The Autorité de la concurrence sets out the conditions for a successful introduction of competition in the passenger rail transport sector

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Directive 2007/58/EC of 23 October 2007 calls for the liberalization of international rail services for passenger transport by 1st January 2010 at the latest. This partial opening of rail transport to competition is the first step in a movement that, within 5 to 10 years, will lead to totally open competition in the railway sector.

Building on the lessons and actions from other sectors recently opened to competition, the Autorité de la concurrence, on its own initiative, issued an opinion in May 2009 (**see press release**) that notably had as its objective to determine "*if, on the one hand, possible competition restrictions relative to train stations would be likely to have repercussions on the passenger land-based public transport sector and/or on the intermodal market, if one exists, and on the other hand, if the incumbent operator's diversification would require the latter to take special precautions in order to maintain competition*."

Even though competition in this sector will most likely develop very progressively, it is useful to anticipate the necessary changes in order to ensure that this competition is effective in terms of its service to travellers and companies.

Train stations play a central role in the transport chain. The success of the sector's opening to competition is conditional on their management and on the access

conditions for newcomers

Train stations can obviously be viewed as infrastructures that are essential for rail transport. Indeed, they appear to be indispensable for an economic operator in order to be able to offer a service or product on a market that is upstream, downstream or complementary to the one on which these infrastructures are located, and they cannot be replicated under acceptable cost conditions.

As part of the introduction of competition, the SNCF will have to allow new rail operators to access train stations so that the latter can both provide services therein and be provided with a certain number of services. The pricing for this access and these services will notably be a decisive element for the other operators, as will the allocation of spaces within the stations.

Moreover, train stations are linchpins for other transport networks and, as a result, they represent an opportunity on the markets related to public transport in which the SNCF is also present as part of the diversification of its activities.

Intermodality, a growing requirement of local and regional administrations

Intermodality - i.e. the ability of transport operators to provide continuous services between the various transport modes and to ensure the user's seamless and predictable transit - has now become an indispensable element in the offers of carriers during public transport invitations to bid, launched by local and regional administrations.

The SNCF is present throughout the transport chain, from trains to bicycles, and including transport-related services and the management of parking lots. It is continuing to extend its diversification within markets related to rail transport, notably through Keolis, the leading private urban transport operator of which it will shortly be taking control (1) (**see press release**), which also plays a major role in interurban transport.

In view of these competition risks, the Autorité has several recommendations.

The recommendations of the Autorité

1. **The governance system for the mission to manage train stations as envisaged by the SNCF is not satisfactory. It should be reviewed along the lines of the models that were set up at the time of the opening to competition of public monopolies in other network-based industr**ies.

After the Keller report (2), the SNCF announced the creation of a new branch called *Gares & Connexions* (Train Stations & Connections), in charge of managing train stations. While this organisational choice is not contrary to the provisions that govern railway activities, it does not appear to be fully satisfactory: the fact that the SNCF has not made *Gares & Connexions* more independent of the undertaking's competitive activities and that this entity has been placed under the SNCF chairman's direct authority would seemingly not provide sufficient transparency in the management of train stations on the basis of factors other than just the incumbent operator's best intentions.

In order to prevent the risks arising from the incumbent operator's possession of essential infrastructures, the *Autorité* therefore recommends that the management of train stations should be more thoroughly separated. Several models exist: separate ownership, legal separation or even functional separation. The simple accounting separation model set up by the SNCF will provide an insufficient response to the stakes resulting from the opening of this sector to competition.

2. The pricing applicable to rail companies using station-based services is an essential element of the market access conditions. The justification of these prices must therefore be independently justifiable in order to demonstrate the sincerity of the costs presented by the incumbent operator, and to provide newcomers with transparency regarding the sums that will be invoiced to them. **In this regard, the *Autorité* feels that the future sector regulator must be**

provided with *ex ante* examination powers relative to these rates and the underlying costs, in order to assess whether or not they comply with regulatory requirements. However, in the current state of the government bill relative to the organisation and regulation of railway transport, the ARAF does not have such powers.

3. The *Autorité* **is not calling into question the SNCF's diversification strategy, which can be a factor for driving competition in the markets in which the latter is present, but it considers that this strategy must be the subject of special precautions**, in view of the SNCF's extremely strong position within the rail transport sector.

• The SNCF's position on the passenger rail transport market is likely to distort competition between SNCF subsidiaries and their competitors. It must therefore take care not to propose a vertically integrated transport offer to organising authorities, as this would be a significant competitive advantage to which other transport operators would not have access.

• Via *Gares & Connexions*, the SNCF may be required to provide permits for the temporary occupation of the public railway domain, for the operation of parking

(1) The European Commission recently deferred to the Autorité de la concurrence for an examination of this operation with regard to mergers' control.

(2) In view of the sector's upcoming opening to competition, the parliamentary report delivered to the Prime Minister on 10 March 2009 by Senator Fabienne Keller, entitled "La gare contemporaine" (The modern train station), recommended the separation of the SNCF's train station management activity from its competitive activity as a railway carrier.

See the opinion 09-A-55 of 4 November 2009 on public passenger transport services