



Seventh Annual Market Monitoring Working Document

April 2019



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List of country abbreviations and regulatory bodies

| Country | Country abbreviation | Participating regulatory bodies |
|------------------------------------|----------------------|---|
| Austria | AT | Schienen-Control GmbH |
| Belgium | BE | Regulatory Body for Railway Transport and for Brussels Airport Operations |
| Bulgaria | BG | Railway Administration Executive Agency |
| Czech Republic | CZ | Transport Infrastructure Access Authority |
| Croatia | HR | HAKOM |
| Denmark | DK | Jernbanenaevnet |
| Estonia | EE | Estonian Competition Authority |
| Finland | FI | Finnish Transport and Communications Agency Traficom |
| France | FR | Autorité de Régulation des Activités Ferroviaires et Routières |
| Germany | DE | Bundesnetzagentur |
| Greece | GR | Regulatory Authority for Railways |
| Hungary | HU | Rail Regulatory Body |
| Italy | IT | Autorità di Regolazione dei Trasporti |
| Kosovo | KS | Railway Regulatory Authority |
| Latvia | LV | State Railway Administration |
| Lithuania | LT | Communications Regulatory Authority of the Republic of Lithuania |
| Luxembourg | LU | Institut Luxembourgeois de Régulation |
| Netherlands | NL | Autoriteit Consument & Markt |
| Norway | NO | Statens jernbanetilsyn |
| Poland | PL | Urząd Transportu Kolejowego |
| Portugal | PT | AMT - Autoridade da Mobilidade e dos Transportes |
| Republic of North Macedonia | MK | Macedonian Railway Regulatory Agency |
| Romania | RO | Consiliul Național de Supraveghere din Domeniul Feroviar |
| Slovakia | SK | Transport Authority |
| Slovenia | SI | AKOS |
| Spain | ES | Comisión Nacional de los Mercados y la Competencia |
| Sweden | SE | Transportstyrelsen |
| Switzerland | CH | Schiedskommission im Eisenbahnverkehr |
| United Kingdom | UK | Office of Rail and Road |

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01

Introduction



Participating countries

AT - Austria
BE - Belgium
BG - Bulgaria
HR - Croatia
CZ - Czech
Republic
DK - Denmark
EE - Estonia
FI - Finland
FR - France
DE - Germany
GR - Greece
HU - Hungary
IT - Italy
KS - Kosovo



LV - Latvia
LT - Lithuania
LU - Luxembourg
MK - Republic of
North Macedonia
NL - Netherlands
NO - Norway
PL - Poland
PT - Portugal
RO - Romania
SK - Slovakia
SI - Slovenia
ES - Spain
SE - Sweden
CH - Switzerland
UK - United Kingdom

1. Introduction

This working document complements the Seventh IRG-Rail Market Monitoring report¹ by providing country specific data (mostly for 2017) and further context to the results presented in the main report. The aim of this document is to provide a more detailed description and analysis on the developments in the monitored countries.

The content of the working document follows the structure set up in the main report, with chapters on the network characteristics of the railway market (Chapter 2), the track access charges paid by railway undertakings for the minimum access package (Chapter 3), the market players and global rail traffic (Chapter 4) before eventually analysing the rail freight (Chapter 5) and the passenger (Chapter 6) markets.

There are two focuses of this year's report on the competition for the market with an analysis on the outcome of awarding procedures for public service contracts (Chapter 7), followed by an investigation into incumbents' strategies to access rail passenger markets abroad (Chapter 8).

Additionally, the working document also includes a summary of important regulatory decisions taken (Chapter 9) and for which consequences appeared in 2017.

All data provided in the tables and figures of the working document is available on the IRG-Rail website.²

The working document can either be read as a separate report, or in parts for anyone interested in country specific or more detailed information than that presented in the main report.

¹ The Seventh IRG-Rail Market Monitoring Report can be found [on IRG-Rail website](#).

² The data is available [on IRG-Rail website](#).

02

Network characteristics of the railway market



2. Network characteristics of the railway market

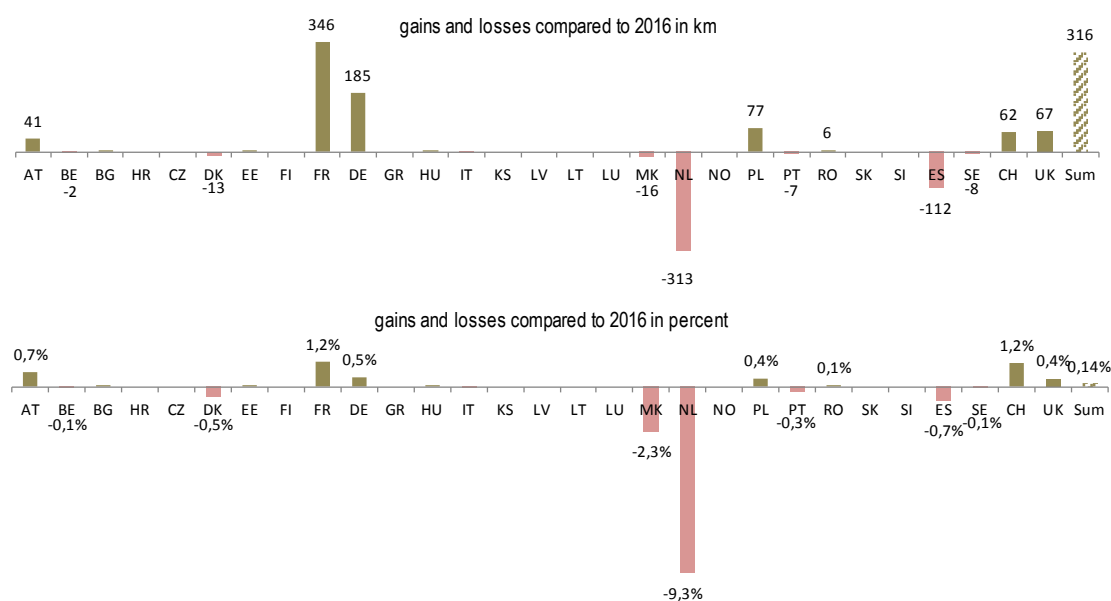
2.1. Total route length

Compared to 2016, only four countries have seen a change in total route length of more than 1% (Figure 1). For France, the increase of 346 route km (1.2%) is a result of the opening of new lines between Tours and Bordeaux, Le Mans and Rennes (of which 94% is high-speed lines), and Nimes and Montpellier, offset somewhat by a decrease of classic lines. The total route length for the Netherlands has decreased by 313 km (9.3%) compared to 2016. This is a reversal of a change between 2015 and 2016 which saw the route length in the Netherlands increase by 310 km. This is because in 2016 the infrastructure manager in the Netherlands used a different method for the calculation of route length.

For the other countries with changes in route length, these can be attributed to construction or decommissioning of routes and changes in reporting practices over time. For example, the increase in route length for the UK is partly a result of data quality improvements following the introduction of a new database for track assets. For Spain, the reduction compared to 2016 is due to the decommissioning of sections of Iberian gauge track that have not been used for many years, whereas for Poland old lines in the North-East of the country were reopened, leading to an increase in route length. For Germany, the increase is largely due to the opening of a new line between Ebensfeld and Erfurt in 2017.

Eleven countries had no change in their route length between 2016 and 2017. The combined route length across the participating countries increased by 316 km compared to the previous year, which represents less than 0.2% of the total route length.

Figure 1 – Evolution of total route length (in km and in %) between 2016 and 2017

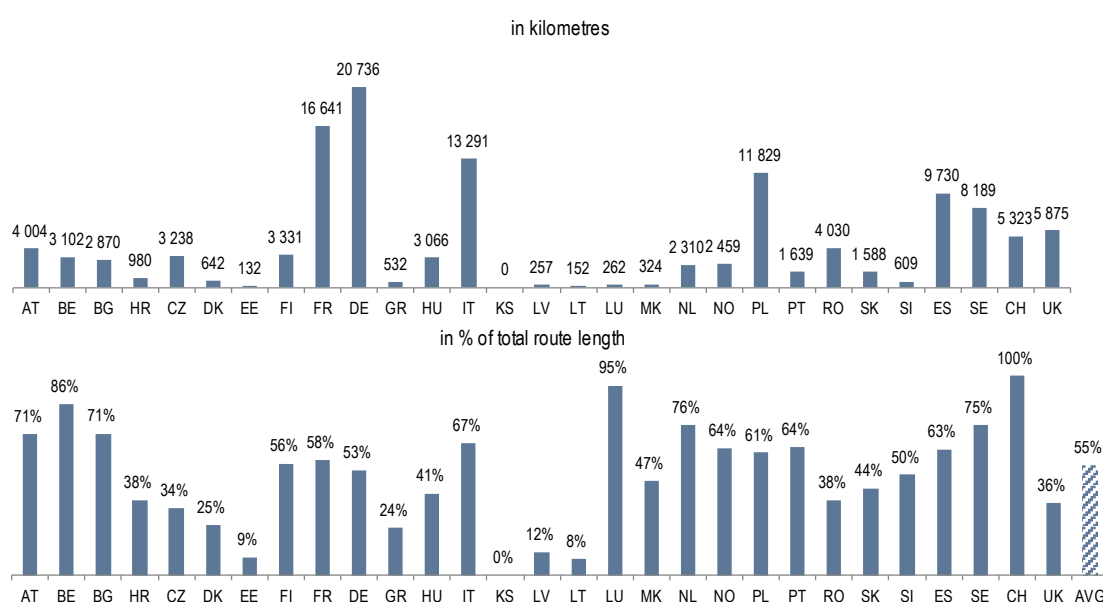


2.2. Electrified route length

The level of electrification of the railway network differs significantly between countries (Figure 2). Switzerland is the only participating country with a fully electrified network, while Kosovo has the only network on which no lines are electrified. Overall, 55% of the total route for participating countries is electrified.

Many countries have had small increases in the length of electrified route since 2016 with the largest increases seen in France, the UK and Germany. In France, this is due to the construction of the new lines mentioned above, which are all electrified. These changes are indicative of investment in the rail networks to electrify existing lines and the construction of new electric routes. The use of electric powered trains is considered cleaner and more efficient than diesel powered equivalents and may help to increase capacity on existing networks. Poland, Portugal and Spain are the only countries in which the length of electrified route has fallen from year to year. However, this year-over-year evolution does not always reflect the longer-term trend of electrification. For instance, in the case of Spain, despite the year-on-year reduction, there has been an upward trend in the length of the electrified route between 2012 and 2017, increasing from 9,063 km to 9,730 km. In Poland there is a plan for the electrification of about 300 km of lines in the upcoming years.

Figure 2 – Electrified route length (in km and in % of the total route length) in 2017

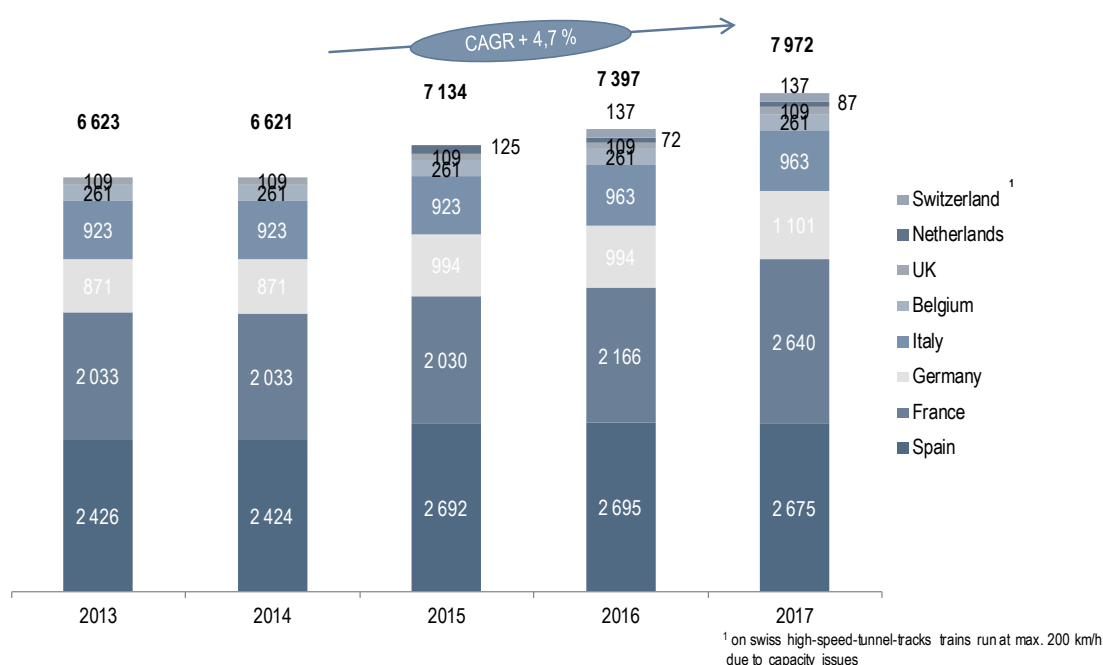


2.3. High-speed route length

Another indicator of the ongoing development of the European railway network is the expansion of high-speed lines. Seven countries now report having high-speed lines as defined in the European Commission’s Implementing Regulation 2015/1100 (Figure 3).

The total length of high-speed route in the participating countries in 2017 amounts to 7,972 km of lines, increasing by 8% in one year (+576 km). This change is primarily driven by the construction of new high-speed lines in France (+473 km) on routes between Tours and Bordeaux and Le Mans and Rennes, in Germany (+107 km) between Ebensfeld and Erfurt and in the Netherlands (+15 km). On average, the annual growth rate since 2013 is 4.7%.

Figure 3 – High-speed route length (in km) in 2017



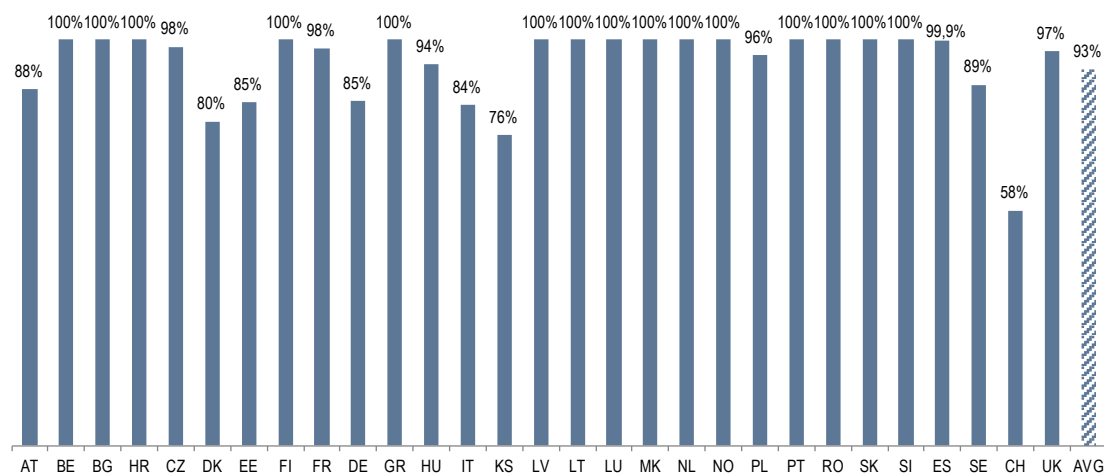
2.4. Main infrastructure managers’ share of route length

The main infrastructure managers control 93% of the total route length across the participating countries (Figure 4). In 15 countries, the main infrastructure manager controls 100% of the network. In Czech Republic, whose data is included in the market monitoring report for the first time, the main infrastructure manager controls 98% of the total route. Only three countries have a main infrastructure manager’s share of 80% or lower; Switzerland (58%), Kosovo (76%) and Denmark (80%).

There have been only marginal changes in the share of route controlled by the main infrastructure manager since 2016, with France showing minor decreases in the proportion of route controlled by the main infrastructure manager

(-2 percentage points). This is due to new newly opened routes not being managed by the main infrastructure manager.

Figure 4 – Main infrastructure manager’s share of total route length in 2017

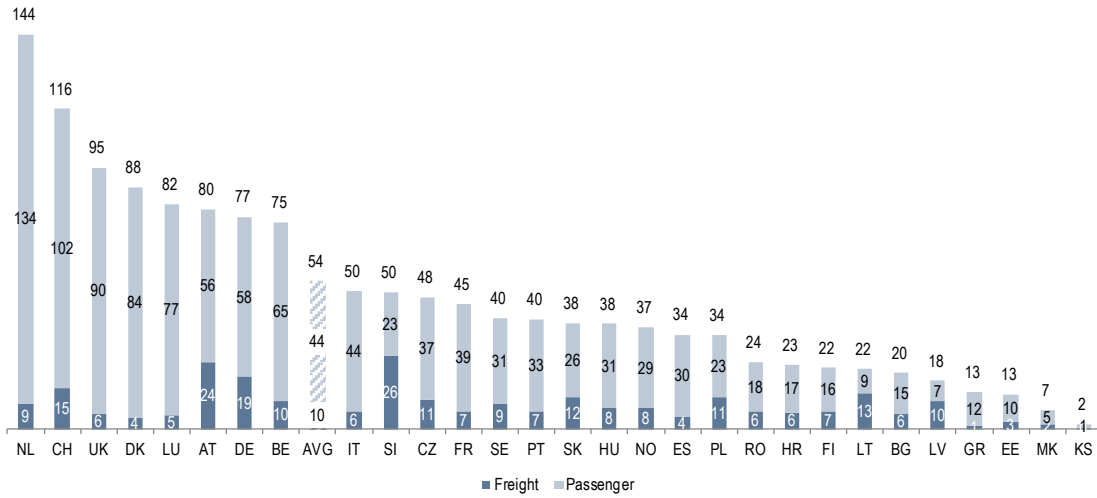


2.5. Network usage intensity

Network usage intensity measures the number of train-km per route km per day and is an indicator of the overall occupancy of the network. However, it cannot be considered a true measure for congestion, as multi-track lines are not taken into account. Moreover, the intensity of usage of the rail network can vary significantly between different regions within a country.

For most participating countries, the rail networks are more highly used by passenger services than by freight trains (Figure 5). Lithuania, Latvia and Slovenia are the only countries in which the rail network is utilised more intensively by freight services than passenger services. The usage intensity for freight is highest in Slovenia, followed by Austria and Germany, which may reflect the level of cross-border freight traffic in these countries.

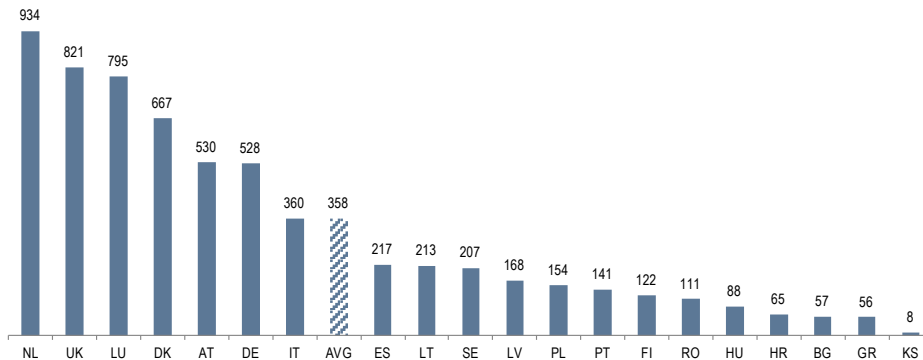
Figure 5 – Network usage intensity (train-km per route km per day) in 2017



2.6. Railway undertaking revenues with respect to the rail network

Figure 6 shows the total railway undertaking revenue (that includes the revenues from fares as well as the compensations for both passenger and freight railway undertakings) per route length per country. With an average value of 358 thousand Euro per route kilometre, this indicator shows high disparity across countries: from 8 thousand Euro of revenue for railway undertakings in Kosovo, to 934 thousand Euro in the Netherlands. These differences could be explained by several reasons, such as the size of the network, operators’ revenues from fares or from compensations, the usage intensity of the rail network amongst others.

Figure 6 – Total railway undertaking revenues per route length (in thousand Euro per km) in 2017³



³ The average takes into account the countries mentioned in the figure. The missing country are not included in this average.

03

Track access charges
paid by railway
undertakings for the
minimum access package



3. Track access charges paid by railway undertakings for the minimum access package

Directive 2012/34/EU which was to be implemented before June 16th, 2015 required Member States across Europe to harmonise their charging methods. Figure 7 shows that the average track access charge (TAC) per train-km paid by railway undertakings varies widely among countries. In Lithuania, railway undertakings pay on average 13.36 Euro of TAC per train-km, while railway undertakings in Slovenia pay on average 0.54 Euro. In Slovenia, this relatively low amount is because operators of PSO passenger services are exempted from paying TAC.

It is worth noting that Figure 7 does not allow drawing any clear comparison of track access charges between the monitored markets. In some countries, the track access charges for passenger trains also encompass for instance station usage or other costs that may not be included in the TAC in other countries.

