Workshop on Rail Transport Regulation

Aims, models and powers of rail regulators
The view of Deutsche Bahn

Deutsche Bahn AG
Joachim Fried
Director. Economics, Policy and Regulation
Florence, 15 November 2010
Agenda

- Market development
  - Discussing the new legal framework
  - Limits of regulation
Development in Germany shows: Liberalisation and its regulatory protection are crucial for competition – not structural questions

**Aims of the rail reform**

- More traffic to the rails
- Lower the burden for the public purse

**Instruments of the rail reform**

- Implementing a holding company structure
  - Merger of Bundesbahn and Reichsbahn – founding Deutsche Bahn AG
  - Separating commercial (transport, track infrastructure, related business activities) and public sectors (sovereign tasks, dept management, human resources management)

- Rail competition

- Creating a level playing field with other transport modes
  (Investments in infrastructure, taxes, external costs)
The framework conditions for competition in Germany have produced good results

IBM Rail Liberalisation Index 2007

- Germany
- Sweden
- Netherlands
- Austria
- Denmark
- Switzerland
- Poland
- Czech Republic
- Portugal
- Romania
- Slovakia
- Norway
- Estonia
- Lithuania
- Italy
- Slovenia
- Bulgaria
- Latvia
- Belgium
- Hungary
- Finland
- Spain
- Luxembourg
- France
- Greece
- Ireland

Advanced 800 – 1,000 Punkte
On Schedule 600 – 799 Punkte
Delayed 300 – 599 Punkte

Working Competition

Operating performance of non-Group companies (Million train-path km)

- Increasing number of competitive tenders for long-term regional passenger services
- Market share of non-DB Group railways is growing rapidly
- As of Dec 31, 2009 323 non-DB Group railways operated on the rail infrastructure of DB Netz AG
- There are no comparable levels of competition in the origin countries of our main competitors
After a drastic slump across all transport modes in 2009, the German freight market recovers

Freight transport in Germany
(year-on-year change in per cent; basis: traffic performance)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010 (as at April)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total market</strong>(^1)</td>
<td>5.7%</td>
<td>0.9%</td>
<td>-11.2%</td>
<td>4.4%</td>
</tr>
<tr>
<td><strong>Total Rail</strong></td>
<td>7.1%</td>
<td>0.9%</td>
<td>-17.1%</td>
<td>13.8% (as at June)</td>
</tr>
<tr>
<td><strong>DB</strong></td>
<td>2.9%</td>
<td>-1.0%</td>
<td>-20.8%</td>
<td>14.6% (as at June)</td>
</tr>
<tr>
<td><strong>non-DB Railways</strong></td>
<td>28.7%</td>
<td>8.6%</td>
<td>-3.7%</td>
<td>11.4% (as at June)</td>
</tr>
<tr>
<td><strong>Road</strong>(^2)</td>
<td>6.2%</td>
<td>1.2%</td>
<td>-9.9%</td>
<td>3.5%</td>
</tr>
<tr>
<td><strong>Inland Shipping</strong></td>
<td>1.2%</td>
<td>-1.0%</td>
<td>-13.4%</td>
<td>2.9%</td>
</tr>
</tbody>
</table>

1) Total market: rail, road, inland shipping and long-distance pipelines
2) Road: incl. regional transport by German trucks, excl. cabotage transports by foreign trucks in Germany
3) 2009 = provisional figures

Source: Federal Statistical Office and DB AG
2009 rail lost the market shares it had gained in the freight market in previous years

Modal split trend for freight transport in Germany
(in per cent, basis billion t-km)

1) Forecast
Source: Federal Statistical Office, BVU and DB AG
In the rail freight market, DB’s competitors raised their market share by more than three percentage points in 2009.

Rail freight traffic performance
(billion t-km)

Source: DB AG
* Figure for 2010: forecast
## Downturn in passenger transport market – increase of demand only in rail and air traffic

### Passenger transport in Germany
(year-on-year change in per cent; basis: traffic performance)

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010 (August)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total passenger transport</td>
<td>-0.3%</td>
<td>-0.7%</td>
<td>-0.2%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Total rail</td>
<td>0.4%</td>
<td>4.4%</td>
<td>-1.5%</td>
<td>1.7%</td>
</tr>
<tr>
<td>DB</td>
<td>0.0%</td>
<td>3.0%</td>
<td>-1.6%</td>
<td>1.6%</td>
</tr>
<tr>
<td>Non-DB railways</td>
<td>8.2%</td>
<td>27.0%</td>
<td>0.1%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Public road passenger transport</td>
<td>0.0%</td>
<td>-0.5%</td>
<td>-0.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Private motorized traffic</td>
<td>-0.5%</td>
<td>-1.4%</td>
<td>0.0%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>Air traffic (domestic)</td>
<td>7.7%</td>
<td>3.0%</td>
<td>-3.6%</td>
<td>0.5% (as at July)</td>
</tr>
</tbody>
</table>

