

POSITION PAPER

OUR TOP POLICY PRIORITIES FOR THE NEXT FIVE YEARS

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Introduction

The European Commission is not even close to meeting its goals to reduce greenhouse gas emissions as detailed in its White Paper on Transport from 2011: “50% shift of medium distance intercity passenger from road... to rail”¹. Instead, despite significant attempts to broaden the appeal of rail travel, the market share of passenger rail has barely risen – just 0.6% between 2011 and 2016² - due to weak performance by dominant players in long distance passenger traffic.

Over the same period – in the few places where it is allowed to exist - it has been proven that competition in the passenger rail market has led to lower prices and material modal shift, in some cases *doubling* rail ridership within just 7 years³, **faster than even the 2011 White Paper aimed for**.

Meanwhile - also in the few places where it is allowed to exist - competition in the downstream rail ticket retail market has brought about the transparent “multimodal connection platforms” that the 2011 White Paper also mentioned, a quick & easy booking experience with rail as the backbone. Both types of competition have brought innovation, better service & new jobs – at no cost to the taxpayer.

But the big question remains: does the EU Commission *really* want to meet its ambitious goals for decarbonisation? If rail is *really* meant to become backbone of transport, then we **urgently** need **the same level of intramodal competition across all 28 EU member states** that already exists in other modes of transport, rather than a two-tier Europe that undermines the Single European Rail Market.

The next mandate of the Commission will be crucial for market opening and delivering on the expected benefits.

In this paper, we will name our **seven key policies** for the next five years and identify concrete solutions that would make the sector more efficient and attractive, with the overarching aim of achieving modal shift to rail. **Otherwise we do not believe that Europe’s ambitious decarbonisation goals will be met on time – it will be too late.**

¹ https://ec.europa.eu/transport/themes/strategies/2011_white_paper_en

² European Commission, 6th RMMS report

³ <http://www.cesisp.unimib.it/en/la-storia-di-italo-e-i-benefici-della-concorrenza-nellalta-velocita-ferroviaria/>

ACHIEVING A BETTER PASSENGER EXPERIENCE & PERFORMANCE to win the battle against the private individual motor car:

POLICY 1: IMPROVING TRANSPARENCY:

Regulation (EC) No 1371 of 2007 already stipulated that it is a passenger right to search and book all relevant rail options including fastest and cheapest services. However, in the meantime a number of new entrant operators have begun offering commercial services. There has also been a substantial technical advancement in the ability to aggregate different travel options and combine separate tickets. With taxpayers subsidizing the EU rail system with at least €70 billion per year⁴, it is only correct that passengers should have the right to search and book all available rail options at all channels, both online and offline, both at independent and incumbent in-house ticket vendors. In the interests of passenger convenience, any licensed ticket vendor⁵ should have the duty to inform the passenger and serve as a “One-Stop Shop” for all rail-related enquiries. Such ticket vendors consequently need access to all of the operators’ timetable, real-time operational and fares data *in order to comply* with this duty.

It should not be access to data itself that is the source of a competitive advantage but rather the innovation in refining and promoting it for the benefit of the travelling passenger.

This policy is not just about independent ticket vendors – it is crucial for new entrant operators as well. State-owned rail incumbents still enjoy over 90% market share in rail ticket retail, often also sharing a brand with the infrastructure manager and station manager. This has the effect of distorting the market by giving the incumbents the opportunity to deny exposure to newcomers.

Over the last years, several new entrant operators have failed to establish a viable market position for exactly this reason. For example: Locomore, an innovative crowd-funded new operator that aimed to bring lower cost intercity rail travel to Germany and provide an alternative to Deutsche Bahn, sadly declared bankruptcy in May 2017. Just a few weeks beforehand, its CEO cited the incumbent’s stranglehold over information and sales channels as being the chief reason for its financial problems⁶.

POLICY 2: MANDATORY THROUGH TICKETING:

With the ‘heavy’ technical side of the European rail system being integrated soon, it makes complete sense that the softer ‘ticketing’ or retailing side should follow suit; after all, this is a key customer touchpoint without which the whole rail sector would not survive. Competition can still exist very well within a common seamless ticketing framework – after all, operators can still compete with each other in terms of price and service rather than by restricting the availability and distribution of their products. However, if the optimal (cheapest and/or fastest) journey between any 2 rail stations is by means of combining separate tickets/transport contracts **in an impartial manner** – adhering to standard connection times approved by operators and station managers themselves - , why should passengers not be able to see and book such combined options and be covered by passenger rights from start until the end of the entire journey?

