



Competition Report 2009

“Competition is well developed in Germany – other European countries are lagging behind”

Never before has so much freight been transported on rail. Never before have so many people travelled by train. Rail’s market share has continued to grow steadily every year since the start of the decade. This is again impressively illustrated by this year’s Competition Report.

Needless to say, the downturn in the global economy since summer 2008 has also impaired the development of the rail market. Rail freight has been particularly badly affected and, with growth of just one per cent, is noticeably less dynamic than in previous years. However, despite this difficult situation, rail freight has succeeded in defending its market position against other transport modes. Compared to the growth of the market, our competitors achieved an extremely high increase in traffic performance of 8.6 per cent. For years, there has been increasing demand for rail infrastructure from our competitors and that trend continued last year. Demand for train paths from other players in the rail market rose by 7.9 per cent year-on-year. We therefore cannot afford to ease off our efforts to expand and upgrade our infrastructure. This year, we shall actually raise our contribution to that process with the help of the economic recovery programme launched by the Federal Government: we intend to modernise stations in rural areas, invest in regional lines and continue to upgrade the main lines and nodes.

For many years, all the market players have benefited from the well-developed infrastructure in Germany and the effective opening of the market. Other EU Member States still have a long way to go to providing such conditions, a situation that we, as a railway undertaking that operates throughout Europe, sincerely regret. The fact that the entire rail passenger market is already open to competition in some European countries, such as Germany, Italy, the United Kingdom and Denmark, but not in others has led to severe discrepancies in the market. But even in countries which have officially opened their markets, we often encounter numerous barriers in practice when offering transport services outside our domestic market. To highlight the problem more clearly, this year’s Competition Report examines the situation in Italy and France as typical examples.

I explicitly call for national regulations and competent regulatory bodies in all Member States of the EU that encourage free and fair competition. If that is not the case, those countries which have opened their markets to competition whilst others have still not done might unfortunately find themselves to be the losers, as Günter Verheugen, Vice-President of the European Commission, accurately put it in his interview for this Competition Report.

Sincerely




Harmut Mehdorn
Chairman of the Board
of Management and CEO
Deutsche Bahn AG



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Photo: Heiner Müller-Elsner

Market and Competition Although the international economic crisis is having clear adverse effects on the logistics and freight transport markets, the rail passenger markets in Germany have so far remained largely unaffected. Rail's competitiveness rose slightly in both market segments. Train path applications for this year's working timetable were up 5.3 per cent year-on-year.



Excess capacities severely increase pressure on prices

The logistics market in Germany was marked by two opposing trends in 2008: whereas the market players enjoyed good growth in revenues during the first half of the year, the international economic and financial crisis had a severe effect on the logistics industry during the third and fourth quarters of the year.

The global economic downturn in the second half of 2008 had a marked impact on the international transport and logistics markets, with numerous leading logistics companies registering a substantial decline in freight volumes. At the end of the year, demand for transport services had decreased in all market segments, in some cases on an extreme scale. The resulting surplus capacities intensified pressure on prices. Whilst that situation may have benefited customers, it also led to falling revenues and declining margins, especially for those service providers which have their own transport capacities. The consolidation trend continued, driven by takeovers by major players and bankruptcies of small and medium-sized transport companies.

The air freight segment was by far the worst hit. After years of strong growth, volumes in the worldwide air freight market – in terms of freight tonne-kilometres – fell by roughly four per cent in 2008. Freight volumes continued to rise until May 2008, although growth was already down year-on-year, but then dropped significantly from June until the end of the year. In addition to the general economic situation resulting from the financial crisis, the market also suffered from high fuel costs until summer 2008. The decline could largely be attributed to the Asian market, which accounts for almost 50 per cent of total market volume.

In the ocean freight segment, the optimistic forecasts were already dampened at the start of the year as growth in the global economy began to tail off, leading to a reduction of volumes in the key markets. Expressed in Twenty-Foot Equivalent Units (TEU), the overall market achieved growth of only between three and five per cent in 2008 compared with its impressive performance in previous years. The highest-volume trade lanes in the world market are still those from Asia to North America and Europe, and there are still good transport volumes for the inner-Asian market. However, failure to meet the anticipated growth figures – aggravated by expanding capacities on offer from the shipping companies – led to unsatisfactory tonnage utilisation and consequently a drastic fall in ocean freight rates. A typical example of this is the route from China to Germany, where freight rates per TEU sank by approx. 80 per cent over the course of the year.

The crisis has also had a significant impact on the European land transport market. Until summer 2008, economic growth continued to have a positive effect on demand for road haulage. After the second quarter of 2008, however, recessionary tendencies were apparent in all the major European countries, with a noticeable decline in the transported quantities of freight. Apart from the



The global air freight market is particularly hard hit by the economic crisis.



The forecasted growth rates for ocean freight were already adjusted downwards at the start of the year.



Declining sales in the automobile industry have diminished growth in the contract logistics market.

uncertain development in the price of diesel after the all-time high towards the end of the second quarter of 2008, ongoing increases in input costs led to increasing pressure on prices, amongst other things

as a result of road tolls. This was counteracted by excess capacities at the carriers, which on the one hand made it difficult to enforce price increases with the shippers, but on the other hand also led to a general reduction in purchasing prices at the forwarders.

In 2008 the contract logistics market segment continued to grow, with revenues up by just under four per cent year-on-year. While the first three quarters of the year saw a sharp increase in demand, market growth slumped abruptly in the following months. This was due primarily to the dramatic decline in sales by the automobile industry.

In 2008, competition in the transport and logistics market was again characterised by numerous enterprises expanding their business base and achieving external growth by taking over companies. Whilst DB substantially expanded its European network with the acquisition of the Transfesa, a Spanish logistics operator in March and the Romanian company Romtrans in December 2008, SNCF also secured a well-established provider of forwarding and logistics services for its portfolio when it purchased the entire shares in Geodis. Other examples of such expansion include the Danish forwarding group DSV, domiciled in Brussels, which took over the shares of British financial investor 3i in ABX Logistics, a provider of global logistics services in the air and ocean freight sectors and the road haulage market.

The "Top 100 Logistics Companies" annual survey published by the Fraunhofer Society identifies the key players in the German logistics market. The 2008/2009 survey confirms that the three leading enterprises succeeded in defending their positions from the preceding year. With logistics revenues of roughly EUR 7.1 billion (2007) in Germany, for example, the DB Group remains the market leader, followed by Deutsche Post DHL at

EUR 6.2 billion, and the logistics and freight transport company Kühne + Nagel in third place with logistics revenues of EUR four billion. Together, these three companies account for a market share of only eight per cent of the German logistics market, which in 2007 amounted to a total volume of EUR 205 billion. The German logistics industry is thus still dominated by a large number of medium-sized and small forwarding companies.

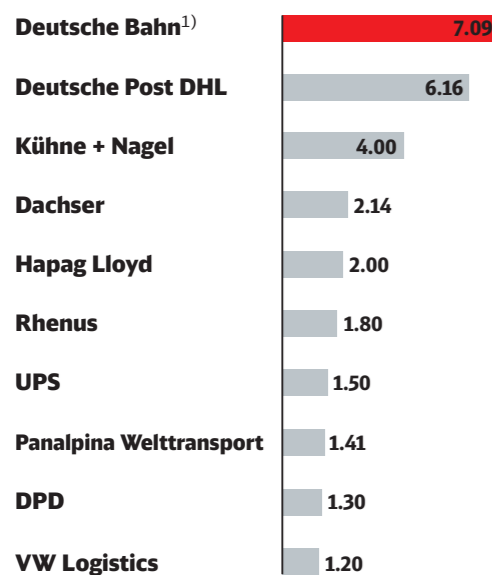
industrial and commercial enterprises themselves is regarded by the experts as confirmation of that theory. Accordingly, there is clearly immense growth potential in that area.

Good long-term prospects for the logistics industry despite the present crisis

Despite the current slump, expansion strategies are sure to pay off in the long run for logistics services providers. According to the "Global Logistics 2015+" study conducted by the Innovation Center for Transportation and Logistics at Technische Universität Berlin in October 2008, business enterprises make special efforts to reduce costs during an economic downswing. This includes concentrating on their core competencies and outsourcing logistics activities to specialists: in particular there is high demand for complex services such as supplying entire manufacturing plants, inclusive of all the necessary primary products and raw materials. At the same time, the driving forces which contributed to the growth of this sector of industry continue to apply. These include, for example, scarcity of natural resources as well as global economic structures which are increasingly defined by a division of labour. Expert observers such as the Fraunhofer Society predict a continuing rise in demand for logistics services, in particular for worldwide ocean and air container transport, for international logistics systems and for complex logistics solutions. Moreover, the fact that in Germany more than half of all logistics services are still provided by

Logistics Top Ten, Germany

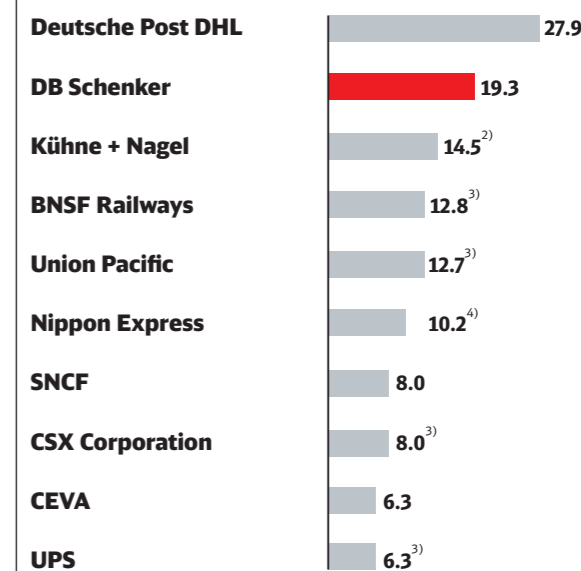
Logistics revenues in Germany 2007 (EUR billion)



1) Rail Freight Transportation and Logistics Business Units
Source: Fraunhofer Society, "The Top 100 Logistics Companies", 2008/2009 survey

Logistics Top Ten, Worldwide¹⁾

Worldwide logistics revenues 2008 (EUR billion)



1) excl. shipping companies 2) CHF = EUR 0.67
3) USD = EUR 0.71 4) end of financial year 31. 3. 2008; JPY = EUR 0.00638
Source: 2008 financial reports

Photos: A.P. Møller - Maersk A/S / Ben Wind Photographie; Wolfgang Klee

Rail freight transport asserts its market position

In a comparison to other transport modes, rail freight again demonstrated its competitiveness in a difficult environment. The European rail freight market is currently characterised by national railways which are expanding in order to improve their competitive position.

Growth in the German freight transport market (rail, road, inland shipping and long-distance pipelines) was weaker than in the preceding year. While the first half of 2008 saw stable increases in growth, the trend in the second half of the year was far less dynamic as a result of the marked economic downturn. Cost burdens such as the sharp rise in fuel prices also adversely affected the transport industry. The price of diesel, for instance, was up by a good 14 per cent year-on-year. However, thanks to the positive developments during the first six months, traffic performance for the whole market actually rose by 1.1 per cent in 2008, to a total of almost 670 billion

tonne-kilometres (tkm). Although growth for rail freight was far less impressive in 2008, it nevertheless managed to exceed the high level of the preceding year with a 0.9-per-cent increase to a total of 115.7 billion tonne-kilometres and, following the successful performance of the past five years, in 2008 again defended its market share of 17.3 per cent. Since 2002, rail freight managed to expand its market share by two percentage points, whereas inland shipping, for instance, has lost approx. two and a half percentage points. The main growth driver for rail was again combined transport, although growth in that segment was far more moderate than in previous years. After excellent performance in the first half of the year, there was a noticeable decline in growth rates resulting from the worldwide economic downturn in the following months. These effects curbed both seaport hinterland transport and continental combined transport across all sectors of industry.

While transit traffic dropped severely, the highly productive domestic transport market improved substantially, as did import and export transports as a consequence of the ongoing expansion in international business activities. However, apart from new transports and growth in existing transports, it should be noted that some railway undertakings were included in the transport statistics published by the Federal Statistical Office for the first time in 2008. Accordingly, year-on-year changes are in some cases not based on identical reporting groups.

Traffic performance in the road haulage market (German and foreign trucks inclusive of cabotage transports in Germany) also eased off considerably. Foreign trucks clearly dominate the market for cross-border transports and again



Traffic performance in the road haulage market was slightly higher than overall market growth.

achieved stronger growth than their German competitors, despite the fact that demand from foreign trade slumped significantly in the second half of the year. Foreign trucks handle a share of approx. 36 per cent of total traffic performance on German roads. Whereas demand remained stable during the first six months of the year, in spite of the sharp increase in fuel prices, the situation was virtually reversed in the further course of the year: diesel prices decreased sharply, while the simultaneous drop in demand led to surplus loading space capacities, with the corresponding effects on pricing. Compared with just over six per cent the year before, traffic performance in the road haulage market achieved only moderate growth on the whole in 2008, although at 1.6 per cent the increase was nevertheless slightly higher than for the overall market.

After achieving only slight growth in 2007, the generally weak performance of the inland shipping sector in previous years continued once again. Despite the mild 2007/2008 winter, and subsequent improved operating conditions, the stable overall economic situation during the first half of the year was not sufficient to enable inland shipping to compensate for the economic slump during the second half of the year. This segment was badly affected, not least by the sharp increase in gas oil costs during the first months of the year. Total traffic performance on German waterways in 2008 was 1.0 per cent down year-on-year, which meant that inland shipping failed to retain its market share for the fourth year in succession.

In view of this market environment, which was particularly difficult in the fourth quarter of 2008, the DB Group companies in the rail freight market in Germany did not quite succeed in maintaining the high level of the previous year. Traffic

performance in 2008 amounted to 91 billion tonne-kilometres, compared to 92 billion in 2007. Traffic performance by DB competitors rose by 8.6 per cent, which was significantly lower than the 28.7 per cent increase in 2007. The estimated market share of non-DB railways again rose by a good two percentage points, reaching just over 21 per cent in 2008 compared with 19.7 per cent in 2007.

Competitors achieve above-average growth

Approx. 30 railway undertakings currently account for the greater part of total traffic performance on the rail freight network in Germany. This high number of active freight railways in Germany shows that the German rail freight market is easily accessible to new entrants and that the degree of market concentration is consequently low. More than 300 freight railways are licensed to provide freight transport in Germany. These companies can expand their operations at any time and thus increase the competitive pressure. Moreover, a further twelve railway undertakings (RUs) obtained a licence for the German market last year.

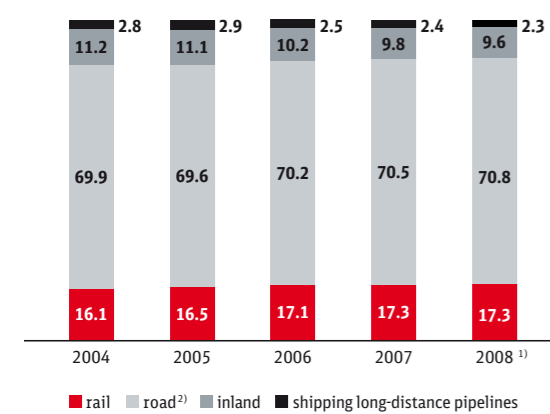
In addition to the high number of RUs, the diversity of rail providers is further proof that competition is working well in the German rail freight market. DB's competitors include both German and foreign railway undertakings. Some of the foreign competitors are organised as private-law companies, such as Veolia Cargo, a member of the French Veolia Group, whilst others are state-owned railways such as Swiss SBB Cargo, or TX logistics, in which Trenitalia is the majority shareholder. SNCF in particular wishes to establish a position as an alternative to DB in Europe. In 2008, for example, SNCF entered the German market after acquiring a 75-per-cent stake



In 2008, inland shipping again lost market shares.

