



New Horizons for the Commission in Rail Transport

State aid and AT issues on the rails

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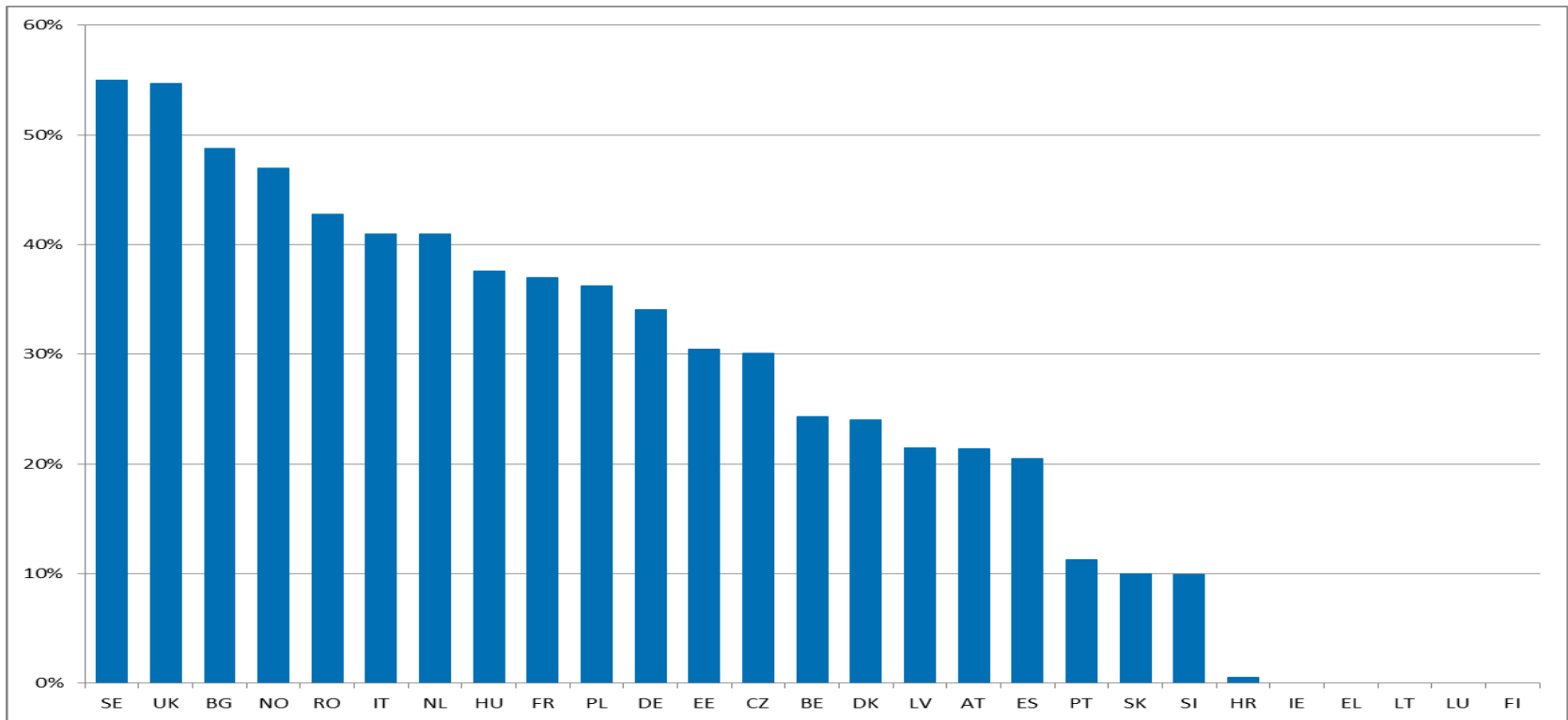
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Competition in the rail sector