This is particularly relevant to cross-border travel: while many longer journeys in Europe are easily accomplished by a single flight or bus, such as Cologne to Lille or Paris to Rome, the “equivalent rail journey requires 2+ legs and operators — bringing in a missed connection risk that does not apply to

⁴ EEA Technical Report “Size, structure and distribution of transport subsidies in Europe”, March 2007

⁵ Licensed ticket vendors are EU-based companies that both show rail travel information AND vend tickets, meaning that Google, Amazon and Facebook are not included in this grouping

⁶ <https://www.allianz-pro-schiene.de/themen/aktuell/interview-derek-ladewig-locomore/>

air travel”⁷. ALLRAIL believes that tickets from 1 or more operators is a major way to attract budget conscious passengers away from less sustainable transport modes, such as low-cost airlines.

- Historic incumbents benefit from an inherited network and are typically the only entities that offer pan-EU through ticketing (in co-operation with each other). Again, this adds a competitive advantage to those entities that have agreed such through tickets which, under current regulations, makes the incumbents’ through ticket options functionally superior to alternative products offered by new entrant Railway Undertakings.

Passengers buying end to end journeys using reasonable routes and with standard connecting times should be guaranteed end to end carriage regardless of what type of ticket(s) they have purchased.

Solutions for 1 & 2:

- A Central Reservations System for Europe is no longer necessary; besides, it has been proven that the rail incumbents could never agree on the principles behind such a system anyway. With API technical interfaces available to most Railway Undertaking reservations systems, digital One Stop Shops can now make multiple separate tickets seamless. Through tickets are no longer necessary - ticket vendors are delivering the same outcome, but entirely at their own cost.
- In the upcoming Trilogues on the EU rail passenger rights recast COM(2017)0548, ensure that (1) ALL fares and timetables are shown & sold at ALL ticket vendors and that (2) guaranteed end to end carriage coverage exists for separate tickets in the same one-way travel chain if purchased in the same booking transaction.
- Delay compensation should be based upon the value of the entire combined journey (across separate tickets), with liability being with the causer of the delay – this would be a *very* effective way to **achieve performance improvement** across all operators.
- Emphasise to all stakeholders that minimum standard connection times are set by operators and Station Managers – they are NOT put together at the ticket vendors’ discretion.
- Introduce Multi-Modal Passenger Rights that follow the same principles as we suggest for Rail Passenger Rights. If passengers can travel from door-to-door (within the EU) on public transport without risk – with rail as the backbone -, this would be one of **single biggest incentives to entice people away from the private individual motor car.**

⁷ <https://www.independent.co.uk/travel/news-and-advice/european-rail-operators-kinder-delayed-travellers-trains-expert-warning-mark-smith-seat-61-a8240216.html>

EMBRACING DIGITALISATION:

POLICY 3: MOVE TO PASSENGER-CENTRIC, DEMAND-DRIVEN RAIL SERVICES

Assuming better Passenger Rights combined with increasing digital innovation by ticket vendors, it is realistic to estimate that the rail system could become much more dynamic over the next 5 years. Particularly long distance passenger rail services need not be set to a rigid timetable; they can become more demand-driven, similar to the much heralded Mobility as a Service (MaaS) and indeed other modes of long distance passenger transport (e.g. air, bus, car-sharing).

After all, wherever competition on the tracks has been introduced, experience shows that the heightened demand has “led to increasing frequencies on existing routes”⁸ – prescribing rigid timetables is thus not necessary. It has also enabled many routes to become commercially viable that were previously subsidised⁹, bolstering EU 1370/2007 (Art. 2.e) which states that **a route should not be subsidised if it does not need to be.**

However, we now notice disturbing new trends that contradict such proven success. Slovakia, the Czech Republic and Austria now want to give taxpayer funded trains priority over their commercially viable counterparts. Germany is attempting to introduce a clockwork timetable “Deutschlandtakt” that will introduce subsidy to a long distance rail system that is currently commercially viable. Last but not least, the far right Austrian Transport Minister Norbert Hofer (who recently resigned) lately started a new way of killing competition by planning to fund to a long distance cross-border service that until now has been commercially viable, by means of a direct award to incumbent ÖBB – and the financial justification for this move is not clear. Its sole motivation seems to be to favour ÖBB.

