



Discrimination potentials in today's regulatory context

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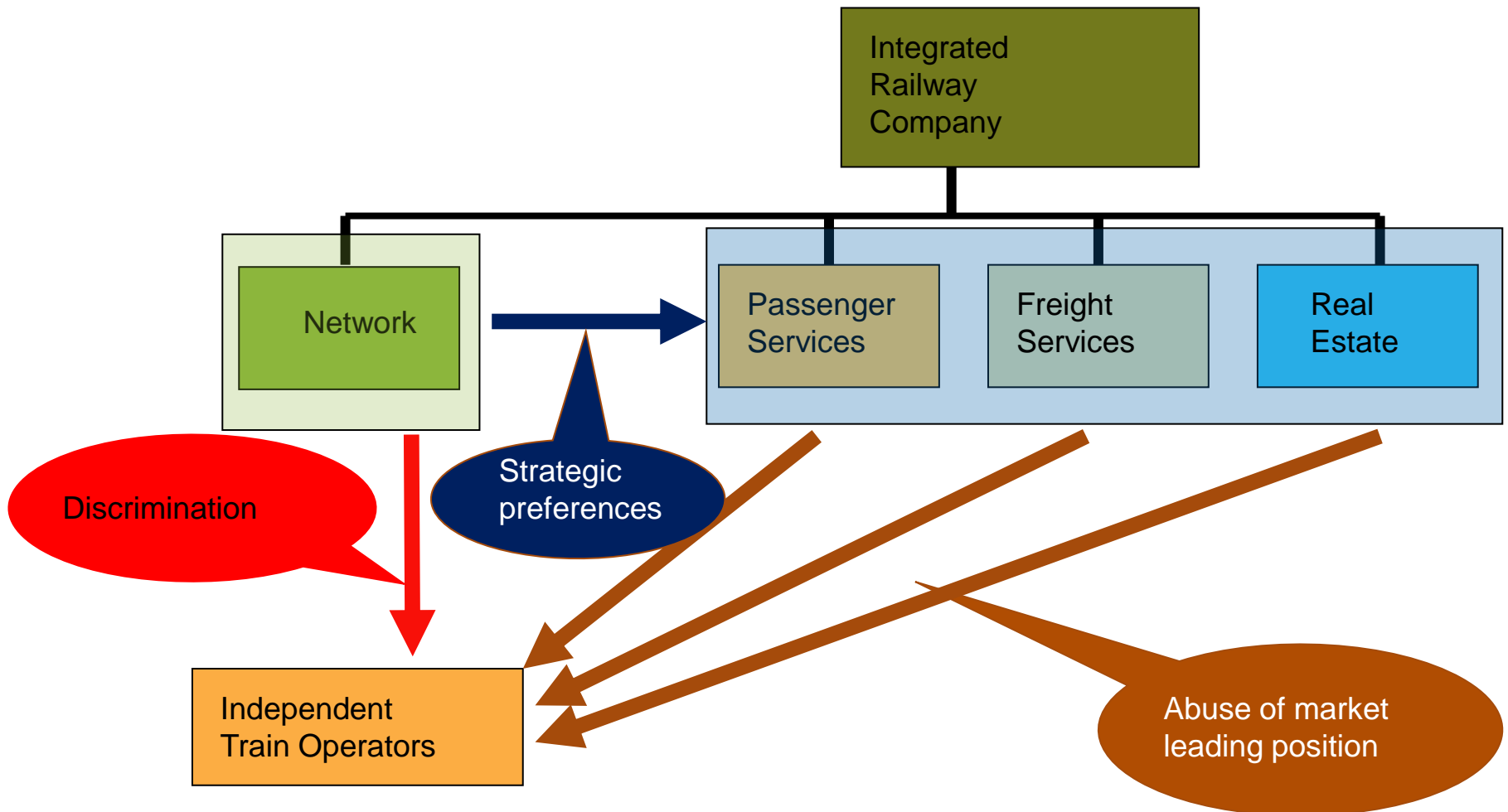
Aims of the European Railway Regulation

- I. Greater competition in the supply of transport within each mode. This emphasizes reducing market entry costs.
- II. Fair competition between transport modes by considering the external costs and coordinated infrastructure access prices.
- III. Provide sufficient transport infrastructures.