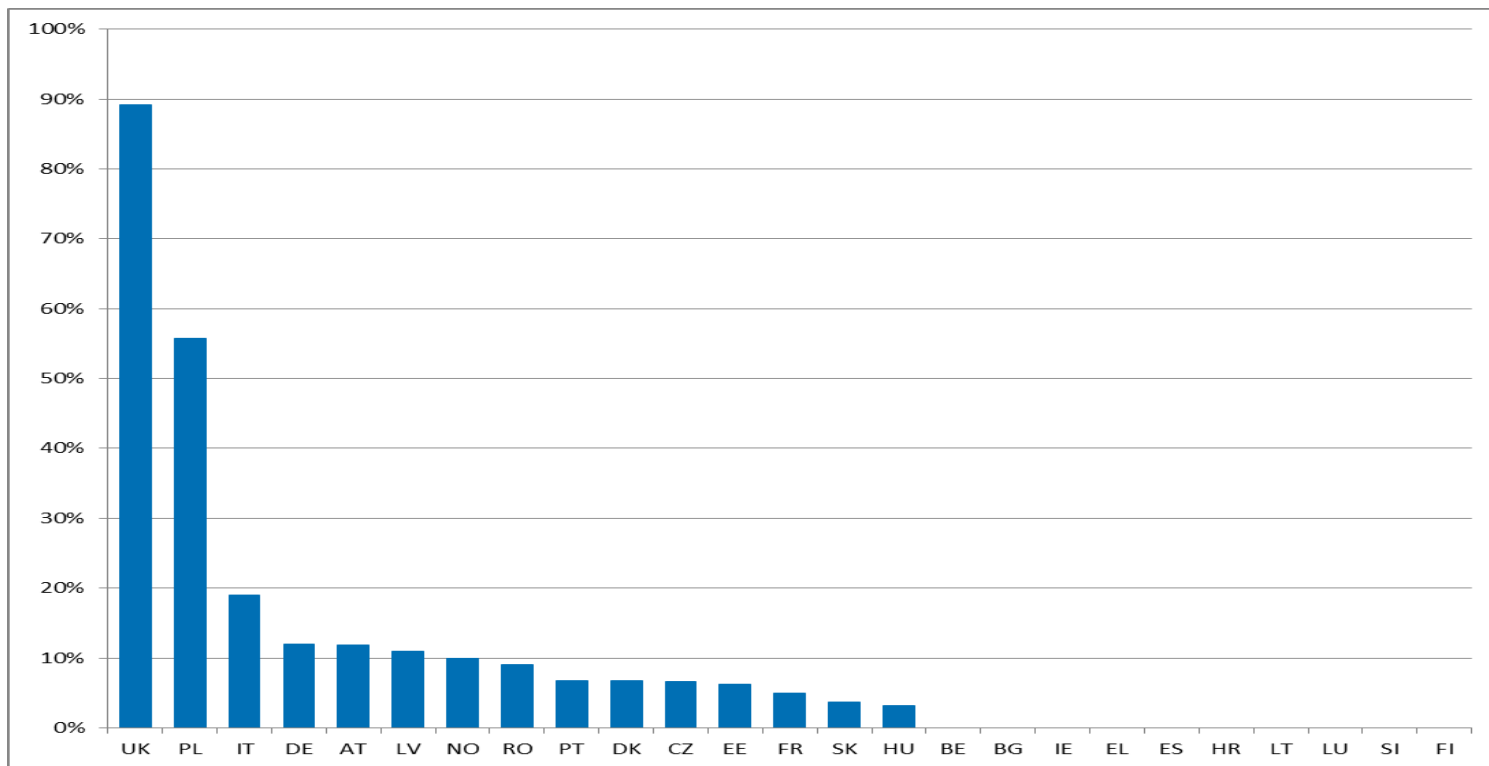
- Despite progressive liberalisation there is little to no effective competition in most passenger and some freight rail markets.
- There are many reasons
 - Lack of effective implementation by Member States of the rules to create a Single European Railway Area
 - The EU legal framework itself does not always provide a sufficient basis for an effective change in the market
 - Most national rail markets in the EU are dominated by the rail incumbents which are in some cases vertically integrated into infrastructure, in particular train paths
 - High entry barriers (e.g. access to rolling stock, maintenance facilities)
 - Enormous amount of state subsidies to incumbents (estimated to be in the range of EUR 18-20 billion excluding infrastructure per year)²

The landscape of rail passenger and freight markets in the EEA



Market share of competitors in the freight market (2014, % of p-km)

The landscape of rail passenger and freight markets in the EEA



Market share of competitors in the passenger market (2014, % of p-km)

In sum, we are here:

Stagnating modal share

National vertically integrated monopolies (passengers)

Low innovation

Risk of unlawful state aid

Risk of abusive behaviour (foreclosure, predation etc.)