Sadly, although all of these changes appear to add cost to the industry and will have the effect of limiting customer choice, they are all defended as being legal - the market pillar of the EU 4th Railway Package allows such caveats. Unfortunately, at any time in the future, any government can suddenly start funding to finance rigid, clockwork services that override anything that is currently commercially viable. Not only is this a very risky situation for private investors to be in, but without intensive competition in long distance passenger rail, the sector will not change and not become more efficient.

Solutions:

- Urgent legislative re-working is needed to protect demand-driven, commercially viable passenger rail services. 4th Railway Package risks making liberalization more difficult, not more easy.
- Prohibition of all direct awards from 2021 and mandatory reduction of all direct awards that were completed after 2018 to a maximum length of until 2024
- In order to attract private investors, there must be the guarantee that paths remain available and track access for commercially viable trains receives a higher priority than PSO. If an authority tries to introduce on a subsidized service on the same route, an Economic Equilibrium Test must take place in order to justify its existence, with results reviewed by an independent rail regulator.

POLICY 4: ENSURE MEANINGFUL PARTICIPATION IN EU DIGITAL RAIL INITIATIVES

The last 5 years have demonstrated that TAP TSI is **NOT the solution for retail and ticketing**. Essentially defined by incumbents, any perceived benefits to non-incumbents and to the travelling public are marginal at best. The Full Service Model (FSM) is also inadequate – it has not even attracted most of the other incumbents to join (!). Perhaps unsurprisingly, both concepts are flawed – they only allow for voluntary commercial agreements in an environment that desperately needs mandatory action in order to enhance both domestic and cross-border passenger rail integration.

⁸ https://www.railjournal.com/in_depth/italian-high-speed-success#.XMqlq2dFwDA.twitter

⁹ Such as the Vienna to Salzburg main line in Austria. It has competition and is not subsidised whereas other domestic main lines in Austria (e.g. Vienna-Graz and Vienna-Innsbruck) remain subsidised

It is unwise to always give the responsibility to incumbents who consequently view such projects as a lobbying opportunity to further their domination and to stifle true innovation and competition – with the tacit approval of the EU Commission. The best example is TSGA¹⁰, **in which our members were not involved until after the rules were made**. The Commission should actively seek the involvement of all relevant stakeholders in defining customer-centric digital initiatives in the rail sector; this would ensure that fresh thinking and true innovation be brought to the sector.

Other EU sponsored initiatives such as Shift2Rail also miss the input of smaller rail companies. However, the cost and time involved are prohibitive, meaning that once again only state funded incumbents have the resources to participate – exactly the kind of entities that are not so innovative. Once again this leads to the situation where only large players benefit and change remains slow.

Solutions for 3 & 4:

- Any ticketing, TSI or market-related initiatives & subgroups at the EU level that involve the EU Commission should come under the joint chair between incumbent with new entrant passenger rail companies. Only with such treatment is it possible to convince new entrants that Commission is acting fairly (currently, many are demotivated from coming to Brussels in person).
- Shift2Rail should encourage participation by means of a different model - with companies under a certain size being able to offer work capacity and personnel as opposed to paying money.
- Entities that benefit from EU co-funding should not be allowed to join and pay dues to the incumbent lobbying association – EUROFIMA, Rail Baltica and EU Rail being the most obvious examples. The EC is indirectly funding an organization that undermines its own good work. If this is to remain the case, then we request equal EU taxpayer money in order to fund our activities.

¹⁰ the TAP TSI Services Governance Association

ACHIEVING A PROPER SINGLE EUROPEAN RAIL MARKET:

POLICY 5: COMMERCIAL VIABILITY FOR INDEPENDENT TICKET VENDORS

Independent distribution has hugely benefited aviation- there is no reason why it cannot do the same for passenger rail. 3rd party ticket vendors compare different operators products (on the same route) giving the power to the customer to make informed purchase choices based on their own preferences. They also have the ability to combine separate travel tickets together in an **impartial** manner to create new journey opportunities for customers - something that most **incumbents' in-house ticket vendors still refuse to do. Such exposure is also critical for the success of any new entrant operator.** Controlling the downstream market for the sale of tickets is a very subtle but hugely effective way of actually controlling the entire sector & minimising the impact of new entrant operators.

