MARKET ENTRY (RAILWAYS): THE ITALIAN RAILWAY CASE

Subject: Market entry
Abuse of dominant position
Access to facilities

Industry: Railways

Parties: Ferrovie dello Stato
Georg Verkehrsorganisation

Source: Commission Statement IP/03/1182, dated 28 August 2003

(Note. Once again, market entry is facilitated by a combination of statute law and the application of the rules on competition, in this case the prohibition of an abuse of a dominant position. By applying the rules, resulting in undertakings by the infringing body, access to essential facilities is guaranteed.)

The Commission has adopted a decision requiring Ferrovie dello Stato (FS), the Italian State-owned railway company, to allow new train operators to provide cross-border passenger services into Italy. The decision finds that FS has prevented Georg Verkehrsorganisation (GVG), a small German railway operator, from providing passenger services from Germany to Milan, by refusing to enter into an "international grouping", by refusing to discuss terms for access to the track and by refusing to provide traction services. This has deprived rail passengers of the benefits of price competition and customer choice. With a view to settling the case, FS has made substantial undertakings, granting GVG access and opening the market for other railway operators too. The decision illustrates the Commission's determination to apply the competition rules as a tool to ensure effective market opening in the European Union's railway sector.

The Commission regards the case as a landmark decision for competition in European rail transport. The decision is also in line with European Union legislation which, since 1991, has required railway companies wanting to start new, competing, international services to enter into an agreement with a company on the other side of the border. (Council Directive EEC/440/91 on the development of the Community's railways provides in Article 10(1) that "international groupings shall be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international services between the Member States where the undertakings constituting the said groupings are established".) All the available evidence is that the introduction of competition, if properly regulated, delivers better rail services at less cost to the taxpayer than railway companies operating in closed markets. This decision opens up choice for consumers and will improve railways' attractiveness compared to other modes of transport.

GVG has been seeking access to the Italian railway market since 1995 to provide a twice-daily passenger service from various points in Germany via Basle to Milan. The service would reduce journey times by about an hour, mainly because it would be non-stop and timed to interconnect at Basel with Intercity trains from and to Germany. To be able to provide the service, GVG has to have access to the Swiss and Italian railway networks. It obtained the necessary trainpath in Switzerland in 1996. But the company also has to form an international grouping with an Italian railway undertaking, pursuant to the Directive, and FS is the only Italian train operator currently equipped to enter into such a grouping. Furthermore, GVG needs traction services (that is, locomotives and train crew), which, at this stage in the European railway liberalisation process, it needs to rent and only FS is capable of providing.

Following discussions with the Commission and in order to come to a settlement, FS has entered into an international grouping agreement with GVG and has agreed on the terms of a traction contract with the company. FS and its subsidiary RFI, which manages the Italian railway infrastructure, have promised to use their best endeavours to provide GVG with train paths. FS has also undertaken to enter into international grouping agreements with any duly licensed train operator, which has concrete proposals to start an international rail service into Italy. Furthermore, FS has undertaken that, for a period of five years, it will provide traction to other railway companies for such services. Accordingly, the Commission has come to the conclusion that the infringement has been terminated and, in view of the novelty of the case and the substantial commitments offered by FS, has decided not to impose a fine.

This is a landmark decision for competition in European rail transport. It means that, as long as the international grouping requirement remains on the statute book, the refusal of a dominant train operator to enter into such an arrangement amounts to an abuse of the competition rules if the national flag carrier is the only possible partner with whom the grouping can be formed. Likewise, a refusal to provide traction services, in circumstances where there is no realistic alternative supplier, will also be deemed abusive. And there can be no excuse for refusing to discuss terms for access to the tracks.

At this stage of the liberalisation process of the European Union's railway sector, the legal requirement to enter into an international grouping, the dependency on vertically integrated flag carriers to provide access to the national railway network and the need to ensure traction in different Member States constitute an almost insurmountable mix of technical, legal and economic barriers to entry. It is therefore not surprising that there are virtually no international passenger railway services in competition with national flag carriers. By addressing these three most important access barriers, this decision will greatly facilitate entry into the market of international rail passenger services.

GVG is based in Frankfurt and is active in air and rail transport. It has been operating passenger trains since 1995 and now operates more than 200 services in the long distance market in several European countries. FS is the Italian state-owned railway operator. ■