Figure 7 – Infrastructure managers revenues (in Euro per train-km) from railway undertakings for the minimum access package in 2017⁴

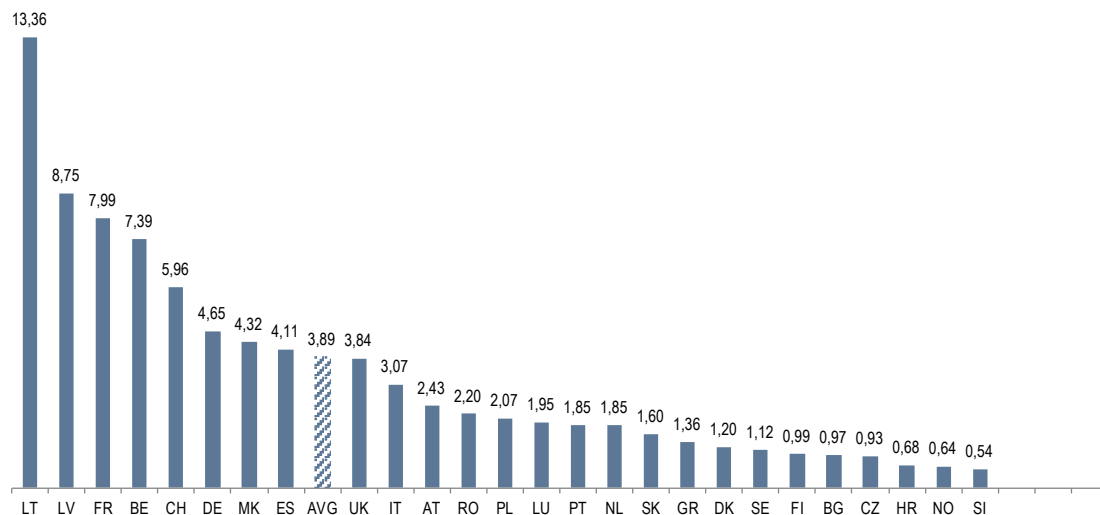


Figure 8 shows that track access charges paid by operators are mainly derived from passenger services. In most countries, this is due to the fact that there are more passenger services than freight services. In some countries, however, this is also due to a large difference in track access charges between passenger and freight services, as shown in Figure 9.

⁴ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

Figure 8 – Infrastructure managers revenues share from railway undertakings of passenger and freight markets in 2017⁵

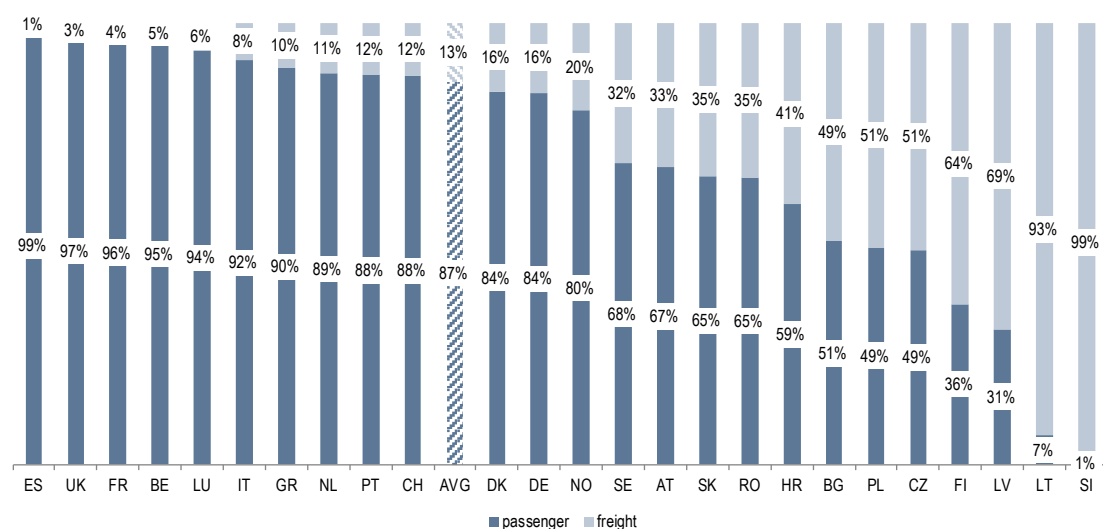


Figure 9 shows that on average freight services pay less TAC (2.81 Euro per train-km) than passenger services (4.17 Euro per train-km). In France, passenger services pay 8.94 Euro per train-km on average (the highest of the monitored countries), while freight services pay 2.30 Euro. The amount of TAC paid by railway undertakings depends on pricing rules that differ according to whether this are freight or passenger services. In both cases, TAC include reservation, the use of railway infrastructure and the use of electrical supply equipment for traction current. Moreover, in France, freight services receive a public grant (called the “freight compensation”) directly paid by the state to the infrastructure in order to finance the part of the marginal cost which is not covered by TAC paid by the freight operators.

In Lithuania, freight operators pay 21.16 Euro per train-km on average, while passenger services providers pay 2.17 Euro. This is because the rail network is much more highly used by freight trains than by passenger trains. Lithuania has identified market segments that can bear mark-ups in order to obtain full recovery of the costs incurred by the infrastructure manager. The mark-ups are applied to; passenger transit, cargo transit, dangerous goods carriage, low-value goods carriage and other goods carriage market segments.⁶ In view of these, freight trains face higher charges for the minimum access package than passenger trains.

In Latvia, freight services pay 10.36 Euro per train-km on average, while passenger services pay 6.47 Euro. This is because the scope of the minimum access package differs significantly for freight and passenger railway undertakings. The minimum access package for freight includes infrastructure that is used only by freight railway undertakings such as freight railway stations

⁵ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

⁶ More information is available here: <https://www.rrt.lt/en/railways/supervision-of-charges>.

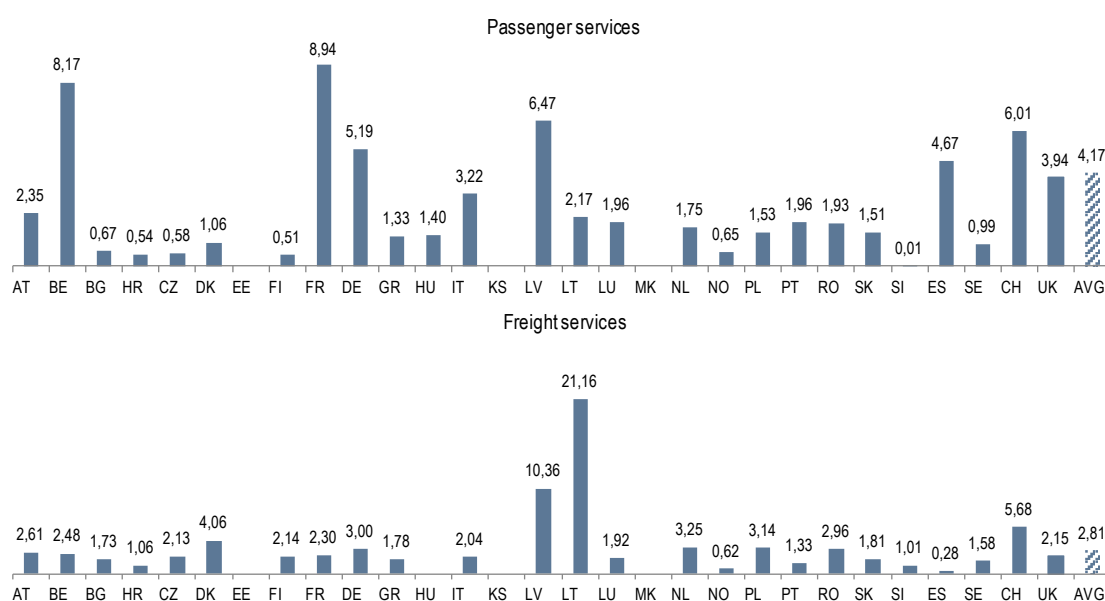
and sidings. As the minimum access package for passenger railway undertakings does not include freight specific infrastructure, the charge of the minimum access package for passenger railway undertakings is considerably lower.

In Belgium, passenger services pay 8.17 Euro per train-km on average, while freight services pay 2.48 Euro. This is because freight operators only need to pay the direct cost they cause as a result of operating the train service. The infrastructure manager in Belgium uses mark-ups in addition to the direct costs to obtain full recovery of its costs. Because the market needs to be able to bear these costs, these are charged mostly to the passenger railway undertakings.

In Slovenia, freight operators pay 1.01 Euro per train-km on average, while passenger services pay 0.01 Euro. This is because passenger trains operating under PSO contracts are exempt from paying TAC.

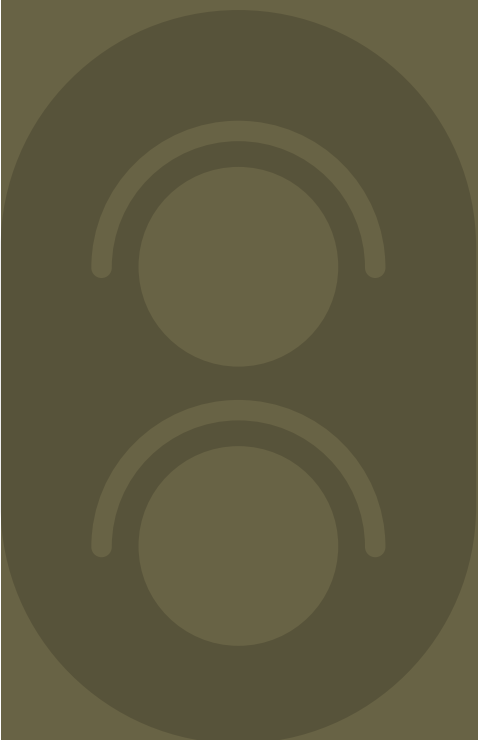
In Portugal, freight operators pay 1.33 Euro per train-km on average, while passenger operators pay 1.96 Euro. This is because the calculation rules laid down in the national regulation for minimum access package charges define different parameters for each market segment; freight, urban, regional, long distance/international and empty trains.

Figure 9 – Infrastructure managers revenues from railways undertakings per train-km per passenger and freight services in 2017⁷



⁷ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

Market players and global rail traffic

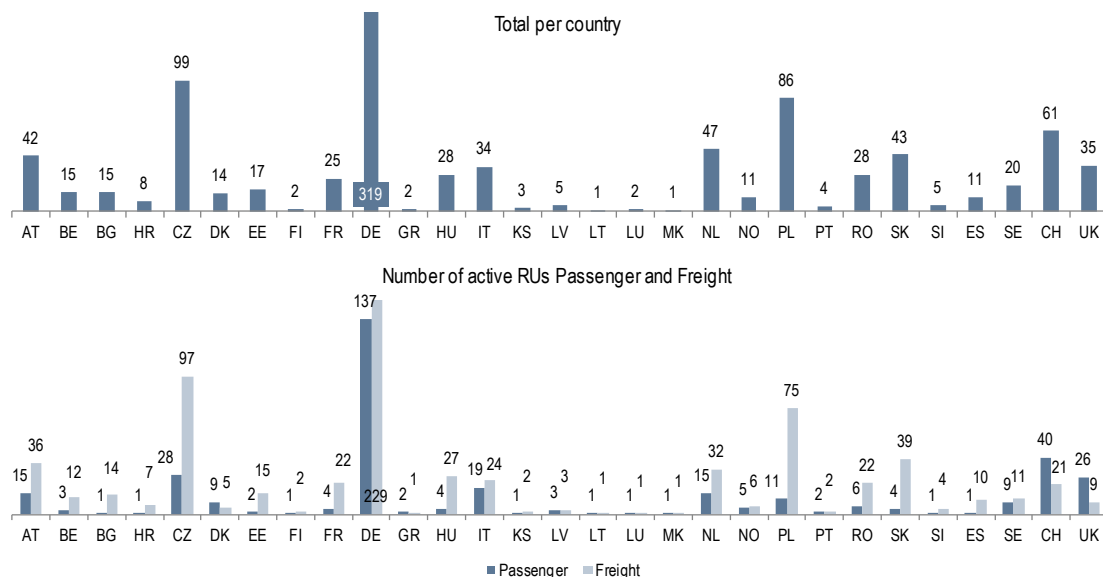


4. Market players and global rail traffic

4.1. Market players

The number of active railway undertakings in IRG-Rail member countries varies significantly, depending on historical national developments, barriers to market entry or other factors. In some countries, such as Lithuania and the Republic of North Macedonia, there is one single railway undertaking offering both passenger and freight services. Conversely, Germany (319), Czech Republic (99) and Poland (86) reported the highest numbers of active railway undertakings in 2017.⁸ Most countries experienced an increase or stable number of railway undertakings in comparison to 2016, with only four out of 29 countries seeing a decline in the number of active railway undertakings (Germany, Slovenia, Sweden and UK).

Figure 10 – Number of active railway undertakings (total and per service) in 2017



For the majority of member countries, the number of active freight railway undertakings exceeds the number of passenger railways undertakings. This may be because the liberalisation of the freight market began earlier. When observing the absolute numbers of freight and passenger railways undertakings, some undertakings might be listed twice within one country when they operate both in the freight and the passenger sectors. Consequently, the sum of active passenger and freight railways undertakings can appear to be greater than the total number of railways undertakings (Figure 10).

The proportion of passenger undertakings operating PSO services varies significantly across countries. In 13 countries 100% of passenger services are PSO, whereas in others such as Belgium (33%), France (25%) or Czech Republic (18%) only a minority of undertakings run under PSO. However, this does not necessarily imply that these markets are more competitive, as this can depend

⁸ Please note that due to different counting rules, the number of passenger RUs active in each country may not be the same as the one found in Chapter 8. Refer to Section 8.1. for more details.

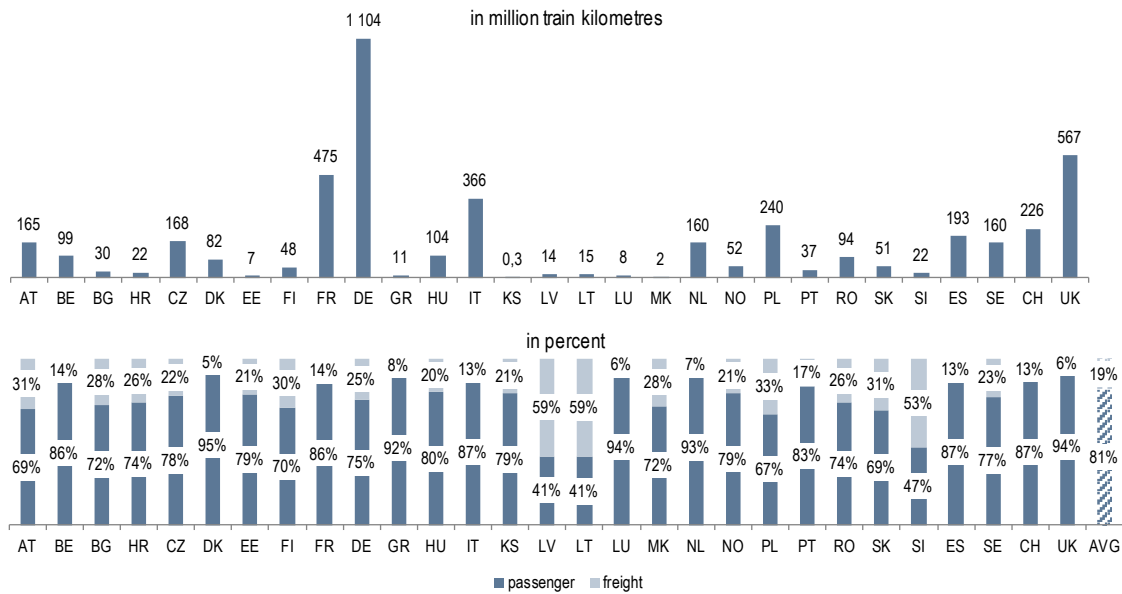
on other factors such as the process for awarding PSO contracts (e.g. tendering).⁹

4.2. Total rail traffic

A total of 4.52 billion train-km was reported in 2017 in the 29 countries. Breaking this down by country reveals that Germany (24%), the United Kingdom (13%) and France (11%) contributed almost half of the amount (47%) of the total supply (Figure 11).

Passenger services accounted for 81% of the total train-km. This is typical of the majority of monitored countries, with the share passenger train-km ranging between 67% (Poland) and 95% (Denmark). There are only three countries (Latvia, Lithuania and Slovenia) where the share of freight traffic exceeds that of passenger traffic. Although overall train-km have been steadily increasing since 2013, the distribution between freight and passenger traffic has not changed, suggesting that both freight and passenger traffic are increasing at a similar rate.

Figure 11 – Rail traffic (in millions train-km) and the breakdown between passenger and freight services (in %, based on train-km) in 2016



⁹ Please refer to the Chapter 7 for additional details on the awarding procedure of public service contracts.

05

The rail
freight market



5. The rail freight market

5.1. Rail freight market size

The total demand in 2017 was 451 billion net tonne-km (across the 28 countries observed). The German, Polish and French rail freight markets continued to be the largest; together they represent just under 50% of the total demand.

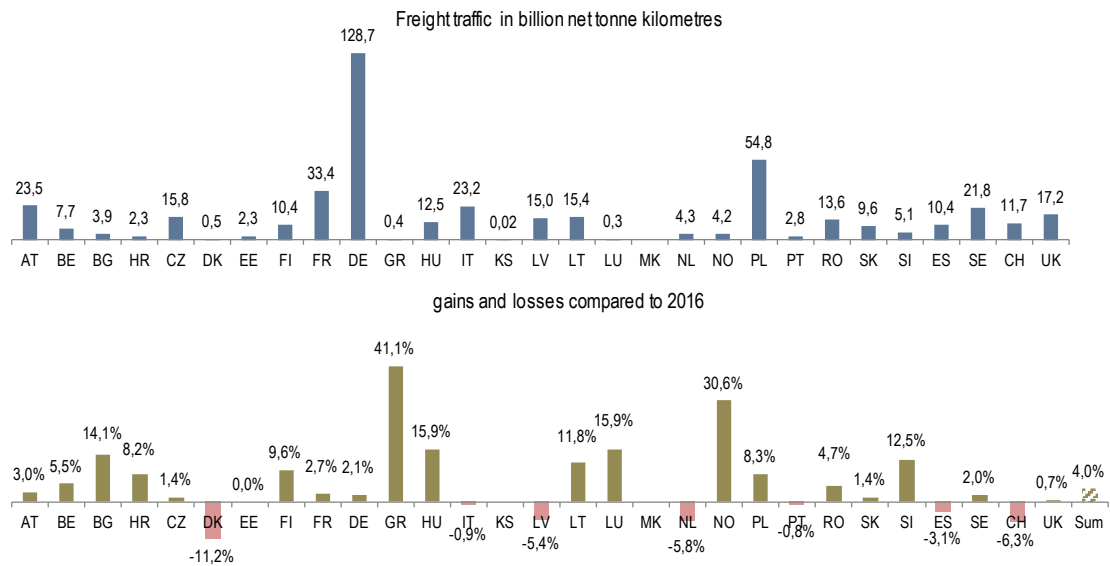
Rail freight traffic saw a 4.0% increase in tonne-km between 2016 and 2017 (Figure 12). Across the monitored countries there was a wide variation in development between 2016 and 2017, ranging from -11.2% in Denmark to 31% in Norway and 41% in Greece. A decrease in net tonne-km was noted in seven countries compared to 2016, while the demand for freight services increased in 18 countries (and remained constant in another). For countries with relatively low absolute values of traffic, a small variation in traffic can show as a large percentage change, which may reflect the apparently wide range of change across the monitored countries.

In Greece, the large increase of 41% can be explained by resolving some problems experienced the previous year (for example traffic was stopped on a section of the Thessaloniki - Idomeni railway line for approximately two and a half months due to the takeover of the line by refugees/immigrants).¹⁰ Furthermore, there was an increase in the volume of freight transport between the two largest commercial ports of Athens and Thessaloniki.

In Norway, the increase of 31% can be explained by an increase in intermodal national rail freight traffic, driven by the two competitors CargoNet AS (the Norwegian incumbent) and Green Cargo AB (the Swedish incumbent). An important factor in that increase was that 2017 saw relatively high reliability and availability of the rail infrastructure in Norway when compared with previous years. This allowed the railway undertakings to offer more continual and reliable intermodal rail freight services.

¹⁰ See [Sixth Market Monitoring Working Document](#).

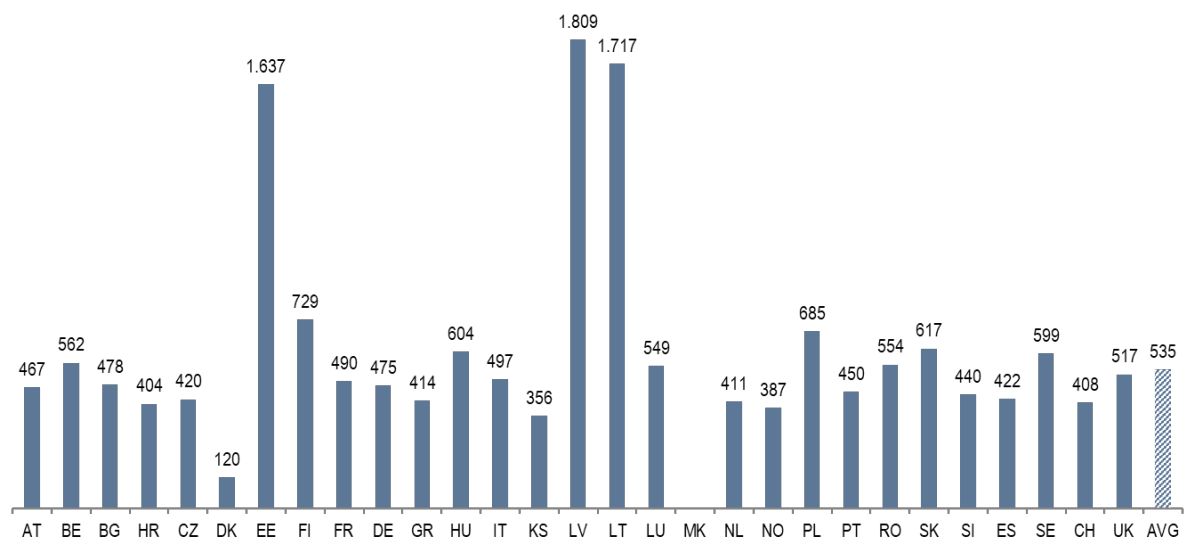
Figure 12 – Rail freight traffic (in billion net tonne-km) in 2017 and evolution between 2016 and 2017



As in 2016, the Baltic States showed the highest load factor in 2017, more than three times the overall average of 535 tonne-km per train-km (Figure 13). This is likely due to their infrastructure allowing much heavier loaded wagons than in the rest of Europe.¹¹

After the Baltic countries, Finland shows the highest load factor with 729 tonne-km per train-km, followed by Poland (685). The lowest value is recorded in Denmark with 120 tonne-km per train-km.