Rail defends its market position

(per cent, basis: traffic performance, figures rounded)



1) Estimate; 2) German and foreign trucks (incl. cabotage transports in Germany)
Sources: Federal Statistical Office, DB data

Photos: Bartłomiej Banaszak; Bartłomiej Banaszak



Rail Cargo Austria plans to become the main provider in South-Eastern Europe.



According to a recent survey, customers are highly satisfied with the quality of rail freight transport.

in the private railway company Import Transport Logistik Dresden. Several German regional railways, such as Mittelweserbahn, expanded both their national and international business activities. Over the last ten years, Mittelweserbahn has evolved from a small regional railway to a major enterprise with a workforce of more than 130 and a fleet of 45 vehicles.

The German rail freight market is particularly attractive because of its size and central geographical position, and the entry of SBB Cargo and SNCF confirms that national railways are systematically pursuing expansion strategies into other countries in order to consolidate their competitive position in the European rail freight market. Last year, DB took over the Spanish logistics company Tranfesa, followed by the Polish freight railway PCC in January 2009; approval from the antitrust authorities is still pending. The Austrian company Rail Cargo Austria (RCA) has already stated that it plans to

obtained a safety certificate for the Slovenian rail network, a prerequisite for beginning transport operations. However, it is not yet clear when RCA will actually begin to offer freight transport in Slovenia.

RCA is planning to join the Italian market as a low-cost carrier. RCA's parent company, the Austrian state railway ÖBB, currently has around 60 shareholdings in South-Eastern Europe, and continues to acquire more. Some national railways have not yet privatised their cargo segments: in most cases, these are too small to survive independently, especially in the present difficult economic climate. But RCA is already in stand-by position to acquire the freight segments in Croatia and Montenegro. To date, however, there is still not sufficient political will to privatise the railways in these two countries. ÖBB has already acted as consultant to the Croatian state railway in connection with its reorganisation and has also been in negotiations with the Montenegrin state railway.

Competitor railways have access to all resources

According to a special report on the rail freight market published by the Federal Freight Transport Office, the market consolidation process is expected to continue at European level: "The former monopolist national markets are being replaced by an oligopolistic structure at European level." The Office believes that at the end of the consolidation process, Europe-wide services will be offered by just a few large railway undertakings, most of them former state railways. Companies such as Veolia or the British Arriva Group, however, show that it is also possible for private companies to establish a firm

position in Europe alongside the former state railways. As a result of takeovers and stake acquisitions, combined with dynamic developments in the leasing business, access to rolling stock is no longer a barrier for small railway companies attempting to enter the market. One of the ways in which RUs can prove their competitiveness is by offering solutions geared to the requirements of specific customers, for instance by transporting goods which were previously considered unsuitable for carriage by rail, such as expensive computer hardware. Special security seals are used to monitor such freight. Other companies offer the transport of perishable goods, such as fish. Dedicated information and support chains enable the RUs to monitor the temperature of refrigeration plant throughout the entire transport route.

The "Rail Freight Survey 2008" conducted by management consultants Booz & Company in spring 2008 confirms that the rail freight market is characterised by fierce competition and innovative products, falling prices and a noticeable improvement in quality. According to the survey, customers rate the quality of rail freight transport as satisfactory or highly satisfactory. The positive effects of competition, such as the sharp rise in traffic performance in recent years, are however severely jeopardised by capacity bottlenecks in the rail network. More than half the survey participants, for example, feared that the infrastructure would not be able to cope with future growth. Despite the present Europe-wide slump in transport volumes as a result of the economic crisis, medium- and long-term megatrends such as globalisation and ongoing climate change will again lead to a strong increase in demand for rail freight services and make infrastructure capacity expansion a matter of top priority.

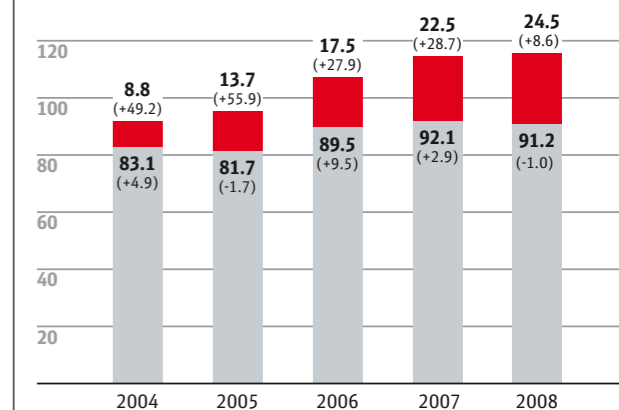
Photos: ÖBB/Archiv FG, Stefan Watter

Competitors increase traffic performance by 8.6 per cent

Their market share amounts to just over 21 per cent.

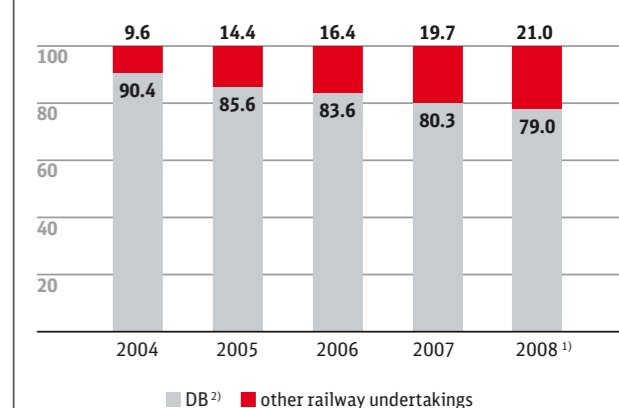
Traffic performance in rail freight transport

(billion tonne-kilometres, figures in brackets show year-on-year change in per cent)



Market share of DB and its competitors

(per cent)



1) Estimate; 2) Railion Germany and RBH Logistics as from 2006
Sources: Federal Statistical Office, DB data

Megatrends will prevail over the long term and necessitate capacity expansion to cope with increasing rail freight volumes.

become the largest provider of rail freight services in South-Eastern Europe by 2010 by means of strategic alliances and takeovers. In December 2008, for instance, it took over the rail freight subsidiary of MAV, the Hungarian state railway, where it intends to set up a full-coverage distribution network with six new logistics hubs. In July 2008, RCA



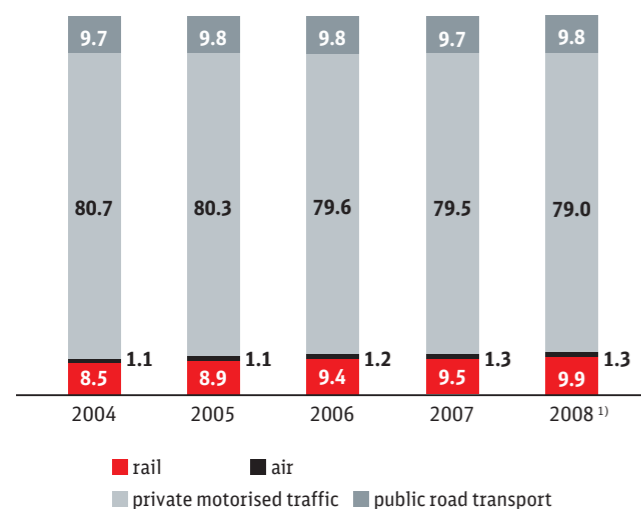
Traffic performance by long-distance rail passenger transport set a new record in 2008.

Rail passenger market weathers the crisis

Compared with the freight sector, the rail passenger markets have remained largely unaffected by the onset of the recession in Germany. On the contrary, rail profited from the stable employment market and the huge demand for mobility from passengers. It also benefited from the high fuel prices until mid-2008.

Rail again raises its market share

(share of modal split in per cent; basis: traffic performance, figures rounded. Revised figures/data on public road transport as from 2004 owing to a change in data capture method pursuant to German Transport Statistics Act)



1) Estimate Sources: Federal Statistical Office, DB data

2008 was a successful year for rail passenger transport. This was due in particular to the record increase in fuel prices to more than EUR 1.50 per litre of diesel in June 2008 (cf. www.adac.de). Despite the economic downturn in the second half of the year, fuel prices remained high, at almost seven per cent up year-on-year. Because trains are more energy-efficient than cars or planes, rail's competitive position consequently improved compared with the other transport modes.

More long-distance and regional passengers

On the whole, the passenger railways can look back on a successful financial year. The long-distance segment increased both the number of passengers and also traffic performance, thanks to good acceptance for new connections and lower price increases than in private motorised traffic. The train drivers' strike in autumn 2007 had caused a reduction in traffic performance for rail as a whole, but this in turn led to a corresponding increase in the growth rate for 2008. In the regional market, traffic performance increased although the ordering authorities actually ordered

fewer train services owing to the cutbacks in regionalisation funds. DB Regio is faced with intense competition in this segment from new providers which are owned by the Federal Laender, local authorities or subsidiaries of international corporations.

The overall market declined by 0.8 per cent. Private motorised traffic continues to dominate the market, but suffered a particularly strong decrease of 1.7 per cent, putting its share below 80 per cent of the total market. This makes the 3.5-per-cent rise in rail passenger traffic performance all the more remarkable. Rail's share of the market increased to 9.9 per cent. Public road transport was down by 0.5 per cent and thus failed to meet the 2007 figure, accounting for a share of 9.8 per cent of the total market. Domestic air traffic in Germany on the other hand continued to grow, although after years of strong growth, it rose by a mere 7.7 per cent in 2007, which was only half the growth of the preceding year. Its share of the overall market remained stable at 1.3 per cent.

Study analyses competitive opportunities in the long-distance segment

In 2008, traffic performance in the long-distance rail passenger market increased substantially to 35.5 billion passenger-kilometres (pkm), a rise of 4.3 per cent. The upgrading of popular lines as well as new cross-border connections, for instance between the cities of Hamburg and Copenhagen or Frankfurt/Main and Paris, ensured that a higher number of passengers opted for long-distance rail products again.

The Railteam alliance founded by European high-speed rail providers in 2007 meant numerous advantages for international rail passengers: for example, if a train is delayed, passengers can travel on an alternative train run by any other partner in the alliance ("Hop on the next train") or enjoy privileges for frequent travellers such as lounges and premium tickets throughout the entire Railteam network. Moreover, central info points and a joint website (www.railteam.de) ensure easy access to Railteam products and services.

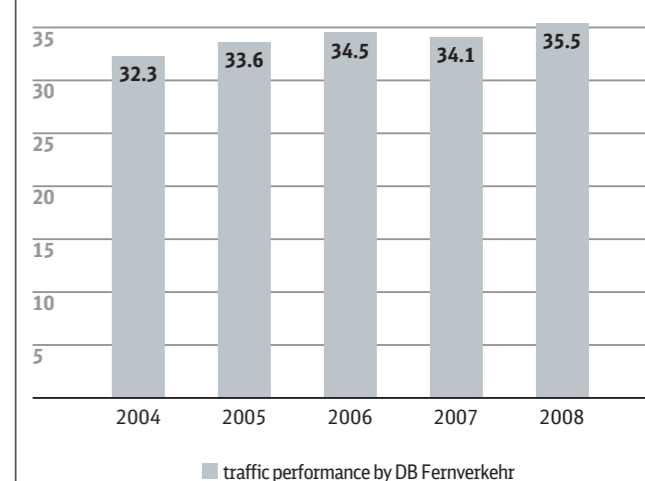
The wide range of reduced-price fares and special offers, such as the "Dauer-Spezial", also had a positive effect on passenger figures.

As in previous years, Deutsche Bahn's competitors were reluctant to join the purely commercial

long-distance rail market in 2008 and the only non-DB services were those which were already on offer by other companies such as Veolia ("Inter-Connex"), Arriva (Vogtlandbahn, Plauen-Berlin) and Georg Verkehrsorganisation (Berlin-Malmö). At the insistence of its British parent company, Vogtlandbahn discontinued the service between Plauen and Berlin in February 2009 because of the sharp increase in costs, but reinstated the connection on 8 April 2009. Possible reasons for the low number of competitors in the long-distance rail passenger market are given in a survey by the European School of Management and Technology (ESMT), which investigates the potential opportunities from functioning competition once the European rail passenger market is liberalised as from 2010, as prescribed by the EU. Some of the findings of the study can already be applied to the present situation, as some EU Member States, including Germany, already opened up their networks to competition years ago.

Sharp increase in long-distance transport

In 2008 performance by DB Fernverkehr was well up year-on-year (traffic performance in billion passenger-kilometres).



Source: DB data

Photo: Axel Hartmann



More rail passengers thanks to high fuel prices, attractive products and good response to flat-rate tickets.

The study has succeeded in quantifying the competitive pressure triggered by aviation on the examined routes, based on the parameters of passenger figures and price reactions. It reveals that the launch of a flight service by a low-cost carrier leads to an average decline in traffic performance by long-distance rail of approx. eight per cent and to significantly lower prices compared with the market situation prior to entry of the low-cost carrier. This applies to both first and second-class travel. These findings prove the important role played by inter-modal competition. On the other hand, the authors of the study do not expect strong competition to develop on rail following the liberalisation of the European long-distance rail market, and states the key reason for this as the high preliminary investments required before a long-distance route can be offered, compared with the regional and freight markets. This is also confirmed by Klaus Jakobs, CEO of Arriva Germany, the third-largest railway undertaking in Germany after DB and Veolia Verkehr. "It is in fact difficult to operate long-dis-

tance transport profitably. [...] It is simply very expensive to run trains. We are always in competition with other transport modes," says Jakobs (Source: "Regionalverkehr", Issue 1/2009, p. 52f.)

Regional transport: more services for less money

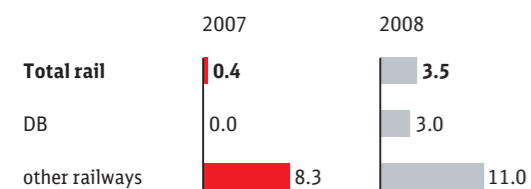
At 3.2 per cent, last year saw pronounced growth in traffic performance by the regional rail passenger market. Despite some cancellations, traffic performance in this segment increased from 44.9 billion to 46.3 billion passenger-kilometres (2008).

The compromise reached between the Federal Government and the Federal Laender regarding the allocation of regionalisation funds in 2007 led to a cutback to EUR 6.675 billion for 2008. Up to the year 2014, the regionalisation funds are to be increased by 1.5 per cent per annum to a total of EUR 7.3 billion. The ordering authorities used 78 per cent of the funds available, i.e. approx. EUR 5.2 billion, to order train services (cf. "Regionalverkehr", Issue 1/2009, p. 40). Intense competition in the regional rail market has led to price cuts for the train services ordered, with the corresponding benefits for the ordering authorities. As a result, many regional and local authorities were still able to offer an attractive range of rail services despite the reduction in funds.

Performance by DB subsidiaries in the regional rail market also improved, although the increase of 1.8 per cent was below average. In view of several lines and part networks which were lost to other players, such as the Hunsrückbahn, which will be operated by the Mainz-based company Rhenus Veniro as from December 2009, this can nevertheless be regarded as a success, which can be attributed to high fuel prices, attractive products and the good

Higher growth for rail passenger transport

(year-on-year change in per cent, basis: passenger-kilometres)



Source: DB data

response to flat-rate tickets. Competitors raised their share of the total market to approx. 18.4 per cent of train services and 10.1 per cent of traffic performance by taking over services previously offered by DB subsidiaries. Traffic performance by competitors increased by roughly 10.8 per cent to 4.7 billion passenger-kilometres.

In 2008, the ordering authorities awarded new contracts for approx. 38.2 million train-kilometres, with approx. 28 per cent of that total going to DB companies. The greater part was awarded in the form of tenders (roughly 51 per cent of train services). Of the remaining 49 per cent, a good two thirds were awarded directly, the remainder in negotiation procedures.