In addition, independent ticket vendors are continually innovating in order to remain relevant and compete with other retailers. This in turn encourages incumbents' in-house ticket vendors to do so as well, meaning that ultimately all railway passengers benefit. Andreas Mundt, President of the German Cartel Office, famously declared in May 2016 that "competition in the rail sector depends on competition in sales, i.e. beginning with the sale of rail tickets"¹¹.

Unfortunately, incumbents are quick to declare the relationship with independent ticket vendors as a B2B matter, i.e. nothing that concerns regulators. Being market dominant on most routes and sole provider of access to their sales systems, incumbents are in a position to dictate unviable commercial terms for independent ticket vendors (for example low commission levels & unjustified marketing restrictions) that can literally drive them out of business, unless they charge an additional booking fee in order to cover costs, which puts them at a competitive disadvantage to incumbent in-house ticket vendors. At the same time, incumbents pump immense funds into their own ticket vendors which in turn give highly **partial** and preferential coverage to their in-house operators.

The contrast is startling: in 2018 our member the multi-modal ticket vendor FromAtoB, based in Germany, declared bankruptcy. Meanwhile, the German rail incumbent DB has declared last month it will invest over €100 million into a multi-modal "SuperApp"¹². Clearly, market failure has occurred. **Incumbent in-house ticket vendors have similar market power in the EU rail ticketing market as booking.com with hotels, Amazon with e-commerce and Google with search engines.**

Solutions:

- Commercial terms must be fair, reasonable and non-discriminatory (FRAND). There should be a reasonable and realistic rate of return.
- Independent rail ticket vendors should be able to sell in all markets & all channels, without any marketing restrictions. For example, it should not be the case that contractual terms stipulate that many terms cannot be used by independent ticket vendors in search engines, contrasting greatly to other sectors (e.g. e-commerce, aviation and hotels).

¹¹ Press release by German Federal Cartel Office in 2016 about the German rail incumbent agreeing to make changes to the previous rail ticket sales arrangements in Germany:
https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2016/24_05_2016_DB_Fahrkarten.html

¹² <https://www.bild.de/geld/wirtschaft/wirtschaft/bahn-app-zuege-e-scooter-und-carsharing-bald-ueber-ein-tool-buchbar-61656138.bild.html>

POLICY 6: NON-DISCRIMINATORY ACCESS TO ROLLING STOCK

Availability of rolling stock – particularly for long distance services – is one of the biggest barriers to entry for newcomers. Unlike in other - less environmentally friendly – modes of transport there is no active & vibrant second hand leasing market. Meanwhile EU incumbents often don't offer their second hand, amortised trains to new entrants, preferring either to scrap them or sell them abroad.

Brand new rolling stock is expensive in an industry that already has very high capital costs. Potential investors need much more money than if they were to invest in other transport modes → **it is no wonder that non-EU manufacturers are now being seen as an attractive alternative.**

Meanwhile EUROFIMA is only open to operators that carry out public service offerings (PSOs), which in many EU member states (Poland, Austria, Spain, Belgium and more) will still be directly awarded to the state-owned incumbent for many more years, creating the very opposite of a level playing field. For example: the new long distance high-speed Pendelinos in Poland are effectively only available at a preferential borrowing rate to incumbent operator PKP Intercity, despite claims to the contrary.

Solutions:

- Incumbents should be required to rent their underutilised fleet to independent newcomers, so that a proper leasing market can begin.
- **No scrapping.** Incumbents should offer surplus 1st generation high speed trainsets for leasing, especially when they are already authorised to operate in the same markets. Urgent action is required to prevent 1st generation Eurostar trainsets going to the breakers yard.
- If the market does warrant the establishment of privately owned ROSCOs for long distance rail, then taxpayer funding should provide such rolling stock pools.
- Equal financing opportunity: there should be same purchasing terms for new or 2nd hand rolling stock as the incumbents benefit from at EUROFIMA – for non-PSO services as well.

POLICY 7: INCUMBENT DE-BRANDING

Incumbents enjoy historical brand recognition, being THE default “Go To” ticket vendor and operator for rail services, with well-known apps/websites and inherited ticket counters & ticket machines at preferential locations in railway stations. They also often share the same brand as the infrastructure manager and station manager. In such cases, profit oriented brands are sharing the same brand as the taxpayer-funded infrastructure manager and benefiting from its familiarity but not paying any market rate for this brand rental. The logo is ubiquitous – we call this ‘**inherited brand equity**’.