1) Figure for 2009 provisional
2) 2010 forecast correct at 3 September 2010
For rail a trend above average is expected

Passenger transport in Germany 2009
(market shares in per cent; basis: traffic performance)

<table>
<thead>
<tr>
<th>Mode</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rail</td>
<td>8.9%</td>
<td>9.4%</td>
<td>9.5%</td>
<td>10.0%</td>
<td>9.8%</td>
<td>10.1%</td>
</tr>
<tr>
<td>Public road transport</td>
<td>9.8%</td>
<td>9.8%</td>
<td>9.7%</td>
<td>9.6%</td>
<td>9.6%</td>
<td>9.6%</td>
</tr>
<tr>
<td>Air</td>
<td>1.1%</td>
<td>1.2%</td>
<td>1.3%</td>
<td>1.3%</td>
<td>1.3%</td>
<td>1.3%</td>
</tr>
<tr>
<td>Private motorised traffic</td>
<td>80.2%</td>
<td>79.6%</td>
<td>79.5%</td>
<td>79.1%</td>
<td>79.3%</td>
<td>78.9%</td>
</tr>
</tbody>
</table>

* Figure for 2009 provisional/estimate
(Figures are rounded and may therefore not add up to exactly 100)
1) Forecast

Source: Federal Statistical Office, BVU and DB AG
Long-distance traffic performance by rail declined in 2009 as a result of the economic crisis

Traffic performance by DB Long-Distance
(billion pkm)

- Long-distance traffic performance by DB was down by 2.3%.
- There are still hardly any competitors active in the market for regular long-distance services.
- Announcements by Keolis and locomore rail that they planned to enter the German long-distance rail market were retracted in April 2010.
- Prospects 2010: (as at August: DB Long-Distance = +3.0%
Competitors in the regional market raised their share of ordered train services to 20.3 per cent

Ordered train services in the regional market
(million train-km)

In 2009, the share of competitor railways in terms of operated train-kilometres rose by 10.4% owing to contracts won in competitive procedures in previous years.

DB Regio was successful in contract award procedures in 2009 and won 71% of the total 63 million train-kilometre order volume.

Source: DB AG
Foreign transport undertakings in the German rail passenger market (as at: 2010 timetable)

Source: Federal Office for Freight Traffic -regional rail traffic, cartographic presentation: regional rail passenger market SPNV in Germany, 5.5.2010
Unchecked growth for the more than 320 competitor railways

Operating performance by non-DB railways (million train-path km)

- Operating performance by non-DB railways was up 6 per cent year-on-year to 170 million train-path kilometres.
- Competitors account for a share of approx. 17 per cent of total operating performance by DB Netz AG (2008: 16%)
National regulatory authorities are acting independently

German regulatory authorities in the rail sector

**Federal Railway Office (EBA)**
In authority for questions of unbundling, -security and environmental issues, etc.

**Federal Network Agency (BNetzA)**
In authority to promote competition in so called network markets

**Federal Cartel Office**
In authority for cartel law, merger control and limiting the power of market dominant companies

Guarantee of access for every interested railway undertaking
Agenda

- Discussing the new legal framework
- Limits of regulation
- Market development
Despite market opening, the access for DB in European markets is confronted with substantial competition barriers

Problems that have continued without improvement since 2008

- Prevention of one-man operations by trade unions or public authorities
- Time-consuming approval procedures for technical locomotive equipment
- Infrastructure connection for DUSS terminal is refused
- Use of Alessandria marshalling yard is not permitted

Barriers occurring in 2009

- SNCF blocks capacities for train path applications
- Allocation of train paths: only at short notice and in poor quality
- Lengthy procedures for the approval of new locomotives
- 5 months after the law was adopted, the regulatory authority has still not commenced work
The Commission’s initiative to further standardise European railway law is on the whole to be welcomed

**Opinion DB for the Recast**

- The promotion of railway traffic in Europe calls for harmonised framework conditions
- Therefore DB welcomes the initiative on the whole
- DB calls for a complete liberalisation of the rail passenger market as well
- The Commission has emphasised the importance of this issue in the accompanying notification
- Also decisive for DB: the integrated structure has to stay possible under European law

**Subjects to debate concerning the Recast**

- regulation of service facilities
- detailed requirements for infrastructure costs and access charges
- provisions on noise-differentiated infrastructure charges
- demands for performance schemes
- extended powers for market observation for regulatory bodies
- requirements for the „regulatory accounts“
- legislative technique
- mandatory discount schemes for trains equipped with ETCS
Agenda

- Market development
- Discussing the new legal framework
- Limits of regulation
Regulation has to be reasonable – interference only if necessary

Legally different interests have to be balanced

Is regulatory interference reasonable?