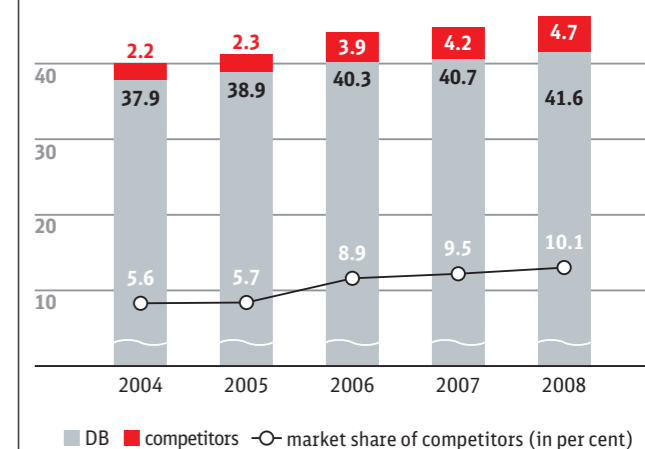
Of the 27.5 million kilometres of train services awarded to DB competitors in 2008, 23 million train-kilometres went to subsidiaries of international corporations, such as the transport division of the French Veolia Group, which has numerous subsidiaries active in Germany, and Benex, a subsidiary of Hamburger Hochbahn and the Australian investment company Babcock & Brown Public Partnerships.

Foreign providers gradually move into the German regional rail market

The consolidation process in the German regional rail market is frequently initiated by foreign state railways such as SNCF, whose subsidiary Keolis competes with DB in Germany from the basis of its protected home market in France. The Dutch state railway, NS, also joined the German regional market through its subsidiary NedRailways last year, when it took over Abellio, a transport company in Essen. Some state railways, such as the Swiss SBB, already operate in Germany, whilst others, for example the Danish DSB, have announced plans to do so. The British Arriva Group is particularly active, with subsidiaries and affiliates in many parts of Germany. Its share in Osthannoversche Eisenbahn (Metronom), for example, provides Arriva with links to transport companies owned by local authorities and Land governments. One of the publicly-owned companies which is particularly active is Hessische Landesbahn (Cantus Verkehrsgesellschaft, Vectus Verkehrsgesellschaft and others).

3.2 per cent growth for regional rail market

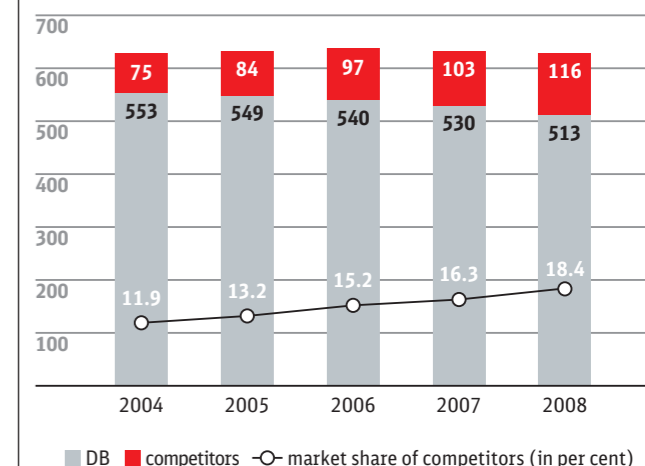
Competitors enjoyed above average-growth in traffic performance (billion passenger-kilometres)



Source: Federal Statistical Office

Market share of competitors rises to 18.4 per cent

(train services in million train-kilometres)



Source: DB data

Photo: Ralf Kranert



International corporations such as Arriva have consolidated their position in the public road transport market.

Divergent competition conditions in public road transport

Only regional transport is open to competition, and local authorities can still award public service contracts directly to their own transport companies. There is growing opposition to the divergent access regimes to transport markets in the EU.

As in previous years, last year also saw an increase in competition in the regional bus market. As these services are newly awarded or put up for tender at regular intervals, this market is constantly changing. In 2008 alone, for example, new contracts were awarded for approx. 40 million revenue-earning kilometres: contracts were awarded in competitive tenders mainly in Schleswig-Holstein (three), Hesse (48) and Munich (five). In nine cases, the Federal Land of Lower Saxony opted for competitive approval procedures, which means that the transport companies apply directly for the franchise on the basis of the services up for tender. DB Bahn Urban companies won 40 per cent of these tenders. Hesse, in particular, saw a continuing change in the market players, as traffic performance lost by the DB Bahn Urban company DB Regiobus Hessen (RKH) could only be partially compensated for by the acquisition of new contracts. Other companies, such as the Essen-based transport company Abellio and its two subsidiaries Werner and Verkehrsgesellschaft Mittelhessen in the Federal Land of Hesse, won additional public service contracts. In Schleswig-Holstein, the DB Bahn Urban bus company Autokraft in Kiel, will continue to offer its present services. The new contracts for Reinfeld and Ahrensburg (Schleswig-Holstein), however,

went to Dahmetal, a private company, and Verkehrsbetrieben Hamburg-Holstein AG (VHH), a municipal transport company.

Local authorities bank on expansion

The most common procedure in the public road transport market is still that the local authorities award services directly to their own transport companies. In November and December 2008 alone, the cities of Darmstadt and Wetzlar (Hesse), Ulm (Baden-Württemberg), Neu-Ulm and Munich (Bavaria) and the Erzgebirge district in Saxony announced direct contract awards to their own companies.

In addition to such in-house awards, an increasing number of local authorities are promoting mergers between their own companies and other municipal transport companies. Duisburger Verkehrsgesellschaft (DVG), Essener Verkehrs AG (EVAG) and Mühlheimer Verkehrsgesellschaft (MVG) for instance, are planning to amalgamate operations in a new transport company, Rhein-Ruhr-Verkehr (RRV), in 2010. The resulting new corporate structure would create its own market. There are similar plans by municipal transport companies in Brandenburg. The objective of such mergers is to

cut costs and thus improve the cost effectiveness of the companies. According to figures published by the Association of German Transport Undertakings, municipal transport companies in the western Federal Laender achieved a cost-recovery rate of only 74.6 per cent, while the figure in the east of Germany was a mere 68.4 per cent. A substantial improvement in these cost structures is urgently required, as increasing competition in the energy market means that local authorities are losing revenues from their own energy providers, which was used in the past to finance their orders for transport services.

In the interests of optimising the economic performance of their transport companies, the local authorities are therefore pursuing expansion strategies. Hamburger Hochbahn, together with its subsidiary Benex, purchased Hamburger Nahverkehrsgesellschaft and also participates in tenders outside the boundaries of Hamburg through Benex. The company recently won tenders in the Greater Munich Area and in northern Hesse.

It is unclear whether this will still be permissible once EU Regulation 1370/2007 on local public transport enters into force in December 2009, (cf. chapter "Regulatory Policies"). The Regulation is aimed at increasing competition and consequently bans companies such as Hamburger Hochbahn from competing in tenders, as they already benefit from direct contract award by their owners.

Only limited scope for growth

In 2008, international corporations again expanded their position in the German public road transport market by buying up other companies. The British Arriva Group in particular is increasingly active in the German market after taking over the operations of Lüchow-Schmarsauer Eisenbahn and purchasing Südbrandenburger Nahverkehrs GmbH. The latter company alone handles more than two million revenue-earning kilometres per annum in its home region. A new player in the German market is NedRailways, a subsidiary of the Dutch state railway NS, following the takeover of Abellio GmbH, a transport company in Essen.

These international corporations and DB Bahn Urban compete with each other primarily for

regional bus services, as they have no access to other segments of the road transport market which are awarded by the local authorities in the form of in-house procedures. This means that the regional bus market is practically the only segment with growth potential. While DB Bahn Urban opts for various forms of cooperation, integration projects and joint ventures – in particular with medium-sized municipal and private transport undertakings – in the domestic market, the European market also

Competitive conditions vary in the individual EU Member States.

has interesting potential. Not all EU Member States, however, offer the same competitive conditions. While Keolis, a subsidiary of the French SNCF, has been active in the German regional transport market for years, as has Veolia Verkehr, a subsidiary of the French Veolia Environnement S.A. Group, German and other European transport companies are still unable to operate successfully in France, where the market is still de facto closed to foreign players.

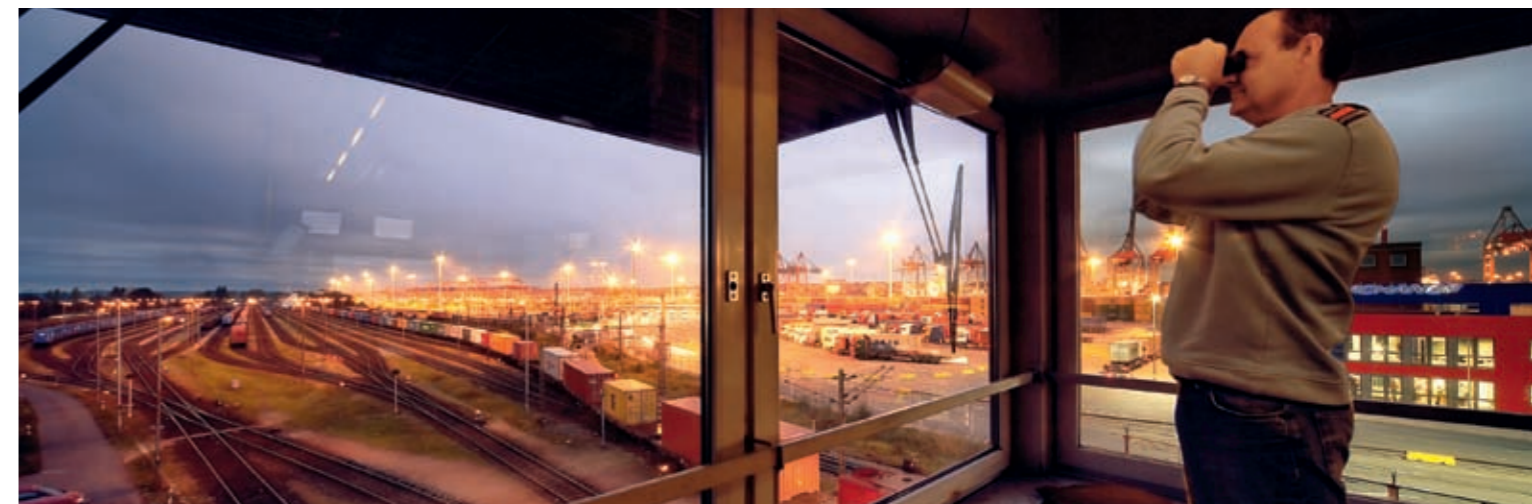
After DB Bahn Urban had filed an objection to an award, on 10 December 2008 Bordeaux Administrative Court ordered the City of Bordeaux to repeat the contract award procedure which had begun in November 2007, stating that the city authority had failed to satisfy its obligation to conduct a transparent competitive procedure and had consequently infringed Community law (Articles 43 and 49 of the EC Treaty). Bordeaux had published the invitation to tender for the public service contract only in local and largely unknown publications. By contrast, a previous invitation to tender in 1999 had been published in the EU Official Journal, owing to its substantial financial importance. At the beginning of April 2009, however, the French supreme administrative court Conseil d'Etat repealed the ruling of Bordeaux Administrative Court and confirmed that the City of Bordeaux had conducted the tender procedure correctly. Bordeaux city authority then signed the contract for the relevant transport services with Keolis.



In 2008, DB Bahn Urban was successful in 40 per cent of tenders.



Major construction projects have already been taken into account in the current working timetable.



After allocation, train paths have to be converted into smooth operations wherever possible.

Stringent demands on the working timetable

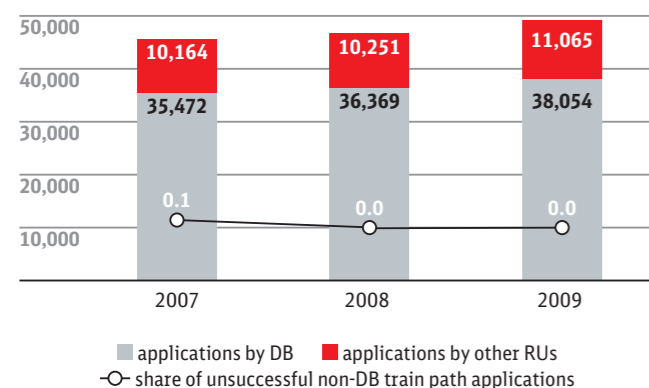
As in previous years, DB Netz AG was able to satisfy almost all customer applications for train paths for the 2009 working timetable. The marked growth in train path applications proves that the compilation and coordination processes function well.

The steady rise in train path applications in recent years again continued for the 2009 working timetable. Applications for 49,119 train paths for the current timetable, as against 46,620 the preceding year, are due on the one hand to the fact that major construction projects were already integrated in the working timetable, but also serve as proof of the competitiveness of rail transport on the whole as well as the positive trend in intramodal competition. Non-DB railways account for a share of 11,065 train paths, which is 7.9 per cent more than in 2008. Not only DB, but also its competitors thus benefit from the trend towards rail transport. In addition to the three major customers DB Regio AG, DB Fernverkehr AG and DB Schenker Rail, as well as a further 25 DB affiliates, 312 competitors also operate on the German rail network: these include 72 rail passenger companies, 149 freight operating companies, and other players such as construction firms.

In the rail freight sector, year-on-year growth for non-DB players amounted to 14.5 per cent, which is slightly higher than for the RUs in the DB Group, which achieved growth of 12.4 per cent. In the regional passenger market, train path applications from non-DB railways were six per cent up year-on-year. The total increase in train path applications was approx. four per cent. At 2.9 per cent, the growth rate for DB undertakings in 2008 reached only half that figure.

2009 timetable compiled without problems

The number of train path applications by competitors rose by 7.9 per cent year-on-year. Only three train paths could not be included in the working timetable and had to be rejected (absolute figures)



Source: DB data

This can be attributed primarily to the fact that DB Regio lost various tenders to other players, who applied for more train paths for their newly acquired contracts. In the long-distance passenger market, non-DB railways applied for 97 train paths for 2009 – 37 more than in 2008. Nevertheless, what appears to be substantial growth should not obscure the fact that the number of applications for long-distance train paths is very low compared with other categories.

Successful coordination procedures

The increasing number of train path applications also made train path compilation and operational implementation of the working timetable increasingly complicated. The rise in demand for the current timetable (in force since 14 December 2008) meant that approx. 12,000 train paths had to be coordinated. Conflicts of interest arose between customers who had applied for the same time slot or with overlapping requirements. In such cases, alternative solutions are sought in consultation with the affected RUs in the form of coordination procedures: the opposing positions are first compared, their feasibility examined and a solution which is acceptable to all the parties involved is then sought. If no agreement can be reached in the coordination procedure, DB Netz AG is entitled to rule on

the train path application dispute, subject to prescribed statutory criteria for reaching its decision. To ensure that these criteria are correctly applied, the legislator has granted the regulatory authority the right

Incompatible applications were received for 12,000 train paths. Almost all conflicts could be amicably resolved.

to examine any rejected train path applications. The Federal Network Agency did not object to the three rejected train paths for the 2009 working timetable.

Research project develops new, efficient traffic control programme

Once the train paths have been allocated, they have to be converted into smooth running operations. In view of the increasing number of train path allocations, it is increasingly difficult to ensure that operations remain on schedule, especially on the main corridors. Accordingly, DB is cooperating on a research project with

Photos: Gustavo Alabiso; Heiner Müller-Eisner



The increasing number of train path applications makes it increasingly difficult to handle operations on schedule.



Germany has a mixed rail network, on which all traffic categories are highly interlinked.

DB Netz AG customers benefit from optimised processes in the planning and execution of construction projects.

RWTH Aachen University of Applied Sciences and TU Dresden aimed at developing a system to assist traffic control. The target is to help the traffic controllers identify and resolve problems in railway operations on a non-discriminatory basis and with optimum results in terms of operating and economic aspects. For instance, if it is clear that diversions from the timetable will be

necessary, the traffic control assistance system should compensate for these disruptions promptly, so that the train concerned can revert to the scheduled timetable as soon as possible. DB Netz expects the introduction of this "DisKon" programme to lead to substantial improvements in operations and consequently raise punctuality in the operating schedule.

