleaning facilities. More often than not, that competitor is the largest incumbent railway undertaking.

So what exactly are the bottlenecks when we are talking about access services?
Where could barriers to entry emerge?

First, it is price.

Second, it is the conditions that need to be met. If those conditions are unfavorable, for example because of tying or the use of annual contracts, they can be quite a barrier to entry.

Another problem is refusal of access because a so-called viable alternative is claimed to exist. Incumbent parties often say that there are viable alternatives for the entrants, so there is no need for them to grant access. What we need is a clear definition of what does or does not constitute a viable alternative.

Everyone understands that incumbents are not exactly excited about welcoming new entrants to their market, and that they will go a long way to maintain their positions. That is why safeguards are needed that protect fair treatment of new entrants in the market. Those safeguards are needed in areas like transparency, verifiability, dispute settlement procedures, clear definitions of terms and clear rules for 'use it or lease it'.

Conclusion

In conclusion, I have explained what the position of IRG-Rail is on the important steps to be taken to enhance competition in the freight and passenger market.

In order to have a well-functioning freight market, there is a need for the corridor model to evolve into a true international network, so that barriers for international freight transport are eliminated.

Opening the domestic passenger market is a vital step in creating a truly single European Railway area. The current weakening of the proposals jeopardizes the realization of a single European Railway area.

It is really up to the politicians now to define the conditions that can bring the best result for the passengers, shippers and taxpayers.

So who knows... maybe in the future, travelling by train to Berlin will be my first choice of transport.

Thank you for your attention.