



The diversity, efficiency and financially affordable nature of land passenger transport are essential for the proper functioning of the French production system and employment market, for French citizens to access education, training and health, and for social and regional cohesion. In addition, the work to reduce greenhouse gas emissions included in the French National Low Carbon Strategy and the achievement of carbon neutrality by 2050 rely critically on the transport sector, the main emitter of greenhouse gases.

Competition in these markets is a powerful driver of efficiency, cost reduction, quality and diversification of the offer. It can also contribute to the achievement of sustainable development objectives by facilitating a modal shift towards less carbon-intensive transport and making it possible to seek better environmental performance in organising authorities' calls for tender.

¹ This summary, which is an extract of Opinion 23-A-18 of 29 November 2023, is for information only.

Since its creation and as part of its consultative role, the *Autorité de la concurrence* has issued numerous recommendations to public and private players in the land passenger transport sector. On 15 November 2022, the *Autorité* launched inquiries at its own initiative into the issue of competition in this sector, in order to carry out **an unprecedented stocktaking exercise**.

This opinion is the result of this ambition and has a dual purpose:

- to **take stock of the implementation of the main recommendations** made by the *Autorité* since Opinion 09-A-55 of 4 November 2009 on the land passenger transport sector;
- to identify the sector’s **current competitive issues** and put forward **new recommendations** for improving the operation of the markets under consideration – rail transport, intercity road transport, urban public transport and private public passenger transport.

To this end, the *Autorité* launched a public consultation in March 2023 and interviewed a number of public and private players in the sector. It also drew on the work of the sector-specific regulator, the **French Transport Regulatory Authority (*Autorité de régulation des transports, ART*)**. The *Autorité* has consistently supported increasing the ART’s independence and resources, and emphasises the crucial role of a strong sector-specific regulator in opening up to competition. This opinion reaffirms this support, as the ART, whose role as a regulator in opening up to competition is **crucial**, could usefully see its resources and prerogatives strengthened.

Following on from its previous work, the *Autorité* distinguishes between the two competitive approaches at work in the land passenger transport sector: **competition in the markets** for freely organised transport services, in which competition can take place between several operators, and **competition for the markets** for contracted transport (in which operators compete to be awarded a “monopoly” over operations on one or more routes for several years).

The freely organised transport markets include intercity coach transport, freely organised rail services and private public passenger transport. Their liberalisation required major structural and regulatory changes – whether through the authorisation of freely organised intercity road transport, the separation of infrastructure management and rail transport activities, or the distinction between hail and rank and pre-booking, in which taxis and private-hire vehicles (PHVs) compete.

The *Autorité* has anticipated and supported the reforms carried out since 2014 in these three sectors with its recommendations, many of which have been taken up by the government. **The *Autorité* calls for the spirit of these reforms to be carried through** to the most operational level, with the independence of the infrastructure manager SNCF Réseau remaining, in particular, a key factor in the success of opening up the rail sector to competition. The *Autorité*’s recommendations as set out in this opinion are aimed specifically at **barriers to entry to these markets**. The lifting of regulatory barriers in the freely organised intercity road transport market, in line with the recommendations presented by the *Autorité* in 2014, enabled this mode of transport (the “Macron coaches”) to expand immediately; the legal definition of an intercity service could, however, be modernised in favour of greater liberalisation and to take account of the creation of larger regions. For private public

passenger transport, the gradual alignment of the conditions for accessing the related professions and the publication of data enabling an understanding of the competitive reality of the sector are two welcome developments. However, progress in implementing the *Autorité's* recommendations has been mixed, leading the *Autorité* to reiterate several of them.

In rail transport, the barriers are high and many. The passenger rail transport market, whether contracted or not, is now entering a decisive phase in its development:

- theoretically, the arrival of new entrants offering freely organised services in France is becoming a reality;
- as a matter of course, the awarding of contracted regional rail transport contracts (TER) to the incumbent operator SNCF Voyageurs is becoming conditional on its merits in the face of competitors bidding for tenders launched by the regions.

