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Session D : Rail Passenger Transport
Session II. Compensation parameters

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For the Future of Passenger Rail



Alliance of Rail New Entrants (ALLRAIL) is the European non-profit association of independent passenger rail companies



ALLRAIL was established in May 2017, based in Brussels, Belgium.

ALLRAIL has the status of an EU representative body.



Our members share the belief that faster market opening is the only way to help Europe achieve its ambitious climate change targets as set down in the EU Green Deal.



Market opening leads to more trains, lower prices, & better products for cross-border and night trains



Where it has happened already, it brings consumer oriented services, improved service quality, lower fares, higher demand, more private investment and **modal shift to rail**, which is very beneficial for the **EU Green Deal**

How to increase legal certainty on the calculation of PSO compensation

EU 1370/2007 Article 2e => open access is the default

Member States should encourage an open access rather than PSO
(PSO then only in case of commercially-driven services not being viable)

After all, passenger rail must have the aim to break even or turn profit

If it does not, then it becomes unattractive for private investment. Rail becomes reliant on government funding & direction -> **the sector will remain small**

-> **Rigorous KPIs must be adopted: Could a PSO be done without a subsidy?**
What data is it based on? Have all potential competitors been consulted?
Could other subsidy mechanisms be used that would be fair to all operators?

In case of PSO: **clear rules have to be followed** (transportation plan & justification of PSO) & competitive tender procedure should follow. **PSO has to be based on financial analysis, not a request or a speculative bid.**



How to increase legal certainty on the calculation of PSO compensation

Polite reminder of the ECJ Altmark judgement from 2003

European Court of Justice held that PSO compensation does not constitute state aid when 4 cumulative conditions are met

1. PSO must be **clearly defined & specified**
2. parameters for calculating the compensation must **be objective, transparent** and established in advance
3. cannot exceed what is necessary to cover all or part of the costs incurred in the discharge
4. If there is a direct award, then compensation must be determined on basis of an analysis of the **costs of a typical well-run company**.



How to increase legal certainty on the calculation of PSO compensation

But the reality is different:

- PSO decisions by Member States are **because incumbent told them to do it** and/or continuation of inefficient Status Quo (see ÖBB)
- Or **money is allocated to incumbent** and divided into batch of PSOs
- **No control. Example:** Czech Supreme Audit Office stated in 2016 CZ Transport Ministry had not established legal mechanism stipulated in Czech law and therefore cannot verify and set correctly level of the compensation as the Transport Ministry

Parameters for compensation are not objective:

1. How can Hamburg (pop. 1.8 million) to Osnabrück (pop 249k) – about 230km – be served by long distance open access while Vienna (pop. 1.9 million) to Graz (354k) – about 200km – is a long distance directly awarded PSO?
2. Why does ÖBB Nightjet need a subsidy to operate to Amsterdam with metropolitan region of 2.4 million + Utrecht + Arnhem, whilst Hamburg is located on its own and ÖBB Nightjet demands no subsidy for night trains to go there?



How to increase legal certainty on the calculation of PSO compensation. Act like companies not charities

Example: is ÖBB Nightjet a well-run company?

It pays too much

- ÖBB Nightjet pays the too expensive Metropol tariff in Germany when it could have paid the cheaper point-to-point tariff (up to 4 trains per day per route)

& it does not maximise revenue



Tweet translation: Lukas Iffländer, Vice Chair of German passenger association ProBahn: “*yes, the demand is there. Kurt Bauer (of ÖBB) once said that if he were to act in a purely business-like manner, he could easily sell the last bed in the sleeping car for 400€ **without any problem***”
Then ÖBB should do so!!

By any objective criteria, financing of ÖBB Nightjet is state aid



How to increase legal certainty on the calculation of PSO compensation? Which parameters require more guidance?

Hybrid (i.e. PSO/open access services in the same train):

- Major risk of direct market distortion via international trains when PSO changes to an open access regime upon crossing the border. This is how:
 - Domestic discount products will be valid, making these trains also more attractive on open access-part (i.e. if Dutch part is discounted, PAX can pay higher price on German part & still be cheaper than OA new entrant).
 - There will be preferential through ticketing (i.e. one transport contract) from national PSO network to international PSO/OA train, giving it feeder services – with pass rights – whereas OA operator will not have that.

Solution for international trips involving PSO: Procurement must be awarded by **all** competent authorities **introducing a PSO for the entire route. Hybrids are anti-competitive**



How to increase legal certainty on the calculation of PSO compensation? Which parameters require more guidance?

