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Revision of State Aid Guidelines for Railway Undertakings

Summary

The Revision of the State Aid Guidelines for Railway Undertakings will play an important role in creating a State Aid regime which is fit for the modern day. The existing Guidelines are, for the most part, obsolete and need to be brought into line with the current legal framework and operational realities of the sector. Today's European rail freight market is diverse and it is essential the revised Guidelines reflect this reality.

Due to this new reality, where [48% of national rail freight markets are made up of challengers to incumbent operators](#), and taking into consideration the increasing number of private operators, there is a need for a strong focus not only on where State Aid should be admissible, but also under what conditions and how State Aid should be granted so as to avoid competition distortion.

In light of the above, ERFA welcomes the decision of the European Commission to revise the State Aid Guidelines for Railway Undertakings. Taking into consideration the recently concluded consultation on the Guidelines, ERFA believes particular focus is needed in certain areas. They are:

- Support for Modal Shift Towards Less Polluting and More Sustainable Transport Modes;
- State Aid for Rolling Stock;
- Restructuring or Rescuing of a Rail Freight Undertaking.

ERFA believes it is essential that the correct approach is adopted to all the above points so as to ensure the revised Guidelines play a constructive role in supporting a diverse and competitive European rail freight market. Crucially, ERFA stresses that the revised Guidelines should have a strategic role to play in promoting that the provisions of Directive 2012/34, particularly regarding Articles 4-6 relating to the independence of Railway Undertakings, are properly implemented and enforced.

[Support for Modal Shift Towards Less Polluting and More Sustainable Transport Modes](#)

The current Railway Guidelines allow for State Aid to support modes of transport that lead to the lowest external costs. Rail transport, as the [least polluting mode of transportation](#), represents the most

sustainable transport solution, especially when compared to road-only transportation. In order to take advantage of the significantly lower external costs of rail freight, and taking into consideration the European Commission's objective of achieving 50% growth of rail freight volumes by 2030 and doubling by 2050, it is important that the revised Guidelines include provisions to support modal shift towards less polluting and more sustainable transport modes.

It is essential that such support measures are fair, transparent and non-discriminatory. ERFA believes a combination of sectoral support measures and direct supports for modal shift are appropriate so long as they are open to all operators. Although scheme-based systems are usually the most appropriate tool in order to minimise competition distortion, direct aid can also play a role in limited circumstances. It is crucial that such supports do not create artificial barriers of entry, such as a high level of administration burdens, to avail of legitimate State Aid.

In regards to the thresholds for aid, ERFA believes maintaining the operational aid support thresholds, namely aid for rail infrastructure use and aid for reducing external costs, at 30% is sufficient. It is important that possible operational State Aid does not become too open-ended whereby unsustainable business practices are supported by State Aid. The role of operational State Aid should be to compensate for the low external costs which come from rail freight services.

There is however a good case for raising the threshold for interoperability aid up to 100% and to switch from unit cost-based financing to a real cost system. Railway Undertakings are being compelled to invest heavily in digital solutions such as ETCS On-Board Units (OBUs). In many cases, Railway Undertakings do not have the financial resources to purchase OBUs and this is leading to a slow deployment of ETCS. On top of this, Railway Undertakings experience no operational improvements from ETCS deployment. Member States therefore have an important role to play in ensuring a successful rollout of ETCS as is the case with ERTMS.

[State Aid for Rolling Stock](#)

There is limited evidence today to suggest that rail freight undertakings face difficulties in having access to rolling stock for most rail freight markets. If anything, the diversity of today's rail freight market, composing of a large number of small undertakings (there are currently 758 rail freight undertakings active in the European Union) suggests that there are no systematic problems related to accessing rolling stock. ERFA is not opposed to State Aid for rolling stock purchase provided that this does not generate further competition distortion. ERFA recommends that this topic is approached with caution.

Although there may be cases where there are problems accessing rolling stock in some isolated networks, it is critical that potential support for such networks does not undermine the existing private market for rail freight supply which is prevalent throughout most of the European Union. State Aid for the purchasing of rolling stock should therefore only be allowed where there is a clear and proven market failure.

A legitimate application of State Aid for rolling stock can be seen if changes to rolling stock have to be financed which (a) give an added value to environmental goals (for example: noise reduction, which would not be implemented by the sector) or (b) lead to a necessary change in the technological development of rolling stock to achieve market harmonisation and interoperability (for example: DAC or ETCS on board units). In these cases, it must also be assured that the financial aid is given to the whole sector in a non-discriminatory manner.

In order to simplify the Guidelines, ERFA recommends that the same rules for purchasing of rolling stock apply evenly to railway undertakings and leasing companies. In order to avoid potential misuses of State Aid, the Guidelines must be clear in this regard.

In cases where the European Commission deems that aid is admissible for the purchasing of rolling stock, ERFA agrees with the proposal that old rolling stock shall be offered for sale or lease on the market for a minimum of period of time by means of a well-publicised, open, transparent, non-discriminatory and unconditional sale process at market price.

Restructuring or Rescuing or a Rail Freight Undertaking

Under the existing Guidelines, the possibility of restructuring of a freight division was intended “*only for the freight divisions of railway undertakings, and for a transitional period, namely for restructurings notified before 1 January 2010*”¹. This transition period was created due to the specific situation facing the sector at the time. The provision was introduced under the “One Time, Last Time” principle and it should now be recognised this period has passed. The existing Guidelines have allowed for restructuring up until January 2010 although, for whatever reason, there appears to be not many cases of such restructuring being notified to the European Commission.

¹ Community Guidelines on State Aid for Railway Undertakings, point 71

A fundamental revision of restructuring principles is therefore required. First and foremost, it must be recognised that restructuring of individual operators has the potential to create significant competition distortion. On average in Europe, new entrants account for 48% of national market shares of rail freight undertakings based on net-tonne kilometre. On top of this, 31% of all rail freight undertakings are non-incumbent operators, meaning they are not an incumbent operator in any European country. Quite often restructuring is required due to mismanagement or poor performance of an operator. Restructuring therefore can potentially harm operators who are financially viable and are well managed. State Aid for restructuring must therefore only be allowed under exceptional circumstances where the disappearance of an individual operator would lead to a total market failure of rail freight.

ERFA believes it is appropriate that rescuing and restructuring of rail freight undertakings should be prohibited as much as possible. Where it is required, it should take place in accordance with the R&R GL. Given that Directive 2012/34 should by now be fully implemented throughout the Union, and – where applicable - rail freight undertakings should subsequently be operating under separate accounts from their holding companies, ERFA believes rail freight can be treated as any other business activity in terms of rules on restructuring and rescuing.

Where State Aid for Restructuring or Rescuing is deemed admissible, ERFA strongly supports the proposal that State Aid should be subject to stringent market and behavioural measures upon the undertaking in question. At the very least, conditions should be attached so as to ensure State Aid which is deemed admissible is used as an opportunity to address business practices that led to an undertaking required support in the first place.