Figure 13 – Freight traffic load (tonne-km per freight train-km) in 2017



¹¹ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

5.2. Market shares of freight railway undertakings

The market shares of incumbent and non-incumbent railway undertakings are an important indicator of the potential for competitive advantages for incumbent operators, and of the possible barriers to new entrants.

In some countries the domestic incumbent is still the only freight operator, as is the case in Greece, Kosovo, Lithuania, Luxembourg and the Republic of North Macedonia. In Finland, the incumbent continues to operate nearly 100% of the market. Conversely, in some countries there is neither domestic nor foreign incumbents active on the freight market, for example in Portugal and Denmark.

New entrants in the freight market can be either foreign incumbents (from another country) or non-incumbents (national or foreign ones). The share of new entrants is relatively high in some countries. In the Netherlands more than half of the market share is dominated by the foreign incumbent (58% of tonne-km and 61% of train-km), with the remaining market in the hands of non-incumbent undertakings. Whereas in the United Kingdom the opposite is observed with non-incumbents operating 55% of tonne-km and 53% of train-km.

Across all the countries observed 57% of the traffic is performed by the domestic incumbent (in both tonne-km and in train-km), 13% by foreign incumbents and 30% by non-incumbents. Sweden, Poland, Norway, Italy and Germany all have similar market structures to the overall picture. For most of the remaining countries the domestic incumbent has a much higher share.

Figure 14 – Market shares of freight railway undertakings (based on train-km) in 2017

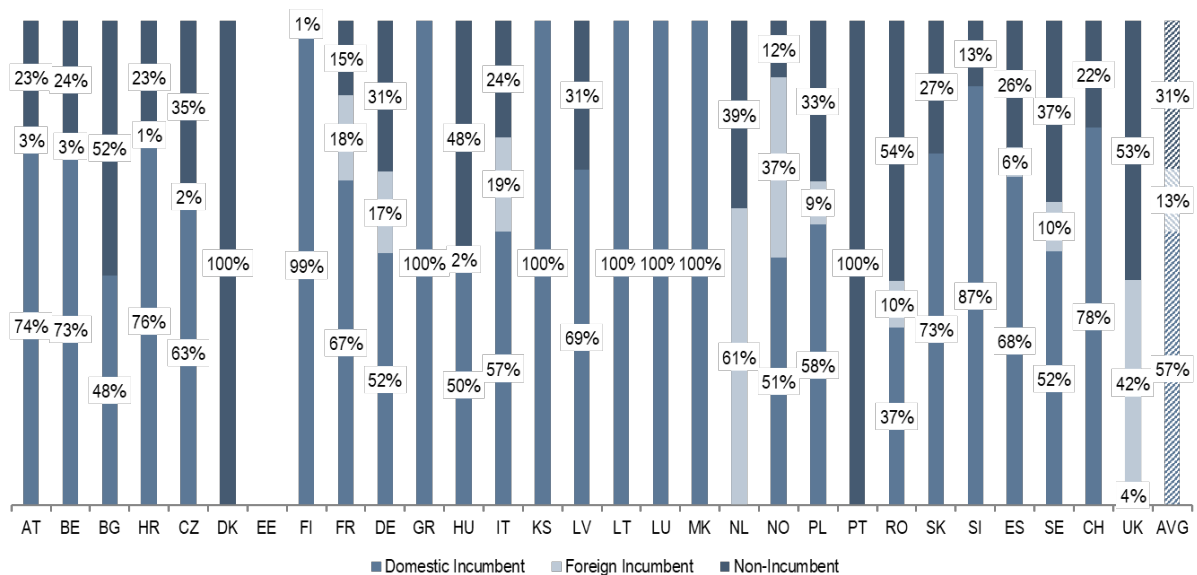
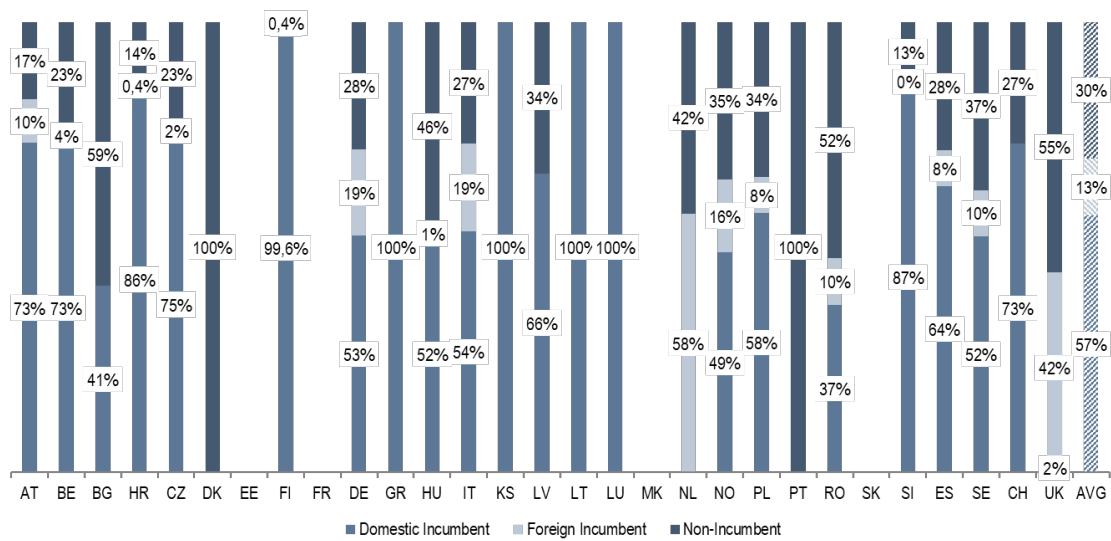


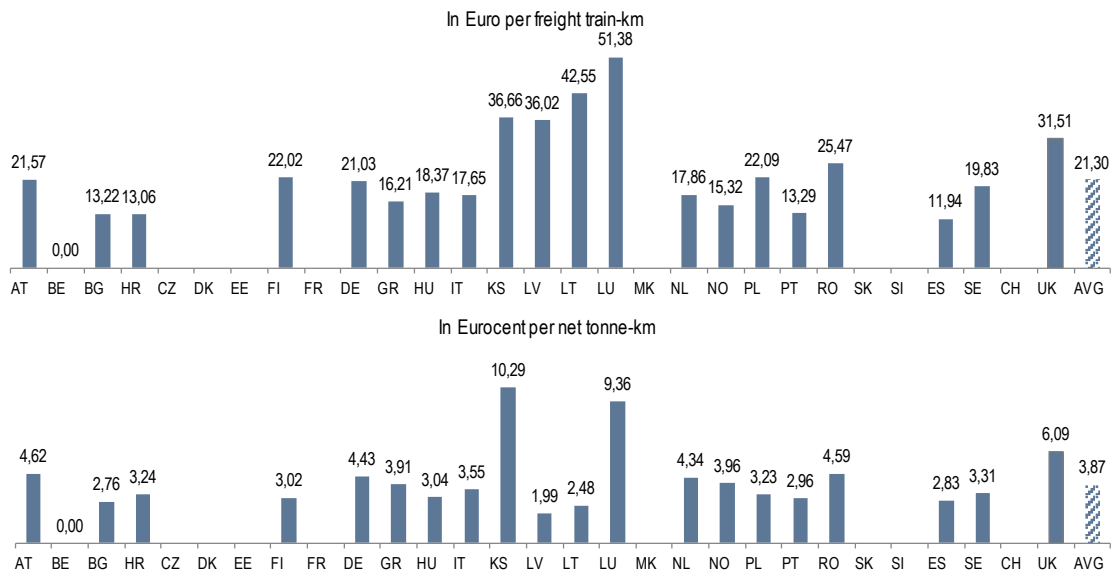
Figure 15 – Market shares of freight railway undertakings (based on net tonne-km) in 2017¹²



5.3. Economic performance of freight railway undertakings

The revenue per train-km for freight operators ranges from 11.94 Euro in Spain to 51.59 in Luxembourg (Figure 16). Per net tonne-km, the freight operators' revenues ranges from 1.99 Eurocent in Latvia to 10.29 Eurocent in Kosovo.

Figure 16 – Freight operators' revenues per train-km and net tonne-km in 2017



¹² The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

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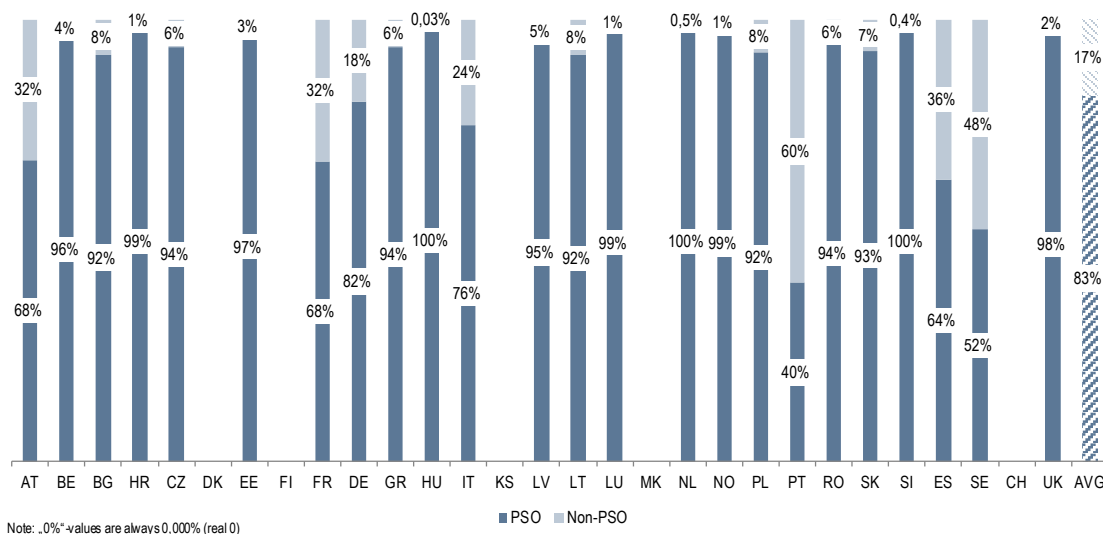
The rail passenger market



6. The rail passenger market

Across the monitored countries PSO services account for 83% of the train-km offered on the passenger market. There are 9 countries in which the share of non-PSO train-km is lower than 5% (Belgium, Croatia, Estonia, Hungary, Luxembourg, the Netherlands, Norway, Slovenia and the UK). In some countries, such as Romania, international traffic makes up all of the non-PSO operations, with domestic traffic exclusively provided by PSO services. In Germany non-PSO services are provided in long-distance railway transport. For geographical reasons, some countries such as Lithuania, Romania and Slovenia¹³ do not distinguish between regional and long-distance services.

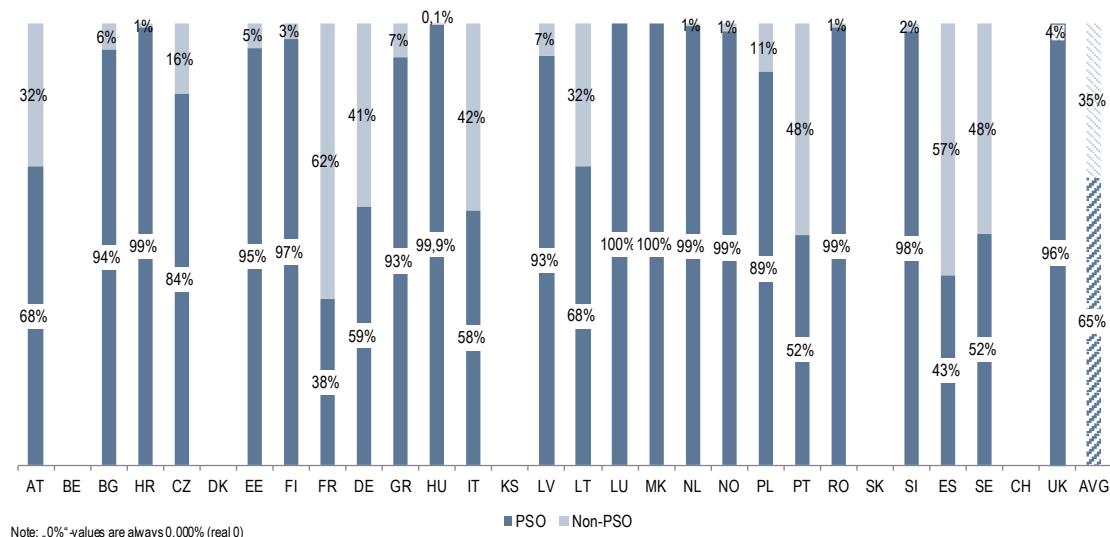
Figure 17 – Share of PSO and non-PSO services (based on train-km) in 2017



A similar situation can be found on the demand side (measured in passenger-km). 65% of all passenger-km were operated in the framework of PSO contracts. In some countries, such as Czech Republic, France, Germany, Italy, Poland and Spain, the share of PSO traffic on the supply side is bigger than on the demand side. While the share of PSO services in the French passenger market reaches 68% in terms of train-km, it amounts to only 38% in passenger-km. This can be explained by the fact that most of the non-PSO services have larger capacities than the regional PSO services. It may also reflect higher occupation rates on the non-PSO market than on the PSO market. In Germany, the high share of PSO train-km (82%) is driven by the high amount of regional traffic operated under PSO, whereas non-PSO traffic is predominantly long-distance services, which is lower in number. Furthermore, long-distance trains carry more than three times as many passengers as regional trains, leading to a notably higher non-PSO share based on passenger-km (41%).

¹³ In Slovenia, for instance, the longest line do not exceed 393 km.

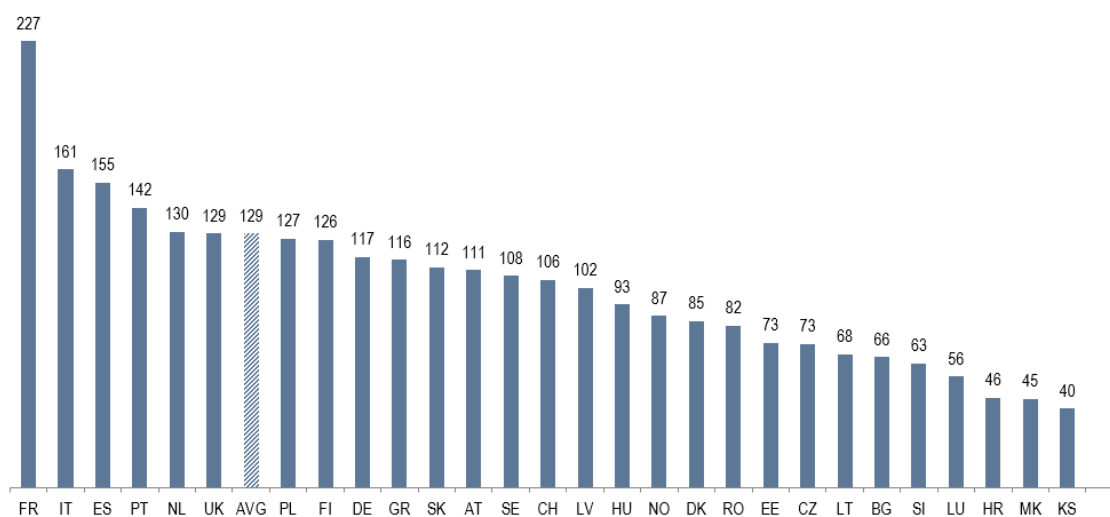
Figure 18 – Share of PSO and non-PSO services (based on passenger-km) in 2017¹⁴



6.1. Rail passenger market size

Across the 28 countries considered, the load factor (passenger-km / train-km) in 2017 was 129 passenger-km per train-km¹⁵. Load factor was above the average value in France, Italy, Spain, Portugal and the Netherlands; these countries have also shown the most notable increases compared with the previous two years.

Figure 19 – Number of passenger-km per passenger train-km in 2017¹⁶



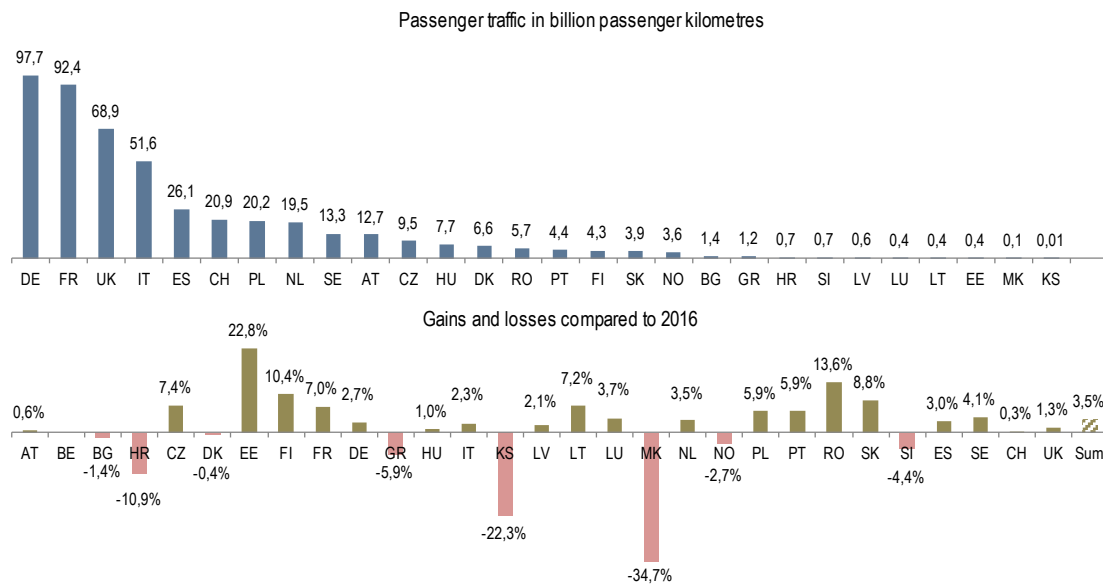
¹⁴ Note that in Luxembourg, the passenger-km data on the line Luxembourg-Paris is not available which explains why the share of PSO traffic in this graph amounts to 100% while it amounts to 99% in the share of PSO and non-PSO services based on train-km.

¹⁵ Note that the load factor is different from the occupancy rate. Indeed, not only the occupancy rate can impact the passenger load factor, but also the carrying capacities (number of seats per trains) for instance.

¹⁶ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

In terms of passenger-km, Germany had the biggest market, followed by France, the United Kingdom and Italy (Figure 20). Together, they represent 65% of the market across all monitored countries. While overall passenger-km increased by 3.5% in comparison with 2016, Germany, the country with the biggest market showed an increase of 2.7%. In France, a moderate growth of 7% was observed between 2016 and 2017. This was mainly because there were several strikes in 2016 that lowered the railway traffic. However, in comparison to 2015 there was still an increase between 2015 and 2017 as a result of the development of low-cost offers and new high-speed lines.

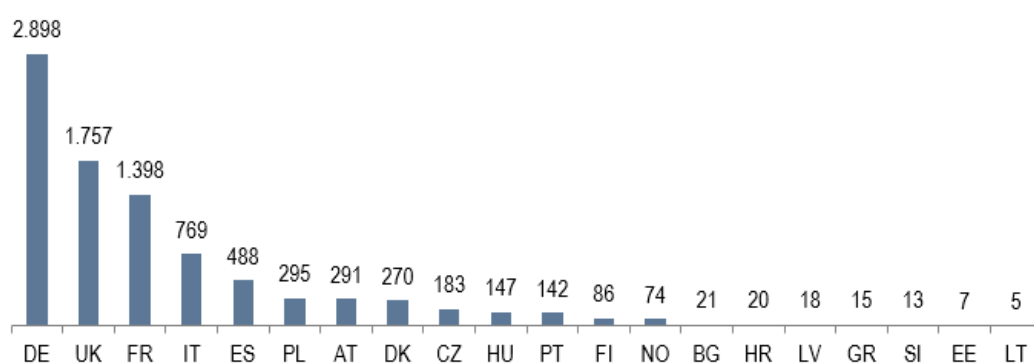
Figure 20 – Passenger transport in billion passenger-km in 2017



Countries with large population and long railway network naturally show the highest figures in terms of passenger transport (in passenger-km) and number of passengers. However, considering population density and suitable timetabling, Austria and Denmark show relatively high figures as well.

As would be expected from the passenger-km data, Germany had the highest number of passengers in 2017 (Figure 21). This represents an increase of 3.8% in comparison to 2016.