Discussion as to practicable harmonisation of traffic control procedures

There are currently discussions in progress at European level as to whether traffic control methods on international routes, such as the Rhine Corridor, should be harmonised. The objective is to raise the competitiveness of railway transport. DB believes that this project is virtually unfeasible. The different traffic control procedures applied by the European rail infrastructure managers have evolved over the years and vary both in the way in which the traffic controllers

work, as well as the way in which they handle traffic on the rail network. The rail network in Germany, for example, is a mixed network on which all the different traffic categories are largely interlinked: by and large, passenger and freight trains travel on the same lines and at the same times. Neighbouring countries such as the Netherlands, on the other hand, operate segregated networks for high-speed services and for freight traffic. Moreover, there is less interlinking of train path structures over the entire network there than in Germany. The effort required to achieve coordinated operations is consequently far higher in Germany than in the Netherlands. Standardised traffic control regulations would not take these differences into account. On the contrary, they would cause additional complications.

It would make more sense if traffic controllers in border regions were aware of how their working decisions affect the train on the networks of other rail infrastructure managers so that they could pay due attention to these aspects when making their decisions.

New construction site management programme

DB Netz has introduced a construction site management programme entitled "Fahren und Bauen" (Operations and Construction), which has brought substantial improvements for customers in respect of construction site management. In the course of proceedings with the Federal Network Agency, the processes for optimising the planning and execution of construction work which had been developed before the matter came up before the regulatory authority could successfully be implemented. Apart from the consensus as regards the subject matter, however, the regulatory authority and DB are in disagreement about the regulatory authority's fundamental compe-

tence with regard to implementation of the resolved construction site management measures.

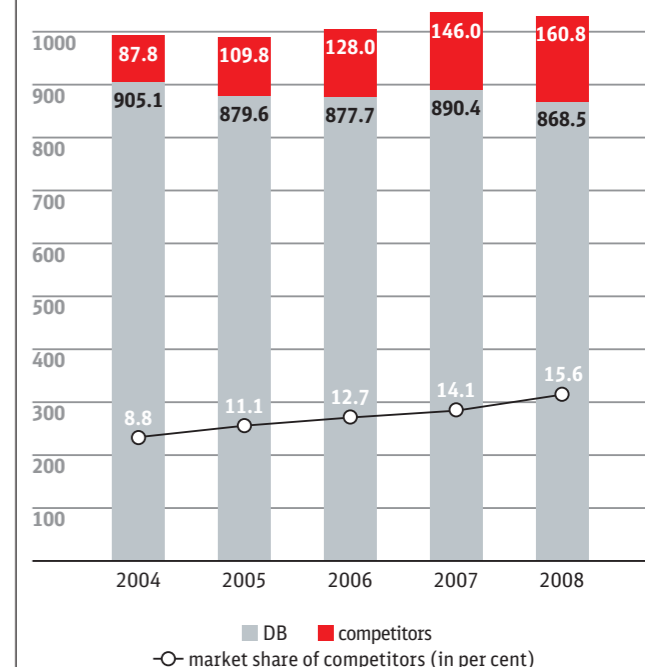
Some of the Federal Network Agency's demands are unfeasible

Since November 2008, DB Netz AG has gradually been introducing a series of new processes based on its Operations and Construction programme for construction site management. These include, for example, taking construction projects which will be particularly disruptive and prolonged into account at an earlier stage, when compiling the working timetable. The RUs now also have more scope for cooperation: because they are informed earlier about the planned measures, they have a longer period in which to submit their comments and state their requirements before the construction work begins. This means there is a greater chance of satisfying these requirements in the overall planning process. DB Netz has also introduced new instruments which provide a clearly defined framework for the regulation of delays caused by construction work. The new "KonzeptSchätzung", for example, enables forecasts to be made about the consequences of construction work and the extent to which it will affect the train paths concerned. On introduction of its Operations and Construction programme, DB Netz has on the whole greatly improved the scope of information for RUs, which are now consulted to a far greater extent when construction work is planned.

However, DB Netz is unable to satisfy those demands of the Federal Network Agency which are technically unfeasible. It will neither be possible to include all construction work when compiling the operating schedule for the largest railway network in Europe, nor to compensate for construction measures by compiling a new timetable for each affected train.

Competitors raise operating performance on rail

The increase in competition is reflected in individual operating performance: non-DB railways again raised performance, whereas the loss of public service contracts led to a reduction in DB performance. (million train-path kilometres)



Source: DB data

Photos: Max Lautenschläger; Günter Jazbec

Political dialogue Since 2005, Günter Verheugen has been very influential in shaping the “Lisbon Strategy” reform programme, which allocates an efficient European transport system a key role in achieving growth targets and safeguarding the competitiveness of Europe.



“Fair competition is still impeded by too many national regulations”

Joachim Fried, DB AG Management Representative for European Affairs and Competition, interviews Günter Verheugen, Vice-President of the European Commission and EU Commissioner for Enterprise and Industry.

Joachim Fried: *The Lisbon Strategy reform programme defines an efficient European transport system as a key requirement for achieving the growth targets that have been set and preserving Europe’s competitiveness. How would you rate developments in the transport sector in terms of the objectives stated in the Lisbon Strategy?*

Günter Verheugen: The European transport policy is aimed at ensuring sustainable mobility for all citizens and all freight. Since 2001, the EU Commission has introduced many legislative measures which have contributed towards the environmentally compatible, safe and efficient transport system that we now have in Europe.

Fried: *What specific measures does this involve?*

Verheugen: Opening the markets for freight transport and international passenger transport, for example, has helped to increase the efficiency and competitiveness of rail. At the same time, the progress made in implementing the trans-European transport networks has eliminated many bottlenecks in cross-border transports. We have improved passenger rights in the aviation and rail markets and submitted similar proposals for bus transport as well as ocean and inland shipping. On a technical level, the Galileo, ERTMS (intelligent signalling for rail traffic) and SESAR (intelligent airspace control) programmes have laid the foundation for the deployment of innovative transport systems.

Fried: *How competitive is the European rail sector in fact today?*

Verheugen: The above measures have stabilised the competitiveness of the rail sector in the EU. Rail’s competitiveness against other transport modes deteriorated for decades, beginning from around 1970. We have now called a halt to that negative trend. There are significant differences between the Member States in Western and Northern Europe and those in Central and Eastern Europe. Rail freight transport plays a more important role in Central and Eastern Europe, where there is not so much intermodal competitive pressure because of the poorly developed motorway networks in some countries. That is why I repeatedly stressed during the accession negotiations that it was vital not to neglect the rail infrastructure, but to use it as a promising basis for further development.

Fried: *What are the main milestones for the development of the rail sector?*

Verheugen: The European Community has adopted a number of legislative measures to revitalise the rail market. These “railway packages” are aimed at opening up the markets and achieving technical harmonisation to gradually create an integrated European railway area. Promoting the competitiveness of rail also means supporting investments in rail infrastructure and thus promoting the objectives of the Lisbon Strategy, i.e. growth and employment. Those national rail markets that opened up at an early stage now rank amongst the most efficient ones, especially in terms of transport volumes.

The transport sector can save EUR three billion every year by reducing administrative burdens.

Fried: Where do you currently see the greatest deficits?

Verheugen: On the whole, competition in the rail freight sector has not developed to a satisfactory extent in the EU owing to organisational problems, technical barriers and unsatisfactory transposition of the EU regulations. In June 2008, infringement proceedings were consequently initiated against those Member States which had still not fulfilled their obligations pursuant to the EU Treaty. An important issue in that connection is that the rail infrastructure managers really have to be independent to ensure that open and non-discriminatory access is guaranteed. Generally speaking, the experience acquired in the rail freight sector shows that problems occur especially when the Member States do not vest their rail regulatory bodies with sufficient powers to ensure non-discriminatory access to the rail network.

Fried: What consequences would you draw from this?

Verheugen: There are plans to recast the legal regulations on market access. The existing provisions are to be simplified and, especially as regards competition, strengthened. That is intended to provide additional

impetus for further opening of the markets and to promote implementation of a single European market.

Fried: How will the financial crisis affect priorities in industrial and competition policies?

Verheugen: The primary target is to stabilise the bank system. At the same time, we have to limit the effects of the crisis on the real economy. It is obvious that intervention can only take place at individual national level. The Community budget does not have any leeway whatsoever in that respect. The Commission is therefore concentrating on ensuring that the measures planned by the individual Member States are coordinated and do not lead to distortions of competition. Economic nationalism must on no account be permissible. A properly functioning single market is a vital criterion for overcoming the crisis. That is why the Commission supervises compliance with competition regulations and abides by its long-term growth and employment strategies. A policy of continuity is decisive.

Better regulation in the transport sector

Fried: What specific consequences for the transport sector do you expect from the “Action Programme for Reducing Administrative Burdens in the EU” presented in January 2007?

Verheugen: In January 2009, the Commission received a progress report on that programme. The measures to reduce administrative burdens which have already been proposed or politically resolved will enable savings of more than EUR 30 billion per annum. In the transport sector, we expect to see savings of approx. EUR three billion. The Commission is currently seeking new ideas for reducing costs in the transport sector in consultation with numerous business federations.

Fried: The Commission is demanding increasingly far-reaching administrative powers. How can you reconcile this with your claim to be a rationalisation commissioner?

Verheugen: The point is to strike the right balance between necessary regulation and the abolition of unnecessary administrative burdens. The EU legal framework is to be reformed, paying due attention to



Günter Verheugen (l.), Vice-President of the EU Commission, to Joachim Fried, Competition Officer of DB AG: “A properly functioning single market is vital to cope with the crisis.”

the social and environmental objectives and the advantages for citizens and administrative bodies. Better regulation does not mean deregulation. We shall continue to adopt legal acts which lead to additional benefits at European level. Our aim is to create a European regulatory environment which satisfies the citizens’ expectations but does not impose superfluous administrative burdens on business enterprises.

Fried: The Commission conducts a high number of studies in the European rail sector – but DB is not always convinced of the usefulness of these studies. Is that not one of the bureaucratic burdens that could be reduced?

Verheugen: The Commission has to abide by the principle of proportionality. To obtain an exact picture of the effects of potential new laws it is essential to seek the views of the market players concerned. We are very grateful to the companies for their participation in studies and consultations. However, these efforts ultimately benefit the companies themselves. After all, bad laws are worse than no laws at all.

Fried: But there has meanwhile been resistance from the ministries themselves to the better regulation programmes, claiming that the programmes actually impose a considerable burden.

Verheugen: In January 2008, the EU Commission presented its “Strategic Review of Better Regulation in the European Union”, which states that optimising regulation is a central instrument with which the EU can tackle the economic and financial crisis. The EU citizens and business enterprises, in particular SMEs, already benefit from simplified regulations and savings in the administration sector. The money saved here directly helps to raise productivity. We have

strong arguments to justify the efforts we have made to quantify administrative costs. The Commission is willing to provide the Member States with comprehensive assistance. For example, it is currently working on a starter kit, a database for measuring and reducing administrative burdens at national level. Member States will have free access to that database.

Systematic market opening promotes competition between the EU Member States

Fried: Not all EU Member States have set themselves national targets for reducing administrative burdens. As a railway undertaking which operates throughout Europe, DB notices the practical effects when individual countries do not pull their weight. For example, in the past every single locomotive had to undergo an expensive and time-consuming procedure to obtain an individual licence from each national safety authority. The Commission has introduced legislation expressly to counteract that situation.

Verheugen: That is true. Last year, our proposals for cross-border recognition were implemented with the help of the Directive on the Interoperability of the Railway System, the recast Railway Safety Directive and the Regulation establishing a Railway Agency. The central task of such an Agency is to facilitate approval procedures for rolling stock. To do so, it collects, classifies and compares the different national regulations. The resulting data is used to set up a reference database, which simplifies the approval process. Although the individual Member States have different regulations, they are often equivalent in terms of safety. Moreover, the Agency organises the exchange of experience between the national safety authorities in order to harmonise the decision-making process



Günter Verheugen (l.) and Joachim Fried discuss the possible development of passenger transport in the EU as from 2010.

and abolish superfluous compulsory regulations in the Member States.

Fried: *Looking at the European legal framework, we see a deficit in transposition rather than regulation. How do you intend to remedy that situation?*

Verheugen: The correct and fast transposition of directives is in the interests of the EU citizens and business enterprises. It is undisputed that the Member States themselves are responsible for transposing EU law. However, the Commission watches this process closely and is prepared to exercise its legal powers as guardian of the Treaties if necessary. The Commission provides support for the Member States, for example with the online network SOLVIT, where the Member States jointly draw up pragmatic solutions for those cases in which single market regulations are applied incorrectly by the authorities.

Compared with aviation, shipping and road haulage, there is still not nearly enough integration of the rail sector.

Fried: *Do impact assessments actually provide the Commission with a valid forecast of the effects of new legislation?*

Verheugen: The impact assessment system is intended to ensure an integrated and fair evaluation of problems and alternative procedures and thus pro-

vide facts on which the Commission can base its political decisions. EU Commission President José Manuel Barroso set up an impact assessment committee in 2006 with the objective of achieving independent quality improvements and quality control. The Commission wishes to raise the quality of all newly adopted legal acts even further in future by continuing to improve the impact assessments so that we obtain an even more precise idea of the consequences of new laws. To do so, we shall extend subsidiarity control, consult the stakeholders to a greater extent and examine the effects of regulations on the administrative burden, fundamental rights, the consumers and the regions in more detail.

Fried: *Do you believe that further legislation is currently required for the rail sector?*

Verheugen: Despite numerous efforts at Community level, the rail sector remains one of the sectors of industry with the lowest degree of integration. This problem does not exist in aviation, shipping or road haulage. I believe that the existing legal regulations have to be intensified to encourage the infrastructure managers to cooperate more closely in operational management and when planning investments. Community law is also necessary to enable fair and equal competition. In my opinion, the problem is not that we should also have competition on rail, but rather that there are still too many national regulations which obstruct free and fair competition. In that situation, those countries which have opened up their markets to competition whilst others have not done so might unfortunately find themselves to be the losers.

Fried: *What is your vision of a liberalised rail market in Europe?*

Verheugen: In my vision, the EU policy of opening and integrating markets will lead to railway undertakings which offer freight transport services without barriers in a single market and have to comply only with EU law – just as they do in the road haulage market. There will be EU-wide free competition and railways will strategically specialise in market segments in which they can expect to be the most competitive.

Fried: *What should the markets in the European Community ultimately look like?*

Verheugen: Some companies will operate as service integrators at European or even at global level, and simultaneously also offer their own services, such as logistics. Other railways will concentrate on regional markets or certain European corridors. Smaller regional or local short-distance companies will supply feeder services for the major railway undertakings. This market segmentation process offers scope for cooperation and mergers between railway undertakings. The alliance between Trenitalia, the Italian incumbent, and the private German railway undertaking TX logistics, the takeover of the largest British rail company EWS by the German incumbent DB Schenker, or the merger between the Austrian and Hungarian freight operators Rail Cargo Austria and MAV Cargo are initial signs of that trend.

Fried: *Are you equally optimistic as regards the development of passenger transport?*

Verheugen: That could develop in much the same way as the freight transport market, but at a later date, as the market for international services will not open up until January 2010. Of course that market, in particular the regional passenger transport segment, will still be governed by numerous public service contracts if it is not capable of providing the required services under commercial market conditions.

Safeguarding the competitiveness of rail

Fried: *The former state railways, unlike their private competitors, often have to satisfy public demand, such as public service obligations or welfare guarantees. However, these public services frequently cannot be recon-*

ciled with the targets of open markets and competition. How can these conflicting objectives be resolved?

Verheugen: Politically motivated requirements which are imposed on the railway undertakings without reasonable financial compensation raise the costs and jeopardise the existence of these railways in competitive markets. That is not acceptable. Railway undertakings have to be able to operate independently of the state, as commercially driven business enterprises, so that they can find the best entrepreneurial solutions for responding to changing demand, allowing them to become and remain competitive. That is a fundamental requirement of EU legislation on rail transport. The successful privatisation of railway undertakings, even if not demanded by EU legislation, could be one indicator of the success of the policies launched by the EU for the reorganisation and revitalisation of the rail sector in the Member States.