In fact, the incumbent operator brand often even retains its prominent position even after there has been vertical separation. Example: NS has a long-term contract to run all major stations in the Netherlands. Despite numerous other operators serving stations such as Rotterdam Centraal only NS’ brand is visible on the outside of the building¹³. Inside, all signage uses NS’ colours & font.

We call this ubiquitous ‘**inherited brand equity**’- and it is much more severe than in all other transport modes. Sometimes signage that is kilometres away from stations show the incumbent logo¹⁴ – sheer gold dust in advertising terms. It is as if the motorways were branded Volkswagen.

Solutions:

- The branding of the incumbent’s in-house operator and ticket retailer must be separated from that of the infrastructure/station manager. The profit-orientated divisions of the incumbent should rebrand while the neutral IM/station manager should retain the inherited logo.
- If there is already vertical separation, then the dominant operator should rebrand; stations should also not still give better exposure to the historical operator.
- Train stations should be neutral locations where passengers go to catch their trains on any operator, much like the experience in an airport.
 - Such incumbent ‘de-branding’ is not without precedent: it has already taken place in Sweden, Norway and the UK (further details are available upon request).

¹³

https://www.bing.com/images/search?view=detailV2&id=7E1121B924492CDD9F494B2DF3D0E29708583148&thid=OIP.TZvMFSQoLWa65-nOShYEWQHaE8&mediaurl=https%3A%2F%2Fwww.sebastian-grote.de%2Fblog%2Fwp-content%2Fuploads%2F2015%2F07%2Frotterdam_centraal10_klein1200.jpg&exph=800&expw=1200&q=rotterdam+centraal&selectedIndex=69&ajaxhist=0&vt=0&eim=1,6

¹⁴ https://twitter.com/ALLRAIL_EU/status/1123143741898936320

SUMMARY:

It makes no sense that incumbents are now publicly calling for “fair competition among modes of transport”¹⁵ without there being fair competition *within* the rail transport mode first of all. After all, intramodal competition has helped all other transport modes to innovate; the same effect would occur in the rail sector.

The sad reality is that - despite competition both on the tracks and in ticket retail having brought benefits to passengers and the environment (wherever they have been allowed to exist) - progress over the last five years has been pitiful. Over the past 3 years, there have been no new entrants in long distance rail apart from Flixtrain, which itself has launched just one single new route over the past 12 months. Flix still operates less than 10 trains per day, almost two years after launch – this does not compare well to its expansion into the bus market which went much faster (!). Meanwhile in Spain, our member ILSA still has not even started operations yet, despite already many years of preparations. Furthermore: most of our members that have been doing business for the past six to seven years are still losing money. Even more stopped and/or went bankrupt during the current Commission’s term. For example: HKX, Locomore, Interconnex, Saga Rail and FromAtoB – losing many jobs as well.

Without viable and functioning competition in the market, we don’t believe the sector will ever reach the Commission’s ambitious decarbonization goals. That means: the next Commission **must act fast – it will be the last chance to move the dial.** Due to the climate emergency, measures should be taken as emergency decrees and immediately implemented. The risk is great: if incumbents continue receiving positive discrimination (as detailed in the seven points above), then not only will **new entrants fail but the environment will not benefit either.**

While it is often said to us that the railway industry is too slow to change, the few islands of market liberalisation (e.g. in Italy) show us that this does not have to be the case - **modal shift by means of proper competition can be done, given the political will.** It may be that the time has come for some positive discrimination in favour of new entrants in order to overcome the wide variety of issues on which incumbents are currently positively discriminated; i.e. where they continue to have a monopoly, a very high market share or enjoy other asymmetrical market influence.

For more details please contact:

Nick Brooks, Secretary General, ALLRAIL asbl, Alliance of Passenger Rail New Entrants in Europe
Tel +32 485 832 991; Email info@allrail.eu; [@ALLRAIL_EU](https://twitter.com/ALLRAIL_EU); Reg nr. 675.784.944.
Publication in the Belgian Official Gazette on 29.05.17

¹⁵ <https://www.handelsblatt.com/politik/international/deutsche-bahn-ceo-richard-lutz-europes-strong-backbone-the-rail/24261300.html>