Figure 21 – Passenger transport (in million passengers) in 2017¹⁷



6.2. Market shares of passenger railway undertakings

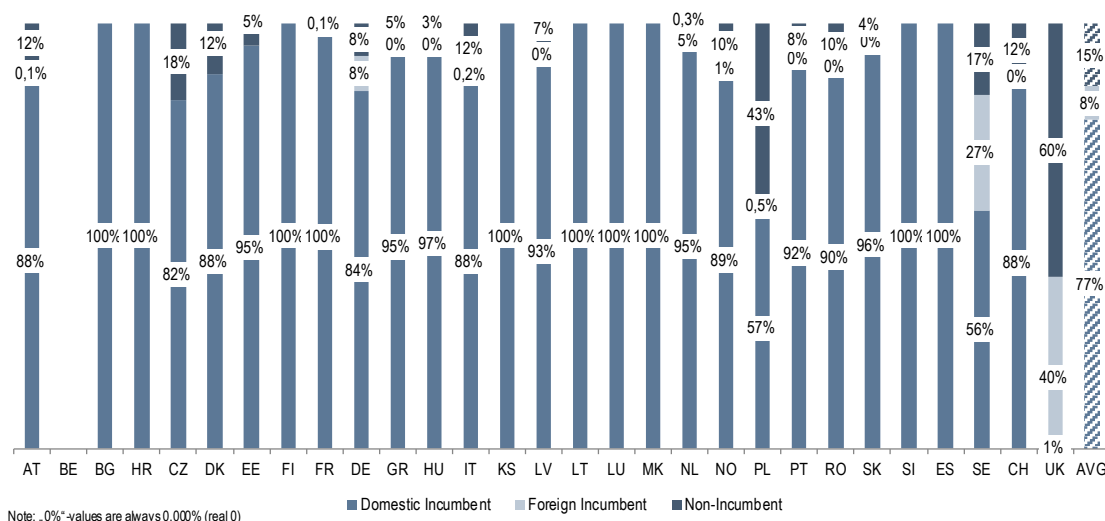
Across the monitored countries, domestic incumbents have a market share of 77%¹⁸ in terms of passenger-km. The only countries where the market share of domestic incumbents was below the average are Sweden, Poland and the United Kingdom. In the United Kingdom, the domestic incumbent accounts only for 1% of the market¹⁹ and the share of the foreign incumbent is about 40%. In Sweden, the main reason for the drop in the market share of the domestic incumbent is that other railway undertakings have won competitive tenders in regional PSO-traffic. Most recently the incumbent lost the contract for the commuter services in the Stockholm area (which explains the extent of the drop in 2017). In Poland, a higher market share of new entrants is due to the fact that regional services are operated by new regional companies formed by regional authorities (22% market share) and by Przewozy Regionalne (also 22% market share), a company that stems from the incumbent, but was municipalised by regional authorities in 2008. In 2015 the state bought package control in Przewozy Regionalne, but the company does not have ownership relations with the incumbent.

¹⁷ Note that the number of passengers was optional data and therefore not available in all the countries.

¹⁸ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

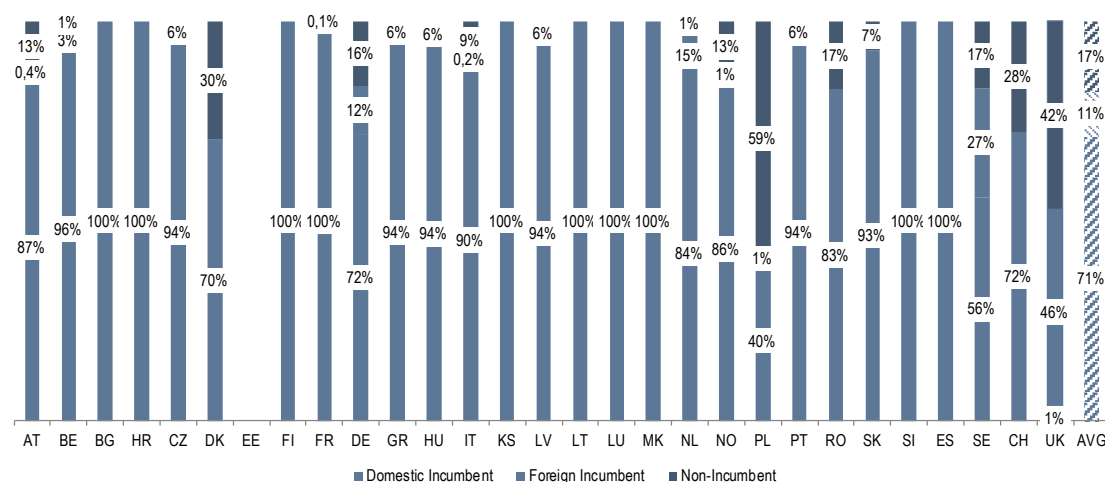
¹⁹ The domestic incumbent in UK, NI Railways (Northern Ireland Railways) is the Northern Ireland domestic incumbent, which runs on a network separate to the majority of the mainline railway in Great Britain.

Figure 22 – Market shares of passenger railway undertakings (based on passenger-km) in 2017



The market share of domestic incumbents in terms of offered passenger train-km was 71% across monitored countries (Figure 23). With the exception of a few countries, such as the United Kingdom, Sweden, Poland, Denmark, Switzerland and Germany, domestic incumbents still dominate most markets. In ten countries there is no competition at all.

Figure 23 – Market shares of passenger railway undertakings (based on train-km) in 2017



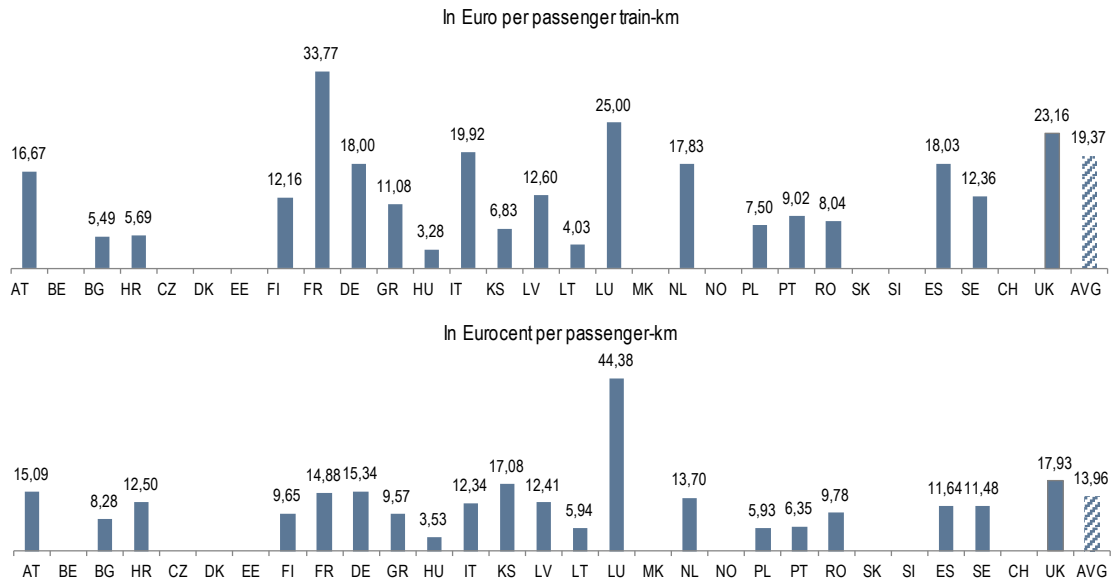
6.3. Economic performance of passenger railway undertakings

Across the monitored countries the revenue of passenger railway undertakings was 19.37 Euro per train-km and 13.96 Eurocent per passenger-km in 2017.²⁰ The highest unit revenues on the supply side (Euro per train-km) occur in France,

²⁰ The average value in this graph differs from the one in the main report since the samples are different: this one includes all the available data for 2017 while the one in the main report includes only countries which provided data for the 2013-2017 period.

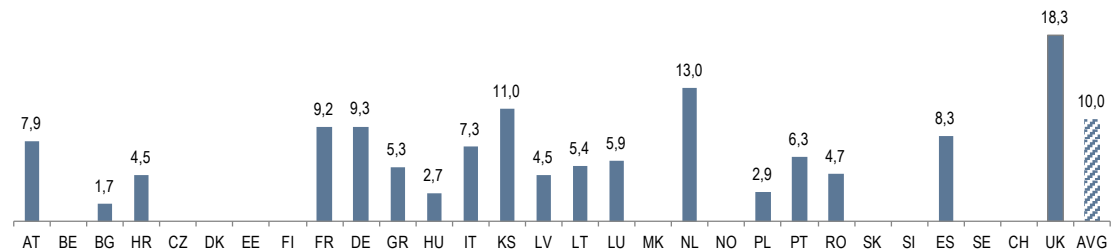
Luxembourg and the United Kingdom, while the highest unit revenue on the demand side (Eurocent per passenger-km) was reported for Luxembourg.

Figure 24 – Passenger operators' revenues (in passenger-km and in passenger train-km) in 2017



Considering only takings from fares, the revenue among the monitored countries was 10 Eurocent per passenger-km (Figure 25). The highest unit revenues (18.3 Eurocent per passenger-km) were found in the United Kingdom.

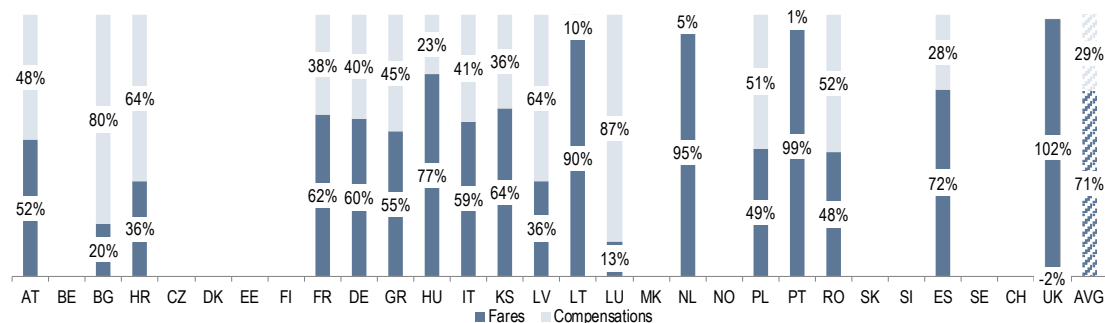
Figure 25 – Passenger operators' revenues from fares (in Eurocent per passenger-km) in 2017



In 2017 71% of all revenues for passenger services were collected from fares. Comparing the different countries, large differences can be seen in the distribution between revenues from fares and from compensations. In some countries, such as Bulgaria and Luxembourg, the majority of revenues are from public compensations (80% and 87%, respectively). Conversely, in the UK the government received a net contribution from railway undertakings (i.e. PSO rail operators paid more to the government in premiums than they received in

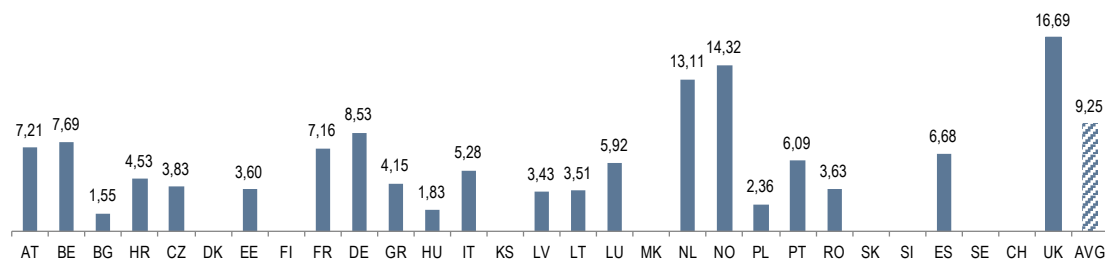
compensation). This gives the impression in Figure 26 that in the UK fares make up greater than 100% of the total revenue.

Figure 26 – Share of passenger operators' revenues from fares and compensations in 2017



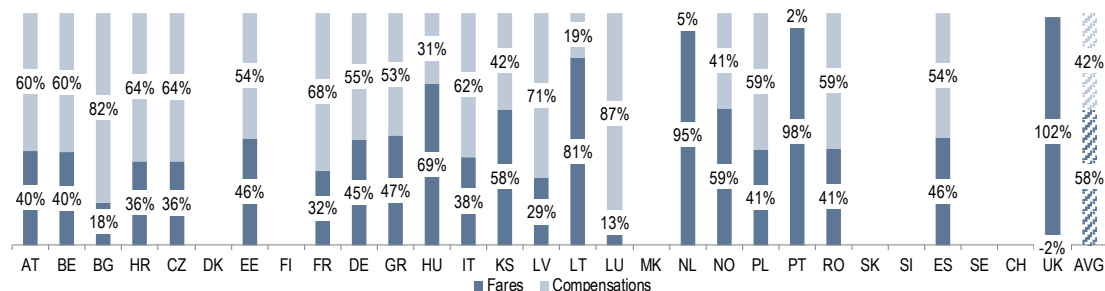
As mentioned in Figure 18, 65% of all passenger-km were operated in the framework of PSO contracts in 2017. Figures 27 and 28 repeat the analysis presented in Figures 25 and 26 for PSO operators' revenue only. The PSO revenue per passenger-km across monitored countries was 9.25 Eurocent. This is slightly lower than the figure for all passenger operators (10 Eurocent per passenger-km). The highest unit revenue for PSO operators was reported for the United Kingdom (16.69 Eurocent per passenger-km), while two countries show passenger PSO operators' revenues of less than 2 Eurocent per passenger-km (Bulgaria and Hungary).

Figure 27 – Passenger PSO operators' revenues from fares (in Eurocent per passenger-km) in 2017



Across the monitored countries 42% of PSO revenues arise from compensation, which is, as expected, higher than in the overall passenger market (29% of total operators' revenues). In all countries the share of PSO operators' revenues from compensations is higher than in the total passenger market (Figure 26).

Figure 28 – Share of passenger PSO operators' revenues from fares and compensations in 2017



Competition for the
passenger market with
focus on the procedures
for award of public
service contracts



7. Competition for the passenger market with focus on the procedures for award of public service contracts

In order to complete the information provided in the main document of the seventh report, this chapter provides details for each country, on the direct as well as on the tendering procedures for award of PSO contracts for regional and long-distance passenger services.

The information comes from the data collected via a questionnaire sent to regulatory bodies.²¹

Austria

Regional

One directly awarded PSO contract has been attributed to the incumbent operator (ÖBB Personenverkehr) by the state authority, for a period of ten years. This contract represents around three million train-km. So far there have been no competitive tenders in Austria. Most of the current PSO contracts cover a period from 2010 to December 2019. The PSO contract for Vorarlberg has been renewed whilst the contracts for other regions are still being negotiated with the incumbent. Direct award is used for all regional services.

Long-distance

Direct award is also used for the majority of long distance services except for lines where there is open access competition.

Belgium

Regional

The domestic passenger rail market is not open to competition. Thus, the incumbent operator - Société Nationale des Chemins de Fer Belge (NMBS-SNCB) is the only railway undertaking in the market. Currently, there is no new management contract. The previous one was legally extended for four additional years, until the new contract enters into force. The current public service contract was directly awarded to the incumbent operator in 2008. Regional, local and long-distance traffic are considered as public service transport.

Long-distance

A PSO contract was directly awarded to the incumbent operator, NMBS-SNCB, to cover national passenger services for a four-year period.

²¹ See the Main Report, part 7.2. for details on the methodology used.

Bulgaria

Regional

There is currently only one operator responsible for the public passenger railway traffic. The Ministry of Transport, responsible to manage the public transport service, has launched a tendering procedure for the provision of PSO services. The Ministry drafts the contract and the operator has to adhere to it, without any negotiations between the parties.

Long-distance

No long-distance PSO contract was directly awarded to railway undertakings, with active services in 2017, nor has it been tender awarded any PSO contract to railway undertakings with services commenced between 2013 – 2017.

Croatia

No distinction between Regional and Long-distance

Public transport services are centrally organised by the Ministry of the Sea. For the time being, there is only one operator of PSO rail passenger services in Croatia, HZ Putnički prijevoz d.o.o. (HZ Passengers). The PSO contract is *de facto* awarded directly to the incumbent operator. Domestic railway passenger transport in Croatia has not been liberalized yet.

Czech Republic

Regional

Contracts for PSO passenger rail services are awarded either directly or through competitive tendering. The oldest contracts have a duration of ten years, but more recent ones have a maximum duration of 15 years. One regional PSO contract of around 829 million train-km has been awarded to the incumbent covering all the territory. Three contracts have been granted to other railway undertakings for certain regions. Two of these contracts represent around 4 million train-km, the other covers four specific lines.

Concerning the PSO contracts awarded via competitive tenders, only one contract had three bidders; including one from the incumbent operator. The PSO contract, awarded to another railway undertaking covers approximately 20 million train-km. In both cases, whether contracts were awarded directly or via a public tender, the contracting authority was a regional authority.²²

Long-distance

The long-distance services are granted to the incumbent operator, Czech Railways, through a directly awarded PSC for a duration of ten years. In addition, a public tender process was launched with five bidders interested, one of them being the incumbent operator. However, GW Train Regio a.s. won the PSC,

²² There are 14 regions (including the city of Prague), concerning the regional transport services.

which has a duration of ten years as well. For both processes the contracting authority is the state, the Ministry of Transport.

Denmark

Regional

There has not been any competitive tendering procedures in the period of 2013-2017. The PSO contracts were negotiated between the Danish State and the relevant railway undertaking before 2013. After these negotiations, the PSO contracts were extended. The duration of PSC varies from eight to ten years. A directly awarded contract was given to the Danish incumbent (DSB) for the period from January 2015 until December 2024.

Long distance

A PSO contract was directly awarded. The Danish incumbent, DSB, is the only RU, which has a PSO contract for long distance. The duration is the same as for regional distance, 10 years. The awarding authority is the State. In this case “long distance” is defined as the routes passing the Great Belt (the sea between the two major islands Zealand and Funen) from Copenhagen to 3 different major cities in Jutland (Esbjerg, Aarhus and Aalborg).

Estonia

Regional

Although the market is fully open to competition, no one has been willing to enter the market, given its small size. The state-owned company, AS Eesti Liinirongid, operates passenger services under a PSC. This contract was established between the Ministry and the incumbent and was negotiated by the parties. The current PSC has a duration of five years. For the time being no decision has been made on the need and possibility and to extend the duration of the contract.

Long-distance

No long-distance PSO contract was directly awarded to railway undertakings, with active services in 2017, nor has it been tender awarded any PSO contract to railway undertakings with services commenced between 2013 – 2017.

Finland

Regional

The competent authorities, the Ministry of Transport and Communications and the Helsinki Regional Transport Authority, have concluded agreements with the incumbent railway undertaking VR Group. The VR Group will provide commuter rail services in Helsinki region until 2021 and in other regional areas until the end of 2019. Long distance

Two different contracts has been directly awarded by the Ministry of Transport and Communications to the incumbent railway undertaking VR Group. According to the other contract VR Group provides long-distance passenger services until the end of 2019 and according the other one until the end of 2024. Since there is no other railway undertaking for passenger services in Finland, VR Group provides all the traffic. The whole traffic is considered to be included within PSO-contracts. Therefore, there has not been any kind of competition in Finland's railway passenger market.

France

Regional

17 PSC were effective in 2017 for regional services (called "TER"), all of them directly awarded to the incumbent operator SNCF Mobilités, a state-owned entity. Following changes in the law²³, the regional authorities which are responsible for the negotiation and implementation of the PSC (directly with the incumbent) are entering into new agreements. Therefore, it is expected that between 2017 and 2019, almost all the Regions will have a new regional PSC agreement in place. The average duration of the PSC is around eight years, with the possibility to renew it. In 2017, active PSO services in different areas of France represented around 235 million train-km resulting from the above-mentioned 17 directly awarded contracts.

Long-distance

In February 2017, the incumbent operator, SNCF Mobilités, was directly awarded a PSC to provide long-distance services (the commercial name being "Intercités"). This five year (2016-2020) contract can be extended to 2023. It covers mainly daily trains but also some night trains (respectively on 16 services and 2 lines in 2018²⁴). In 2016, agreements were signed with six of the 13 new administrative Regions in order to transfer 18 daily services to the Regions, on the basis that they had a "regional vocation". Transfers were carried out between January 2017 and January 2020. Conversely, six services remained under the responsibility of the state. The contracting authority responsible for this PSC is the state.

²³ A law related to the delimitation of the Regions that led to the fusion of some administrative Regions (which reduced the number of Regions from 22 to 13 in metropolitan France) was adopted in 2014 and a law on a new territorial organisation of the Republic reinforce the competences and the roles of the Region in terms mobility was adopted in 2015.

²⁴ In April 2016, the French State launched a call for expression of interest to invite all the railway operators to suggest new innovate exploitation scheme. However, no expression of interest was received at the deadline. The State thus decided not to finance the exploitation of the line anymore but is still attentive to a trade-in offer.

Germany

Regional

The domestic passenger rail market was one of the first markets in Europe to be liberalised. Regional public transport is organized in 27 individual authorities, each of them being responsible for their geographical zone. PSC are usually awarded by competitive tendering by the regional competent authorities. Only in exceptional cases (and with a declining trend) contracts are awarded directly, for example in the cases where contracts are needed to temporarily bridge the time until the start of the next tender, or contracts with very little traffic or contracts for routes that can only be operated by one special company for technical or rolling stock reasons.

In 2017, active PSO services in different areas of Germany covered around 100 million train-km resulting from 48 directly awarded contracts. Around 70% of these contracts representing 90% of the awarded train-km were directly awarded to the domestic incumbent DB.

More than 100 contracts awarded through competitive tenders in the period between 2013 and 2017 cover 300 million train-kms. DB, the domestic incumbent, was the recipient of half of the contracts both in terms of number and volume, but this approach has declined over the years,. The average duration of PSC varies between nine years in the case of contracts competitively tendered and four years for directly awarded contracts.

Long-distance

There are no tendered or directly awarded PSCs for long-distance services. Long-distance services are provided as non-PSO services with DB occupying more than 99% of the market. However, competitors are free to offer non-PSO long-distance services in Germany, too.

Greece

No distinction between Regional and Long-distance

There is only one directly awarded contract, covering all the country, given to the incumbent operator, Trainose, by the central state authority. The average duration of the current contract is five years. The Greek market for domestic passenger services will be open to competition in 2019.

Hungary

No distinction between Regional and Long-distance

The domestic passenger services market is open to competition since 2006, with the PSC being managed centrally by the government and the Ministry for Innovation and Technology. There is no difference between regional and long-distance traffic services which are covered by the PSCs nationally. The PSCs were directly awarded to the two railway undertakings (one of which can be qualified as incumbent for historical reasons), operating in the market: Máv-Start

Zrt. (a State-owned company) and Gysev Zrt. (also state-owned but jointly owned by the Austrian State²⁵ and a private company). The ongoing PSCs have a duration of ten years and cover around 82 million train-km.

