



FLORENCE SCHOOL OF REGULATION

WHICH EUROPEAN REGULATION IN FRONT OF INDUSTRY CONCENTRATION IN THE TRANSPORT INDUSTRY?

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Report on Workshop Proceedings

Florence School of Regulation

Workshop

TRANSPORT WORKSHOP

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Report

The Florence School of Regulation organized a Transport Workshop on the theme 'Which European Regulation in front of Concentration in the Transport Industry?' on the 18th of April 2008 at the European University Institute in Florence.

Number of participants	
Industry	7
Regulators *	6
Academic	11
TOTAL	25

* including National Regulators and European Commission

Scope of the workshop

The workshop was centered on the following issues:

- o Improve competition: the process of opening transport services to competition proceeds in the various segments of the industry at a different

- pace. In rail, the choice of unbundling has been taken but the implementation is neither smooth nor uncontroversial, as in other utilities (see energy).
- o Industry concentration: companies respond to the Europeanization of the market by attempting to expand, both via investment and via mergers and acquisitions. The limits on vertical integration imposed by unbundling directs this process on a horizontal direction across transport modes and between transport and logistics. Is this process an expected and healthy development carrying a competitive challenge across the old national boundaries, or is it a worrying trend reinforcing a small number of dominant companies?
 - o Role of regulation: regulation must face the previous issues, but there are different options on the way national and European regulators can cooperate. Which is the best institutional arrangement: more powers to the Commission? A group of national regulators as an advisor to the Commission? A group of national regulators as an independent body with regulatory powers? An independent agency?

Structure of the workshop

In order to address the abovementioned topics, the workshop was divided into three sessions:

Session 1 discussed the need to further go ahead with unbundling in the rail sector, providing an overview of the rationale and objectives of the unbundling process and examining the requirements for an effective implementation. This included perspectives from the European Commission and from various stakeholders including representatives of independent infrastructure managers and of integrated rail service and infrastructure manager companies.

Session 2 examined some of the lessons learned from practice in transport regulation, with a special focus on European practices in the rail sector and in the rail freight market. This included perspectives from the European Commission and from various stakeholders including representatives of rail regulators and rail freight operators.

Session 3 focused on the discussion of the institutional design of regulation which can better promote competition in the European transport market.

The following is a non-chronological summary of the main aspects which came forward in the presentations and discussions.

Core issues

Unbundling: is it possible?

The workshop provided the opportunity for learning about several national experiences on the application of EU legislation of unbundling in the rail sector. European legislation (Art. 6 Directive 91/440) requires Member States to take the measures necessary to ensure accounting separation of profits and losses for business relating to the provision of transport services by railway undertakings and for business related to the management of the infrastructure. European directives do not impose the creation of a full separate organization responsible for rail infrastructure management (IM), but require that the entity performing 'essential functions', like rail path allocation and infrastructure charging, is independent in its legal, organization and decision making setting, from any undertaking providing rail transport services.

At present different Member States have chosen different organization options: full separation between IM and rail operators, a holding structure, a mixed model or full integration between IM and rail undertakings.

The interaction between operator and infrastructure managers

Among participants there was a general consensus that none of the models listed above performs better than the others under all circumstances. There is a trade off between a better coordination of activities granted by a situation where the IM and rail operators are somehow integrated and the promotion of competition, which is easier to be pursued in presence of an independent IM.

According to one participant, in the future, the real issue to address might be the ability to set a regulatory framework that can bring the benefits of competition also in presence of integrated IM and rail service operator monopolists.

Role of regulation in improving competition and safety.

The workshop discussed the competencies that a regulator needs to have to promote competition and safety in the rail sector.

The experience gained at the European level and in one Member State supports the creation of regulators independent from government and industry, as it helps settling down disputes between different actors and it creates a more stable environment which can better attract investments. Furthermore, coordination of actions towards all the different regulatory issues of the sector, i.e. economic, competition and safety regulation, has been suggested and two participants illustrated the benefits obtained by addressing all these issues within the same regulatory organization.

How can vertical separation take place?

Some participants discussed the modalities for vertical separation. There was agreement among participants in defining the quality of the unbundling process as strictly dependent on the level of communication between the various actors of the separation process. On the one hand, basic unbundling was considered important, but not sufficient, in order to favor the development of competition. On the other hand, some argued that vertical integration makes sense only in small areas: where the market is large enough that competition can work, vertical integration would not make sense.

Compliance, infringements and investigations

The workshop touched upon several aspects related to the issue of compliance. The transport sector seems characterised by a fairly high level of awareness by national regulators about the status quo and level of compliance by the regulated companies. Yet national regulators are not in possession of strong authority. At the EU level, albeit the existing legislative framework is a great prerequisite, it needs correct implementation.

Environmental versus competition policy in the transport sector: which comes first?

The workshop discussed the weight that different policy goals have had at the European level in the past years in the transport sector. Some have pointed out that at present environmental aims have become more important than competition ones

on the EU political agenda on transport.

Comparison between electricity and transport

Several times during the workshop, experiences in the rail and energy sectors have been compared and often the differences between the two have been highlighted. For instance, in the rail sector there is a more stringent need of cooperation between different actors, especially between IMs and rail operators: in electricity, units of an identical product are dispatched, while in the rail sector each train carries on a specific service, whose characteristics need to be taken into account when assigning paths on the network. Then, the higher presence of human and social factors (e.g. suicides along the rail network) in the efficient delivery of the service, can limit the acceptability of incentive schemes that have been effectively introduced in the energy sector to reduce service interruptions.

Lessons learned from confronting realities

The presentations offered various practical experiences related to transport regulation. The main lessons that can be learned are the following:

- in the unbundling process there is a trade off between effectively promoting competition and preserving the benefits from the coordination of activities
- the independence of the infrastructure management (IM) companies should be assessed in relation to the way they operate rather than to their institutional framework
- There is an essential role of regulation which must be performed by a dedicated regulatory institution.