Railway undertakings have to be able to act independently of the state as commercially driven enterprises.

Fried: *European elections will be held in June. What targets has the present EU Commission set itself until the end of 2009?*

Verheugen: Top priority currently goes to coping with the real economic crisis, which as you know was triggered by the financial crisis. Both the Commission and also the Member States have taken comprehensive short-term measures to stabilise the situation. We are also continuing to work successfully on the Lisbon Strategy. As I said to begin with, we need a coherent package of measures to safeguard the competitiveness of Europe and achieve growth and employment over the long term. In connection with the programme to reduce administrative burdens, the Commission has the self-imposed obligation of accepting all reduction measures relating to the 42 EU initiatives within the scope of the programme before the end of this Commission's term of office.

Regulatory Policies Opening the national rail passenger markets in the EU is the next step towards creating an integrated rail market. The Commission intends to reserve special cross-border corridors for freight traffic. The year 2008 saw progress in the regulation of the rail market, for example as regards construction site information and market observation.

EU Commission reorganises rail market

The European Commission accuses 24 EU Member States of not implementing the first railway package properly. It is also planning to recast the first package while the Member States are still in the process of transposing the third railway package into national law. The aim is to improve rail's competitiveness.

In June 2008, the European Commission initiated infringement proceedings against 24 Member States, including Germany, owing to insufficient transposition of the first railway package. The Commission is simultaneously planning a recast of that legislative package for the second half of 2009. The purpose of the recast is to simplify and modernise the legal framework which governs access to the railway market. It is intended to improve the institutional structure by granting the regulatory authorities wider powers and promoting international cooperation between infrastructure managers. An impact assessment ordered by the Commission in preparation for the recast recommends a few measures, such as a greater degree of market observation, publication of the network statements in a second language and obliging the Member States to define a mid- to long-term strategy for development of the rail sector. DB AG believes that legislative action on the part of the Commission is premature and that the first railway package should first be completely transposed by all EU Member States before it is recast. By initiating the infringement proceedings, the Commission itself confirms that transposition is necessary.

Germany is confronted with relatively few allegations. The Commission has merely asked the Federal Government to submit a statement on the degree of independence between infrastructure managers and RUs and on the incentives for infrastructure managers to reduce costs and infrastructure charges. The Federal Government refuted the Commission's accusations in its statement of October 2008: the independence of the DB infrastructure managers from the DB holding and the DB railway undertakings is adequately protected, both by legal regulations as well as organisational provisions and articles of the statutes. It maintained that the criteria stipulated by the Commission for assessing independence went far beyond the actual requirements specified in European law and would make the holding structure impossible, although it is explicitly permitted by law. An expert opinion prepared by Professor Claus-Dieter Ehlermann, European law specialist and former Director-General of the Commission, comes to the same conclusion. Nor can the allegation of insufficient incentives for the infrastructure managers to reduce costs and infrastructure charges be upheld: the incentives demanded by European law are ensured in particular by budgetary provisions and by intermodal competition. The



The first railway package has still not been transposed.
Photo: Entrance to the European Parliament in Strasbourg.



As from 1 January 2010, cross-border European rail passenger transport will be open to competition.

Performance and Financing Agreement between the Federal Government and the DB infrastructure companies also provides additional incentives.

Fourth AEG amendment implements liberalisation of international passenger transport

The third railway package will open up the international rail passenger market, including carriage on purely national segments, with effect from 1 January 2010. To protect transports which are offered as a public service, the Member States can grant their national authorities the power to restrict access rights and impose levies on providers of cross-border connections. Germany transposes the European requirements in the fourth amendment of its General Railway Act (AEG). The amendment essentially envisages one-to-one transposition of the European

tors, whereas others, such as France, still keep their markets closed. In addition to opening up international transport, it is therefore urgently necessary to achieve Europe-wide liberalisation of the economically far more important sector of national transports. However, this would require a new European legislative initiative.

EU Commission grants rail freight transport priority over passenger transport

In October 2007, the European Commission published the communication "Towards a rail network giving priority to freight", aimed at improving the competitiveness and quality of cross-border rail freight services. This is to be achieved in particular by means of better cross-border coordination of investment planning and operational processes in the form of corridor management and by providing higher capacities for rail freight traffic. In July 2008, the expert committee appointed in response to the above communication presented its final report, which highlights the practical requirements of railway operations, the railway undertakings' own entrepreneurial responsibility, and the need to grant the infrastructure managers sufficient scope for action. However, the proposed regulation for the creation of a competitive European rail freight network presented by the Commission in December 2008 ignores central findings of the expert report. Key items of the Commission's proposal are the definition of international corridors and the mandatory establishment of corridor companies. Development plans, including investment and construction site planning, are to be drawn up for these corridors. Moreover, the proposal also envisages reserving network capacities for rail freight, as well as traffic

regulations. The German legislator has waived the scope provided by the Directive for restricting access in order to protect public service transports. However, it has to be feared that other Member States will exercise that option and could potentially use it as an instrument for keeping their markets closed. This would exacerbate the existing distortions, as countries such as Germany and Italy have already opened up their rail passenger markets to competi-

control regulations which grant punctual trains strict priority over delayed trains. The proposal has to be rejected as misguided, because uniform legal regulations throughout Europe would not reflect the specific circumstances of the individual corridors or the different operating requirements. Reserved train path quotas for freight traffic and rigid traffic control priorities would lead to capacity losses. To promote European rail freight transport, no simplistic solutions are needed, but flexible business management approaches, the importance of which was also stressed by the above experts.

Redefinition of the European TEN-T policy

The objective of the Trans-European Transport Network (TEN-T) is to provide the necessary structure for economic development in Europe. The cross-border network includes roads, railway lines and inland waterways. In 2004, thirty plans were selected as priority projects. These focus on rail transport projects which receive financial and administrative support from the EU.

Based on fifteen years of development and experience, the Commission now plans to conduct a comprehensive review of its TEN-T policy. In February 2009, it presented a Green Paper which emphasises the successful development of high-speed lines such as Cologne - Frankfurt, but also states problems such as the delay in completion. The revised TEN-T policy is to specify new objectives and projects and ensure that these will be implemented on schedule. Central elements of the new approach are better integration of the different transport modes and the question of whether the TEN-T policy should continue to focus on one overall network consisting of the individual national networks, or whether a core network concept should be favoured. Greater attention is to be paid especially to climate protection objectives.

DB endorses the Commission's intentions. The currently defined priority projects are not always based on traffic forecasts, but are frequently the result of political decisions. DB believes that future TEN-T projects have to be specified on the basis of traffic forecasts, market requirements and viable business models. The limited TEN-T funds should be concentrated on those corridors and bottlenecks

which could yield the greatest benefits for coping with transport volumes. Various studies have already identified the most important corridors, bottlenecks and parameters for raising the capacity of

DB endorses review of the European TEN-T policy.

rail freight transport. These include, in particular, the port hinterland connections. If rail is to succeed in intermodal competition with road, priority must be given to developing that infrastructure so that it can handle the anticipated transport volumes.

EU enforces deployment of ETCS as a uniform train control system

After presentation and evaluation of the national deployment plans, the EU Commission plans to substantially accelerate the introduction of a uniform European Train Control System (ETCS) on the conventional European rail network. With that objective in mind, it conducted consultation proceedings in 2007/2008 and, at the end of 2008, submitted a proposal for a European ETCS Deployment Plan which contained far stricter provisions than the national deployment plan for the conventional rail network which the Federal Government had notified to the European Commission in September 2007. According to initial assessments, the European deployment plan which was finally adopted by a majority of the Member States at the end of March 2009 is expected to lead to additional expenses of EUR 1.6 billion for the infrastructure of DB Netz AG alone up to 2020 compared with the national implementation plan modified in 2007.

The Commission's proposals, including the specified target data, can be implemented only if the available budget is substantially and promptly raised by the Federal Government and the EU. The objective of simplifying cross-border transports, which DB fundamentally endorses, would otherwise discriminate against rail transport in intermodal

Commission and railway undertakings are in dispute about cross-border coordination of freight transport.



EU Commission wishes to accelerate the introduction of ETCS.



In 2008 the EU again initiated numerous legislative measures for the rail market.

competition for the foreseeable future. Deferring more important transport projects is not a viable alternative, as that would lead to a massive increase in capacity bottlenecks.

Furthermore, there are severe legal doubts as regards the admissibility of imposing binding investment obligations on this scale in the form of a committee procedure (comitology) without involving the European Parliament. The Technical Specifications for Interoperability (TSI) are intended to specify the details of functional and technical regulations and not to impose investment commitments running into billions on the Member States. This is apparent not least from Decision 1692/96/EC, which

The Interoperability Directive is to be transposed into national law by summer 2010.

defines priority TEN projects and explicitly states that their implementation is subject to the proviso that they can be financed by the Member States.

Every effort must be made to ensure that ETCS is not merely a huge burden for the railways in competition with the other transport modes for decades to come, but that it brings tangible operating and economic benefits in the near future. All ETCS deployment plans are dependent on sufficient and sustainable financing. The EU should be prepared to assume co-financing in case of unacceptable economic hardship, for instance if investments to replace signalling technology have to be brought forward.

Faster, more transparent vehicle authorisation

The Member States of the European Union are obliged to transpose Directive 2008/57/EC on the interoperability of the rail system within the Community into national law by summer 2010. Contrary to the road haulage market, rail vehicles still have to be individually authorised in each Member State in a time-consuming and expensive process. In the past, the authorisation of locomotives and traction stock for deployment in other Member States has cost millions, which in many cases could not be justified by safety considerations, but at best on historical grounds. Authorisation processes have occasionally even been used to prevent access to national markets.

The Interoperability Directive is the first Community legal act that explicitly enshrines the principle of mutual recognition for placing rail vehicles in service. Implementation of the Directive will also mean that the national safety authorities have to observe precise time limits for issuing their decisions on correctly submitted applications for authorisation. Their inspection rights are far more strictly defined than before and fundamentally restricted to essential safety requirements. In future, applicants will have more scope to apply for a review of negative decisions by the national safety authorities and, in certain cases, to demand technical statements from the European Railway Agency (ERA). These new provisions are an important step towards achieving a single European railway area and, if consistently applied, can help to raise the competitiveness of rail.

Computerized booking systems mean more transparency for consumers

In September 2008, the European Parliament adopted



In future, new reservation systems in travel agencies will provide comprehensive and neutral information about air and rail travel.

a new Regulation on computerized reservation systems (CRS) which recently entered into force and which is intended to intensify competition between different CRS providers. CRS (also known as Global Distribution Systems, GDS) are computerized booking systems which are used by offline travel agencies and which contain information about schedules and timetables, as well as capacities and fares, mainly of airlines.

Under the new Regulation, the reservation systems have to provide consumers with comprehensive, neutral and non-discriminatory information about the participating transport undertakings. They are obliged to show the cheapest and fastest connections on their home pages. In future, the Regulation will also apply to rail travel, which is to be included in the principal display of a CRS in addition to air travel. The CRS displays must contain information about fares inclusive of all taxes, duties, supplements and other charges in the same price categories. They can optionally also provide information about CO₂ emissions and fuel consumption. The latter can be expressed as average fuel consumption per person in litres per 100 kilometres and the average CO₂ emissions per person in grams per kilometre and, if the journey time is less than five hours, compare them with the best alternative rail or bus connection.

The EU legislator consequently creates more transparency for customers, allowing them to compare the products and prices of different transport modes, and thus enables more competition between train and plane for journeys booked through travel agencies. The Regulation also abolishes the previous obligation of strictly equal treatment when setting booking fees, which meant de facto discrimination against railway undertakings in the past, as

the same fees had to be charged for rail products as for airlines, although this imposed a stronger burden on rail products as a percentage.

Imminent conclusion of state aid proceedings on Berlin/Brandenburg transportation contract

In response to a complaint filed by Connex Regionalbahn GmbH, in October 2007 the European Commission initiated formal investigation proceedings into the public service contract signed between the Federal Laender of Berlin and Brandenburg and DB Regio AG. The issue under investigation is

Equal treatment for rail passenger transport in electronic reservation systems in future.

whether the fees paid to DB Regio by the ordering authorities under the contract constitute overcompensation and could therefore be classified as inadmissible state aids.

The allegation is, however, untenable. The contract satisfies all the requirements of Regulation 1191/69/EEC, which is applicable and conclusive in this case. Moreover, the contract also satisfies the criteria specified by the European Court of Justice in its Altmark Trans ruling regarding the conformity of public services with state aid law. The contract consequently does not contain any state aid elements.

However, the investigation by the Commission has led to a great deal of legal uncertainty, not only as regards the contract concerned, but also for a large number of contracts in Germany and throughout Europe which were concluded in the belief that the present legal situation was reliable. The Commission is expected to announce its decision in 2009.

No suspicion of aids in connection with DB AG financing conditions

The EU Commission announced in December 2008 that there is no suspicion of state aids in connection

with the financing conditions of DB and accordingly refused to initiate proceedings. In October 2007, Netzwerk Privatbahnen (an association of private German rail freight providers) had complained that DB, as a federally owned company, enjoyed a better credit rating and consequently better funding conditions in the form of state aids. The Commission did not uphold that claim and commented that the fact alone that the Federal Government is the sole shareholder in DB AG is not sufficient grounds to assume the existence of aids. It also ascertained that there are neither implicit nor explicit guarantees in favour of DB.

As a result of planned European legislation, a number of provisions will enter into force in December 2009 with far-reaching consequences for the development of competition in the European rail market.

| EU legislation not only promotes, but in some cases weakens the competitiveness of rail | | |
|--|---|--|
| Legal measure | Contents | Relevance for competition |
| Directive on the certification of train drivers (European train driver's licence) | Uniform minimum standards for European train drivers, training objectives, examination and authorisation procedures | The mutual recognition of train driver's licences is intended to facilitate the handling of international transports. As the training standard in Germany is very high, transposition of the Directive into German law will not require any major changes to the currently valid regulations. |
| Regulation on rail passenger rights | Uniform protective standard for passengers in Europe: information duties, rights of passengers with reduced mobility, compensation for delays | The Regulation leads to discriminatory treatment of rail compared with other transport modes which constitutes distortion of competition. There are no similar compensation regulations for either aviation or bus transport, nor does EU law prescribe similarly extensive information duties or sales obligations except for rail transport. |
| Regulation on public passenger transport services | Regulations on the award of public service contracts, contract term and mandatory contents | The Regulation states that authorities can choose between direct contract award or more formal procedures. Directly awarded contracts have a shorter term, and stricter transparency provisions apply. Direct award to internal operators (in-house award) is not governed by the principle of competition, as only one operator is considered. The Regulation prohibits municipal providers which benefit from in-house award from participating in competitive procedures outside their home market. |



Regulation is intended to promote the competitiveness of rail.

New focus in regulatory practice

Regulation of the rail sector made progress in 2008. Interim results have been announced in the proceedings on railway infrastructure usage conditions, on construction site information and market observation. These provide the railway undertakings with a better planning basis as well as more legal certainty.

In addition to negotiations between the Federal Network Agency and DB, various court rulings in 2008 helped to clarify fundamental regulatory questions. They referred to subjects such as the powers of the regulatory authority, or its right to demand information. Speaking at the symposium “Competition and Regulation in the Rail Sector” held by Berlin Humboldt University and Deutsche Bahn in January 2009, Dr. Iris Henseler-Unger, Vice-President of the Federal Network Agency, confirmed that the Agency also welcomed these results. The court rulings have limited the scope for interpretation of the legislative provisions. As a result, the long-winded notices of the past stating detailed complaints, which were of no apparent use to the market players, are no longer to be expected. The Agency has announced that it tends to concentrate on key areas in future.