Italy

Regional

There is competition for the market in regional and local transport under PSO. However, the competition is not as developed as intended and the use of competitive tendering to allocate services under PSO is starting to become more common. Local and regional passenger domestic PSO services are awarded by the region on the basis of PSCs. Under existing legislation, competent administrations may entrust local public transport services through direct award procedures; the use of competitive tendering, though possible, is not mandatory.

In 2017, active PSO services in different regions of Italy representing around 218 million train-km were based on 34 directly awarded contracts. Around 70% of these contracts representing 92% of the awarded train-km were directly awarded to domestic incumbents, namely 61% to Trenitalia, 18% to Trenord, 8% to a partnership between TPER+Trenitalia and the rest (5%) to other incumbents (ATI Trenord-ATM, Busitalia and FSE).

Public service procurement through direct awards continues to be the preferred option of competent authorities to ensure the provision of regional transport under PSOs. Contract extensions have often been granted to the incumbent Trenitalia.

Long-distance

Long-distance PSO services are provided by Trenitalia on the basis of a PSC directly awarded by the Ministry of Transport and Infrastructures as well as the Ministry of Economy and Finance to the Company (expiring in 2026). These PSC have a duration of 10 years and the long-distance PSC represented around 25 million train-km directly awarded.

Latvia

Regional

The domestic passenger market is open to competition. However, no competitor has yet entered the market. The regional and suburban passenger services in Latvia were directly awarded to the incumbent operator, Pasazieru vilciens JSC (a state-owned company) through a PSC, that covers all the network. In addition, regional narrow-gauge heritage operator, Gulbenes – Aluksnes banitis Ltd., has also been awarded a PSO contract. The contracting authority is the state, represented by the Council of Public Transport, which is a collegial institution under the institutional supervision of the Ministry of Transport. The average duration of the contract is approximately fifteen years for the contract with the

²⁵ About 28% are owned by the Republic of Austria and administrated by its Ministry of Transport.

incumbent operator and one year, annually renegotiated, for the other railway undertaking.

Long-distance

No long-distance PSO contract was directly awarded to railway undertakings, with active services in 2017, nor has it been tender awarded any PSO contract to railway undertakings with services commenced between 2013 – 2017.

Lithuania

No distinction between Regional and Long-distance

No separate PSO contract are granted for regional and long-distance services. The competent authority in charge of the PSC award is the state, the Ministry of Transport and Communications. PSCs were directly awarded to the incumbent operator. Although the national passenger service network has been open to competition since before 2004, no new entrants has entered in the market since then.

Luxemburg

No distinction between Regional and Long-distance

The domestic passenger market has not yet been opened to competition. PSCs are centralised by the state authority, namely the Ministry of Transport who directly awarded the contract for all rail PSO traffic to the incumbent CFL. The duration of this contract is fourteen years.

Republic of North Macedonia

No distinction between Regional and Long-distance

One PSC was directly awarded to the incumbent operator, MR Transport JSC, representing around 1,8 million train-km, for a duration of three years. Additionally, there is another publicly tendered PSC, owned by the incumbent operator, of around 1,7 million train-km with a duration of four years.

The Netherlands

Regional

Contracts for regional public transport services are granted by the competent local authorities through public tenders. Of the twelve tenders outlined by the Regulatory Body, only one was attributed to the incumbent operator NS Reizigers. Based on the available information, eleven PSCs represent around 26 million train-km.²⁶ Information reported shows that the incumbent operator competed for three more tenders but lost to other railway undertakings (in this

²⁶ There is no information regarding the train-km included in the PSC with the incumbent operator.

specific case to Arriva, Connexxion and Keolis). In most of these tenders, there was more than one bidder, on average three. The maximum duration of a PSC is fifteen years, some PSC have a ten-year duration.

Long-distance

In 2015, the Ministry of Transport directly awarded, a concession to run long-distance services to the incumbent operator, Dutch Railways - NS Reizigers. This concession is valid from 2015 to 2024.

Norway²⁷

Regional

Two contracts were directly awarded, by the Ministry of Transport and Communications – the competent authority for negotiating PSCs. The largest contract was awarded to the incumbent operator NSB AS, a state-owned company, and included both regional and long-distance traffic. This PSC was granted for six years, until the end of 2017. In 2018, a new contract was directly awarded to NSB, running until December 2022. Regarding regional traffic, no contracts were granted through a public tender. There was also an additional PSC directly awarded to Flytoget AS for fifteen years for the line connecting Drammen to Oslo Airport.

Long-distance

The largest PSC was awarded directly to the incumbent operator, NSB AS, a state-owned company, covering both regional and long-distance traffic. Another PSC was directly awarded to SJ AB, a non-incumbent railway, also for six years. In addition to these PSCs a tender was negotiated with the state authority, the Ministry of Transport and Communications, in cooperation with competent authorities in Sweden for a long-distance international service (Stockholm – Narvik), for a six-year period.

Poland

Regional

Regional public transport is organized in 16 individual authorities²⁸, each one responsible for its geographical zone. Regarding PSCs for active regional services in 2017, 13 contracts were directly awarded, all granted to railway undertakings other than the incumbent, but all publicly owned by regional authorities. These contracts covered around 50 million train-km. Most of these contracts have one-year duration, except for three contracts which have a four year duration. Regarding tenders awarded in 2017, there was one active regional PSO contract operated by Polish branch of Arriva owned by German incumbent DB.

²⁷ Norway aligns its transport legislation with EU law

²⁸ Those authorities are called Voivodeships and are managed by Voivodeship Marshals.

Long-distance

There are two PSCs for long-distance services, one for domestic and one for international services. Both were directly awarded by the state to the incumbent long-distance operator PKP Intercity. The contracts last for one year. The total train-km for the domestic PSC is around 42 millions and for the international PSC is around three million.

Portugal

Regional

The domestic rail passenger transport was not yet liberalized in 2017. It was partially liberalized when in 1999, a public tender process was awarded to the private operator, Fertagus, to run a railway passenger service on a suburban line across the Tagus River. The tender involved three parties, not including the incumbent operator. In mid 2000, the duration of the Fertagus PSC was renegotiated from thirty to six years, with the possibility to be renewed in 2010. The contract is currently active until December 2019. There is also a concession, granted by law, to the incumbent operator Comboios de Portugal (CP), which allows them to operate trains on the country's network. The awarding competent authority is the state, through the Secretary of State for Infrastructure and Planning. Pursuant to legislation, in 2018 the Government approved a PSO contract including the PSO imposed to CP, as a internal operator. The contract is now being assessed by AMT.

Long-distance

Although CP's long distance services were not covered by a PSC, CP has a direct concession from the State and has been operating long-distance trains in exclusivity.

Romania

No distinction between Regional and Long-distance

PSCs are only granted via the direct awards. In 2017, there were active PSO services in different areas of Romania covering around 65 million train-km resulting from seven directly awarded contracts. Of these contracts, only one (14%) was awarded to the incumbent domestic operator - CFR Călători - representing 82% of the directly awarded train-km. The remaining six contracts were awarded to other railway undertakings, which represent 86% of the total number of contracts, but only 18% of the directly awarded train-km.

There is no distinction between regional and long-distance services. The contracting authority is the Railway Reform Authority, a state entity. The average duration of most PSCs is four years, with the possibility of an annual renewal. There are also PSCs with more or less two years of duration.

The railway network in Romania is divided between interoperable and non-interoperable lines. Operable lines are the main lines connected to the Trans-European railway infrastructure and the non-interoperable infrastructure that can

not be connected to the Trans-European railway infrastructure. Private railway undertakings are mainly operating on the non-interoperable infrastructure.

Slovakia

Regional

Domestic passenger railway transport is open to competition. Two PSCs have been directly awarded; one to the incumbent operator, ZSSK, a state-owned company covering all the territory, and another one to Regio Jet, for a regional line (from Bratislava to Komárno). The contracting authority was the Ministry of Transport and Construction. The duration of both PSCs is ten years.

Long-distance

Long-distance services are also managed under a PSC directly awarded to the incumbent operator, ZSSK (Železničná spoločnosť Slovensko) by the state authority, for a period of ten years. This PSC covers around 32 million train-km (this include regional services).

Slovenia

No distinction between Regional and Long-distance

Given the small size of the country there is no distinction between regional and long-distance public transport service. There is only one passenger rail operator active in the domestic market, and the PSC is directly awarded to the incumbent operator, SZ-Potniski promet, by the Ministry for Infrastructure. The duration of the contract is 14 years. The total train-kms falling under the PSO contract are determined annually in annexes based on the annual timetable.

Spain

Regional

The domestic passenger services are not liberalized yet. There are several ongoing PSCs for regional and suburban services, between Renfe Viajeros and the Ministry of Transport as well as with some regional authorities. The provision of these services is awarded through a direct negotiation process.

Long-distance

Long-distance passenger traffic is not considered a PSO, and these services are provided as non-PSO services.

Sweden

Regional

The market for domestic passenger services has been open since 2010. Regional services are competitively tendered by regional transport authorities. There were

eleven tender processes between 2013 and 2017. Based on the information available, the incumbent operator SJ participated in six tenders (there is no information regarding the rest of the process) and won four of them. The average duration of the PSC is eight years, sometimes with an option to renew PSC for three more years on average.

The eleven active PSCs publicly tendered, in different areas of Sweden, represent around 55 million train-km²⁹ based on the contracts commenced between 2013 and 2017. Of these, 53% of the awarded train-km were to the domestic incumbent SJ.

Long-distance

The Swedish Transport Administration is responsible for the PSC related to long-distance traffic. There was a public tender process for night operations, which the incumbent operator won. This PSC which started in June 2013 lasts for five years with the possibility of renewal for further two years

Switzerland³⁰

Regional

Rail passenger services are organised jointly by centralised (Federal) and decentralised (the Cantons) authorities. In regional services, PSCs are directly awarded to operators. Regional services are granted and compensated by both the Federation and the Cantons. The contracts are usually awarded for two years.

Long-distance

The Federal Office of Transport recently decided to give concessions not only to the incumbent operator, SBB AG (Swiss Federal Railways), a company fully owned by the Swiss government, but also to another railway undertaking. This means that from December 2019, BLS AG, a company owned by the Swiss government and the canton of Berne, will be the owner of the concessions for the Bern-Biel line, as well as for the Bern-Burgdorf-Olten line. The existing exclusivity of the incumbent operator will end. The contracts have been awarded for ten years.

United Kingdom

Regional

Regional services are competitively tendered by the state transport authority - the Department for Transport. Between 2013 and 2017, there were ten tender processes, representing in the different areas around 285 million train-km, all of them had more than two bidders with a maximum of five in total. The average duration of the PSC is around nine years. For the mainline railway in the UK there

²⁹ This information does not consider one of the PSCs tendered to the incumbent operator in the area of Västra Götaland (Kinnekulletågen), since it is not available.

³⁰ Although Switzerland does not belong to the EU, it ensures the homogeneity with EU legislation.

is no longer an incumbent operator following the break up and privatisation of British Rail in 1993.

Long-distance

The Department for Transport is the responsible authority for the awarding of the PSCs. In long-distance passenger services two PSC were awarded directly, none of them to the incumbent operator³¹, with an average duration of twenty-eight years. Additionally, there were also two public tender processes to grant long-distance services. Three bidders participated in each of these processes and none of them was the incumbent operator.

The mentioned PSCs represent around four million train-km. The average duration of the PSC is twelve years.

³¹ There is no incumbent operator in the UK railway market, since the incumbent operator was privatized a few years ago.

08

Incumbent's strategies to access rail passenger markets abroad



8. Incumbent's strategy to access rail passenger markets abroad

In order to complete the analyses in the main report, this chapter offers more detailed information on the incumbent's strategy to access rail markets abroad, in particular at country-level.

It is worth highlighting that the number of railway undertakings mentioned in this section may differ from the one used in other chapters of the working document. In this respect we refer to the introduction of the main report for the counting rules.

8.1. Total number of passenger railway undertakings by country and their activities

There is a significant disparity in terms of the number of railway undertakings operating on the European rail network (Figure 29). Representing the biggest passenger rail market, Germany also has the highest number of active railway undertakings. There are 130 operators offering passenger services in the country. Conversely, 16 countries have less than five passenger railway undertakings in their market and six countries only have one railway undertaking providing passenger services.³²

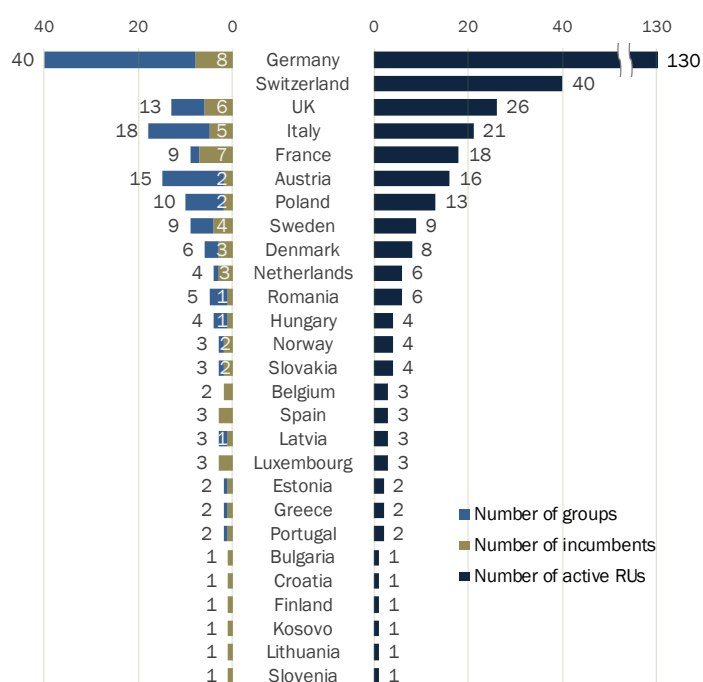
Unsurprisingly, Germany has the highest number of ownership groups with a total of 40. There are as many groups as railway undertakings in countries that have three or less railway undertakings, except for Belgium. Meanwhile, Hungary and Sweden (with four and nine active railway undertakings respectively) both have the same number of groups and railway undertakings.

28 incumbent groups are active in Europe.³³ Germany occupies the first place with eight incumbents, followed closely by France (seven) and UK (six).

³² Compared to figures presented in the Fifth Annual Market Monitoring report, regarding the number of railway undertakings some countries such as France show big discrepancies. This is due to changes in the counting method as mentioned above.

³³ There is one incumbent per IRG-Rail country studied in this chapter (i.e. 27 incumbents) and one non-member incumbent (Hong-Kong) which provides services in the countries studied (Sweden and UK).

Figure 29 – Number of active railway undertakings and ownership groups by country³⁴



The large number of railway undertakings in several countries does not, however, reflect the true degree of competition in these national passenger rail markets. A small number of groups, incumbents in particular, are dominating. For instance, in Germany, DB accounts for 70% of passenger train-km (Figure 22 and Figure 26), performed by seven railway undertakings belonging to the incumbent's group. Four other groups also have several affiliated railway undertakings active in Germany: Transdev (a non-incumbent) having eight railway undertakings, FS having five companies, SNCF and NS both having three railway undertakings. Together, these four groups account for 18% of passenger train-km in Germany in 2017.

Some countries, like the UK have a quite large number of active railway undertakings but several of them are parts of a limited number of transport groups. In the UK, three non-incumbents are quite active, holding eight railway undertakings (four of FirstGroup, two of Go-Ahead, two of Stagecoach), along with ten railway undertakings affiliated with two incumbents (six with DB and four with NS). These five groups are sharing 89% of the British train-km in 2017. Similarly, in France, there are 18 railway undertakings transporting passengers, of which 13 companies belong to for groups only. SNCF holds six railway

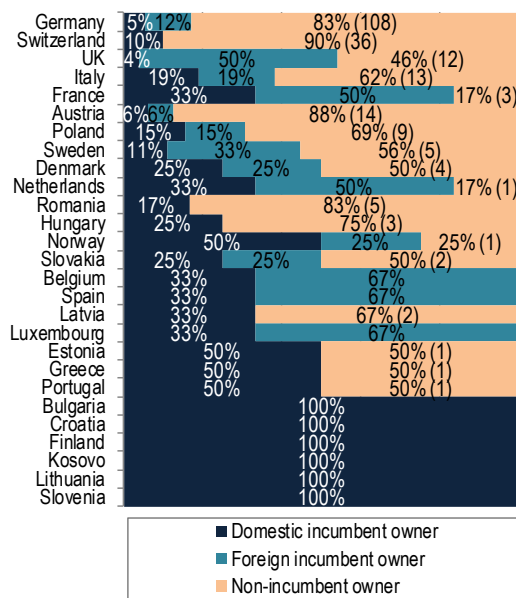
³⁴ Missing data on the number of incumbents (other than SBB) and groups in Switzerland. Note that there can be several incumbents when more than one railway undertaking belongs to the domestic incumbent group (ownership of 50% or more of stakes). In Poland, for the purpose of this chapter, all railway undertakings were taken into consideration, including those operating urban, suburban or regional services on local and regional stand-alone networks, which are excluded from other chapters according to the market monitoring guidelines. One of them is incumbent DB-owned UBB, the second is Warsaw suburban region-owned WKD.

undertakings, FS has three companies, two railway undertakings belong to DB group, and two others to Transdev.

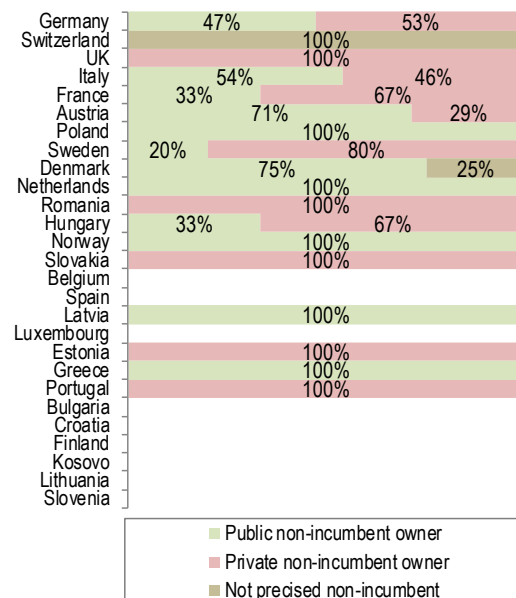
Furthermore, the existence of partnership between railway undertakings, especially between incumbents, also makes the rail passenger market less competitive than it seems. Indeed, it is not rare that a foreign RU cooperates with the domestic incumbent to perform cross-border activities or realize a common service between related countries. In France for instance, CFL (Luxembourg) operates cross-border PSO services in partnership with SNCF – the domestic incumbent. This latter, meanwhile, cooperates with Renfe (Spanish) on an international line between the France and Spain. The same observation can apply to Polish incumbent PKP which realizes services in Poland and neighbouring markets in partnership with the incumbents of those countries (Germany, Czech Republic, Slovakia, Austria, Hungary, Ukraine, Belarus and Russia).

Figure 30 – Share of railway undertakings according to the type of ownership

(a) share of RUs according to their type of ownership (in number of RUs)



(b) share of non-incumbent RUs according to the characteristics of their owner (in number of RUs)



Note for the reader: White bars on the RHS figure correspond to countries where there is no non-incumbent. On the LHS graphic, the figure on the parenthesis correspond to the number of non-incumbent owner.

Breaking down the total number of railway undertakings in each country by types of ownership, it is possible to identify three categories (Figure 30 (a)).

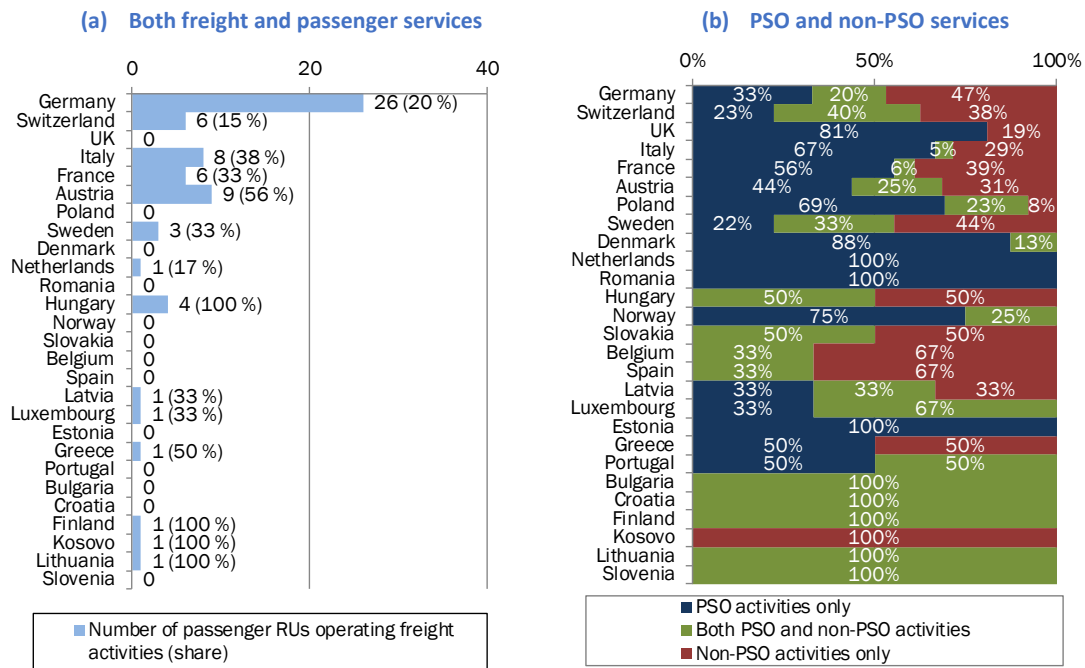
- In the first category, there are six countries where the domestic incumbent is still the only active passenger rail operator: Bulgaria, Croatia, Finland, Kosovo, Lithuania and Slovenia.
- The second category contains countries in which the market is currently shared by the domestic incumbent and another type of railway undertaking. In three countries (Belgium, Spain and Luxembourg), this is

the foreign incumbent whereas, in other six countries (Romania, Hungary, Latvia, Estonia, Greece and Portugal), it is a non-incumbent.

