

EXECUTIVE SUMMARY

Rail transport is a strategic sector because of its horizontal importance to the development of other industries and services, to territorial connectivity and to achieving sustainable mobility. The strategic relevance of rail transport and its nature as a network industry explains why the State has traditionally had a strong presence in the sector.

In recent years, the European Union has promoted the gradual opening of this sector to competition. The liberalisation process has been implemented through the so-called "railway packages". The Fourth Railway Package, adopted in 2016, completes this process by opening the market of commercial passenger transport services by rail in the year 2020.

In Spain, the transposition of European Directives into national laws promotes a model of vertical separation in which the infrastructure management operations, entrusted to ADIF and ADIF Alta Velocidad (ADIF High Speed) are unbundled from the provision of transport services, provided by the incumbent operator RENFE. All of these companies remain state-owned, and they are operated under the Spanish Ministry of Public Works.

The objective of this study is to analyse the market for commercial passenger transport services by rail in Spain, and to assess the main challenges and obstacles for the introduction of competition in this market, in order to formulate recommendations to the competent authorities to ensure its effective liberalisation.

This study draws on the liberalisation experiences of the markets for domestic commercial passenger services by rail in several European countries, which have drawn positive results in terms of increasing the number of passengers, distance travelled, train frequencies, quality of service and lower prices.

The railway sector exhibits certain features that can favour liberalisation. In particular, the Spanish railway infrastructure presents excess capacity and low levels of congestion, which makes it easier for new operators to access the infrastructure. In addition, the small overlap between commercial services and those subject to Public Service Obligations (PSO) facilitates entry into the market.

Nevertheless, there remain a number of challenges and obstacles to achieving effective competition in the market for commercial passenger services.

Firstly, Spain has adopted a model of vertical separation of infrastructure management and transport operations, which entails the structural separation of ADIF and RENFE. However, the subordination of ADIF, ADIF Alta Velocidad and RENFE to the Spanish Ministry of Public Works calls into question their autonomy

from this entity, as well as the neutrality of the Ministry with respect to their activity in the market.

Secondly, certain technical characteristics of the railway infrastructure, and specifically the coexistence of Iberian-gauge and international-gauge rail tracks, hamper the interoperability of passenger transport services, which conditions the competitive dynamics between operators in the market.

Thirdly, some aspects of the capacity allocation and the setting of infrastructure access charges can pose a significant barrier to entry for new operators. In particular, framework capacity agreements, which guarantee an operator's long-term access to the infrastructure, are necessary for new operators to be able to commit to the substantial investments needed to enter the market. At the same time, they reduce available capacity for other operators during the length of the agreement. Moreover, the current system for setting infrastructure access charges should be revised, as it does not provide ADIF with the flexibility required for the optimal management of the infrastructure. In addition, new operators should be granted access to spaces in passenger stations on a transparent and non-discriminatory basis, under the same conditions as the incumbent operator.

Fourthly, there exist potential problems in accessing rented rolling stock and maintenance facilities. These problems stem from the advantageous position of RENFE in these markets as the incumbent operator, and from the large investments and time necessary for new operators to obtain their own rolling stock and maintenance facilities. This situation should be solved so that it does not become a significant barrier to entry for new operators. Moreover, the access by new operators to engine drivers may be impeded by the power exerted by the incumbent operator in the market for recruiting and training of engine drivers.

Lastly, new operators have to commit to large investments and face significant asymmetries with respect to the incumbent operator, which has advantages inherited from its former monopolistic position in terms of information on the market and end users, and by virtue of being a provider of PSO services, which are subject to public subsidies. If the regulatory and institutional framework does not provide sufficient guarantees, it will be difficult for a railway company to undertake the costs and risks involved with entering the rail market.

The analysis carried out in this study, which incorporates the expertise accrued by the CNMC in the application of sector regulations and in ensuring competition in the railway sector, makes it possible to lay out the following recommendations, aimed at maximizing the positive effects of liberalisation and reducing the restrictions on competition that have been identified.

In the first place, the independence of the infrastructure manager from the incumbent operator of transport services has been of great importance, both in the mentioned international experiences and in the liberalisation of freight service in Spain, and has contributed to reducing the uncertainty of new entrants regarding infrastructure access conditions. We therefore recommend:

- Maintaining the structural separation of ADIF and ADIF Alta Velocidad from RENFE.

Secondly, it is essential that both RENFE and ADIF act independently in the market. The autonomy of the incumbent operator is necessary to give certainty to new entrants and guarantee competition between operators under equal conditions. We therefore recommend:

- Ensuring the full autonomy of ADIF, ADIF Alta Velocidad and RENFE.

Third, the entry of new operators is contingent upon obtaining capacity in the railway infrastructure. Accordingly, the infrastructure must be properly managed in order to maximise available capacity and allocate it to operators based on a previously established, non-discriminatory procedure. In turn, the procedure for obtaining framework capacity must balance the entrant's need for certainty regarding long-term access to the infrastructure against the need to safeguard the plurality of rail services, offered by new and different operators. That is, those who do not belong to the same business group and whose partners do not hold controlling stakes or exercise decisive influence over other operators with framework capacity.

We therefore recommend:

- Guaranteeing adequate and sufficient access to capacity in the railway infrastructure and service facilities.

Fourth, the current framework for setting infrastructure access charges, which considers them as taxes, does not provide operators with the necessary certainty regarding the future evolution of one of their main operating costs. Moreover, the amount of the charges must be determined in such a way that it does not pose a significant access barrier for operators, while guaranteeing the financial sustainability of ADIF. An allowance and surcharge structure should be designed to encourage the entry of new operators and to recover the costs associated with building the infrastructure. Consequently:

- We recommend improving the system for setting infrastructure access charges.

Fifth, the access to and maintenance of rolling stock is a considerable barrier to entry for new operators due to the high cost, the technical characteristics specific

to the Spanish network and the absence of rolling stock leasing companies and maintenance companies independent from RENFE. Therefore:

- We recommend facilitating the opening of new maintenance facilities and guaranteeing that new entrants have access to the heavy maintenance services of Renfe Fabricacion y Mantenimiento (Renfe Manufacturing and Maintenance), as well as to the rolling stock that RENFE does not need to provide its services and PSO, on a transparent, objective and non-discriminatory basis.
- We recommend promoting the structural independence between Renfe Alquiler (Renfe Leasing) and Renfe Fabricacion y Mantenimiento from Renfe-Operadora (Renfe Operator), by means of creating separate companies for leasing and maintaining rolling stock that are completely independent from Renfe-Operadora.

Sixth, the driving staff is a fundamental asset for the provision of passenger transport services. New operators must be assured access to these personnel. The deficiencies identified in the market for training and hiring of engine drivers after the liberalisation of freight transport led the CNMC to impose a series of measures on RENFE to ensure the correct functioning of this market. However, any new needs that arise once competition in commercial services is introduced may require the adoption of additional measures. We therefore recommend:

- Guaranteeing effective competition in the markets for training and hiring of engine drivers.

Lastly, in the new competitive framework, it will be essential to prevent RENFE from using the subsidies it receives to operate PSO services to compete more aggressively in the liberalised market. We therefore recommend:

- Not extending the contract directly awarded to RENFE for PSO services.
- Guaranteeing the effective separation of commercial services and PSO by separating the accounting, operational and legal aspects of the two activities.