

Liberalization and regulation of railway markets – new challenges (From the Editor-in-Chief)

Articles

Łukasz Ziarko, Single European Railway Area – creating a competitive structure in the EU railway sector

Table of contents:

- I. Participants of the railway sector
 1. Infrastructure Managers
 2. Railway Undertakings
 3. Operators of service facilities
- II. Use of railway infrastructure
 1. Allocation of infrastructure capacity
 2. Charges for access to railway infrastructure
- III. Regulatory oversight
- IV. Summary

Summary: This paper presents selected provisions of the Directive of the European Parliament and the Council 2012/34/UE establishing a Single European Railway Area, crucial for the creation and promotion of the development of competition in the railway sector. The paper outlines the key changes introduced by the new legislation as opposed to the repealed Directives. This article attempts to answer the question to what an extent does the so-called recast of the first railway package increase the chances of achieving the expected results.

Key words: railway infrastructure, rail related services, railway transport, market opening, single European railway area, recast of the first railway package.

Radosław Pacewicz, Railway service infrastructure in Poland and in Europe – current problems of infrastructure access and changes resulting from the duty to implement Directive 34/12

Table of contents:

- I. Introduction
- II. Railway service infrastructure in Poland
- III. Railway service infrastructure in Europe
- IV. Necessary changes resulting from Directive 34/12
- V. Final remarks

Summary: The paper presents a number of problems associated with the lack of or shortcomings of current legislation that defines the notion and scope of service infrastructure access in Poland and other EU Member States. It is these problems that have largely contributed to the introduction of the changes to be made by the implementation of the provisions of Directive 2012/34.

Key words: railway infrastructure, service infrastructure, Directive.

Tomasz Banaszczyk, Marcin Król, How to best use the potential of vertical separation in Polish railway transport?

Table of contents:

- I. General comments
- II. Vertical separation within the liberalization process of Polish railway transport
- III. Areas in need of urgent change:
 1. access to railway infrastructure
 2. access to rolling-stock
 3. regulatory tools
 4. relations between the President of the ORT (The Office of Rail Transport) and the President of the OCCP (The Office of Competition and Consumer Protection).

Summary: The first part of the article presents arguments behind the government's decision to enforce vertical separation as an element of liberalization aimed at infrastructure sectors. The second part focuses on the actual implementation process of the Polish railway transport reform. A list of urgent and relatively easy to implement actions it put forth in the concluding remarks, which would enable the exploitation of the competitive potential stemming from vertical separation to a far greater extent than is currently the case.

Key words: liberalization of infrastructure sectors, railway transport.

Filip Dopierała, Competences of the railway regulator and the freedom of contract between the infrastructure manager and railway operators

Table of contents:

- I. Introduction
- II. Authority of the President of the Office of Rail Transportation
- III. Comparison of powers of the ORT President with other market regulating authorities
- IV. Procedures of granting access to railway infrastructure
 1. Granting access to railway infrastructure (short description of the term)
 2. Civil law contracts (freely concluded)
 3. Negotiations before the ORT President terminated by a regulatory decision replacing civil law contracts
- V. Subject of the decision
 1. 'Wide interference' concept – currently adopted by the ORT President
 2. 'Narrow interference' concept – PKP PLK statement
- VI. Conclusion

Summary: The goal of this article is to demonstrate, from the infrastructure manager's perspective, the influence that the Polish railway regulator has on the business relations between the infrastructure manager and railway undertakings with respect to granting access to railway infrastructure. The ORT President currently follows the concept of 'wide interference' into the contractual relationships of these parties – the regulator believes to be entitled to arbitrary shape the provisions of decisions replacing a railway infrastructure access contract. By contrast, the PKP PLK states that the market regulator has limited powers only in this matter and should refrain from exercising an excessive influence on the obligations of the parties. The main aim of this paper is to present a theoretical

and practical overview of the problem, and to prove that only the 'narrow interference' concept is legally justified.

