# CALL FOR CONTRIBUTIONS - Competition Policy supporting the Green Deal

20 November 2020

## OVERVIEW

In order for the European Union to bring greenhouse gas emissions under control, it is essential that transport emissions are addressed. In 2017, 27 % of total EU-28 greenhouse gas emissions came from the transport sector. CO2 emissions from transport increased by 2% on the previous year. Transport related emissions are the only source of emissions which are still currently growing.

In 2017, road transport was responsible for almost 72% of total transport related greenhouse gas emissions from transport. In contrast, rail was responsible for 0.5% of total transport related greenhouse gas emissions. In terms of freight, road freight was responsible for over 10% of the European Union's total greenhouse gas emissions whereas rail freight accounted for significantly less than 0.5% figure mentioned above. Even after taking into consideration the fact that road freight accounts for 75% of freight volumes compared to rail's 18%, the environmental benefits of moving goods by rail are clear.

In order to reduce freight transport emissions, it is therefore essential that a modal shift is delivered. The rail freight sector has set a target of achieving a 30% share of freight volumes by 2030. This is ambitious, but achievable if the correct structures are put in place, including competition policy structures. We therefore welcome the European Commission's call for contributions for a Competition Policy Supporting the Green Deal.

## COMPETITION BETWEEN MODES OF TRANSPORT

Important disparities exist in the freight market regarding the level of internalisation of the transport modes' external costs. This has a direct impact on price distortion and unequal competition to the disadvantage of rail freight. A possible solution in this regard could be to allow Member States to introduce compensation mechanisms for these existing cost differences through state aid in order to stimulate market players to use the less polluting rail freight mode.

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## COMPETITION IN RAIL FREIGHT

Firstly, it needs to be recognized that we are still in a process of opening up European rail freight markets to competition. We are moving in the correct direction. On average throughout Europe, new entrants account for 44% of national rail freight markets. On top of this, 31% of the market is non-incumbent operators, meaning they are **not an incumbent operator in any Member State**.

The existing "Community Guidelines on State Aid for Railway Undertakings", hereinafter referred to as the "Railway Guidelines", allowed for the possibility of the restructuring of a rail freight division up until 01 January 2010 under the 'one time, last time' principle. This moment has now passed and all operators must be financially independent. The revised "Railway Guidelines" must clarify on this in order to ensure legal certainty and create a more secure environment for private investment.

The Green Deal must therefore not be used as an opportunity to reopen a discussion on support or recapitalization of national incumbent operators. This would undermine rail freight's ability to grow as it would withhold support from almost half of the market and, on top of this, undermine the ability of private operators to attract investment. Direct support to incumbent operators is therefore not only contrary to EU Law, but also contrary to Europe's climate objectives.

Given the competitive nature of rail freight, it is also important that the acquisition of new rolling stock for freight is inadmissible within the expected revision of the "Railway Guidelines". Aid should instead focus on retrofitting of existing rolling stock in a fair, transparent and non-discriminatory manner.

It is essential that the European Commission ensures that that all support measures granted under the Green Deal foster competition and do not undermine the competitive nature of the rail freight market.

## STATE AID CONTROL

The above section should not be interpreted as private and independent companies in the rail freight market being opposed to increased support measures. On the contrary, there is broad support so long as these measures are fair, transparent and non-discriminatory. As already stated, the environmental benefits of the rail freight sector are clear. The focus of State Aid therefore needs to be on supporting the sector as a whole in becoming more competitive with other modes of transport.

To give a concrete example, rail freight undertakings currently need to invest heavily in ETCS OBUs. The direct benefits for a railway undertaking are marginal given that the gains in capacity management through ERTMS are primarily a benefit to Infrastructure Managers. This therefore produces a significant cost for the sector with little or no direct added benefit. For

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a sector that operators under small margins, further support is essential in order to ensure ERTMS is a success. We are currently not on track in this regard. Only 3,600 out of a targeted 38,000 Railway Undertakings are currently equipped with ETCS OBUs. A change of course in deployment strategy is therefore essential.

Under the current "Railway Guidelines" the threshold for "*interoperability aid*" is currently set at 50%. Increasing this threshold to 100%, and encouraging direct investment by Member States into ECTS OBU deployment, would allow rail freight to become more competitive by removing costs which are currently having to be absorbed (damaging ability to reinvest) or passed on to the customer (damaging ability to compete).

Ambitious direct support measures such as a "green bonus" for using rail freight should also be considered, so long as these are established under transparent criteria. The threshold for a "green bonus" should be set at up to 100% of the eligible costs.

On top of this, the European Commission must ensure that tendering processes are open and proportional, especially in relation to PSOs. Creating excessively large tenders (for instance; at national level) shuts out smaller operators who may be in a position to compete for tenders at a local or regional level.

**ANTITRUST RULES**

To better support and accommodate the Green Deal objectives, antitrust rules should take into account that all players in the logistical process of the freight transport sector should be able:

- to cooperate and exchange operational data more freely to better match supply and demand of transport capacity and to offer synchro modality solutions, leading to pro-competitive effects on both supply as demand side.
- to share assets more freely as to optimise their utilisation rates and load factors.

**MERGER CONTROL**

In order for rail freight to remain competitive, it is essential that its supplier market is also competitive. However, in many cases the European market is made up of quasi national monopolies or outright monopolies for essential train components.

A clear example is the legacy OBU market. This issue has been highlighted by the recent acquisition of Bombardier Transportation by Alstom. Although ERFA did not take a strong position on this merger, it raised significant concerns relating to the ETCS OBU market and the creation of national monopolies for essential components. ERFA has raised concerns with competition in the supply of Class B Systems in, but not limited to, France, Portugal and the Netherlands.

The reality is that in many Member States the number of suppliers for legacy systems is reducing and, in some cases, legacy systems are no longer available on the market. It is a clear collapse in competition when a single supplier can withhold a service from the market.

Where there are such breakdowns in competition, merger controls must ensure that intellectual property necessary to implement such systems is released into the public domain. It is essential that rail freight suppliers remain competitive and where competition is non-existent, conditions are introduced to ensure new-entrants can enter the market.

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