Where we want to be:



The 4th railway package – Market pillar



- 2019: Application of the principle of competitive award and of new performance based exemption next to possibility of direct award
- 2020: Open access services can operate domestic passenger services in competition with incumbents from December 2020
- 2023: Expiry of application of direct award possibility; max. duration of existing rail PSC of 10 years
- From 2023: Principle of competitive award; direct award only in exceptional cases (exemptions)

Commission's two-pronged enforcement approach

- 4th railway package completes the regulatory side (Market opening for domestic passenger transport)
- Time for focused enforcement
 - Enforcement through infringement procedures
 - Enforcement of competition law
 - Antitrust
 - State aid
 - Merger Control
 - Enforcement through closer cooperation with national rail regulators and national competition agencies

Competition Issues

Market Opening and Access Issues:

- Non-discriminatory access to key installations, such as to rail infrastructure and rail-related service facilities
- Access to rolling stock

Financial Flows between Member States and rail operators and within integrated groups:

- Restructuring aid
- Capital contributions not in line with MEIP
- Unjustified or ill-defined PSOs
- Cross-subsidization as a result of overcompensation or from financial flows out of infrastructure management

Abuse of a dominant position

- Predation
- Margin squeeze

Competition Issues – Building cases

- Restructuring (and other) State aid cases politically sensitive
- Private operators are hesitating to come forward, for fear of retaliation by integrated incumbent
- Sometimes private rail operators do seek our support but claims are anecdotal and not well substantiated in competition law terms
 - need for closer cooperation with national rail regulatory bodies and NCAs

Current cases

Anti-Trust Cases

- **AT.39813 – Baltic Rail (Freight)**
- **AT.40156 – Czech Rail**
- *One more on predation*
- *One on sales restrictions of second-hand rolling stock*

Merger Control

- **M.7449 SNCF/Eurostar**

Ongoing access remedy aimed to facilitate new entry

State Aid Cases

- **SA.32179 and SA.32953 – Trenitalia**
- **SA.21143 - Public service contracts between the Danish Government and Danske Statsbaner - Judgment of General Court delivered 18 January 2017**
- **SA.32544 – Restructuring of Greek Railways**
- **SA.31250 – BDZ – Debt-cancellation and other measures**

Antitrust Cases – a closer look

- Preventing entry by incumbent abusing a dominant position:
 - Alleged violations of Art 102 by Lithuanian rail incumbent LG to prevent competitor's entry into the market. LG is suspected of having limited competition on the rail markets in Lithuania and Latvia by removing a railway track connecting the two countries.
 - Predatory behaviour: Czech incumbent ČD allegedly lowered prices on the route Prague – Ostrava to below cost in an attempt to oust new entrants Leo Express and RegioJet.
- Anti-competitive agreements Art. 101:
 - Sales restrictions on second hand rolling stock (incumbent sells used rolling stock on condition of not for resale to certain countries preventing entry)

Staid Aid Cases – a closer look

- Ensuring appropriate scope of public service obligations and preventing overcompensation which may lead to cross-subsidisation
- Separation of accounts as a means to identify unlawful financial flows, cross-subsidisation and overcompensation
- Restructuring of railway undertakings in financial difficulties
 - The Commission is currently investigating railway undertakings in 5 Member States

Outlook

- The Commission will use its competition tools to keep the rail passenger and freight markets open and competitive, and to facilitate entry.
- There will be more and closer cooperation with the Commission's transport department DG MOVE to achieve the overarching goal of a true Single European Railway Area.
- There will be increased cooperation with national rail regulatory bodies and NCAs