

4th Railway Package Governance proposal

2nd November 2015

ERFA input on Trilogue discussions

- ERFA, representing independent operators in the rail market, stresses the need to achieve the basic principles of transparency, non-discrimination and competition in the rail sector. These are fundamental principles for achieving an innovative, attractive and more dynamic rail sector.
- The 4th Railway Package, Governance proposal, is an opportunity to create a more customer and market driven rail sector if the spirit of the original European Commission's proposal is maintained.
- Provisions that allow anti-competitive behaviour harm the quality of existing rail services as well as deter new investment into the rail sector. They are counter-productive to inducing growth for an environmentally sustainable mode of transport in Europe.
- ERFA urges the trilogue negotiators to support rail's transformation from a sector that loses market share to road and aviation and wastes limited public money, into a sector that can positively contribute to jobs, growth and Europe's environmental sustainability.

ERFA key points

Financial Transparency: Loopholes in the current positions would continue to allow public money intended for funding rail infrastructure to be diverted away from their intended use – on much-needed investment in infrastructure and to fund public service contracts. Cross-subsidisation also results in unfair subsidy of the incumbent operator at the expense of the competitiveness of the sector. Allowing financial circuits within holding structures undermines the ability of the regulatory bodies to monitor and oversee financial transparency. The most stringent limits on the financial flows within holding structures must be applied together with additional regulatory body powers on monitoring financial flows.

Functions of the infrastructure manager: All functions linked to the development, maintenance and operations of the rail infrastructure should be firmly under the responsibility of an independent infrastructure manager, whose interest it is to promote efficient and growth-orientated rail services. Maintenance, traffic management and development of the network are just as discrimination-sensitive as path allocation and track access charging and should be the firm responsibility of an independent

infrastructure manager. Outsourcing of the IM functions/tasks should not result in giving discriminatory powers to an incumbent operator “via the back door”.

Independence of the infrastructure manager/Chinese walls: Clear and consistent rules on defining the independence of the IM must be established in order to remove the discriminatory nature inherent to a vertically integrated structure. In addition to financial transparency, new provisions should firmly exclude a railway undertaking’s influence on the functions of the infrastructure manager, limit double mandates and ensure that access to information systems is protected. ERFA cannot accept any backwards step regarding the independence applied to the essential functions.

Coordination Committees: An open, inclusive and transparent platform should be established to bring together all rail users and stakeholders, including the customers and local authorities in order to work together with the infrastructure manager and railway undertakings in improving the performance and customer-orientation of the rail network. As a minimum the coordination committee should be given an advisory role to the infrastructure manager, should have the power to request relevant information from the IM in order to carry out its advisory tasks effectively and should draw up an annual report.

Cooperation agreements: ERFA has strong reservations regarding the value of cooperation agreements in a competitive rail system. ERFA does not oppose practical arrangements for enhancing the performance of the rail system, but believes that the benefits of such arrangements are by no means proven, and risk opening up the possibility of anti-competitive behaviour. Coordination committees, as mentioned above, are a far more effective instrument for pooling resources and efforts to improve rail’s performance.

Ticketing: Access to all ticketing outlets must be facilitated if rail is to become more attractive for passengers. A common travel information and ticketing scheme for the supply of tickets, through-tickets and reservations platform, that allows non-discriminatory access for passengers to all railway undertakings’ services on a national and European basis should be established in order to place rail on the same service level as aviation and road.

Exemptions: The numerous exemptions for dedicated infrastructure (regional low traffic networks, isolated lines etc) and PPP structures risks creating an even more fragmented and inaccessible rail network. While exemptions to certain provisions for local, low –traffic lines may be justified, they should not undermine fair access to the rail network or financial transparency. Also private ownership should apply the strictest rules on financial transparency between different parts of a company owning an infrastructure manager and train or other transport operation that competes with third party RUs. It is not in the interest of users or their customers to allow discrimination or lack of transparency on specific parts of the rail network. Any exemptions should be strongly justified.

Safeguarding open access services: While it is important to protect the economic equilibrium of PSO services from commercial, Open Access services, it is also necessary to provide equivalent protection for Open Access services. Open access operators should not be limited by a competitive tender of a public service contract.