A focal point will be the regulation of charging. The Agency has been reviewing the level and structure of station charges since April 2007 and infrastructure charges since January 2008. No results are as yet available in either case, although DB has processed and supplied the regulatory authority with

comprehensive data in response to numerous requests for information and consultation procedures. At the above symposium on competition, Dr. Henseler-Unger announced that no swift solutions could be expected. The authority first had to define its own investigation standards more precisely in order to clarify unresolved fundamental questions, such as the obligation of the regulated company to disclose its pricing criteria, or the authority’s right to examine the cost allocation structure of individual charging components.

Although the Agency’s powers in regulating charges under the present legislation have still not been clearly established, it is already demanding the extension of its remit. The present legal framework, for instance, is to be amended to permit a performance regime which specifies maximum price limits for previously defined product groups such as train paths or stations. The Agency believes this will encourage infrastructure managers to work more efficiently and reduce costs, as they will be entitled to keep the difference between upper price limit and actual operating costs. However, incentives already



The information and coordination process for construction work was the subject of intensive negotiations between DB Netz and the Federal Network Agency.

exist for the DB infrastructure companies to raise efficiency: the Performance and Financing Agreement concluded with the Federal Government in January 2009 caps government funding at EUR 2.5 billion per annum for a term of five years, provides no compensation for inflation, and prescribes the exact extent and quality of the network. The additional introduction of a performance regime would therefore mean dual regulation. DB believes that efficiency benchmarks should apply not only to the railway undertaking, but also to regulation itself. Moreover, dual regulation would de facto constitute a competitive disadvantage for DB compared with other railways in Europe. Numerous EU Member States have still failed to set up a regulatory authority at all, let alone a properly functioning regulation of charges.

In 2008 as in the preceding years, the Federal Network Agency failed to establish any discriminatory behaviour on the part of DB companies in more than 150 regulation proceedings altogether. This coincides with statements made by competitors, who rate operational cooperation with DB by and large as good and trouble-free. Considering the outcome of these proceedings, it is incomprehensible why the Agency is demanding wider regulatory powers.

Proceedings against DB companies

Railway infrastructure usage conditions

Whereas in the past the Agency had repeatedly complained that large parts of the notified railway infrastructure usage conditions were in breach of railway law, it has now changed that practice: for the first time, it has restricted its objections to just a few clauses of the conditions notified for 2009/2010, such as train path charges for no-load trains. DB Netz AG has filed an appeal, as the relevant provisions are fully compli-

ant with rail legislation. However, in view of the limited scope of the appeal notice and the option of provisional implementation, it saw no need to demand summary proceedings for the time being.

Four cases in connection with usage conditions are still pending before Cologne Administrative Court. They are based on a total objection by the Federal Network Agency, i.e. complete rejection of the entire conditions. On the one hand, this refers to the conditions for the use of maintenance facilities of DB Netz AG and Deutsche Bahn Gleisbau GmbH (18 K 4846/07 and 18 K 4847/07). Another case refers to the usage conditions for passenger stations of DB RegioNetz Infrastruktur GmbH (18 K 4250/07). In accordance with immediate execution pursuant to Section 37 General Railway Act, the above companies have provisionally implemented the notices of the Agency, without recognising a legal obligation to do so. Deutsche Umschlaggesellschaft Schiene-Straße mbH (DUSS) filed for suspensive effect of its objection to the Agency's decision and the petition was upheld by Münster Higher Administrative Court (OVG Münster, order of 28.1.2008, 13 B 2014/07). After due examination, the Higher Administrative Court decided in summary proceedings that the total objection to usage conditions was not the correct instrument and that the notice issued by the Agency will in all probably not be sustained in the formal investigation procedure.

There are numerous other proceedings concerning usage conditions pending before Cologne Administrative Court. Although these do not concern total objections to the entire conditions, they involve complaints about numerous clauses. These refer to the DB Netz AG Network Statement and Usage Conditions for Service Facilities for the years 2008 and 2009 and the General Usage Conditions for Passenger Stations of DB Station&Service AG for 2007.

Deferred commencement of operations is disputed

Framework agreements

2008 was the last year in which RUs could sign further framework agreements pursuant to Section 13 (11) Railway Infrastructure Usage Conditions with effect for the future working timetable periods 2009/2010 before expiry of the first framework timetable period (2005 to 2010). These are known as aperiodic framework agreements. In several preliminary investigation procedures, the Agency complained about the range of the transport periods and train operating days applied for in some cases. The requirements stated in the Agency's notices were met when concluding the aperiodic framework agreements, so that these court cases have now been settled.

Periodic framework agreements with effect as from working timetable period 2011 are now to be signed for the second framework timetable period. DB Netz AG published the period for applications after this had been examined by the Agency in the proceedings on the 2010 Network Statement.

However, it is still disputed whether the railway undertakings, in the interests of allowing them to plan investments, should be granted the option of signing framework agreements which permit deferred commencement of operations, in other words which do not inevitably bind them to the framework timetable period.

Working timetable

When it submitted the final working timetable draft for 2008, DB Netz notified the Federal Network Agency of the train path applications which it intended to reject. The Agency had obliged DB Netz to do so in a notice upheld by Münster Higher Administrative Court (cf. OVG Münster, order of 28.1.2008, 13 B 2024/07). In the past, DB Netz had announced the train paths which were to be rejected on publication of the provisional working timetable draft. The Agency claimed that this was too early. The admissibility of the planned train path rejections for 2008 has been examined by the Agency and no breach of law established.

There were no complaints about train path allocation resulting from the working timetable. The Agency then ordered the review of a coordination

procedure. Such procedures are carried out to negotiate an amicable solution in case of conflicting train path applications and ultimately to avoid the rejection of one of the two train paths. The Agency stated that to date, most conflicts had been resolved in coordination procedures, which harboured high potential for discrimination. The Agency claimed that its remit accordingly also had to cover coordination procedures. However, these procedures are based solely on negotiations between the infrastructure manager and the RUs. Pursuant to the principle of negotiated network access, the regulatory authority's remit does not come into effect until a later stage, viz. when the infrastructure manager intends to reject train path applications.

Station charging system

The Federal Network Agency has been reviewing the DB Station&Service AG station charging system since August 2007. It has submitted countless requests for information and data, which were duly supplied, although DB Station&Service was under no legal



The Agency has been investigating the station charging system of DB Station&Service since 2007.

Performance and Financing Agreement plus Performance Regime would discriminate against DB.

obligation to do so. Even after almost two years, the Agency has still failed to state the actual allegations which it is investigating in connection with these requests for information, or the conclusions it intends to draw from the comprehensive data. This is especially unreasonable as the DB Station&Service AG station charging system is compliant with the legal requirements. The category charging system for stations was introduced after a consultation process with the Federal Laender and ordering authorities. It was expressly welcomed by the Joint Conference of the Heads of the Transport and Road Construction Departments of the Federal Laender because it is simpler, more clearly structured and ensures price stability. The charges for all stations throughout Germany are based on standard criteria which apply to all users,

regardless of whether they are DB companies or competitors. In view of rising prices in all sectors of the economy, the increases are reasonable. There are no reasons to suspect excessive charges, and consequently no grounds for price controls by the Agency.

Construction sites

In the course of its ex-post examination in 2007, the Federal Network Agency issued a notice to DB Netz AG demanding that it amend the Network Statement provisions on information and coordination processes in connection with construction work. DB Netz obtained summary legal protection against the notice, which was then suspended until conclusion of the appeal proceedings. In numerous hearings before the Agency, DB Netz explained the procedures in practice and its plans to change construction site management. The parties agreed to jointly seek a long-term solution to enable best practice in handling construction work. However, despite its agreement to find a mutual solution, the Agency issued a notice at the end of 2008 containing detailed orders for DB Netz to amend the Network Statement provisions concerning construction work, and threatening a

Federal Railway Authority proceedings pursuant to Sections 9, 9a General Railway Act

In early 2008, the Federal Railway Authority issued a notice demanding information on the use of public funds by the infrastructure companies of Deutsche Bahn AG. The Authority did not claim any grounds for suspecting inadmissible use of the funds, in particular inadmissible transfer to RUs. On the contrary, it stated that it was entitled to impose measures even without grounds for suspicion. DB Netz AG filed an objection to the request for information which was dismissed, whereupon DB Netz sought relief from Cologne Administrative Court.

In 2008, the Federal Network Agency and the Federal Railway Authority conducted several on-the-spot investigations to examine the working circumstances of railway employees at the operations centres. In the course of trilateral discussions with the above two bodies, DB Netz AG drew up a comprehensive concept for providing railway undertakings with access to traffic control workplaces at the operations centres. To date, the Agency has still not issued a final statement on this concept, although one competitor has already expressed interest in obtaining access to the operations centre in Leipzig.

Performance Regime

In its ruling of 14 August 2008, Frankfurt/Main Higher Regional Court (OLG FFM, 1 U 27/08) dismissed the petition submitted by Netzwerk Privatbahnen for an injunction against the DB Netz AG Performance Regime, claiming that the matter was not urgent enough to justify an injunction.

The Federal Network Agency then issued a notice (10.010-F08-002) ordering DB Netz AG to inform its customers promptly of the potential amendment of its Performance Regime. DB Netz AG succeeded in having the Agency suspend execution of the order on the instigation of Cologne Administrative Court in the pending summary proceedings. The Agency later withdrew the appeal proceedings. On 30 December 2008, the Agency issued a further notice (10.010-F08-003) ordering DB Netz AG to reinstate the Performance Regime by 12 December 2009. That obligation can be avoided by creating and applying a new Performance Regime.

penalty if it failed to do so. DB Netz filed an appeal against the notice with Cologne Administrative Court. Owing to the immediate enforceability, DB Netz has implemented the demanded requirements and will also comply with any requirements which apply in future.

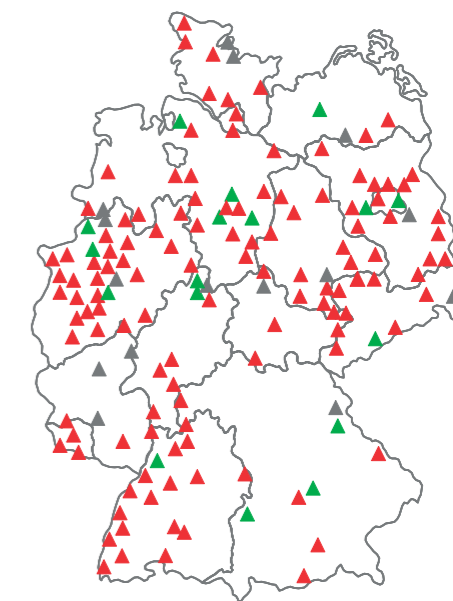
Scheduling regulations

In the year under report, the Agency reviewed Directive 420, which includes key regulations on traffic control. DB Netz subsequently amended these regulations in compliance with the Agency's requirements. The version then notified to the Agency did not lead to any complaints, with the exception of the regulation on quality trains. DB Netz will revise that provision and introduce the new version in 2009.

Nationwide network of maintenance services

Non-DB companies offer maintenance services for all types of rail vehicles at 141 locations in Germany. That is the result of the December 2008 update of the study "Market alternatives for maintenance and train handling at depots and repair shops outside the DB Group" conducted by SCI Verkehr GmbH in 2006. This shows that non-federal rail transport operators have access to a comprehensive network of maintenance providers. They also have the option of setting up their own maintenance depots.

■ new since 2006
■ existing depots
■ closed since 2006



Source: SCI Verkehr GmbH

Interim findings announced for some important proceedings in 2008.

Individual cases

In 2008, two formal investigation procedures concerning regulation were concluded before Cologne Administrative Court. During the course of the proceedings concerning the Köthen – Aken line (18 K 494/07) and Dorsten – Coesfeld line (18 K 3116/07), the Federal Network Agency repealed the notices it had issued against DB Netz AG. The Agency's allegations of discrimination in connection with the spur line block on the Köthen – Aken line and the deployment of crossing keepers on the Dorsten – Coesfeld line to avoid disruptions of rail operations in the Bonn area were therefore not confirmed. By repealing its notices, the Agency prevented the issue of initial clarifying decisions in the formal investigation procedures on access regulation pursuant to the 2005 General Railway Act.

Traction current transmission lines

In its ruling of 18 December 2008, the Federal Network Agency obliged DB Energie GmbH to have its grid charges approved pursuant to the German Energy Management Act. DB Energie has filed an objection to that ruling, as it believes that monitoring traction current lines falls within the remit of the regulatory regime of the General Railway Act. At the suggestion of DB Energie, the decision-making chamber of the Agency has suspended immediate execution of its decision, as the fundamental legal question of which regulatory regime applies to traction current transmission lines has still not been decided by the courts.

Market surveys in the entire rail sector

In 2007, the Agency conducted a market survey in which it distributed extensive questionnaires that had to be completed by railways throughout the entire sector. Railion Germany AG refused to answer

certain questions about revenues and profits, filed an objection and applied to the court for an order with suspensive effect. Railion Germany won the case before the court of appeal. Münster Higher Administrative Court ruled that the Federal Network Agency had no legal basis for asserting requests for information when there were no grounds for suspicion against a railway undertaking. The formal investigation procedure is still in progress. However, out-of-court negotiations are being conducted with the aim of achieving voluntary cooperation.

Maintenance depots

In a final decision in summary proceedings issued on 19 November 2008, Münster Higher Administrative Court ruled that the DB Regio AG maintenance depots constitute railway infrastructure for the purposes of regulatory law. Accordingly, DB Regio is obliged to publish usage conditions for its maintenance depots. The Agency is also entitled to object to individual provisions which encourage discrimination. However, DB still abides by its opinion that the maintenance depots of DB Regio AG and the other subsidiaries of DB Mobility Logistics AG do not constitute infrastructure and is asserting that opinion in the pending formal investigation procedure. Until such time as a decision is issued in that procedure, which will presumably not be for a few years, DB Regio AG will comply with the legal opinion stated by Münster Higher Administrative Court in the summary proceedings for legal protection. Although not conceding any legal obligation to do so, DB Regio has consequently published usage conditions for its maintenance depots and announced this in the Federal law gazette. DB Regio AG is the only maintenance depot operator in the entire market which has published usage conditions.

Special Areas of Discussion Cooperation between railway undertakings and the national and European authorities on the Rhine Corridor is a touchstone for the future. A look at Italy and France shows that marketing opening in Europe does not always proceed smoothly. Reliable framework conditions are vital for market access.



Photos: Michael Neuhäus, Max Lautenschläger

Rhine Corridor: model for the future

An initiative of the International Union of Railways, UIC, has defined six European freight corridors along the main European rail freight routes, which handle 20 per cent of the rail freight volume in Europe, although the length of the corridors accounts for only six per cent of the total European rail network. These six corridors are to be upgraded in the interests of improving the competitive position of rail freight transport.

The Rhine Corridor (Corridor A) is the main artery between the North Sea and the Mediterranean. Because of its central importance for transport, it is regarded as a touchstone for future international cooperation between railway undertakings and national and European authorities. Decades of nationally focused rail markets have led to highly diverse command and control technology and traction current systems, basic operating procedures and regulations in Europe. Harmonisation of these areas is essential to improve the intermodal competitiveness of rail freight.

Highest transport volume between Rotterdam and Genoa

In 2006, the 2100-kilometre long Rhine Corridor handled a freight volume of approx. 30 billion tonne-kilometres. This was the figure calculated by the International Union of Railways (UIC) in a data survey in 2007. The Rhine Corridor therefore has by far the highest transport volume of the six European freight corridors and also the highest growth rate, with an increase of 86 per cent forecast up to 2020, which means it would then handle a freight volume of 51 billion tonne-kilometres. The highest growth rates for rail infrastructure undertakings are anticipated for SBB and BLS, the two Swiss RIUs, (130 per cent) and the Dutch RIU ProRail (106 per cent), followed by DB Netz AG (73 per cent) and the Italian RIU Rete Ferroviaria Italiana (RFI) at 50 per cent. In a ranking of the share of freight in total traffic performance, the Rhine Corridor comes third in the six freight corridors, with freight traffic accounting for 66 per cent. The route from Belgium to Poland (Corridor F) ranks second, at 72 per cent, and the route from Germany to Romania comes first at 81 per cent (Corridor E). Rail freight on the Rhine Corridor is expected to win slight traffic volumes from road and inland shipping, increasing its share of the modal split from 19.6 per cent in 2005 to 23.1 per cent in 2020. These positive forecasts show the potential for development in both intermodal and intramodal competition.

