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Railways Reform

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Note by the secretariat

I. Mandate

1. The Working Party on Rail Transport at its last session considered railways reform to be an important part of railway development. The Working Party requested the secretariat (ECE/TRANS/SC.2/218, para. 51) to prepare a background note based on inputs received by experts at the last session and include proposals for further development of the issue for consideration at the next session.
2. This background note (ECE/TRANS/SC.2/2013/5) is for consideration and discussion by the Working Party.

II. Railways Reform: An Overview

3. Railways and their ownership present a varied picture around the world. In Europe and Asia they are generally owned and run by the state. In the United States of America, the railroads are largely private's owned. But this hasn't always been the case. The construction of railways in Europe in the nineteenth and early twentieth century was mainly carried out by the private sector. It was only later that governments increased their control of the rail sector.
4. With road infrastructure still in an early stage of development, countries soon realized that rail networks were of critical importance to the economy. Governments also came to consider it their duty to ensure a functional railway system operated in the public interest. European countries began to restrict commercialization and limit competition. This step led to loss of traffic and a noticeable deterioration in the financial position of railways. Private railways were no longer willing to invest in infrastructure and rolling

stock. By 1950, nearly all the railways in Europe were state-owned and the vast majority of them still are.

5. The United States is very different. As early as the nineteenth century, American railroad companies were listed on the stock exchange. By 1970, all intercity railroad services – both passenger and freight – were privately owned but regulated by the government. However, passenger traffic was in decline and return on investment insufficient to maintain the tracks. The United States Congress decided to establish a new, more balanced regulatory system that allowed railroads to act freely in managing their assets and setting prices for their services. The state-owned company Amtrak was founded to relieve freight railroads of most of their unprofitable passenger operations.¹

6. One of the main drivers of railway transformation is liberalization. Governments have a number of different aims in pursuing this policy. They include encouraging innovation and quality by introducing competition, stimulating investment to create or safeguard employment, increasing efficiency and relieving the burden on the state in terms of financial support. Liberalization has a firm place on the discussion agenda in most countries with developed railway markets.

7. Three basic models of liberalization can be observed. In North and South America, most private railway companies vertically integrate their rail freight and passenger operations with infrastructure management. Strong demand on dedicated routes justifies railroads offering own networks, competing against each other. The infrastructure itself is either owned by the railway company, as in the United States, or run as a concession, as in Latin America.

8. A second model is found in Japan. Here privatization occurred in the early 1990s. However, no broad liberalization occurred on the markets. Today passenger rail business is provided by vertically integrated companies with a regional focus. The state-owned rail freight operator has access to the tracks owned by passenger railway companies. Private players face a major barrier to entry as they can only enter the market by offering their own infrastructure.

9. EU member States presents a third model. Vertically integrated incumbent railway companies run their passenger and freight operations separately from infrastructure management. At the same time, a regulator oversees access to the track. The result is that intramodal competition in the market is found in the rail freight business, with competition for the markets in the passenger sector limited to public tenders.

10. The European Union has approved a number of railway packages. The following figure details the contents of these packages and outlines their main objectives.

Figure 1
European Union railway policy

<i>1st Railway Package</i>	<i>2nd Railway Package</i>	<i>3rd Railway Package</i>	<i>Main Objectives</i>
All rail freight co's can access Trans-European rail freight network (TERFN)	Cabotage in freight transportation	Common approach to training drivers	Increase modal share of rail to reduce <ul style="list-style-type: none"> • CO₂ emissions • Road congestion

¹ Martin Streichfuss, Partner of Roland Berger, Article on “Railway Transformation” book of Roland Berger Strategy Consultants.

<i>1st Railway Package</i>	<i>2nd Railway Package</i>	<i>3rd Railway Package</i>	<i>Main Objectives</i>
Infrastructure separate from transport business	Harmonization of security standards	Codification of passengers rights	Stimulate competition and so raise efficiency and quality in the industry
Track access charges based on marginal costs	Market access improved through interoperability	Open access for all international services possibly including cabotage	Reduce government funding in the industry
Independent regulator	Coordination and harmonization by European rail agency	Quality standards for rail freight sector	
EU-wide licenses			

Source: European Union.