- The last category corresponds to twelve countries in which all three types of railway undertakings (domestic, foreign and non-incumbents) are operating passenger services.

Regarding the type of services offered by railway undertakings, Figure 31 (a) shows that in 13 countries, passenger railway undertakings are highly specialized as they do not offer any freight services. In the opposite, in some countries, all the passenger railway undertakings also offer freight services, when there is only one passenger railway undertaking such as in Finland, Kosovo or Lithuania, but also when there are several railway undertakings such as in Hungary. Germany has the largest number of railway undertakings offering both passenger and freight activities – 26 companies or 20% of total number of railway undertakings.

Figure 31 – Type of services provided by passenger railway undertakings in each country (based on number of railway undertakings)



Most of the monitored countries have a blend of operators with PSO and non-PSO activity (Figure 31). This may be due to the fact that there are railway undertakings providing mixed services (both PSO and non-PSO – green type) but also because both PSO-only (blue) and non-PSO-only (red) railway undertakings are present in the country. Mixed-service railway undertakings are operating in 21 countries (out of 27 monitored). Among them there are five countries where this is the only type of transport company (Bulgaria, Croatia, Finland, Lithuania and Slovenia), and eight countries in which all three types of railway undertakings exist (Germany, Poland, Italy, France, Austria, Sweden, Latvia and Switzerland). Additionally, there are two countries in which the market

is in competition for both specialized service providers (PSO-only and non-PSO-only RUs). These are the UK and Greece. Finally, in three countries (Netherlands, Romania and Estonia), railway undertakings exclusively provide PSO services.

There are three countries where passenger railway undertakings are awarded PSO services on an exclusive basis: Romania, Netherlands and Estonia. In contrast, the only railway undertaking in Kosovo provides non-PSO activities only.

8.2. Strategies of historical incumbents when operating abroad via their subsidiaries

As stated in the main report, in this section, we are interested in activities of historical incumbents operating abroad exclusively through their subsidiaries, i.e. companies in which the incumbents have shares.

Figure 32 specifies for each incumbent the markets that its subsidiaries entered based on the country in which the railway undertakings are established.

Figure 32 – Markets entered abroad according to the seat of the incumbent’s subsidiaries

| Incumb. | Seat | Markets entered | Subsidiary |
|---------|------|--|----------------------------------|
| | CZ | CZ SK | Arriva Transport Ceska Republika |
| | DE | AT CZ | DB RegioNetz Verkehrs |
| | DE | AT CH CZ FR NL PL | DB Regio |
| | DE | AT BE CH CZ DK FR HR HU IT LU NL PL SI | DB Fernverkehr |
| | DE | PL | UBB |
| DB | DK | DE DK | Arriva Danmark |
| | NL | BE DE NL | Arriva Nederland |
| | PL | PL | Arriva RP Sp. |
| | PT | PT | Arriva Portugal |
| | SE | SE | Arriva Sverige |
| | UK | UK | Arriva plc. |
| | AT | AT | Westbahn |
| | BE | BE DE FR NL | Thalys |
| | DE | DE NL | Keolis Deutschland |
| | FR | CH | SNCF-Lyria |
| | IT | IT | SVI |
| | UK | BE FR UK | Eurostar |
| | UK | UK | Keolis UK |
| | DE | DE | NEB Betriebsgesellschaft mbH |
| | US | US | Keolis US |
| | DE | DE | Netnera |
| | FR | FR | Thello |
| | GR | GR | TRAINOSE |
| | UK | UK | c2c |
| | CH | IT | Cisalpino |
| | DE | DE | SBB GmbH |
| | FR | FR | SNCF-Lyria |
| | IT | IT | TILO |
| | DE | DE | Abellio |
| | UK | UK | Greater Anglia |
| | UK | UK | ScotRail |
| | UK | UK | West Midlands Trains |
| | BE | DE FR NL | Thalys |
| | UK | FR UK | Eurostar |
| | DE | DE | neg Niebüll GmbH |
| | DE | DE | VIAS |
| | SE | SE | Svenska Tågkompaniet AB |

In most cases, the railway undertaking establishes its headquarters in the country where it offers rail services. For instance, DSB (the Danish incumbent) has shares in VIAS which is a transport company based and operating in Germany. Other examples can be observed for the subsidiaries of CFL, NSB, NS³⁵, FS, among others.

The subsidiaries may provide services in multiple countries as well. DB Arriva Personenvervoer Nederland, for instance, is not only active in the Netherlands, the country where it is based, but also in Belgium and Germany. Similarly, Thalys – a French-Belgian company, has its headquarters in Belgium and

³⁵ NS is present in the German market via three subsidiaries of Abellio group (Abellio Rail NRW GmbH, Abellio Rail Mitteldeutschland GmbH, Abellio Rail Baden-Württemberg GmbH).

Note for the reader: “Incumb” refers to the name of the incumbent, “Seat” refers to the seat of the incumbent’s subsidiaries and “Markets entered” lists the countries in which the subsidiary operates.

Reading example: The French incumbent, SNCF, has seven subsidiaries which provide passenger rail services abroad. Among them, Thalys bases its seat in Belgium and operates in four countries (Belgium, Germany, France and the Netherlands). Similarly, Keolis has its headquarters in Germany and operates in Germany and the Netherlands.

transports passengers between four different countries.

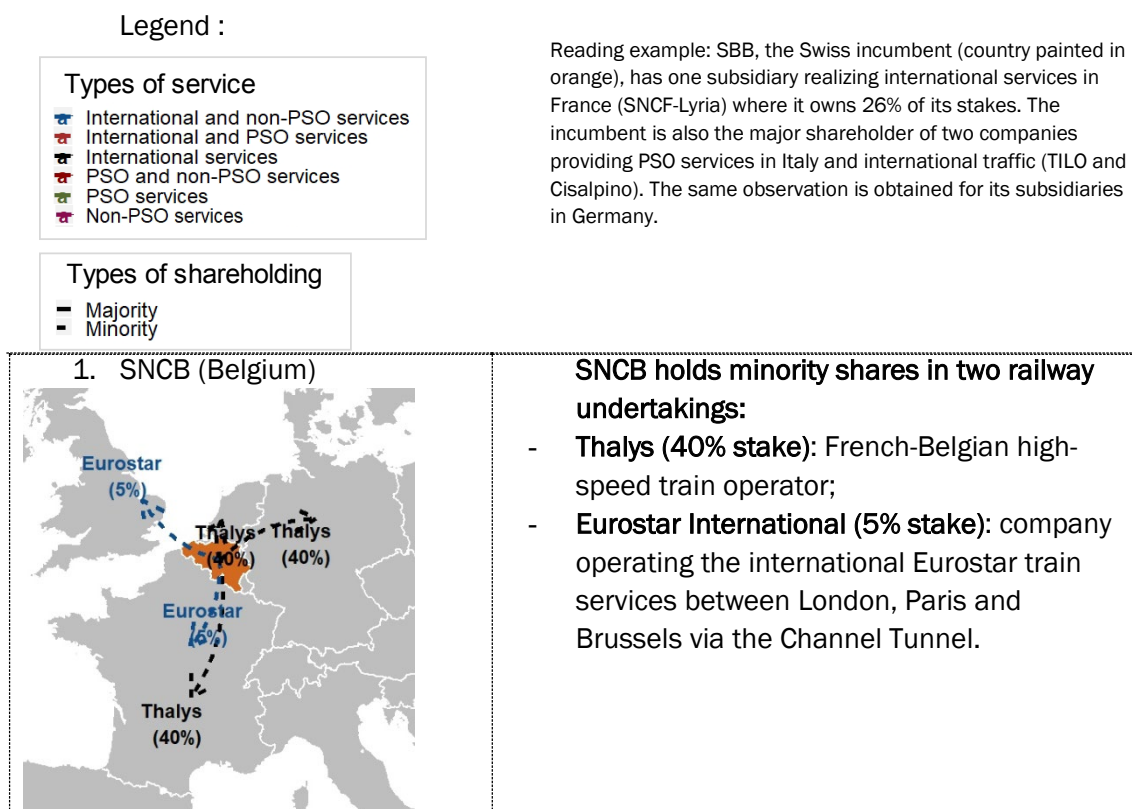
The third category involves subsidiaries which have their main office in the country of their mother incumbent but operate rail services in several countries abroad.

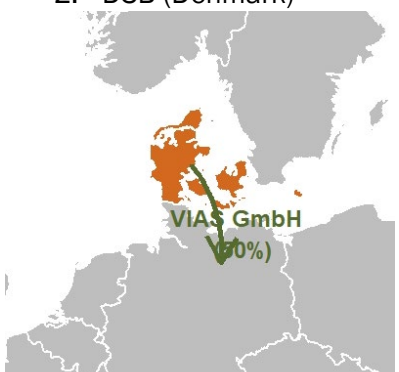
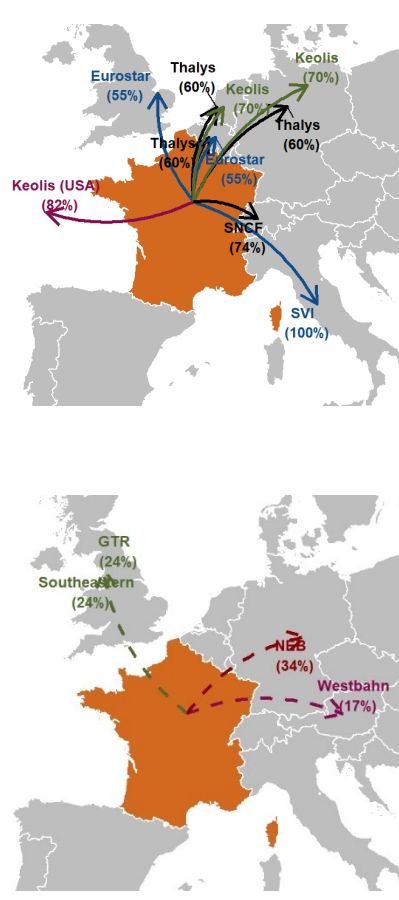
This is the case for certain affiliates of DB (DB RegioNetz Verkehrs GmbH, DB Regio AG, DB Fernverkehr AG, UBB).

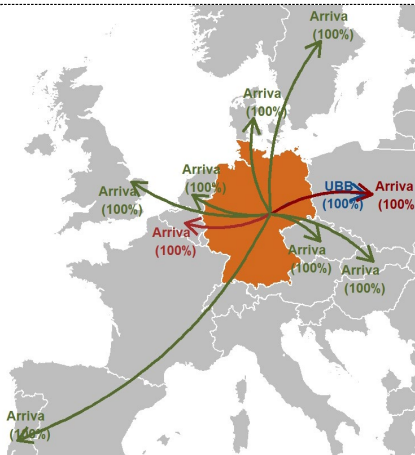
The choice of which markets to enter seems to be greatly influenced by the geographical proximity between the operating markets and the incumbent’s seating country, among other reasons. Most of incumbents’ foreign markets have a direct border with their domestic country. This is even more true when incumbents have only a limited number of subsidiaries abroad.

Figure 33 illustrates this fact. It also details the participation in subsidiaries and the services offered of eleven historical incumbents. Other incumbents (in 17 countries as mentioned above) are not displayed as they do not operate in foreign markets through their subsidiaries.

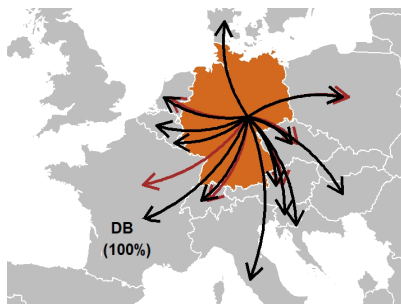
Figure 33 – Presence of ten incumbents abroad via their subsidiaries



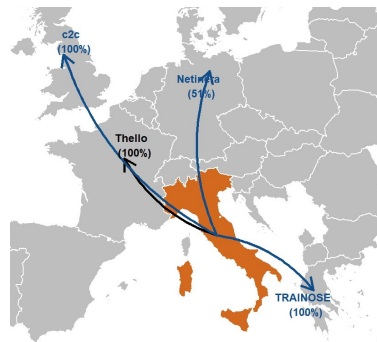
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| <p>2. DSB (Denmark)</p>  <p>A map of Europe with Denmark highlighted in orange. An arrow points from Denmark to a label 'VIAS GmbH (50%)' located in Germany.</p> | <p>DSB holds a 50% stake in VIAS which is a railway undertaking based in Germany and providing regional PSO services there.</p> |
| <p>3. SNCF (France)</p>  <p>The top map shows SNCF's stakes in Eurostar (55%), Thalys (60%), Keolis (70%), Keolis (USA) (82%), and SVI (100%). The bottom map shows stakes in GTR (24%), Southeastern (24%), NEB (34%), and Westbahn (17%).</p> | <p>SNCF has shares in a number of transport companies, the majority of which are owned by 50% or more by the incumbent:</p> <ul style="list-style-type: none"> - Thalys (60% stake): French-Belgian high-speed train operator; - Eurostar International (55% stake): company operating the international services between London, Paris and Brussels via the Channel Tunnel; - Keolis (70% stake in German branch, 82% in the US): French-Canadian private operator of public transport; - SNCF Voyages Italia (100% stake): fully-owned subsidiary operating rail services in Italy; - Govia and LSER (both 24% stake): transport companies based in the UK and operating suburban PSO services there; - Westbahn (17% stake): RU providing long-distance non-PSO activities in Austria; - NEB (34% of stake): RU specialized in suburban/ regional rail transport (both PSO and non-PSO) in Germany; - Lyria (74% of stake): French-Swiss company organizing international services between France and Switzerland. |
| <p>4. DB (Germany)</p> | <p>DB is present in 17 different countries abroad through its numerous subsidiaries of which it owns 100% of the stakes:</p> <ul style="list-style-type: none"> - Arriva: Transport group with subsidiaries that are based and operating in seven European countries (UK, Netherlands, Denmark, Sweden, Poland, Czech Republic and Portugal); - DB RegioNetz Verkehrs GmbH, DB Regio AG: Affiliates of DB providing domestic regional passenger services and |



- international services in six countries abroad;
- **DB Fernverkehr AG:** Branch of DB realizing domestic and international long-distance services;
 - **UBB Usedomer Bäderbahn:** German-based subsidiary offers domestic regional passenger services with a short international (cross-border) service into Poland.




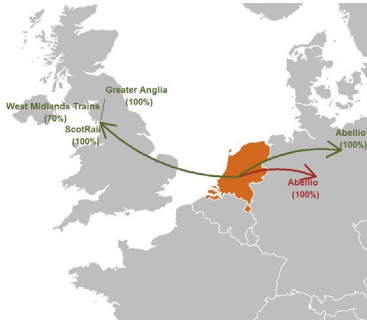

5. FS (Italy)



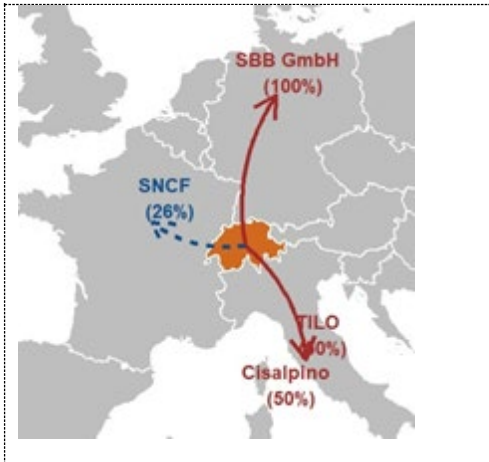
- FS group has three fully-owned subsidiaries** which operate passenger rail services:
- **Thello:** an open-access train operator running international services between France and Italy
 - **C2C** (City to Coast – former NXET): London-based RU offering C2C train connections in the UK
 - **TrainOSE:** the Greek incumbent realizes both passenger and freight services (acquired in September 2017 by FS).

Besides, **FS has a 51% stake in Netinera**, a French-Luxembourg-Italian company, performs PSO urban and suburban services in Germany where its headquarter is based. A daughter of Netinera, named “Die Länderbahn” also provides cross-border-services from Germany to Czech Republic and Poland.³⁶

³⁶ In Poland Die Länderbahn cooperates with Koleje Dolnośląskie for the realisation of cross-border services. Each railway undertaking is responsible for the route on the territory of its country. Die

| | |
|---|--|
| <p>6. CFL (Luxembourg)</p>  | <p>CFL has a fully-owned subsidiary, Neg Niebüll, which is based and providing regional PSO services in the district of Nordfriesland in Germany. It also performs infrastructure management there.</p> |
| <p>7. NS (Netherlands)</p>  | <p>NS are active in Germany and the UK through its majority-owned subsidiaries:</p> <ul style="list-style-type: none"> - Three companies of the Abellio group (100% stake): RUs realizing PSO regional services in Germany. Abellio Rail NRW provides international trains as well. - Greater Anglia (100% stake), ScotRail (100%) and West Midlands Trains (70%): railway companies perform PSO services in the UK |
| <p>8. NSB (Norway)</p>  | <p>NSB's fully-owned subsidiary, Svenska Tågkompaniet, is a railway company that operates franchises (PSO and international services) in Northern Sweden and Greater Stockholm. Svenska Tågkompaniet previously was a Swedish non-incumbent RU that NSB acquired in 2007.</p> |
| <p>9. SBB (Switzerland)</p> | <p>SBB is the majority or minority shareholder in four transport companies which operate rail passenger services:</p> <ul style="list-style-type: none"> - SBB- Deutschland GmbH (100% stake): fully-owned subsidiary that is based and operating in Germany; - TILO (50% stake): Italian-Swiss company providing long-distance PSO services in Ticino canton and Lombardy in Italy; |

Länderbahn also operates transit services through Poland between Germany and Czech Republic on a line that goes through Polish territory, but has no link to the railway network in Poland. Besides, Netinera has 50% shares in ODEG, which performs regional services in Germany (including privileged transit services through border region in Poland).



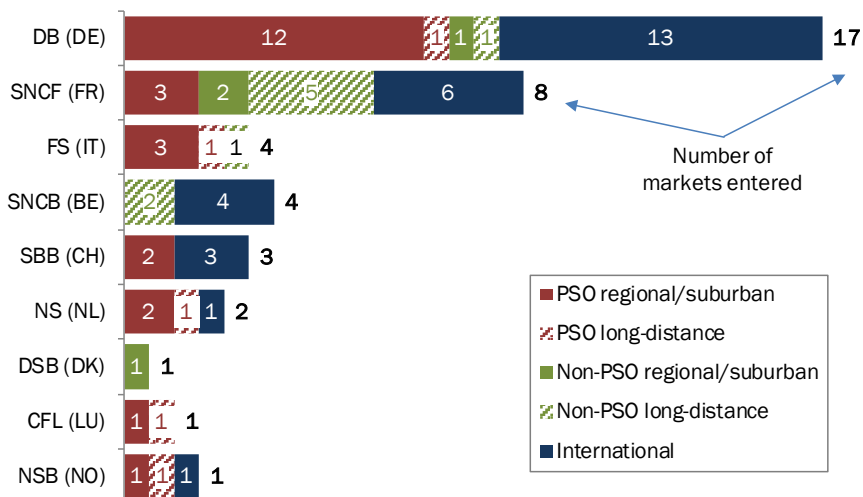
- **Cisalpino (50% stake):** Italian-Swiss company operating domestic PSO in Italy and international trains between Switzerland and Italy;
- **SNCF-Lyria (26% stake):** French-Swiss company based in France, offering international services between France and Switzerland and non-PSO activities in France.

8.3. Services offered by historical incumbents when operating abroad via their subsidiaries

Incumbents - when operating abroad through their subsidiaries - provide a large range of services, from domestic to international traffic and from PSO to non-PSO activities (Figure 34). Among domestic services, regional or suburban PSO activities are most frequently provided by incumbents. Only SNCB (Belgian) and DSB (Danish) do not perform this service abroad. For non-PSO activities, long-distance services are offered in a larger number of countries than the regional ones. SNCF, for instance, has its subsidiaries offering long-distance non-PSO services in five out of eight markets while in only two countries its affiliated companies do provide the regional traffic.

On the other hand, incumbents operate international services through their subsidiaries in the majority of countries entered. In all countries, subsidiaries of SNCB (Belgium), SBB (Swiss) and NSB (Norwegian) provide international services.

Figure 34 – Types of service provided in markets abroad by historical incumbents’ subsidiaries (in number of markets entered)



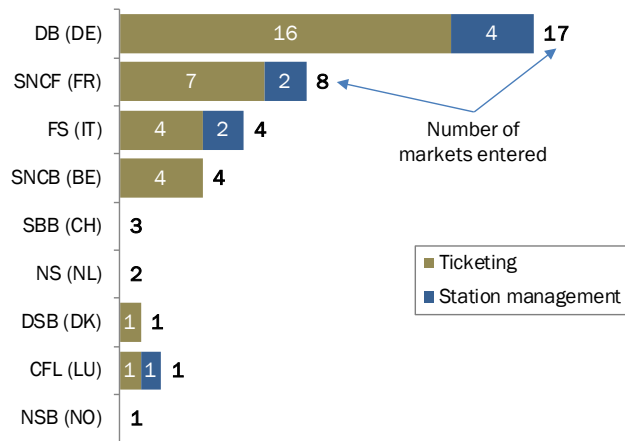
Note for the reader: The number of markets entered abroad may be smaller than the sum of all types of service. This is because an RU may operate multiple services in a country.

Reading example: Subsidiaries of the Italian incumbent operate in four countries abroad, of which in one country they offer non-PSO services only and in the other three countries they realize PSO services only.