The various rail infrastructure owners (RIUs) have set up the European Economic Interest Grouping (EEIG Corridor Rotterdam - Genoa) to deal with the tasks facing them. The EEIG is organised and funded by the rail infrastructure undertakings of the countries which border on the Rhine Corridors: ProRail (Netherlands), DB Netz (Germany) and RFI (Italy). The two Swiss rail infrastructure undertakings SBB and BLS cooperate with the EEIG on the basis of an association agreement. The EEIG for the Rhine Corridor was founded at the start of 2008 with the objective of improving the competitive situation of rail freight



Freight accounts for a share of 66 per cent of rail traffic between Rotterdam and Genoa.



Numerous German cities, such as Cologne, benefit from international cooperation on the Rhine Corridor.

Rotterdam – Genoa is the main artery from north to south
The Rhine Corridor, one of six defined corridors, plays a central role for freight transport because of the high freight volume.



Map: DB

in transport to and from the seaports of Rotterdam, Amsterdam and Genoa as well as numerous inland ports and transshipment terminals. This is intended to shift traffic from road to rail and consequently reduce environmental impact. However, the countries along the Rhine Corridor had already begun to cooperate long before the corridor organisation was formed in 2006, for instance when planning the Swiss NEAT projects (Lötschberg Base Tunnel, Gotthard Base Tunnel, Ceneri Base Tunnel), and the Betuwe Route in the Netherlands, a dedicated line for rail freight from Rotterdam to Zevenaar near the Dutch-German border. The individual projects are developed by member RIUs of the Rhine Corridor ProRail, DB Netz, SBB, BLS and RFI and then decided in consultation with the RIU management and ministries of transport. The latter represent the Rhine Corridor vis-à-vis the European Commission and its regulatory bodies. The supply of information direct to the ministries and EU Commission ensures that these projects can be included in the transport concepts of the individual Member States at an early stage.

Competition barriers identified

In order to achieve the above target figures by the year 2020, the Rhine Corridor project has first identified some relevant competition barriers. There is room for improvement of interoperability in the area of command and control technology and the traction current systems. It is also important to eliminate capacity bottlenecks caused by insufficient infrastructure, and various projects with that objective had already been launched prior to formation of the EEIG. These included the swift implementation of a uniform European standard for command and

control technology (ERTMS) to achieve interoperability, the elimination of infrastructure bottlenecks on the Dutch-German Betuwe route between Emmerich and Oberhausen, upgrading the entire Karlsruhe – Basel line (including Katzenberg Tunnel) as a four-track line, and construction of the Lötschberg, Gotthard and Ceneri Base Tunnels in Switzerland.

Tangible quality improvements

Once these bottlenecks have been eliminated, the optimisation of long-distance, regional and freight transport can be tackled. Other quality improvements, which will also be noticeable for rail customers, are to be achieved by means of various instruments, such as Europtirails, a web-based system for real-time monitoring of freight train running, the European Performance Regime (EPR), a charge-based system developed by the UIC for reducing disruptions and increasing the efficiency of the rail networks at European level, and Pathfinder, a web-based communication system for better coordination of international train paths offered by Rail-NetEurope. The investment volume on the Rhine Corridor, inclusive of the funds already spent, amounts to approx. EUR 30 billion for the period 2007 to 2020. The upgrade of Gotthard Base Tunnel alone involves costs of EUR 6.5 billion.

The individual plans envisage introducing ERTMS and harmonising the traction current systems to reduce costs for the RUs. This, in turn, will boost rail's intermodal competitiveness. There will no longer be any need for locomotives to have expensive, technically complex multi-system equipment and train movements can then be carried out on the infrastructure of the different national RIUs without a change of locomotive, which is time-consuming and requires advance planning. Moreover, the elimination of infrastructure bottlenecks on the Rhine Corridor will reduce journey and transport times. The increase in capacity will allow rail to handle completely new traffic. Not least, the infrastructure upgrading projects will facilitate interoperability, so that barriers can be overcome at an early stage of the planning process. The EPR, for example, identifies the causes of delays and provides incentives for reducing them. The IT application Europti-

rails provides the necessary data from the different infrastructure managers for the Performance Regime, while Pathfinder makes it easier to order

Higher interoperability reduces costs and improves competitiveness.

international train paths. The improvements resulting from these instruments will therefore also benefit customers.

The six most important European trade routes on rail

Upgrading these lines is intended to raise the competitiveness of rail freight transport.

| Corridor | Route | Length |
|---|--|------------------|
| Corridor A: Rotterdam – Genoa | Emmerich – Bonn – Mannheim – Basel – Domodossola | approx. 2,100 km |
| Corridor B: Stockholm – Bologna | Copenhagen – Flensburg – Augsburg – Innsbruck – Verona | approx. 3,500 km |
| Corridor C/D: Antwerp – Basel | Luxembourg – Metz – Strasbourg | approx. 8,500 km |
| Antwerp – Lyon/ Lisbon/Porto de Sines | Perpignan – Barcelona – Madrid | |
| Corridor D: Lyon – Zahony (Hungary) | Milan – Ljubljana – Budapest | approx. 2,000 km |
| Corridor E: Hamburg – Constanța (Romania) | Prague – Vienna – Budapest | approx. 6,000 km |
| Mainz – Constanța (Romania) | Passau – Vienna – Budapest | |
| Corridor F: Zeebrugge – Terespol (Poland) | Aachen – Berlin – Poznań | approx. 3,000 km |
| Zeebrugge – Medyka (Poland) | Aachen – Wittenberg – Cracow | |

Sources for all corridor figures stated in the article: unpublished study on European freight corridors by the Community of European Railways CER (August 2007) and UIC "European Rail Infrastructure Masterplan" (January 2008)

Photo: Max Lautenschläger



The Italian rail sector profits from the growing transport market.

Market access in Italy is highly diverse

Because of its geographical situation, Italy plays a significant role in the cross-border European rail market as both source and destination country on the north-south corridor. In recent years, the country has benefited from the growing transport market in both the freight and passenger segments.

Traffic performance in the Italian rail freight market rose by 24.6 per cent between 2003 and 2007, placing Italy behind Germany (34.6 per cent), but ahead of the United Kingdom (12.1 per cent) and France, which suffered a sharp decline of 13.5 per cent. Rail's competitive position in the overall freight transport market hardly changed at all during that time: the modal split share rose only slightly from 9.9 per cent in 2003 to 10.0 per cent in 2007.

The trend for the Italian rail passenger market was similar, with traffic performance up by 10.1 per cent during these five years. This corresponded to developments in other European countries: over the same period, traffic performance increased by 10.9 per cent in Germany, by 11.6 per cent in France and by 17.5 per cent in the United Kingdom. Rail's share of the modal split in the passenger transport market increased moderately up to the year 2007, from 5.3 per cent in 2003 to 6.4 per cent in 2007, proving that rail was well able to hold its own in intermodal competition with other transport modes.

An international study conducted by Hamburg-based management consultants SCI Verkehr explains why rail was unable to achieve a stronger improvement in its competitive performance in

Italy: a review of quality indicators, such as fleet development and infrastructure resources, revealed that Italy has a great deal of ground to make up in modernisation of its fleet (exclusive of locomotives). In 2006, the average age of the Italian fleet was 23 years; the average service life of the vehicles is between 30 and 40 years. For many years, Italy's investments in new rolling stock were below average. Another finding of the study showed that the country does not pay sufficient attention to the requirements of the population when upgrading its rail infrastructure.

Focus on upgrading high-speed traffic

One of the reasons for the low investment volume could well be the low fare level, which is specified by the government. In 2007, the average fare for regional travel was approx. ten cents per kilometre. By comparison, that figure is roughly 14 cents in Germany, 16 cents in France and 20 cents per kilometre in the United Kingdom.

Investment funds provided by the government are used primarily to upgrade the high-speed network for long-distance passenger services, in line with the long-term strategy of the Italian state railway Ferrovie dello Stato (FS). On completion in

2012, the 1200-kilometre long high-speed network will link the major cities with each other: Milan - Rome - Naples on the north-south corridor, Turin - Milan - Trieste on the west-east corridor.

Inconsistent market opening

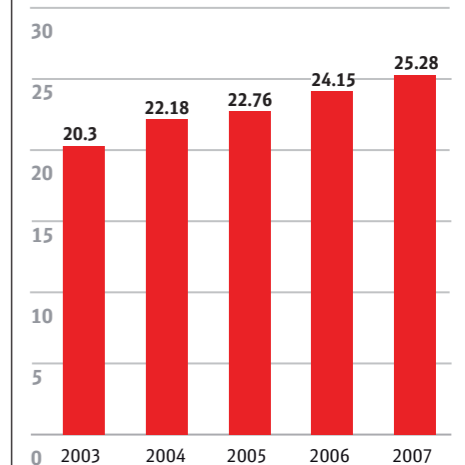
Italy created the necessary legal conditions for more competition on rail at an early stage. Its rail freight market was opened parallel to the liberalisation stages prescribed by the EU: in other words, the rail freight market was opened up to cross-border traffic as from January 2006 and one year later for the entire rail freight sector. In the long-distance passenger sector, Italy ranks up alongside Germany as pioneers in Europe. The long-distance market is already completely accessible to those companies whose home market also offers free access. The latest trends actually show that even railway undertakings from closed markets can nevertheless enter the Italian long-distance passenger market, for instance in the case of the French SNCF through its stake in the newly founded Italian company Nuovo Trasporto Viaggiatori (NTV). The reciprocity principle also formally applies to the regional market: invitations to tender are open only to RUs from companies whose home markets are also open to competitors in this sector.

The largest rail transport provider in Italy is Ferrovie dello Stato, which is wholly owned by the Italian state. The core companies in the group are Trenitalia for passenger transport and Trenitalia Cargo for freight transport, together with the infrastructure manager Rete Ferroviaria Italiana (RFI). The separation of the Italian state railway into independent companies for infrastructure and operations has been embodied in law since October 2003, when Italy transposed EU law.

Trenitalia is currently the only player in the purely commercial long-distance rail passenger segment. As from 2010, the private Italian rail company NTV, in which the French SNCF currently holds a 20 per cent share, will enter the high-speed market, operating 25 high-speed trains on selected routes. In the regional market, transport services are ordered by the regional authorities, as they are in Germany. Direct contract award to the Italian incumbents is the usual practice. As yet, there are

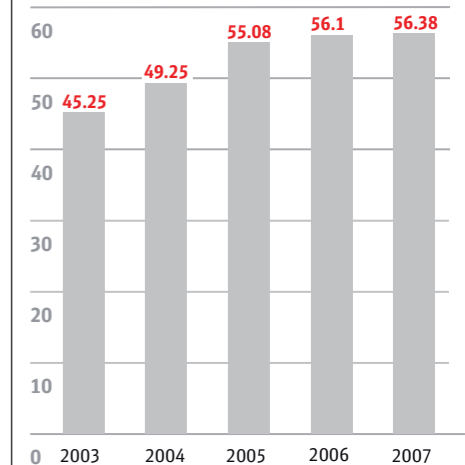
Continuous increase in traffic performance since 2003

Traffic performance in freight transport (billion tonne-kilometres)



Sources: Istat - Istituto nazionale di statistica, Eurostat

Traffic performance in passenger transport (billion passenger-kilometres)



Sources: Progrtrans, European Transport Report 2007/2008 (2005-2008), Eurostat

Photo: Georg Wagner

no transparent tender procedures. In terms of revenues, Trenitalia has an approx. 80 per cent share of the regional market; the remaining 20 per cent are handled by other providers, mostly regional and municipal companies. As from 2009, the ordering authorities in Italy are planning to conduct Europe-wide tenders. Competition is expected to increase once international transport undertakings join the market. According to Istat, the Italian office of statistics, in 2007 competitors accounted for a 16.1 per cent share of the rail freight market, measured in operated tonne-kilometres. In terms of tonnes of freight carried, their share was 32.8 per cent. Apart from Trenitalia Cargo, the main players are SBB Cargo Italia with 1.1 billion tonne-kilometres, Veolia Cargo Italia and Crossrail Italia. DB Schenker Rail also operates in the Italian market through its subsidiary DB Schenker Rail Italia, which had a market share of 0.1 per cent, measured in operated

tonne-kilometres, in 2007. Trenitalia Cargo's competitors are in some cases faced with serious market barriers, either of a technical or operating nature, or administrative barriers. The following examples show that in practice this leads to substantial additional expenses for rail freight operators and prolongs the time required until players can actually provide transport services for customers.

Unique demand for two-man operation

An unusual railway regulation imposed by the Italian infrastructure manager Rete Ferroviaria Italiana (RFI) states that there must always be two train drivers in the driver's cab in Italy. The usual system in the rest of Europe is a vigilance device, which the train driver uses to confirm his presence by pressing a button at short intervals. The lack of a network-wide infrastructure- and vehicle-based train control system are stated as grounds for the exceptional rule in Italy, claiming that the required safety cannot be guaranteed unless the train is manned by two train drivers.

Meanwhile, however, the lines have been equipped with the new ground-based system Sistema di Controllo Marcia Treni (SCMT) and the locomotives operated by DB Schenker Rail Italia have the corresponding on-board system Sottosistema di Bordo (SSB) as well as an on-board radio system (CAB-Radio). Moreover, DB Schenker Rail Italia has invested substantial sums in refitting its locomotives and training its personnel. Although it has satisfied the technical requirements for one-man operation, the two-man rule still applies. The reason for this, on the one hand, is that the Italian trade unions and health authorities are resisting the changeover to one-man operation. On the other hand, there are serious delays in vehicle authorisation, especially with the new Italian train control system.

Prolonged authorisation procedures for technical locomotive equipment

There have been severe delays in equipping the locomotives with the relevant on-board systems because the technical specifications for the on-board system SSB and on-board radio (CAB-Radio) drawn

up by Trenitalia were not officially published until a very late stage. The rail industry is now confronted with the challenge of having to develop that equipment within a very short time. Prior to publication of the specifications by RFI, Trenitalia had already booked almost the entire production of the on-board systems from Ansaldo, the only manufacturer. As a result, competing RUs were initially unable to obtain any equipment owing to insufficient capacities of the supplier, and legal action had to be initiated.

Trenitalia's competitors deploy large numbers of Vossloh G2000 diesel locomotives. One-man operation of these is also delayed because the competent Italian bodies have refused to grant type approval of the on-board systems - even though SBB Cargo Italia provided a test loco for trial runs at an early stage. It took more than six months before the new-build Bombardier TRAXX F140 DC loco supplied by DB Schenker Rail Italia obtained authorisation.

Both the protracted authorisation practice as well as the two-man rule are contrary to the central concept of the revised European Interoperability Directive, which provides for a considerably more streamlined, and therefore faster, authorisation procedure for rail vehicles, based on the principle of mutual recognition, which means that vehicles which have been authorised in one Member State should be permitted on principle to operate in the other Member States.

Infrastructure connection for DUSS terminal refused

DUSS Italia operates the Sommacampagna terminal on the economically important Verona - Milan route. The terminal is used to tranship load units between rail and road in the combined transport segment. A central component of the contractual agreements was connection of the terminal's rail infrastructure to the RFI rail network. One and a half years after the contract had entered into force in 2006, the infrastructure manager RFI still refused to grant the DUSS Italia terminal in Sommacampagna a connection to the Italian rail network. Safety reservations were quoted as the reasons for refusal, although DUSS Italia had complied with all the safety requirements imposed by RFI.