The players interviewed by the *Autorité* have high expectations of the opening up to competition. For both freely organised services and contracted transport, competition can lead to lower costs for railway companies, improved quality, diversification of the offer and a break with the Malthusianism that characterises the rail system. Faced with strong demand for rail transport, which is being encouraged by the government as part of the ecological transition, competition can promote the development of the offer and thus help finance the investments needed to maintain and replace rail infrastructure. The effect of opening up to competition on the offer is confirmed by the example of Italy, which opened up its rail market earlier than France.

While the initial effects of liberalisation are noticeable in France and elsewhere in Europe, their extent will ultimately depend on the effectiveness of competition in the rail transport markets.

New entrants, whether they want to offer freely organised services or manage contracted services, face **potentially prohibitive obstacles and disincentives, to which the *Autorité* is strongly alerting** all players. Certain competitive risks inherent in the organisation of the French rail system have already been the subject of attention by the *Autorité* in its previous opinions, in particular those linked to the vertical integration of the infrastructure manager into the SNCF group, and to operators' access to service facilities.

Other obstacles are appearing or becoming clearer now that new entrants are putting their plans to serve the French territory into practice. They include the poor quality of the infrastructure and access by railway companies to rolling stock, on-board equipment, and information and expertise that only the incumbent operator has.

Lastly, rail tolls, which are particularly high in France, could act as a deterrent to new entrants. An assessment of the impact that lower tolls would have on rail offers and, thereby, on infrastructure financing seems necessary.

Not all of these obstacles can be overcome by changes to the regulatory framework. While it seems necessary to further strengthen the powers of the sector-specific regulator, and for the government to intervene on an ad hoc basis to resolve certain persistent difficulties, the *Autorité* calls on SNCF Réseau to more actively develop a culture of independence in order to dispel the doubts and concerns of new entrants regarding its willingness to fully exercise its mission to foster competition.

Furthermore, there are fears that the process of opening up TER services to competition will not be completed within the timeframe set by European and French legislation. Like the ART in its observations, the *Autorité* is concerned to find that the regions are moving forward in a disorganised manner, without necessarily having the means to carry out competitive bidding under the right conditions. This places them in a situation of dependence on SNCF group entities, a source of competitive risk, while for operators, the high number, complexity and frequency of calls for tender may limit or even make it impossible for them to participate in the competitive game, instead of stimulating it. The *Autorité* calls on mobility organising authorities (*autorités organisatrices de mobilité*, AOMs) to take ownership of the process for the benefit of their mobility policy, in the ultimate interest of passengers and taxpayers alike, and draws to their attention a number of best practices that could be implemented when organising calls for tender.

During the preparation and conduct of the call for tender phase, many factors are likely to hinder or, on the contrary, stimulate competition between bidders, such as the location of maintenance sites, the fact that the organising authority does not bear the operator's costs during the mobilisation and pre-operating phase, or the good condition of the rolling stock at the start of the contract. All in all, the regions must take care not to take too many decisions that effectively disadvantage new entrants, at the risk of them being read as an unfavourable signal by the market. The benefits of opening up to competition for passengers and regional taxpayers would then be lost.

Although the opening up of contracted rail transport to competition is still in its infancy, urban transport organising authorities already have long experience of competitive bidding for transport operators. To date, however, these AOMs have done little to implement the recommendations made by the *Autorité* in this area, in its aforementioned 2009 opinion and in the opinions it issued in response to referrals from AOMs in 2010 and 2020². The *Autorité* would like to emphasise that although these recommendations are addressed primarily to the AOM making the referral in each case, they are **“transposable” to all contracted transport markets**, whatever the AOM or transport modes concerned, whenever an AOM chooses not to operate and manage its networks itself.

The *Autorité* points out that the intensity of competition in this sector remains low. Urban transport is dominated by three operators, whose contracts are often renewed, and two of which are backed by companies that have historically held a monopoly. AOMs must therefore remain vigilant. This opinion describes the levers at their disposal to stimulate competition for the benefit of their transport policy.

In particular, the *Autorité* stresses the need to ensure that bidders are effectively placed on a level playing field, on the one hand, and that outgoing operators do not play an excessive role in competitive bidding processes, on the other.