Key words: granting access to the railway infrastructure, President of the Office of Rail Transportation, railway infrastructure management unit, carrier, powers of market regulating authority, freedom of contract, railway market

Stefan Akira Jarecki, Opening the market for domestic rail passenger transport services to competition. Rules of access to infrastructure for commercial and public services

Table of contents:

- I. Introduction
- II. Competition in the railway passenger transport sector
 1. Why do we need competition in the domestic passenger railway industry?
 2. Competition in the passenger railway industry – only advantages?
 3. What models of opening the market for competition are applied in the railway passenger industry?
 4. Model of opening the market for competition proposed by the European Commission
- III. Protection of the economic equilibrium of public services. Different rules of access to infrastructure for commercial and public services
 1. Protection mechanisms of the economic equilibrium of public services in Great Britain and Poland
 2. The mechanism proposed by the European Commission
- IV. Conclusions

Summary: Transport is fundamental to EU economy and society. Mobility is vital for the internal market and for the quality of life of its citizens. Transport enables economic growth and job creation. According to EU transport policy, the majority of medium-distance passenger transport should be based on railways by 2050. However, rail markets are currently facing stagnation or decline in many EU Member States. Faced with this problem, the European Commission proposed in January 2013 far reaching measures to encourage more innovation in European railways by opening domestic passenger markets to competition. The Commission proposed to amend EC Regulation 1370/2007 on public service in order to make the award of public service contracts for rail competitive on a mandatory basis. It also proposed to amend Directive 2012/34/EU meant to ensure open access to infrastructure in order to provide domestic passenger services. However, opening up domestic passenger markets to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. According to the Commission's proposals, Member States will thus have the possibility to limit access rights for the purpose of operating domestic services if the exercise of such rights would compromise the economic equilibrium (viability) of a public service contract. Rules of access to infrastructure for commercial and for public services will therefore be different. The main aim of this article is to analyze the mechanism proposed by the European Commission in order to protect the economic equilibrium of public services. The paper will also compare the proposed EU mechanism with models already in use in certain Member States, namely Great Britain and Poland. In conclusion,

changes to the drafts presented by the European Commission will be proposed on the basis of the above analysis.

Key words: railways, public services, access to infrastructure, protection of the economic equilibrium of public services, opening domestic passenger markets to competition.

Michał Zajfert, Access to rolling stock as the key barrier for market development of rail passenger services in Poland

Table of contents:

- I. Introduction
- II. Characteristic costs and incomes in railway transport
- III. Reform of the state enterprise Polish Railways (PKP)
- IV. Strengthening of market entry barriers by railway providers belonging to the incumbent PKP Group
- V. Organisation of short-distance passenger railway transport
 1. First attempt to create a municipal provider – case study Lubuska Kolej Regionalna
 2. Services provided by public rail operator belonging to the PKP Group
 3. Purchase of rolling stock by county councils (voivodeships)
 4. Municipal operator created with property of the state enterprise Polish Railways – case study Koleje Mazowieckie
 5. Creation a new urban operator – case study SKM Warszawa
 6. Creation a new regional operator – case study Koleje Śląskie
 7. Competitive tendering of regional railway services
 8. Transfer of the national regional railway provider (Przewozy Regionalne) from the PKP Group to county councils (voivodeships)
- VI. Experiences in reforming other public transport services
- VII. Summary

Summary: Competition in rail-freight transport is developing rapidly in Poland. The same cannot be said about passenger transport, both short and long-distance, where improvements are far more limited because of problems with the organisation of passenger transport by local authorities and with the creation of new railway operators. Although positive examples do exist, most of the implemented solutions in use consolidate the monopoly of public services, eliminate competition and thus makes it impossible to introduce the optimal solution for society.

Creating municipal providers is a better model than a national railway company but in truth, this option will end up creating local monopolies. Competitive tendering (competition for the market) is the best solution here but Poland battles with a major entry barrier – the lack of necessary rolling stock. Surplus rolling stock belonging to the state railway companies of the PKP group should be made available to other railway companies. Similarly, county councils (the voivodeships) should be able to control the rolling stock of the national regional rail operator (Przewozy Regionalne PKP), which they now own.

Keywords: railway transport, railway rolling stock, public services, monopoly.

Michał Gajdus, Anna Laszczyk, Few remarks on the competitiveness on the Polish rail freight market

Table of contents:

- I. Introduction
- II. Rail freight market
- III. Access to infrastructure and anticompetitive practices
- IV. Draft models aimed at effective market liberalization and an improvement in the competitiveness of the market
- V. Role of the President of the Office of Rail Transport on the rail freight market; regulatory authority as an effective re-regulation mechanism
- VI. Conclusions

Summary: Introducing competition into the Polish rail market remains one of its most widely discussed topics because the market liberalisation process has not been completely efficient. One may enumerate various reasons for such an outcome. These include: the improper restructuring of the national incumbent rail operator (Polskie Koleje Państwowe), barriers to infrastructure access and insufficient powers of the regulatory authority. The above mentioned issues are discussed throughout the paper. The rail freight market, as a strategic sector for the national economy, is analysed in details.