Basic principles of the market development in the railway sector

- I. The regards management, administration and internal control of railway undertakings should be separated from those of the state. The railway undertaking shall be managed as any other commercial company.
- II. The States shall ensure a separation of the accounts for the management of railway infrastructure and the provision of transport services..
- III. The network shall be accessible. The access fees provided on a non-discriminatory level.

In which relations discrimination and abuse of a market leading position can apply



Discrimination may appear in many ways

Detectable Discrimination

- I. Train path allocation
- II. Pricing models
- III. Access to network and services
- IV. Network operation

Hidden discrimination

- I. Network investments
- II. Technical standards and technology implementation.
- III. Administrative procedures.

Abuse of market leading position

- I. As railway production covers an entire network, a TOC needs to have access to all production resources at any place it runs services. This is much easier for TOC covering a large network.
- II. Economies of scale apply to the market leaders.
- III. Service times and technical requirements are adapted to the market leaders
- IV. Abuse of a market leading position is in some cases difficult to detect.

Problems of internal strategic decisions of integrated railways

Internal Discrimination

Strategic decisions may lead to an internal discrimination of TOCs e.g. the decision is to focus on passenger transportation within an integrated fix timetable – than in the field of infrastructure development the requirements of the freight TOC will be handled with lower priority

External Discrimination

The TOCs may show a greater flexibility in case of conflict to their sister TOCs than to external TOCs e.g. shifting trains schedules for a few minutes or modify production schemes to generate additional train paths.

Many conflicts apply between the State as owner of TOCs and as regulatory body.

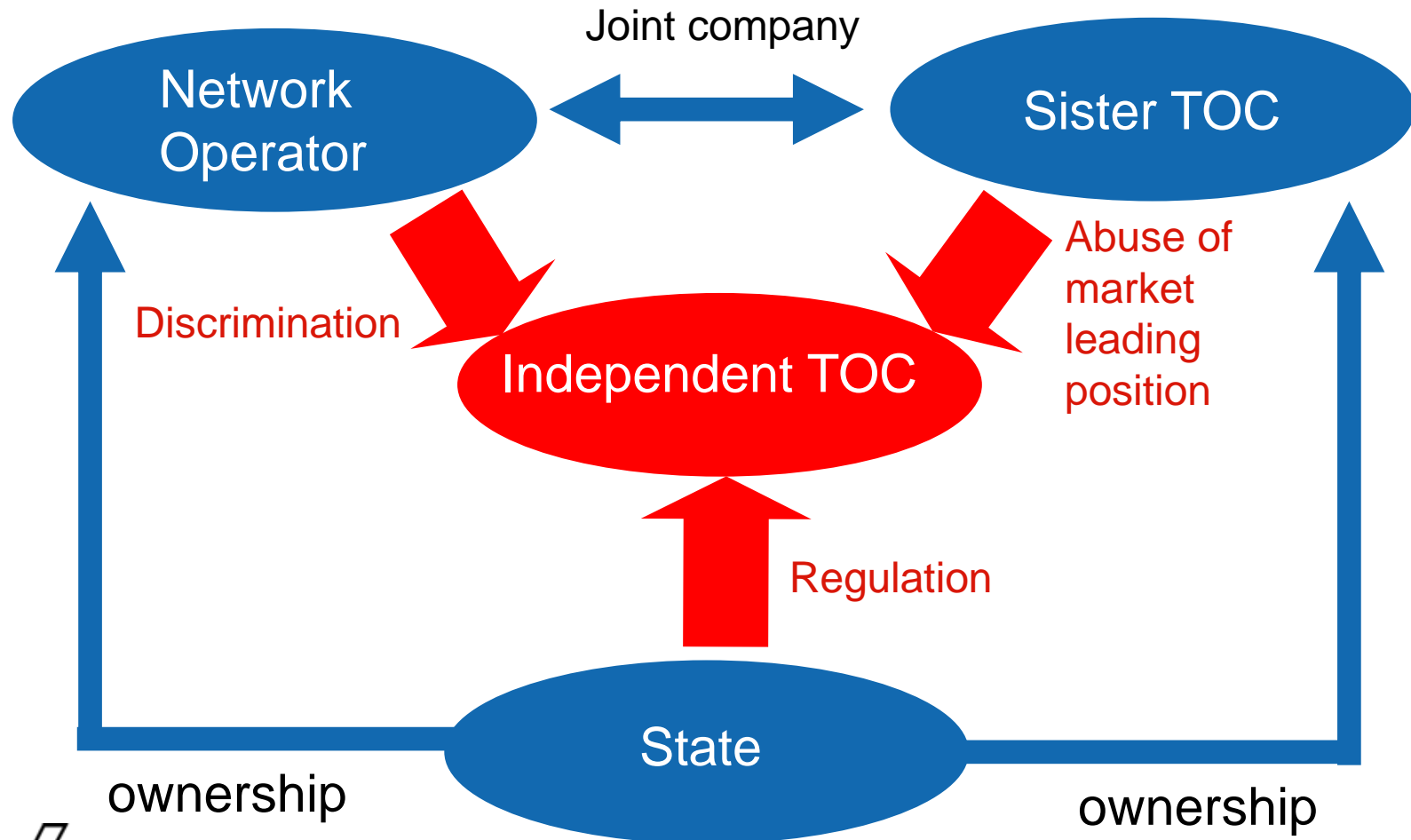
- I. As a regulatory body, the state must act without giving preference to any single company.
- II. As the owner of a TOC, the State has a strong interest to increase the revenues from the companies. This may cause decisions, which supports the company's financial success.