To organise their urban transport networks, AOMs can choose to manage them themselves, entrust their operation to a single operator (single-operator model), or structure them by **allocation** whereby several companies operate distinct segments. In practice, the single-operator model predominates, and allocation is extremely rare, even though it encourages competition. In this opinion, the *Autorité* notes the reluctance of AOMs to use allocation and

² In response to a referral from the Urban Community of Bordeaux, the *Autorité* issued Opinion 10-A-22 on 19 November 2010, and in response to a referral from Île-de-France Mobilités, Opinion 20-A-08 on 16 September 2020.

their reasons for this (the convenience of having a single contact, the complexity of organising competitive bidding for a multi-operator network and then managing it, etc.), but **invites AOMs not to rule out allocation as a matter of principle**, and to systematically study its impact before taking decisions on the next expiry dates of their contracts with incumbent operators. Lastly, this opinion presents the *Autorité's* thoughts on the role of sustainable development, mainly in environmental terms, in opening up the transport sector to competition.

Policies to open up the transport sector to competition aim to improve the performance of public transport in every respect. As in the rail industry, they tend to encourage innovation, lower prices and improve the diversity and quality of the services offered to consumers. Improving the performance of public transport makes it more attractive to passengers and is therefore likely to encourage a modal shift.

For contracted transport, public procurement and, thereby, AOMs can make competition a tool for sustainable development. The law now allows competition to seek a better environmental deal through public procurement.

By enabling passengers to combine several modes of transport during their journey, and thus creating more “virtuous” alternatives to individual car use, **intermodality** is one facet of the link between sustainable development and competition policy. In its analysis, the *Autorité* endeavoured to include intermodality, an essential passenger need that is now systematically taken into account in public transport policies and the strategies of sector players, in the competitive functioning of the sector.

Following on from aforementioned Opinion 09-A-55, which focused mainly on stations as intermodal facilities, this opinion pays particular attention to the infrastructures and services that enable the development of intermodality.

The review of previous recommendations concerning **stations** is satisfactory as, on the whole, they have been implemented by the government. Competitive issues are common to all station categories: access conditions for new operators, governance, regulation and quality of service. The multimodal dimension of stations plays a key role in the analysis of these issues. In addition, the *Autorité* stresses that greater involvement of AOMs in station management is essential to developing and driving competition in the intercity coach transport sector, as well as that of contracted rail transport.

As far as bus stations are concerned, the main problems identified are regional coverage and quality of service. The *Autorité* recommends that regional AOMs, in consultation with the ART, draw up stringent, harmonised quality standards for bus stations.

In the rail sector, the opening up of contracted transport to competition is threatening the already fragile SNCF Gares & Connexions management model, which relies heavily on SNCF Voyageurs services for station management. Once again, the *Autorité* recommends that AOMs become more involved in this area, and that SNCF Gares & Connexions provide them with the information and tools they need to understand the challenges of this management. With regard to new entrants, the *Autorité* invites SNCF Gares & Connexions to give railway companies maximum visibility regarding the allocation of station space, which is a competitive issue.

The recommendations in this opinion are addressed not only to the operators of transport services in each of the markets studied, and to the French State – legislator, shareholder and organising authority for contracted rail services –, but also to the players who have the main responsibility for stimulating competition: the infrastructure managers of the rail system – first and foremost SNCF Réseau – and regional and local AOMs.

Until now, the *Autorité* has rarely addressed local and regional public authorities; this opinion highlights their essential role and invites them to take up the question by more systematically integrating competitive issues into the development and implementation of their mobility policies. The *Autorité* invites AOMs to intensify their exchanges and feedback on the competitive organisation of transport, particularly within the associations of which they are members. This work could usefully lead to the drafting of a best practice guide, or even, at a later stage, to more structured cooperation, or even the creation of a shared centre of expertise, depending on the regions' interests.

The *Autorité* is prepared to contribute to this within the limits of its powers, and invites the ministries concerned and the ART to respond, where appropriate, to requests from AOMs on this subject, in accordance with the principle of the self-government of local and regional public authorities.