Key words: rail; rail freight transport; President of the Office of Rail Transport; access to infrastructure; regulation; regulatory authority.

Michał Będkowski-Kozioł, Łukasz Gołąb, On the notion and scope of rail transport law. Some remarks on the 10th anniversary of the Polish Rail Transport Act of 2003

Table of contents:

- I. Introduction
- II. Notion, subject and scope of rail transport law
 1. General remarks
 2. Rail transport law at domestic level
 - 2.1. Rail transport law in the narrow sense
 - 2.2. Rail transport law in the broad sense
 3. Rail transport law at the EU level
 4. International law of rail transport
- III. Specific conditions of rail transport law regulation
 1. Technical, economic and political implications
 2. Interdependent relations of norms of rail transport law
- IV. Position of rail transport law in the overall legal system
 1. Rail transport law as public law
 2. Rail transport law as private law
- V. Conclusions

Summary: The 10th anniversary of the Polish Rail Transport Act of 28th March 2003 gives an opportunity to make some remarks on the notion and scope of rail transport law in Poland, including the analysis of the subject and scope of its provisions. For this purpose, the paper

contains a detailed analysis of the roots of rail transport legislation, both at the domestic (Polish) law level as well as the EU and the international level. The article makes an attempt to delimitate the boundaries of rail transport law and to define the character of its norms. Finally, it outlines the specific conditions of its validity and enforcement.

Key words: transport, rail transport, rail transport sector, passenger transport, transport of goods, railway infrastructure, railway lines, rail transport law, sources of rail transport law, polish rail transport law, EC rail transport law, international rail transport law.

Legislation and case law reviews

Łukasz Gołąb, The rail transport sector in the jurisprudence of the Court of Justice of the European Union

Table of content:

- I. Introduction
- II. Allegations of the European Commission in its complaints against Member States
 1. Allegations of the Commission in cases where a breach of EU law was established
 2. Allegations of the Commission in cases where a breach of EU law was not established
 3. Allegations of the Commission in case C-369/11 *Commission v. Italy* (still pending)
- III. Jurisprudence of the Court of Justice
 1. Judgments of the Court of Justice in cases where a breach of EU law was established
 2. Judgments of the Court of Justice in cases where a breach of EU law was not established
- IV. Summary – judgment of the Court of Justice in case C-512/10 *Commission v. Poland* in the context of other ruling delivered by the Court of Justice

Summary: Recent years have shown an increase in the activities of the European Commission as far as the evaluation of the implementation process of EU rail transport law. As a result, a number of cases were brought by the Commission before the Court of Justice of the European Union against Member States which have, in the opinion of the Commission, infringed their obligations to implement relevant EU provisions. This article discusses the cases examined by the Court of Justice.

Key words: rail transport, rail transport sector, regulation of rail transport, European Union law, Court of Justice of the European Union.

Poland failed to comply with its obligations deriving from EU law in the rail transport field.

Judgment of the Court of Justice of the European Union of 30 Mai 2013 in case C-512/10 European Commission/Poland (Tadeusz Skoczny).

Danish state aid to the incumbent railway operator complies with EU law

Judgement of the Court of 20 March 2013 in case T-92/2011 *Andersen v European Commission (Danske Statsbaner)* (Jędrzej Wciślak)

Direct conclusion of a service contract and the possibility to lodge an appeal against the activities of the organiser of public transport

Comments to the judgements of the Voivodeship Administrative Court in Gliwice in cases II SA/GI 1024/12, 1267/12, 1268/12, 1269/12 and 1408/12 I 1409/12 (Katarzyna-Bożekowska-Zawisza, Łukasz Bożekowski)

Legal character of decisions issued by the Polish railway regulator that replace a railway infrastructure access contract

Judgement of the Competition and Consumers Protection Court of 28 Mai 2013 in case XVII AmK 1/12 (Marin Trela)

Basis for the calculation of the basic fee for minimal access to railway infrastructure

Judgement of the Competition and Consumers Protection Court of 21 February 2013 in case XVII AmK 2/12 (Michał Będkowski-Kozioł)

Publications review**Main Polish publications concerning the railway sector** (Łukasz Gołąb)