

# 4<sup>th</sup> Railway Package – Governance

## Input Paper on “cooperation agreements”

Brussels, 11<sup>th</sup> September 2014

### **“Cooperation agreements” perpetuate monopolies in European rail**

Recent discussions within Transport Council working groups have included the idea of allowing cooperation agreements or alliances between an infrastructure manager (IM) and one or more railway undertakings (RUs). It is not yet entirely clear what is the purpose, scope or limitations on such agreements, and the benefits, if any. ERFA is concerned that cooperation agreements could be used as a tool for discrimination against new entrants and draws attention instead to the coordination committees already proposed in the 4<sup>th</sup> railway package, and which would ensure effective collaboration between all users of the rail network. ERFA reiterates its view that for a competitive rail sector, the rail network should be developed for the benefit of all rail users, and not only in the interests of one or other RU.

### **Coordination and communications are necessary.....**

ERFA supports initiatives to make infrastructure managers more customer-orientated, and an important step in this direction is ensuring coordination between the various actors in the railway through the Coordination Committees already proposed in Article 7d of the draft Directive for governance.

For example, this should require IMs to consult all RUs about timetables, and closing tracks for maintenance. At present, some IMs are often accused of closing tracks at times to give their own RU a commercial advantage over independent ones. There are many examples of this in France. For these Coordination Committees to work, they must be open to all RUs on an equal basis.

## .....but “cooperation agreements” cause market distortion

However, a ‘cooperation agreement’ or ‘alliance’ between an IM and one or more RUs can cause a major distortion of the market. It may sound useful to have an agreement between an IM and an RU on a specific project but, looking into the detail, there are likely to be problems. For example, where an RU may wish a part of the network to be upgraded, is prepared to contribute financially in return for special low access charges to compensate for the contribution. This could be to the detriment of other RUs operating on the same line who may not have wanted or needed the upgrade but might effectively be paying more than the first IM who had contributed to the capital cost.

Another example might be an agreement between IM and one RU to receive priority access to a congested part of the network. Such an agreement would clearly have an adverse effect on other RUs. In either case, if the IM and RU are part of the holding structure, even with properly functioning Chinese walls and comprehensive independent regulation, the risks of creating an unfair advantage to those who are not party to a cooperation agreement are too great.

## The UK experience

ERFA does not believe that the UK experience, quoted by several members of the working groups, is relevant for wider application. It should be noted that it has taken 15 years after liberalisation in the UK (where there is total separation between IM and RUs and strong regulation) for an alliance to be tested, and an ERFA member there (the Rail Freight Group) remains concerned about them and their effect on freight operations. **See Appendix.**

## Conclusion: “cooperation agreements” are not the answer for European rail!

ERFA therefore strongly opposes the introduction of cooperation agreements or alliances since there are no apparent benefits that cannot be achieved by effective Coordination Committees as is already proposed. There is a high risk that any other agreement could lead to severe distortion of the market and could be used by some member states to perpetuate the benefits which monopoly incumbents currently enjoy

## Appendix

**The UK experience.** ERFA understands that the UK Government is proposing or supporting the idea of allowing co-operation agreements or alliances between an IM or one or more RU.

The UK Rail Freight Group, a member of ERFA, offers the following comments:

*'The UK IM (Network Rail) has formed a number of different alliances (co-operation agreements) with third parties for different reasons. Some cover projects, others particular work programmes, and all aim to bring earlier and closer working, and in some, but not all cases, to share any upside financial gain for example in project delivery. For the most part, such alliances are not causing specific concern as they are not related to the day to day operation of trains.'*

*However where the Alliance is between the IM and one train operator, there is more unease. In the UK the so called Deep Alliance between the IM, Network Rail and the franchised passenger operator, South West Trains (SWT), has brought operations together under a single Managing Director with cost sharing arrangements in place. The Alliance causes a refocus of activity for all employees in the two entities towards activity to the benefit of that train operator, seeking positive outcomes for them. Other operators have received assurances that they will not suffer as a consequence of this, but it is difficult to see how in reality such an approach would not marginalise interest in others. Although there are no specific reports of negative treatment, freight performance has not benefitted from the Alliance, and a number of key projects for freight have suffered delay. Additionally, passenger performance has not benefitted either.'*

*In this specific case, the train operator, SWT, is owned by a company who has no financial interest in any other train operator in the area. This may not always be the case, and there would be the potential for further distortion of the competitive market if the owing group was partial.'*

*Although regulatory safeguards remain in place around timetabling, access and charges, it is not possible to regulate day to day behaviour, and for that reason, RFG is uneasy with the prospect of cooperation agreements relating to the day to day operation of the network and other issues that might affect the fair operation of the network.'*