Some subsidiaries also operate urban transport (tram, bus, etc.) and coach services. DB's subsidiaries are involved in the urban transport system in twelve out of 17 countries and propose coach and bus services in eight countries (out of 17). The numbers are two and one respectively for FS' subsidiaries. They are the only incumbents providing these types of activities in foreign markets. No incumbents provide carpooling and air services.

Other types of complementary services are proposed by incumbents' subsidiaries (Figure 35). Transport companies under the flag of the DB group have their own ticketing services in 16 (out of 17) countries, SNCF's subsidiaries in seven (over eight) markets, and so on. Incumbents' subsidiaries may participate in station management as well, but this service is not so common. They only operate it in a limited number of countries, and only the affiliates of four incumbents (DB, SNCF, FS and CFL) do so. Three incumbents' subsidiaries, namely SBB, NS and NSB, operate abroad without providing any complementary services.

Figure 35 – Type of complementary services offered abroad by historical incumbents' subsidiaries



Note for the reader: The number of markets entered abroad may be smaller than the sum of all types of complementary service. This is because an RU may offer multiple services in a country.

Abstract of regulatory decisions in 2017



9. Key regulatory decisions in 2017³⁷

Austria

- Decision on charges for minimum access package,
March 27th, 2017, an appeal is still pending

In 2012, Schienen-Control started official proceedings concerning the infrastructure usage charges for the minimum access package, brought about by a claim from a railway undertaking that the charges had been calculated from costs which were ineligible according to the legal requirements (Directive 2001/14/EC). In Austria, the Directive has been transposed into national law without changes to the legal text concerning the costs directly incurred by the train service. The proceedings covered the charges from 2011 to 2017.

It was found that some cost components chosen by the infrastructure manager did not comply with the principles laid down in Directive 2001/14/EC. However, the infrastructure manager also did not include all expenses in its cost calculation, and therefore allocated less costs than eligible. Consequently, the charges were still below the level at which they could have been set according to the legal charging principles. Therefore Schienen-Control decided that the level of charges was in line with legal requirements.

- Decision on charges for using the electricity supply network,
March 27th, 2017, an appeal is still pending

In 2016, Schienen-Control had lowered the tariff for charges for the usage of the rail related electricity network as it had declared certain components of the 2016 charges null and void.

For 2017, the infrastructure manager published a new (higher) tariff, which led one railway undertaking to request that Schienen-Control issues an order to lower the 2017 tariff according to the results of the evaluation made in the previous year. Schienen-Control rejected this request on the grounds that it was not appropriate to apply the cost evaluations results for 2016 onto future years. The final decision concerning the charges for the 2017-tariff period was issued in early 2018 and continued to lower the published tariffs along with a revised decision on some of the elements of the allowed costs.

³⁷ In this chapter, each regulatory body provide the most important regulatory decision taken in 2017 and for which consequences appeared in 2017.

Belgium

- Advice A-2017-02-S regarding the retroactivity of the performance regime

According to Belgian legislation, as of January 1st, 2017, it is up to the infrastructure manager - Infrabel - to define and apply a performance regime. Until then, the rules regarding the performance scheme were laid down in a Royal Decree.

Infrabel introduced a new performance regime on 1st of July 2017, however, applicable from January 1st, 2017.

On June 23rd, 2017, the Regulatory Body issued an advice on the possibility for the infrastructure manager to enter and apply this performance regime with retroactive effect.

Analysing the relevant clauses in the Recast and the Belgian legislation, the Regulatory Body came to the conclusion that legally the performance scheme should be considered a “charge”. This point of view was corroborated by the European Court of Justice in its judgement of April 18th, 2013, to which the Regulatory Body refers in its analysis.

As the performance regime is to be considered a “charge”, a Royal Decree stipulating the regulations for charges and their modifications is to be applied. According to this Royal Decree, in general, modifications to charges are only applicable as of the entry into force of the timetable following the one during which the modifications are established.

Exceptionally, modified charges can apply sooner, but only if they are published three months before they enter into force. This legal requirement, which the infrastructure manager cannot deviate from as it exists to protect the interests of the operators, makes a retroactive entry into force of a new performance scheme de facto impossible.

Bulgaria

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Croatia

In 2017, there were no regulatory cases in which the Croatian Regulatory Authority for Network Industries (HAKOM) made decisions. In one regulatory case, HAKOM declared itself not competent.

Czech Republic

- Establishment of the Czech Republic regulatory body,
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April 1st, 2017

The Transport Infrastructure Access Authority was established as the regulatory body for the Czech Republic on 1 April 2017.

- Inspection into infrastructure charges,
September 2017, an appeal is still pending

On September 2017, the regulatory body initiated an inspection into infrastructure charges, this will be completed during 2018.

- Decision on temporary capacity restriction on regional lines,
September 30th, 2017, an appeal is still pending

On 30 September 2018 the regulatory body refused to approve a 300 days temporary capacity restriction on regional lines because the necessary legal conditions had not been fulfilled. The Czech Railways railway undertaking appealed against this decision.

- Decision on temporary capacity restriction,
October 31th, 2017, an appeal is still pending

On 31 October 2017 the regulatory body approved a temporary capacity restriction for November despite the disagreement of Czech Railways. The Czech Railways railway undertaking appealed against this decision.

Denmark

- Follow-up supervision with the IM's network statement (JN36-00017):

In 2016, the Danish regulatory body issued an indicative opinion containing a number of specific recommendations on changes to the structure of the state-owned infrastructure manager's (Banedanmark) network statement, alongside a number of requests for changes to the text and appendices. This opinion, published on 24 November 2016 is available online.³⁸

In 2017, the regulatory body issued a follow-up to the 2016 opinion with regards to Banedanmark 2017 network statement. There were three remaining issues: missing translations of individual annexes, missing information from an annex and failure to update several links to current legislation.

Banedanmark announced by letter on 1 November 2017 that the remaining issues had been corrected.

³⁸ The opinion is available on the following website: www.jernbanenaevnet.dk.

→ The incumbent railway undertaking, Danske Statsbaner, compliance with the Railway Passenger Rights Regulation articles 16, 17 and 29 (JN36-00025):

The Danish regulatory body initiated investigations as to whether Danske Statsbaner (DSB) had complied with the provisions in the railway passenger regulation concerning the travel time guarantee and the requirement for provision of information to passengers about this. On this basis, DSB initiated several measures to improve and correct travel time guarantee conditions and improve the information available on DSB's website, on online ticket sales platforms, in ticket offices, on the back of tickets/travel cards, in brochures and via announcements at stations and on trains.

The Danish regulatory body issued an opinion on 15 February 2017, which included several additional requirements for extending the travel time guarantee scheme to include journeys comprising several train services, the right to reimbursement of fares following delays and questions about expiry of claims.

DSB announced by e-mails of 16 and 21 August and 1 September 2017 that the required corrections and updates to information had been completed. On 27 September 2017, the Danish regulatory body issued a follow-up guidance statement, which concluded that the DSB had fulfilled the requirements of Articles 16, 17 and 29 of the Railway Passenger Regulation.

→ DSB's service facilities and supply systems (JN36-00038):

Following a recommendation from the Danish Transport, Building and Housing Agency, the Danish regulatory body initiated an inspection concerning the service facilities and supply systems³⁹ linked to the rail infrastructure, which are owned by the incumbent railway undertaking, DSB.

The Danish regulatory body requested DSB to explain how it complies with the Railways Act and Executive Order No. 1380/2015 on the management of service facilities / utilities. The DSB response stated that the service facilities and supply systems at the stations are made available to all railway undertakings in accordance with the Executive Order.

Regarding the independent management of facilities, DSB is only obliged to manage the service facilities and supply system separately if it has a dominant position in the transport market in which that facility is used. It is

³⁹ "Supply systems" refer to the different services available at the locations with service facilities connected to the rail net. At some of these locations of service facilities technical train services are offered only, eg. technical train maintenance in the form of wheel profiling facility. At other locations of service facilities only the more simple service facilities are offered: Refilling of fuel and water and emptying of toilets and oil.

noted in that regard DSB has a dominant position in the passenger area but is not involved in freight transport.

DSB has stated that no passenger companies currently purchase access to the production-oriented service facilities, except for the sale of fuel to Arriva. Only rail freight companies, that are not in competition with DSB, purchase services. Therefore, the Danish regulatory body concluded that DSB is not obliged to separate management service facilities and supply systems from its other activities.

The Danish regulatory body noted that DSB should be able to document that the tariffs paid by railway undertakings for the use of service facilities and supply systems comply with the requirements of the Executive Order. DSB stated that they could provide documentation for the pricing of the individual services on request. Based on this, the regulatory body did not find sufficient grounds for requesting that DSB have separate accounts for the management of service facilities and the supply system.

Regarding access, DSB stated that track access to the service facilities and supply system is free. The Danish regulatory body issued a statement on 27 September 2017 with no further comments concerning DSB's compliance with the current provisions concerning market access. The regulatory body noted however that the European Commission implementing regulation on service facilities and rail-related services (which was under preparation at that time) was expected to impose a number of new requirements.

→ Suspensive effect of a complaint concerning cancellation of paths (JN34-00032):

The incumbent railway undertaking, Danske Statsbaner (DSB), lodged a complaint with the Danish regulatory body regarding a decision by Banedanmark (the infrastructure manager) on the cancellation of paths at Copenhagen Central Station between 12 January 2018 and 26 March 2018. DSB claimed that Banedanmark had violated the access contract's notification provisions and requested that the complaint be given suspensive effect.

According to section 14 of the Executive Order on the Danish regulatory body, a complaint does not in itself have suspensive effect. However, the Railway Board may give a complaint suspensive effect in special circumstances.

In the assessment of suspensive effect, the board focused in particular on:

- i. Whether there was a likelihood of a material breach of the applicable rules.

- ii. Whether or not a suspensive effect could lead to the loss of the purpose of the appeal proceedings,
- iii. An interest weighing for the suspensive effect; i.e. the complainant's interest in suspensive effect must weigh heavier than the opposing party's interest in the opposite.

The Danish regulatory body elected to uphold the request for suspensive effect at the board meeting on 19 December 2017. Consequently, Banedanmark was not entitled to suspend the paths. Emphasis was placed on the above three main criteria. Regarding the balance of interest, the board highlighted the need to protect DSB and passengers against the significant effects from the cancellation of paths with short notice, including non-economic consequences.

Estonia

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Finland

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France

- Definition of a new incentive mechanism ("Reciprocal incentive"),
Decision taken in July 2017

ARAFER defined a new incentive mechanism for the 2018 timetable called the "Reciprocal incentive" that aims at holding the stakeholders responsible and thus optimizing the capacities offered by the network by creating systematic and fixed reciprocal incentives involving penalizing the infrastructure manager (IM) or train path applicant in the event of cancellations or modifications made by the latter. It targets on the one hand the effective and stable issue of allocated train paths, by encouraging the infrastructure manager of the national rail network to not cancel or modify them, and on the other hand it targets the early return and stabilization of the capacities reserved by train path applicants both for freight and passenger transport.

This new decision replaced the previous one, issued in 2016, by modifying the scale of penalties applicable to the IM for mass transit train paths in order to better take into account the specific rules and process of allocation of capacity for the Paris suburban trains. Indeed, the scale of penalties applicable to the IM payable to applicants affected is reduced by 50% in case of a cancellation by the IM on a Paris suburban train. This new decision also includes an independent study (launched by Arafer) on the French capacity

allocation process in order to understand the hurdles that this process may face, with the objective of a further modification of the reciprocal incentive decision.

This decision was ratified by the French Ministry of Transport in November 2017.

- Publication of guidelines on the accounting rules to establish separate account.
Decision taken in September 2017

Under the French law, accounting rules that are used by the railway undertakings to establish their separated accounts have to be approved by ARAFER. After rejecting SNCF Mobilités (the incumbent) rules in December 2016, ARAFER wrote in 2017 new guidelines for operators. These guidelines were written after consulting the operators and other stakeholders such as the transport authorities and defined the requirements regarding perimeters of separated activities, allocation of products and costs and financial relationships between activities.

These guidelines were published by ARAFER on September 27th, 2017, then endorsed by the Ministry of Transport on December 4th, 2017: compliance with this decision is required when submitting accounting separation rules to ARAFER approval.

Germany

- Planning and Execution of construction works.
Decision taken in February 22th, 2017

Bundesnetzagentur is following up on complaints regarding the management of construction work by DB Netz AG and has started proceedings to examine DB Netz AG's planning and execution of construction works on its railway network.

According to the complaints received, construction works frequently lead to significant delays and cancellations of trains. Highly utilised routes in Bavaria and Northrhine - Westphalia, especially around Munich and Cologne/Bonn, are mostly affected. Bundesnetzagentur wants to examine, for example, if commuter trains run by competitors of Deutsche Bahn are especially negatively impacted.

Preliminary findings confirm failings in traffic planning. In some cases, railway undertakings have been informed too late, and adapted schedules have been overridden by new, ad hoc, construction works and thus become inaccurate.

Bundesnetzagentur aims to determine measures that safeguard stable operations that run (for the most part) as planned, despite ongoing construction.

- Base level of costs of DB Netz AG for the first regulation period.
Decision taken in June 28th, 2017

Setting the base level of costs⁴⁰ is the first step to determining the charges of DB Netz AG from 2019 to 2023. To find the base level Bundesnetzagentur has examined the costs and operating performance of DB Netz AG between 2014 and 2016. Based on the level of costs set, Bundesnetzagentur specifies a cost framework (or ceiling of costs) for each year of the regulation period which takes inflation and productivity gains into account. The cost framework can also be adjusted to allow for extraordinary effects or one-off events. The charges levied by DB Netz AG are approved annually in view of this predetermined cost framework. This approach leads to stable market and investment conditions for the rail sector and incentivises cost reductions by DB Netz AG.

DB Netz AG had submitted costs of around 6 billion EUR, which Bundesnetzagentur reduced to 5.3 billion EUR after examination. Reductions were made regarding capital costs and cost projections. Bundesnetzagentur did not accept items that were insufficiently substantiated or based on incomplete projections. Bundesnetzagentur reduced the interest on invested capital claimed by DB Netz AG from 7.7% (pre-tax interest rate) to 5.9%. The cost level that has been set by BNetzA is about 4.5% above the level on which the approved charges for 2018 are based.

- Charges of DB Station&Service AG for use of its passenger stations approved for 2018
Decision taken in October 4th, 2017

Bundesnetzagentur has approved, to almost a full extent, DB Station&Service AG's charges for passenger traffic. Some parts of the costs, such as those for certain maintenance activities have not been fully substantiated by DB Station&Service AG. Bundesnetzagentur has reduced the requested charges in these cases, thereby taking market concerns into account. Pricing itself has also been adjusted, pre-empting potential price rises for some station stops made by long-distance passenger services. This does not constitute a final decision by Bundesnetzagentur on the overall charging principles of DB Station&Service AG.

The change in charges was necessitated by a change in rail regulatory law. In the future, station charges for regional passenger traffic will be frozen at the 2017 level and linked to the development of the

⁴⁰ Initial level or starting level of costs.

""Regionalisierungsmittel"". These are public funds which the German states (Bundesländer) may use to tender regional passenger services. Station charges for long-distance passenger traffic follow the development of charges for regional passenger traffic. The new charges will continue to differentiate between different regions (i.e. the different regional authorities charged with organising public transport).

- Preliminary proceedings following the Rastatt incident,
Decision taken in 2017, ongoing

Bundesnetzagentur has started preliminary investigations following the caving of the tunnel construction site and the ensuing route blocking which affected both passenger and freight traffic. Alternative routes, such as the Gäubah, "were temporarily unavailable due to construction and maintenance works, meaning that initially only about 20% of rail freight traffic could be successfully diverted onto other routes. DB Netz AG was also lacking adequate diversion and contingency plans in the immediate aftermath of the incident (trains could not be rerouted via France for example). A large part of trains on the Rheinstalstrecke (Rhine valley route) were cancelled without replacement leading to a significant backlog at harbours and freight terminals. Some freight was also shifted to roads or inland waterways. Bundesnetzagentur started preliminary proceedings immediately after the tunnel site caved and asked for continual updates on access granted by DB Netz AG. The preliminary proceedings were focused on the provision of train paths on the remaining alternative routes and their allocation among railway undertakings. These preliminary proceedings continue into 2018 and will focus on drafting suitable contingency arrangements for construction works that ensure continuing operations during disruptive events. "

- Congested infrastructure around Bonn on the left bank of the Rhine,
Decision taken in 2017, ongoing

The railway route between Hürth-Kalscheuren (near Cologne) to Remagen via Bonn on the left bank of the Rhine was declared congested in late 2016. In 2017, the capacity analysis and the capacity enhancement plan needed to be completed. This was the first instance where the draft capacity enhancement plan had to be published for a public comment period of one month. The double-track route is used by both freight and passenger trains. According to DB Netz AG the average use of 9 trains per hour already exceeds the limits of operational quality. Some smaller infrastructure improvements can be made in the short term which will primarily improve operations but will only marginally enhance capacity. DB Netz AG thus proposed in their draft plan to "freeze" the current level of regional passenger services in order to enhance the capacity available for rail freight and thin out some connections on a branch line to Remagen. This proposal was met with

large-scale protest on behalf of the municipalities along this route. By the end of 2017, DB Netz AG had abandoned their plans to cut regional passenger services after Bundesnetzagentur and the Federal Railway Authority made clear that an increase in demand for rail freight services had not been sufficiently documented. Owing to the route's importance as part of the Rhine-Alpine rail freight corridor its state of congestion will remain an issue.

Greece

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Hungary

→ Decision on the service facilities as regulated services

The Hungarian regulator investigated the scope of a potential service facility. As an outcome of the procedure the regulatory body determined that the facility provides a service regulated under Annex II, paragraph 2(d) of the 2012/34/EU Directive (storage siding). Based on the above, the operator of the facility was obliged to fulfil its reporting obligations within 60 days after receiving the decision: it had to report information on conditions for access to VPE (independent capacity allocation body responsible for the compilation of the Network Statement) and report to the regulatory body on its registration as an operator of a service facility.

→ Decision on the time limit of the answer for the RUs' requests to access services facilities

According to the Hungarian railway act, requests by railway undertakings for access to and for supply of services referred to in paragraph 2 of Annex II shall be answered within a time limit set by the regulatory body. The time limit cannot exceed 15 days. During the procedure the regulatory body investigated a terminal operated by a service facility operator. The facility provides service regulated under paragraph 2 (d) of Annex II of the 2012/34/EU Directive. Taking into account the relevant national legislation and the service facility statement published by the operator, the regulator set the maximum time limit for answering requests to 15 days. While determining the time limit the regulatory body took into consideration that requests may only be refused if there are viable alternatives, allowing railway undertakings to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions. Considering the fact that in the case of lack of capacity in the service facility the procedure for determining whether a viable alternative is available is part of the capacity allocation process, which in the regulatory body's opinion requires a significant amount of time, the regulatory body considered that setting the maximum time limit for answering requests was justified.

- Decision on the compliance of the Network Statement with the regulation

The regulator investigated the Network Statement as to whether its content complied with the regulation laid down in the railway act and in the ministerial decree on access to infrastructure. As a result of the procedure the regulatory set out in its decision that the content of the Network Statement did not violate any regulation.

Italy

- Additional regulatory principles and criteria for access to the national railway system (Decision 152/2017),
Decision taken in December 22th, 2017

The Authority adopted additional regulatory principles and criteria to be applied to the charging system covering; the pricing criteria for the one component of the charge for the minimum access package, the pricing criteria for a component of the charge that takes into account the productivity increases achieved by railway undertakings from the operation of multiple-unit rolling stock, and a charge modulation aimed at ensuring greater correlation with the actual energy consumption of the single train. In particular, the Authority's measures have modified the charge component concerning direct costs.

- Decision to establish the minimum quality conditions for rail passenger services, both national and local, with public service obligations (Decision 88/2017),
Decision taken in June 28th, 2017

A public consultation on this topic is open

- Regulatory measures to determine the most appropriate procedures to ensure cost-effectiveness and efficient management of shunting operations (Decision 17/2017),
Decision taken in February 2nd, 2017

- Decision to establish the methods and criteria for the definition of the objectives of increasing efficiency in the management of regional railway transport services (Decision 69/2017).

A public consultation on this topic is open.

→ Decision No 114/2017 of 21 September 2017 - Charge of HS/HC railway section Bivio Casirate - Bivio/PC Roncadelle

Following complaints from railway undertakings, the Authority found that the infrastructure manager had imposed different charges on rail sections having the same characteristics. For the purpose of ensuring fair and non-discriminatory access to railway infrastructure and avoiding distortions on the market concerned with respect to the actually existing competition, the Authority re-determined the charge for the HS/HC rail section Bivio Casirate – Bivio PC Roncadelle, consistently with the charges that are already applied by the same infrastructure manager for Turin-Milan, Milan-Bologna, Bologna-Florence, Rome-Naples sections of the HS/HC network. Compliance with the Authority's requirements is being monitored.

→ Decision No 140/2017 of 30 November 2017 – Indications and requirements concerning the NS 2019, submitted by the manager of the national railway infrastructure, R.F.I. S.p.A., the NS 2018 and the preparation of the NS 2020

The Authority addressed the infrastructure manager with directions concerning, inter alia, infrastructure access conditions and characteristics, capacity allocation, services and the update of the 2018 Network Statement. The Decision further addressed issues concerning the rail corridors and the international capacity booking system. In particular, the Authority imposed on the infrastructure manager to identify the Path Coordination System – PCS developed by RNE as the sole instrument for international capacity requests, with the aim of identifying only IT systems capable of ensuring maximum transparency, traceability and equity of the access procedures to the railway network.

→ Decision No 126/2017 of 20 October 2017 – Initiation of proceedings concerning the implementation of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)

The Authority challenged the infrastructure manager on the infringement of the transparency principle and information obligations provided for in the Network Statement, as well as of the equity and non-discrimination principles, with respect to the access conditions to the railway infrastructure for the rail operation with two-coupled trainset and the speed increase over 300 km/h. The proceeding is still ongoing.