Theoretical foundations
Accepted in economic and legal theory:
Only „Essential Facilities“ have to be regulated!
Two prerequisites 1):
- The facility has to be vital to operate on the downstream market
- The competitor cannot build up the facility on his own with adequate means

Instance
- Clearly compliant with prerequisites
  - Train paths
  - Stations etc.
- Compliance with prerequisites in dispute
  - Maintenance facilities etc.
- Clearly not compliant with prerequisites
  - Ticket distribution
  - Energy distribution etc.

1) Source: Wettbewerbsökonomie: Regulierungstheorie, Industriökonomie, Wettbewerbspolitik, Günter Knieps, S. 103
The integrated structure means a significantly lower burden for the public purse – performance by countries with other models is not so good.

<table>
<thead>
<tr>
<th>Deutschland (Germany)</th>
<th>Frankreich (France)</th>
<th>Vereinigtes Königreich (United Kingdom)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rail traffic performance</strong></td>
<td><strong>Burden on the budget per rail traffic performance unit</strong></td>
<td></td>
</tr>
<tr>
<td><strong>German</strong></td>
<td><strong>French</strong></td>
<td><strong>British</strong></td>
</tr>
</tbody>
</table>

- **DB with integrated structure**
- Rail transport markets are fully liberalised
- Strong regulatory influence
- Growth for rail and financial relief for Federal government

- **Formal separation, SNCF responsible for network operation**
- No more than minimum requirements of liberalisation implemented
- No independent regulatory authority until 2010
- Drastic slump in rail freight, high costs for taxpayer

* State funding contributions include payments to ordering authorities, RUs and IMs; Sources: Statistiques équipement gouvernement français, Department for Transport, Office of Rail Regulation, Eurostat and DB data.
Investment activities in Germany are below average on an international comparison

Per capita investments in rail infrastructure in selected European countries in 2008 (EUR)

- Germany: 47
- Italy: 60
- France: 80
- Spain: 84
- Sweden: 104
- Netherlands: 105
- United Kingdom: 136
- Austria: 205
- Switzerland: 284

Public investments in rail infrastructure per euro of gross domestic product in 2008 (at current prices - EUR)

- China: 0.0125
- Switzerland: 0.0064
- Austria: 0.0060
- India: 0.0047
- United Kingdom: 0.0046
- Spain: 0.0035
- Netherlands: 0.0030
- Sweden: 0.0029
- Russia: 0.0028
- France: 0.0026
- Italy: 0.0023
- Germany: 0.0015
- Turkey: 0.0002

Source: 1: BMVBS (Germany), VöV (Switzerland), BMVIT (Austria); SCI Verkehr GmbH “Worldwide Finance and Investment Budgets of the Railways 2009”

Central policy decision in the current five-year plan (2006-2010): focus on investments in rail, target: more market shares for rail

2009: investments in rail infrastructure have overtaken road (Jan-Sep): rail approx. EUR 79 bn; road approx. EUR 78 bn

Increase in investments in 2009: rail +87.5%, road +50.7%

(Source: Institute for Railway Technology, Prof. Dr.-Ing. P. Mnich)
DB welcomes the Commission's proposal for mandatory introduction of multi-annual contracts (MAC)

**Commission's proposal on MAC**

Mandatory introduction of a contractual agreement between the competent authority and the infrastructure manager for a period not less than **five years**. Key elements are:

- Determination of **State funding** for infrastructure
- Definition of **performance targets**
- Giving **incentives to reduce the costs** of providing infrastructure and the **level of access charges**

**Opinion DB**

- **Sustainable financing of infrastructure** (MC-pricing vs. full-cost recovery requirement)
- **Quality standards for infrastructure** subject to public funds
- Ensures that railway undertaking **benefit from cost reductions** and increases in efficiency

MAC allow integration of all these aspects under one roof
Technical harmonisation is as well a crucial issue – DB has seen that recently in the debate about the Eurotunnel.

The European Railway Agency’s control function has to be strengthened.

* Instituted appointed by the state to draw up the conformity declarations pursuant to the TSI (whether the vehicles’ technology conforms to the interoperability requirements. In Germany (in contrast to other Member States) there is only one body, the EBCert, i.e. the Railway Certification Body.
Thank you for your attention!