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Railways—between sector specific and competition regulation

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Railway market in Sweden

- Structural separation in 1988
 - Local/regional authorities started to procure semi-taxfinanced commuter transports in 1990
 - Freight transport opened for competition in 1996
 - State owned “monopolist” split in 5 companies 2001 (passenger traffic, freight, maintenance, real estate, services)
 - Weekend/holiday traffic opened for competition 1 July 2009
 - International passenger traffic 1 October 2009, (EU directive)
 - All national passenger traffic 1 October 2010, (state monopoly on commercial long distance passenger traffic abolished)
 - In 2012 all public passenger transports will be opened up for competition – free market access on commercial bases possible
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Railway market - shortcomings and challenges

- Network capacity
- Slots-times
- Access to repair shops and terminals
- Market for (second hand) rolling stock
- Marshalling capacity
- Ticket and information services for passengers using several operators

Competition regulation and sector-specific regulation (1)

Competition law:

- + Competition law applicable on all markets and companies
- + Provides a dynamic view on competition and emphasis on market development in the long run
- Often not sufficient in the transition period from monopoly to competition
- *Ex post* regulation, years in court before final decision

Competition regulation and sector-specific regulation (2)

Sector-specific regulation

- + Regulation a more efficient and adapted tool during the transition from monopoly to competition
- + Industry specific → sector-expertise
- + Ex ante obligations
- + Relevant market pre-defined
- + More close supervision and control of markets possible

Possible risks as markets develops:

- Risk for “regulatory capture”, (over-regulation)
- High costs, non-dynamic view on competition, emphasis on market development in the short run
- Negative effects on incentives for investment and innovation

Competition regulation and sector-specific regulation (3)

- Sector specific regulation to control access to infrastructure - the monopoly.
- Competition regulation in competitive train operation markets.
- In the transition period sector specific regulation is important – more precise, faster, ex ante intervention
- Competition law and sector-specific regulation – can be applied to the same matter.
- Close cooperation between regulator and competition authority is needed, in boarder-line cases, to decide “best weapon” to handle a problem.

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Competition regulation and sector-specific regulation (4)

- A risk for legal uncertainty for the market players when two or more authorities and regulations involved.
- Well-defined set of rules is important - unbundling, clear borders between the regulated monopoly and competitive markets,
- Scheduled follow-ups and close monitoring of markets helps to be successful in liberalization of markets.
- Sector specific regulation and competition regulation are both important tools - the center of gravity may shift over time.

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