Kosovo

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Latvia

→ Decision on equal and non-discriminatory access to public-use railway infrastructure,

Decision taken on August 18th, 2017

The applicant, a private railway undertaking, informed the regulatory body of a monopolistic situation in the public-use railway junction at Ventspils station, which prevents a private transporter from providing freight services in the same manner as the incumbent railway operator. The infrastructure manager had provided in its internal documents a restriction which allowed only the incumbent railway undertaking to perform freight services at this junction. The regulatory body adopted a decision instructing the infrastructure manager to amend all of its internal documents so that every undertaking could access the infrastructure. No appeal has been submitted and the infrastructure manager has taken steps to comply with the decision.

→ Decision on access to service facility,

Decision taken on October 24th, 2017

After consultations with railway undertakings and service facility operators, the regulatory body adopted a decision to set a time limit of 1 month for service facility operators to answer access requests from railway undertakings in accordance with article 13(4) of Directive 2012/34. No appeal to court was submitted.

→ Decision on access to services facility and closure of the service facility,

Decision taken on December 5th, 2017

The applicant, a private railway undertaking, informed the regulatory body that it performed maintenance of its railway rolling stock in the railway maintenance facility in Ventspils depot, which belongs to the infrastructure manager, and was used by the applicant under a rental agreement. However, the rental agreement was terminated by the infrastructure manager, with the intention of closing the facility and using it to store unused rolling stock. The regulatory body concluded that depot is a service facility and adopted a decision instructing the infrastructure manager to ensure that depot is accessible as a service facility, and it should not be closed. This decision has been appealed, with a final judgement not adopted in 2017.

Lithuania

- Pending the complaint regarding the allocation of public railway infrastructure capacity.
Decision taken in 2017, ongoing

The regulatory body received a complaint from the railway undertaking regarding the allocation of public railway infrastructure capacity for the validity period of the 2017-2018 working timetable for rail transport and related decisions on 6 November 2017. In that complaint, it was stated that the railway undertaking was not allocated the requested public railway infrastructure capacity and such exclusion was not justified.

Luxembourg

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Republic of North Macedonia

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The Netherlands

- New method for calculating the track access charges

In 2018, the Netherlands Authority of Consumers and Market (ACM) approved the method for allocating costs to the minimum access package. The ACM limited its approval of the method for the calculation of the charge for the minimum access package to a period of three years, instead of five years as requested by ProRail. Some parts of the cost allocation currently rely on data covering just a single year. It will take some time to broaden that basis. That is why the ACM has chosen to set the allocation method for just three years of service, instead of the requested five years. After three years, the method will have to be adjusted on a number of points, and the ACM will then re-evaluate it.

The infrastructure manager also requested a five year approval for their method to calculate the mark ups, which has been granted by the ACM. In accordance to directive 2012/34/EU, the infrastructure manager differentiates the mark up for the segments freight services, passenger services with a public service obligation and other passenger services. The mark ups for the different segments are based on what the market can bear. To determine what the market can bear, the infrastructure manager used the Ramsey-Boiteux method, in which more price elastic segments will be given a lower mark up.

→ Complaints about network statement and service facilities

The ACM has received complaints about the network statement of ProRail. A representative of rail freight companies complained about several aspects of the network statement 2019. This resulted in an injunction for the infrastructure manager to amend the network statement in relation to the train length at border crossings.

The ACM also conducted an investigation following a complaint filed by DB Cargo about ProRail's allocation of tracks at marshalling yard Kijfhoek for the 2019 train timetable. DB Cargo wished to have control of all tracks at the marshalling yard, but ProRail assigned some of those tracks to other operators. The ACM ruled that DB Cargo insufficiently demonstrated that the use of all 47 tracks was necessary for her to be able to carry out its marshalling activities.

Norway

→ Decision on a complaint from a freight railway undertaking regarding an infrastructure capacity (re)allocation decision taken by the infrastructure manager.

Decision taken in April 2017

In April 2016, the Norwegian Regulatory Body (RB) received a complaint from a freight railway undertaking (RU) regarding an infrastructure capacity (re)allocation decision taken by the infrastructure manager (IM). The IM's decision was made following market exit by the second largest freight RU in Norway, resulting in the latter returning a large number of train paths that had been allocated to it in the 2015 annual timetabling process. The IM received applications for the returned train paths by both the complainant (a new entrant in the market) and the incumbent freight RU. On the route between Oslo and Trondheim, the two applications were found to be conflicting and the IM applied a specifically designed procedure to handle the conflict and allocate the routes in question. In its decision dated April 7, 2017, the RB found that the allocation process had been discriminatory and not in line with the Norwegian railway legislation, and that the resulting allocation of capacity had distorted the competitive situation on the route between Oslo and Trondheim in the short term. As part of its decision, the RB imposed a number of mainly procedural measures that the IM will have to demonstrate compliance with by the end of January 2018.

→ Decision on a complaint submitted by the Norwegian railway incumbent concerning alleged discriminatory access to Oslo airport train station.

Decision taken in June 2017

In June 2017, the Norwegian regulatory body decided on a complaint submitted by NSB AS (NSB), the Norwegian railway incumbent, against Bane NOR SF (Bane NOR), the main manager of infrastructure and passenger stations, concerning alleged discriminatory access to Oslo airport (Gardermoen) train station. Specifically, NSB claimed that Flytoget AS (Flytoget), the airport express train operator, was given preferential treatment at the station in accordance with a long-term agreement concluded between Bane NOR and Flytoget. The said agreement afforded Flytoget decisive influence over, firstly, Flytoget's own presence (installations, promotional effects etc.) at the station, and, secondly, the installations and visibility of other train operators at the station. No other train operators had been given similar rights. With respect to Flytoget's influence over its own presence at the station, the regulatory body found that this was objectively justified and therefore not discriminatory, as Flytoget's influence over its own presence was considered essential to enable Flytoget to fulfil its designated purpose and specific public responsibility related to the station. In particular ensuring that a high share of travellers chooses railway transport over other modes of transport to and from the airport. With respect to Flytoget's influence over the presence of other operators, however, the regulatory body considered that this was less important with respect to enabling Flytoget to fulfil its purpose and responsibility, and, furthermore, that it was likely to negatively impact on NSB's possibility to observe its commitments. Consequently, Flytoget's right to influence the presence of other operators, including NSB, at the station was considered disproportionate and discriminatory. The contracting parties were required to amend the agreement accordingly.

- The company LKAB took to court the infrastructure manager Bane NOR SF, following a decision made by the Norwegian Regulatory Body.
Ongoing

Following a decision made by the Norwegian Regulatory Body in October 2016, the company LKAB decided, in September 2017, to take the infrastructure manager Bane NOR SF to court. LKAB claimed that it had a right to being refunded unlawfully levied infrastructure charges for a longer period of time than what followed from the Regulatory Body's decision. Proceedings were scheduled to commence in 2018.

The freight railway undertaking LKAB Malmtrafik AB, transporting iron ore from Kiruna in Sweden to Narvik in Norway, filed a complaint to the Norwegian Regulatory Body in November 2015 against the infrastructure managers levying of infrastructure charges. In its decision, the regulatory body found that infrastructure charges related to permitted axle load of 25 tonnes were discriminatory and in contravention of the Norwegian regulation

implementing directive 2001/14/EC. According to the decision, the IM had to refund LKAB infrastructure charges. The IM had to calculate the amount to be refunded and decide whether parts of the claim was obsolete within three months from the entry into force of the decision. This resulted in LKAB being refunded approximately three million Euro from the infrastructure manager Bane NOR SF.

Poland

→ Decisions taken to grant open access to railway undertakings:

Over the course of 2017, 25 decisions were made granting open access to five domestic railway undertakings: incumbent PKP Intercity, regionally-owned Koleje Mazowieckie and Koleje Dolnośląskie, DB owned Arriva RP and incumbent PKP Cargo “nostalgic/heritage trains” (normally PKP Cargo operates on the freight market).

A decision made by the regulatory body granted open access to Czech private railway undertaking Leo Express, which started international operations between Cracow and Prague in 2018.

→ Easing of conditions for railway undertakings during modernisation of railway lines

The President of UTK issued decisions and recommendations taking into consideration the scheduled modernisation of railway lines. As a result:

- The infrastructure manager is responsible for co-financing rail replacement bus services

If a railway line or a part of it is being closed for the period of modernisation, rail replacement bus services have to be provided for passengers. These services are run by the railway undertaking but should be co-financed by infrastructure manager. The infrastructure manager should pay for the difference between the cost of replacement services and the access to rail infrastructure.

- The Infrastructure manager prepares “model routes” for diverting railway lines under modernisation

If a railway line is being modernised or closed due to modernisation, the infrastructure manager is obliged to prepare so called “model routes” identifying diversions both for passenger and freight railway undertakings. Since diversions are usually much longer, the charges for running services on them should be limited and similar to charges that railway undertakings would pay on the routes they would take if they were not under modernisation.

→ Study on railway stations fees

In 2017, UTK started a study of railway stations fees (and a first decision on this matter was issued in 2018).

Portugal

→ Decision under article 56 of Directive 2012/34/EU concerning an appeal from CP Carga - Logística e Transportes de Mercadorias, S.A. (currently Medway - Operador Ferroviário e Logístico de Mercadorias, S.A.), a freight railway company, against the Network Statement of 2017:

CP Carga appealed against the Network Statement of 2017 based on; a lack of efficiency of the infrastructure manager in managing rail infrastructure, a lack of reasoning behind certain additional and ancillary services and disproportionality of charges concerning requested but non-used capacity. After considering all arguments presented by the parties, AMT found that the claims of CP Carga were unfounded and, in some cases, not sufficiently grounded. Consequently, the appeal was dismissed.

→ Decision under article 56 of Directive 2012/34/EU concerning an appeal from Fertagus - Travessia do Tejo, Transportes, S.A. (private passenger railway undertaking) against the 2nd Amendment to the Network Statement of 2015 and against the 1st Amendment to the Network Statement of 2016:

Fertagus - Travessia do Tejo, Transportes, S.A. appealed against the 2nd Amendment made by the Infrastructure Manager (Infraestruturas de Portugal, S.A.) to the Network Statement of 2015 and against the 1st Amendment to the Network Statement of 2016. The appeal was limited to reaffirming the arguments presented in previous appeals against the Network Statements of 2015 and 2016. AMT dismissed the appeal, having found in particular that it was not sufficiently and validly grounded.

The decision is available at <http://amt-autoridade.pt/decisões/>

→ Decision under article 56 of Directive 2012/34/EU concerning an appeal from Fertagus - Travessia do Tejo, Transportes, S.A. (private passenger railway undertaking) against the Network Statement of 2017:

Fertagus - Travessia do Tejo, Transportes, S.A. ("Fertagus") appealed against the Network Statement of 2017 based on; the illegality of Regulation IMTT 630/2011 (concerning the method for calculating railway infrastructure charges), procedural reasons relating to its adoption, lack of reasoning, incorrect methodology and other alleged irregularities. The appeal was

addressed to AMT. After considering all arguments presented by the parties, AMT dismissed the appeal. In particular, AMT found that it lacked legal powers to assess the claim concerning the legality of Regulation IMTT 630/2011 (in Portugal that power belongs to the Administrative Courts) and that the remaining claims of Fertagus were unfounded and in some cases not sufficiently grounded.

The decision is available at <http://www.amt-autoridade.pt/decisões/>.

- Decision under article 56 of Directive 2012/34/EU concerning an appeal from Fertagus - Travessia do Tejo, Transportes, S.A. (private passenger railway undertaking) against the Network Statement of 2016:

Fertagus - Travessia do Tejo, Transportes, S.A. (“Fertagus”) appealed against the Network Statement of 2016 based on; the illegality of Regulation IMTT 630/2011 (concerning the method for calculating railway infrastructure charges), procedural reasons relating to its adoption, lack of access to detailed reasoning behind the charges, incorrect methodology and other alleged irregularities. The appeal was addressed to AMT, but submitted in first place to the IMT, Instituto da Mobilidade e dos Transportes (former body in charge of deciding appeals), because at the time of submission AMT had not yet begun activity. The case was later transferred to AMT. After considering all arguments presented by the parties, AMT dismissed the appeal. In particular, AMT found that it lacked legal powers to assess the claim concerning the legality of Regulation IMTT 630/2011 (in Portugal that power belongs to the Administrative Courts) and that the remaining claims of Fertagus were unfounded and in some cases not sufficiently grounded.

The decision is available at <http://www.amt-autoridade.pt/decisões/>.

- Decision under article 56 of Directive 2012/34/EU concerning an appeal from Fertagus - Travessia do Tejo, Transportes, S.A. (private passenger railway undertaking) against the Network Statement of 2015:

Fertagus - Travessia do Tejo, Transportes, S.A. (“Fertagus”) appealed against the Network Statement of 2015 based on; the illegality of Regulation IMTT 630/2011 (concerning the method for calculating railway infrastructure charges), procedural reasons relating to its adoption, lack of access to detailed reasoning behind the charges, incorrect methodology and other alleged irregularities and inconsistencies. The appeal was submitted to the IMT – Instituto da Mobilidade e dos Transportes (former body in charge of deciding appeals) but the case was transferred to AMT after its establishment. After considering all arguments presented by the parties, AMT dismissed the appeal. In particular, AMT found that it lacked legal powers to

assess the claim concerning the legality of Regulation IMTT 630/2011 (in Portugal that power belongs to the Administrative Courts) and that the remaining claims of Fertagus were unfounded and in some cases not sufficiently grounded.

The decision is available at <http://www.amt-autoridade.pt/decisões/>.

Romania

- Decision concerning the infringement of the Law 202/2016 by the infrastructure manager regarding the charging scheme,
Decision taken on November 20, 2017

The regulatory body required the infrastructure manager to publish in its Network Statement all types of services and facilities offered to railway undertakings, in addition to the charges, and the methodology of their calculation.

- Decision concerning the infringement of the Law 202/2016 by the infrastructure manager regarding train path allocation,
Decision taken on December 5, 2017

The regulatory body required the infrastructure manager to allocate the train paths to the passenger railway undertakings, fulfilling the legal conditions for PSOs.

Slovakia

- Two decisions on the impact of new international passenger railway services on existing services operated under public service contract

In 2017 the regulatory authority took two decisions on the possible impact of new international passenger railway services on existing services operated under public service contract.

Slovenia

- Decision on a complaint of an RU and the IM against a non-incumbent railway undertaking statement,

A non-incumbent railway undertaking submitted a complaint to AKOS that SŽ-Infrastruktura (the IM) had abuse its position to prioritize SŽ-Tovorni promet (the national freight railway undertaking). This followed the IM's decision to allocate a number of tracks in Port of Koper in exceptional circumstances (for example if the terminal is not able to receive trains due to occupation). AKOS established that such an allocation (limitation of tracks for

receiving trains) is applied only in exceptional circumstances and that the IM had not prioritized the national freight railway undertaking.

- Decision on increase of freight trains delays
Ongoing

A second decision was based on an investigation into a significant increase of delays of freight trains, particularly at the end of the year around Christmas and New year. AKOS established:

1. A lack of coordination between allocated train paths and time-slots in terminal; leaving trains on terminal tracks blocking the terminal
2. “parking“ of trains / vehicles free of charge

Based on these facts, AKOS obliged the IM to implement charges for the stabling of rail vehicles in Port of Koper.

A non-incumbent railway undertaking has lodged a complaint against the decision to the Administrative Court

Spain

- Decision requesting the lowering of charges by the infrastructure manager (ADIF and ADIF high-speed) for the provision of complementary services, in order to promote a higher use of service installations (STP/DTSP/051/17),
December 21, 2017
- Decision on the application for intervention of the association of private railway companies in relation to the selection and recruitment processes of train drivers by the incumbent Renfe Operadora, S.A (STP/DTSP/053/17),
December 21, 2017
- Consultation with the representatives of users of rail services (INF/DTSP/131/17),
December 19, 2017
- Report on the charging scheme proposed for 2018 (STP/DTSP/031/17),
September 21, 2017
- Adoption of the Principal Purpose Test methodology in relation to applications for new international services (STP/DTSP/032/17),
September 20, 2017
- Decision requesting the infrastructure manager to modify the calculation of some charges for urban, suburban and interurban travel services (STP/DTSP/023/17),
March 30, 2017

- Reports on the partial modification of the Railway Sector Regulation and other legal provisions (IPN/CNMC/037/17 and IPN/CNMC/036/17),
November 11, 2017

Sweden

Several disputes have been under investigation during 2017, but no decisions were taken during the year.

Switzerland

- Track closure,
May, 2017

The closure of railway lines for repair or maintenance work results in additional costs (e.g. bus services that substitute the railway); some are to be shouldered by the Infrastructure Manager and some by the Railway Undertaking. The law states that insignificant additional costs are not compensated for. However, it does not define "insignificant" and up to what amount this rule applies. RACO decided that the infrastructure manager has to base the criteria for the "insignificance" of the costs for track closure solely on objective and plausible facts. Therefore, bearing of costs had to be re-decided in three specific cases of track closure.

- Energy consumption prices,
June, 2017

RACO examined the energy consumption prices for freight trains (part of track access charges). There is just one single category for all freight trains, although factors like the number of freight tons, short- or long-distance hauling, traction, number of train stops all have a significant impact on energy consumption. As a consequence, RACO ordered a differentiation of the consumption category for freight trains.

- Shunting of locomotives,
December, 2017

A railway undertaking filed an appeal concerning a supplementary charge for the shunting of locomotives (the shunting is due to the change of locomotives on the Swiss border because of different electricity systems). The RACO examination revealed that the supplementary charge was correct and that it had been correctly communicated to the Railway Undertaking.

United Kingdom

→ Network Statement – Review,
February 2nd, 2017

The ORR (jointly with its French equivalent, ARAFER) published its ‘opinion’ on Eurotunnel’s 2018 proposed Network Statement on 24 February 2017.⁴¹

The Network Statement should be more transparent. In particular it should be clearer about:

- the terms on which a new entrant would access the Channel Fixed Link and the effects of that on existing users;
- how capacity is allocated in the Channel Fixed Link (discussion ex ante instead of waiting for a capacity problem to arise);
- the relationship between Eurotunnel’s proposed charging structure and its actual and forecast costs, which are not clear. In particular Eurotunnel does not identify the costs directly incurred.
- how Eurotunnel’s actual charges to Eurostar (the only passenger train operator) based on the railway usage contract (RUC) are consistent with those in the Network Statement.

The decision also required Eurotunnel:

- to justify how the structure and level of charges for the use of infrastructure and the adjustment of charges applied to freight and passenger activities are consistent with the charging principles laid down in the Directive;
- to review the section on the performance regime which does not fully demonstrate compliance with the requirements of Directive 2012/34/EU and does not explain in enough detail how the performance regime works.

→ Judicial review – Heathrow Spur charging framework:
May 26th, 2017

In May 2016, taking into account representations and evidence from affected parties, including considerable documentation and submissions from Heathrow Airport Limited (HAL), ORR decided HAL was not permitted to introduce all of its proposed new charges for train operators to use its track, which links Heathrow Airport to the Great Western main line. HAL launched a judicial review of the decision not to allow HAL to levy an Investment Recovery Charge to recover the historical costs of constructing the Heathrow Spur itself. After a three-day hearing, the court dismissed HAL’s application and upheld ORR’s decision on 26 May 2017. ORR will now work with all the

⁴¹ See http://orr.gov.uk/__data/assets/pdf_file/0016/24172/orr-eurotunnel-network-statement-2018.pdf.

affected parties to enable Crossrail services to start running as scheduled into the airport.

→ Grand Central Railway and Network Rail Infrastructure Limited,
November 13, 2017

In November 2017, ORR rejected an application from Grand Central for additional early and late weekday services between Kings Cross and Wakefield using the East Coast Main Line, including new stops for existing services at Peterborough. The proposal did not generate sufficient new business in order to pass the non primarily abstractive (NPA) test.⁴²

→ First Great Western and Network Rail Infrastructure Limited,
December 21, 2017

In February 2017, ORR received a dispute which relates to Great Western Railway's request to stable trains at Paddington Station. In December ORR rejected GRW's request on the basis that ORR cannot issue directions to Network Rail to amend an access agreement if performance of the access agreement as amended would necessarily involve Network Rail being in breach of another access agreement. Part of the solution to enable GWR to stable at Paddington involved Heathrow Express agreeing to use fewer platforms than it is contractually entitled to, but there was no indication that Heathrow Express would be prepared to give up the relevant access rights. In addition, whilst the platforming study showed the capacity that might be available for stabling in various scenarios and satisfactory stabling had been agreed for the December 2017 timetable, this did not demonstrate that sufficient capacity would always be available to meet GWRs requirements.

⁴³

→ GB Railfreight Limited vs Network Rail,
December 21, 2017

On 5 December 2017 ORR issued directions to Network Rail Infrastructure Limited to amend its existing track access contract with GB Railfreight Limited (GBRf). In its decision, ORR approved new firm access rights, excluding access rights from the Port of Tyne to Lynemouth, until the Principal Change Date of 2026. Taken together with the rights GBRf proposes to give up, these changes amount to an alteration of GBRf's service patterns with a broadly similar quantum of services overall and a more efficient use of capacity. ORR also approved new access rights from the Port of Tyne to Lynemouth but only

⁴² Additional information can be found online:

http://orr.gov.uk/__data/assets/pdf_file/0010/25984/grand-central-railway-company-limited-6th-supplemental-agreement.pdf.

⁴³ Additional information can be found online:

http://orr.gov.uk/__data/assets/pdf_file/0004/26356/s22a-fgw-7th-sa-dec-letter.pdf.

until the Subsidiary Change Date of 2019, as these are essentially new rights.⁴⁴

⁴⁴ Additional information can be found online:

http://orr.gov.uk/__data/assets/pdf_file/0011/26210/s22a-gb-railfreight-limited-4th-sa-directions.pdf.