Network effects

- It cannot be the case that only one operator has access to a feeder network
 - Through ticketing (i.e. one transport contract) from a national PSO network to a specific PSO (or open access) train carried out by the same operator effectively gives that train feeder services - with passenger rights coverage for whole trip - which new entrants do not have
 - National networks were inherited by incumbents from the taxpayer, and **these should not be used as a competitive advantage**
 - The lack of 'network effect' (i.e. ability to offer connections) means new entrants can lose 20-30% of total revenue, threatening their very survival

Mandatory through ticketing is the solution – Win/Win for whole sector



How to increase legal certainty on the calculation of PSO compensation? Which parameters require more guidance?

Non-discriminatory access to rolling stock is crucial

Problem: lack of level playing field to purchase or lease rolling stock

- if incumbents have tight control over rolling stock, then newcomers cannot help the passenger rail sector grow
- Meanwhile, unlike in other transport modes (bus, plane), **there is no long-distance passenger leasing rolling stock market, either 2nd hand or new**
- Rigged tenders are also an issue. In Slovakia, a tender specified rolling stock that only ZSSK had, and in turn it had been funded by EU money.
- **Bunkering, scrapping & wasting:** e.g. DB is inquiring in market for rolling stock [that it already has standing around](#) and Eurostar is wasting
- Unjustified 'PSO' for ÖBB enables it to pay €500m on new night train rolling stock that it will still use many years after Austrian market opening in 2030s



How to increase legal certainty on the calculation of PSO compensation? Which parameters require more guidance?

Solutions to achieve fair access to rolling stock

- There must be state guarantee for new EU interoperable rolling stock from 2020 onwards
- Incumbents should be required to make under-utilised 2nd hand fleet available newcomers, with no unnecessary scrapping
- Same financing rates for new entrants as incumbents. Green Bonds, EIB
- Private ROSCOs would be good but will not come if the market is not open. Who do you keep the rolling stock for if an new entrant RU fails? Very risky business when you still do not see enforcing of anti-trust & state aid rules
- **The key is justifying direct awards & PSO.** Must be super strict awards on awarding public money that is used to acquire rolling stock. If MS do not justify it, that rolling stock must revert to public ownership after expiry



Huge risk that that public funding crowds out private investors

It cannot be the case that a pan-EU night train cartel is paid for by the taxpayer by means of direct awards

Here is ÖBB employee Helmut Uttenthaler admitting on Twitter that ÖBB Nightjet is **only working together with other state incumbents** when building a night train network

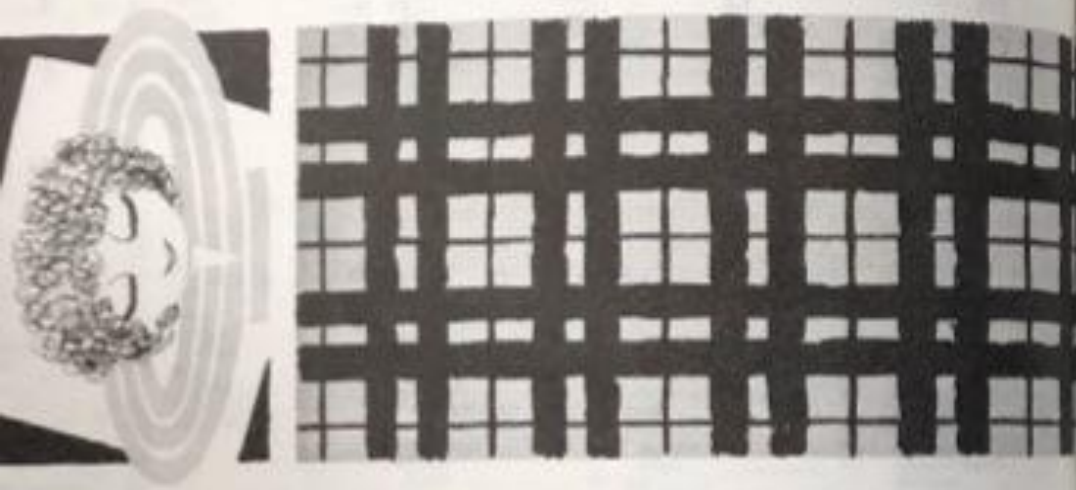


If operators in 'cooperation' with each other (i.e a cartel) are being overpaid by the taxpayer and lack the need to compete, then they will become complacent.

Airline pax & car drivers will not be won over, disappointed by the lack of attractiveness. **Private money will invest in other more competitive transport modes instead** that then innovate and win new passengers. Politicians will reduce funding & cut rail services. **Passenger rail will remain small**

We went through this cycle in the 20th Century. Why follow the same flawed model yet again?!

pour voyager heureux, voyagez couché
 schlafend reisen, glücklich reisen
 per viaggiare sereni viaggiate dormendo



TEN Trans Euro Nuit
TEN Trans Euro Nacht
TEN Trans Euro Notte

en voyageant de nuit
 Mit einer Deluxe
 viaggiando di notte



BB *nightjet*

This is not a level playing field!





Thank you

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