Restricted use of Alessandria marshalling yard announced at short notice

DB Schenker Rail Italia has used Alessandria Smistamento marshalling yard for forming, splitting and regrouping trains since 2003. In the past, DB Schenker Rail Italia was able to run fully loaded block trains from Germany or other parts of Europe to Italy to serve customers in the regions of Piedmont, Lombardy, Liguria and parts of Emilia-Romagna thanks to the train formation facilities there. The use of these facilities is a core element of DB Schenker Rail Italia's business operations.

Market barriers make it difficult to enter the Italian rail transport market.

At the end of October 2008, the Italian infrastructure manager RFI unexpectedly announced that the marshalling yard could no longer be used for train formation as from introduction of the new timetable in December 2008. This announcement is in conflict with the train paths already allocated to DB Schenker Rail Italia for the entire timetable year 2009. Moreover, the 2007 Network Access Report did not state any restrictions whatsoever for the use of the Alessandria yard. The Network Access Report is published every December before introduction of the new timetable and states the anticipated restrictions for the following two years. DB Schenker Rail Italia consequently offered to handle train formation itself in future and to offer that service to other railway undertakings in return for payment, but RFI has categorically rejected that offer on repeated occasions.

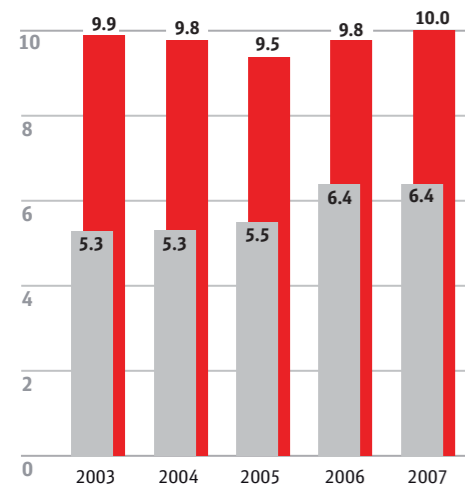
DB Schenker Rail Italia has appealed to the regulatory body of the Italian Ministry of Infrastructure and Transport and hopes that even if there is no scope for comprehensive sanctions it will remedy the competitive distortion against DB Schenker Rail Italia on the Italian rail freight market promptly and consistently with the support of the European Commission and also enable de facto free market access and non-discriminatory market operations.



Foreign freight operators account for a market share of 16.1 per cent in Italy.

Rails performs well in intermodal competition

(share of modal split in per cent; basis: traffic performance; figures rounded)



■ Modal split share of rail freight Modal-Split-Anteil
 ■ Modal split share of passenger transport

Sources: Istat - Istituto nazionale di statistica, DB data

Photo: Hermkes

France plans new regulatory regime

The current government bill for the organisation and regulation of rail transport envisages the establishment of a regulatory authority with powers similar to those of the Federal Network Agency in Germany. Based on a report from the Senate, the government is also planning further changes to the regulatory regime, which is not particularly well developed in France.

The European Commission accuses France of infringing its obligation under European law to establish a functioning regulatory authority. In the infringement proceedings initiated at the end of June 2008, it complains that there is still no functioning institution which has sufficient resources, is authorised to conduct comprehensive inspections and to impose sanctions. France has now reacted and presented a bill for the organisation and regulation of rail transport. The bill specifies the establishment of an effective regulatory authority.

The "Autorité de régulation des activités ferroviaires" will be furnished with sufficient personnel and financial resources, similar to the Federal Network Agency in Germany. According to the

ever, the French bill does not include an obligation for the infrastructure manager to inform the regulatory authority in advance if it intends to refuse applications for the use of infrastructure, or to submit its network statement prior to publication. The bill only obliges the infrastructure manager to provide information on the level of infrastructure charges. The French Senate is now also demanding that the authority issues a formal opinion on the network statement.

On the whole, the establishment of such a regulatory authority is to be welcomed as it will enable fair competition on the French rail network by monitoring non-discriminatory access to infrastructure more effectively.

Government plans establishment of a new infrastructure division at SNCF

In the infringement proceedings, the EU Commission also criticises that train path allocation is not separate from the railway undertaking Société Nationale des Chemins de Fer Français (SNCF). In 1997, infrastructure was separated from operations in France and assigned to the newly founded Réseau Ferré de France (RFF). Nevertheless, SNCF continues to handle maintenance and operation of the rail network on behalf of RFF. This allocation of tasks is criticised not only by the Commission, but also in a report commissioned by French Prime Minister François Fillon and presented by Hubert Haenel, Senator from Alsace in autumn 2008. The report proposes that the SNCF employees who are responsible for network operation should be transferred to an independent company called "Exploitation du réseau ferré national" (ENCF). Although that would still form part of SNCF, it would work



The EU Commission criticises the lack of independence in train path allocation at SNCF.

completely independently and take over the full remit of network operation and train path allocation from RFF. RFF would remain the competent body for organisation and financing of infrastructure maintenance. ENCF would be responsible for drawing up the working timetable, informing the railway undertakings about allocated train paths, deciding on train path applications at short notice and ensuring the safety of operations.

An addendum to the bill for the organisation and regulation of rail transport demanded by the French government at the beginning of February 2009 picks up an idea put forward in the Haenel report. However, instead of a separate company, the addendum envisages only the establishment of a new division within SNCF. This independent division would work for the account of RFF and perform the tasks required for infrastructure management in accordance with the objectives and principles of RFF. It would do so under conditions which guarantee independence of the key functions, as well as free competition and non-discrimination. RFF is to set up a commercial platform to serve as contact for the railway undertakings and to coordinate train path applications and construction work. In response to a further report by Alsace Senator Fabienne Keller, SNCF also plans to create another independent department for station management.

France is considering trial opening of the regional rail passenger market

The organisation of regional public transport has been the responsibility of the French regional authorities since 2002. To date, they can only negotiate with SNCF to satisfy transport require-

ments in the regional rail passenger market. The second part of the Haenel report confirms that on the whole, this rail passenger segment has developed positively since regionalisation. It proposes

To date, the French regional authorities can order regional rail passenger services only from SNCF.

various measures for improving station development and coordinating regional and long-distance transport.

The report also criticises the legal and technical uncertainty relating to opening up the regional rail passenger market to players other than SNCF. It is debatable whether SNCF's monopoly in regional transport is compliant with the new European Regulation on public passenger transport services (Regulation 1370/2007). It has not been clarified what would happen to the SNCF staff and rolling stock if the market were opened. Accordingly, the report suggests conducting trial opening of the regional rail passenger market in some regions, allowing the regional authorities to choose other railway undertakings within strict limits and for restricted periods. In preparation for this trial opening of the regional rail passenger market, the French government has set up a working party with the stakeholders concerned. Its findings are to be presented in 2010.

France has decided to establish an effective regulatory authority.

media, it will have a staff of 60 and a budget of EUR eight million. If the authority has reason to suspect infringement by a player, it has the right to inspect the company's documents and enter its premises. It will be authorised to issue notices which are immediately enforceable and impose penalties of up to three per cent of the company's annual revenues.

France has decided to establish an effective regulatory authority

In contrast to the German regulatory regime, how-



Dr. Otto Wiesheu (l.), DB Board Member for Economic and Political Affairs, and DB CEO Hartmut Mehdorn (r.) contributed to the discussion on different regulatory approaches in Germany and Europe.

Controversial debate on regulatory measures

At the third symposium “Competition and Regulation in the Rail Sector” staged by Humboldt University Berlin and DB, well-known experts discussed the different viewpoints of the regulator and the railway undertakings. The focus was on opening the long-distance rail passenger market as from 2010.

In January 2009, 150 experts discussed the regulatory policy and its consequences for day-to-day business operations at the symposium “Competition and Regulation in the Rail Sector” in Berlin. Dr. Iris Henseler-Unger, Vice-President of the Federal Network Agency, announced that the Agency would define its investigation standards more precisely. She further demanded new powers for the Agency to review charges in the form of a performance regime, as the provisions of railway law lagged behind the other sectors in that respect. Dr. Otto Wiesheu, Member of the DB Management Board for Economic and Political Affairs, replied that on the basis of regulatory experience in the telecommunications and postal industry, the legislator had deliberately set different standards in railway law. The panel also discussed the level of infrastructure and station charges and their contribution to financing high-quality infrastructure. Michael Harting, assistant head of department at the Federal Ministry of Transport, referred to the Performance and Financing Agreement which had come into force in January 2009, commenting that the effects of that agreement had to be awaited and that it was not yet necessary to introduce an additional performance regime.

Professor Lars Hendrik Röller, President of the European School of Management and Technology, presented the findings of a study on cooperation in the long-distance rail passenger market conducted on

behalf of DB in 2008. The study revealed that more attention had to be paid to competition between rail and plane when assessing the effects of alliances on competition. Such alliances have long since been practised in aviation, as they can offer more flexible fares on international connections, or better coordination of flight schedules, both of which improve efficiency and make the products far more attractive for customers.

Joachim Fried, DB Management Representative for Competition, demanded binding market regulation for all EU Member States. In France, for example, regulation exists in the books, but is not sufficiently implemented in practice. Fried appealed to the representatives of the EU Commission at the symposium to settle simple competition infringements quickly, adding that for the market players, faith in dependable framework conditions was a vital criterion for market access. Dr. Axel Sondermann, Chairman of the Management Board of Veolia Verkehr, and Karl Michael Mohnsen, CEO of TX Logistics, reported on practical business matters on behalf of the foreign transport undertakings which are active in Germany. Both speakers made it clear that the companies were more concerned with minor day-to-day subjects such as train path rejections, price changes and disruptions, rather than the general framework conditions. In that connection, Sondermann and Mohnsen suggested intensive dialogue in partnership with DB Netz AG.

Photo: Bernd Lamme

Competitor regional rail passenger networks

Timetable 2009
Correct at: 31.01.2009

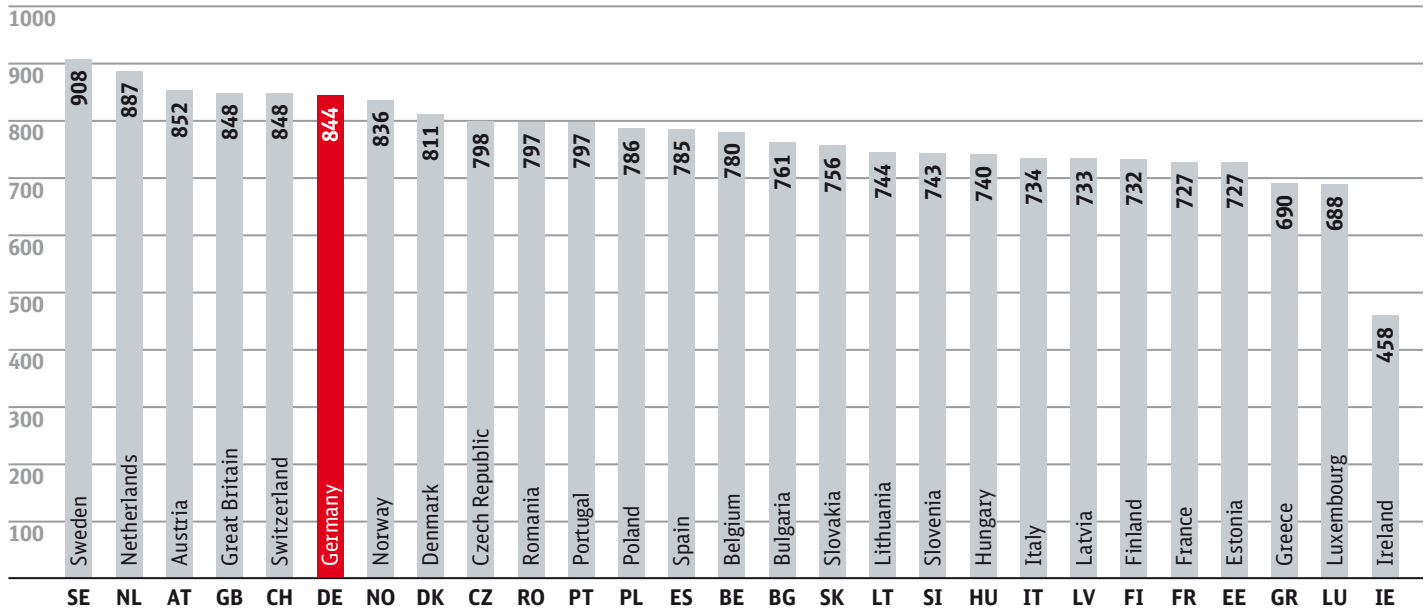


NB: The map does not show museum or mountain railways. All lines show the transport undertakings which actually operate. As some of them provide services on behalf of other players, the map does not show the contractual relationships of the RUs with ordering authorities and customers.
Source: Bundesarbeitsgemeinschaft Schienenpersonennahverkehr, 2009

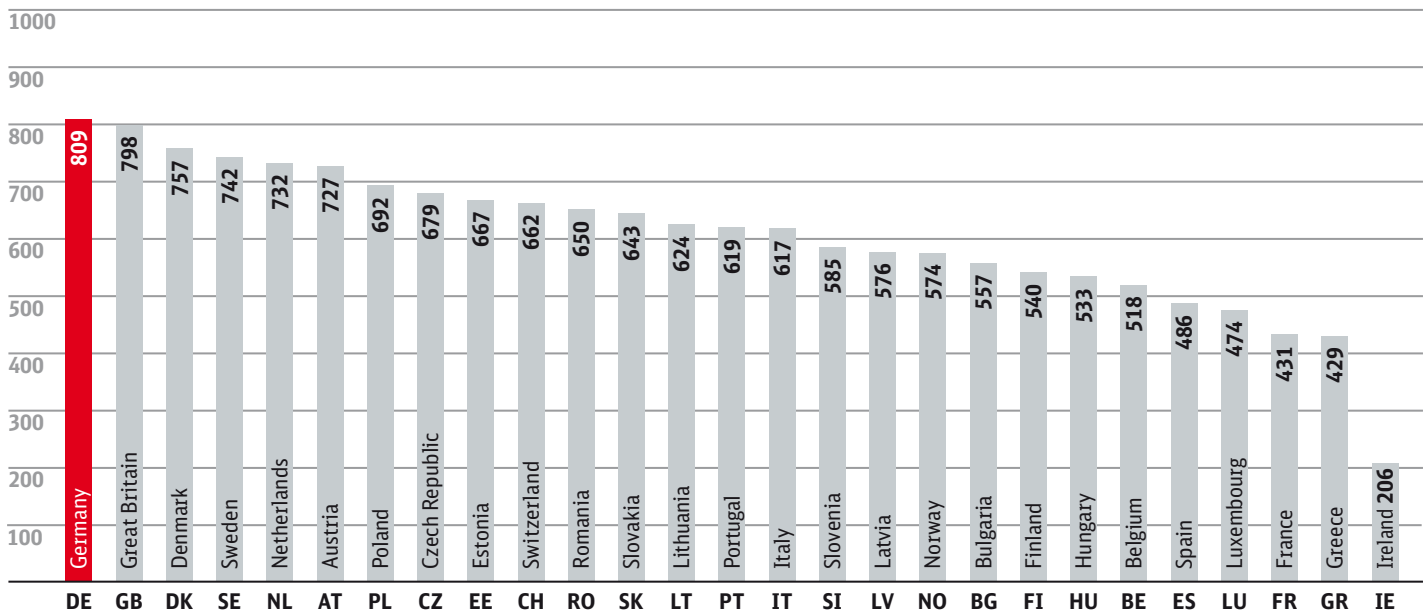
Rail markets in Europe are open to different degrees.

The liberalisation of European freight transport has already made good progress, whereas the liberalisation of European passenger transport is far less well developed. There are fundamentally no uniform market access conditions in the EU, as high market barriers continue to exist de facto in some countries.

2007 Rail Liberalisation Index - Freight Transport



2007 Rail Liberalisation Index - Passenger Transport



Source: IBM Global Business Services and Kirchner, 2007 Rail Liberalisation Index



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