Field	Description
Rolling stock licences	Process requests for rolling stock licences from independent TOCs very slowly. Delay the process by asking for additional information. Change requirements during the process
Insurance and financial standards	Require independent TOCs to meet extremely high insurance or financial standards
Standards for TOC staff	Impose very high standards for TOC staff knowledge in order to be allowed to use the network
Safety certification	Impose very high standards for the independent TOCs in terms of safety certification

Political decisions may affect companies in their entrepreneurial decisions.

- I. Politicians usually see State owned railways as part of the political environment and not as conventional undertakings.
- II. This causes a preferential treatment for these railways as well as assigned obligations.
- III. It is difficult to calculate the compensation for assigned obligations. Thus, the compensation is often incorrect, sometimes there still is no compensation granted. (e.g. SBB Cargo is legally obliged to operate an SWL network – but there is no compensation foreseen).
- IV. Thus, State railway are in some cases discriminated by the owner compared to private railways.

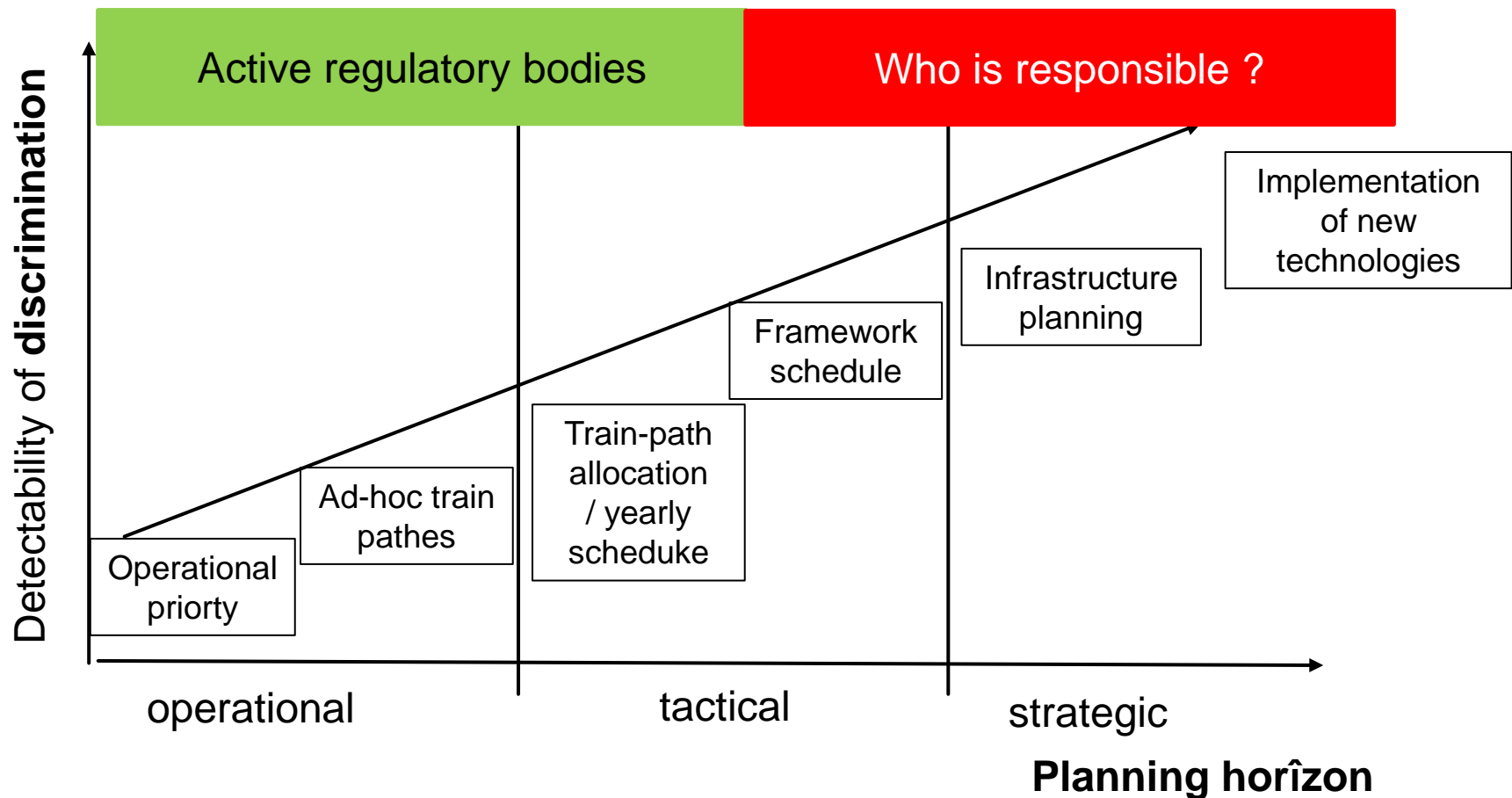
Result: Independent TOCs under triple pressure



Measures according to the perceptibility and impact of discrimination

		Impact	
		Insignificant or secondary	serious
Detectability	Easy	<ul style="list-style-type: none"> • Effects on competition low • Simple to be monitored by regulation bodies • Overall, not a problem 	<ul style="list-style-type: none"> • Can be prohibited by reliable and proper working regulatory bodies.
	Difficult	<ul style="list-style-type: none"> • Smaller impact on the economic situation of independent TOCs. 	<ul style="list-style-type: none"> • Can only be prevented by appropriate organisational structures in the railway sector

Detectability of discrimination according to the planning horizon



Conclusions

- I. The classical discrimination are almost easy to detect. Thus, regulatory bodies can work on an effective level.
- II. As Discrimination on a strategic level is difficult to detect, especially in the field of long term infrastructure and technology planning, here discrimination potential exists.
- III. Political influence on the management of the state railways always causes discrimination.
- IV. Discrimination topics shifted from classical discrimination to strategic planning and political influence topics.
- V. It is difficult to operate a state owned, integrated railway discrimination-free.

These findings support the conclusion that infrastructure companies and train operating companies must completely separated

Any Questions ?



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