11. Privatization in Europe presents a complex picture (figure 2). Only the United Kingdom has completely privatized its railways. The former national incumbent British Rail was broken up into more than 100 separate train operating companies among them six freight companies. Following their sale to the United States company American Wisconsin Central Railroad, five of these six freight companies were amalgamated to form English, Welsh and Scottish Railways (EWS). EWS was sold to Deutsche Bahn in 2007. The company remains to this day the United Kingdom's leading rail freight provider. In 2002, the infrastructure management company Rail Track was brought back under public control and renamed Network Rail.

Figure 2

Railway privatization in Europe

<i>Country</i>	<i>Passenger Rail</i>	<i>Rail Freight</i>	<i>Infrastructure</i>	<i>Comment</i>
Denmark	X	✓	X	Rail freight sold to Deutsche Bahn
Estonia	(X)	(X)	(X)	66 % of integrated railway operators sold; re-nationalization followed reduction of track access charges which made operator's business unviable
Germany	(✓)	(✓)	X	IPO planned but was postponed
Great Britain	✓	✓	(X)	British rail split into 100 companies; infrastructure re-nationalized after several major accidents caused by infrastructure failure
Hungary	X	✓	X	Rail freight sold to Rail Cargo Austria
Netherlands	X	✓	X	Rail Freight sold to Deutsche Bahn

✓ Prioritized, (✓) Partially / soon to be privatized, X Not privatized, (X) Privatized then re-nationalised

Source: Railway Transformation.

A. Recast of the first railway package

12. The first railway package consisted of three directives (2001/12/EC, 2001/13/EC and 2001/14/EC) which were substantially amended in 2004 (second package) and 2007 (third package). Its purpose was to revitalise railway transport (still largely in the hands of state monopolies confined to their national markets) by gradually opening it to competition at Europe-wide level. The market for rail freight transport has been completely opened since 2007 and for international passenger services since January 2010.

13. The recast the first railway package is: firstly an exercise in legislative simplification and consolidation ("codification") with the merger of the three directives in force and their successive amendments (all in all nine directives, one decision and two acts of accession). The recast also aims to modernise the legislation and tackle key problems areas which have been identified on the market over the last 10 years.

14. The EU railway market suffers from three major problems:

(a) A low level of competition due to market access conditions which are not sufficiently precise and therefore still biased in favour of the incumbents;

(b) Inadequate regulatory oversight by national authorities, often with insufficient independence, competences and powers;

(c) *Low levels of public and private investment* as the quality of infrastructure is declining in many Member States because of insufficient funding, investment in railway services becomes less attractive both for incumbent and new operators.

15. The recast of the first railway package is:

(a) firstly, an exercise in legislative simplification and consolidation ("codification") with the merger of the three directives in force and their successive amendments (all in all nine directives, one decision and two acts of accession), the elimination of cross-references and the harmonisation of terminology;

(b) secondly, it aims at clarifying existing provisions (solving in particular problems of diverging interpretations by member States) and at adapting them to the evolution of the market during the last decade, with a view to addressing key problem areas – building on the experience of the last 10 years. These are the problems mentioned in the second section above and facilitating implementation.

B. The fourth railway package

16. The low efficiency and quality of some rail services are mainly the result of low competition, remaining market distortions and suboptimal structures. Long and costly procedures, access barriers for new entrants and different market access rules are all addressed in the fourth Railway Package, which adopts a holistic approach.

17. The initiatives in the package are mutually reinforcing: they all contribute to creating a more efficient and customer-responsive industry and improving the relative attractiveness of the rail sector vis-à-vis other modes. All measures facilitate the entry of new operators into the market. Synergies will be achieved via the combined effects of the individual initiatives. Effectiveness of de jure market opening depends on ensuring that certain "framework conditions" are in place and are effective, such as non-discriminatory access to infrastructure, to suitable rolling stock, to stations, or train path allocation including traffic management. To ensure that market opening is a success, the benefits of network effects need to be preserved. Some of these framework conditions will be addressed through the initiatives related to the opening of the market for domestic

passenger transport services by rail and others via the proposal on enhanced infrastructure management. To lower the access barriers for new entrants, synergies are expected through reducing discrimination in access to infrastructure and providing simplified procedures for issuance of safety certificates for Rail Undertakings and vehicle authorisations for placing on the market.

III. Guidance by SC.2

18. SC.2 may wish to consider and review the background document and provide guidance to the secretariat on further action in this field.
