

Speech Henk Don – Chair IRG-Rail 2015

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Ladies and gentlemen,

Many of you have traveled to be here today, and, for many of you, that trip has been an international one. Probably by plane, but perhaps also by train.

Let me briefly tell you about my most recent international train experience.

I used a night train with couchettes to go for a skiing trip in Austria.

I will spare you the details, but at one point, we found ourselves waiting for at least 45 minutes at the Dutch-German border, because the locomotive needed to be changed to a German one. With a German driver.

This is not exactly the idea of a single European rail market, I would say.

Apparently something similar happened at the German-Austrian border, for some reason that episode took even longer.

All in all, it was a comfortable journey, but clearly it took much longer than necessary.

Apparently it still is quite an operation to have a train cross national borders when getting from A to B.

This is just one example of the importance of effective cooperation at a European level.

This year, I have the honor of chairing IRG-Rail, the cooperation of national rail regulators in Europe.

I am grateful to the organizers for this opportunity to tell you what IRG-Rail is and does.

I will also devote some time to the 4th Railway Package and to IRG-Rail's position on that package.

Finally, I will discuss access to Rail Services, which is a very important issue for railway undertakings, both in passenger transport and in freight.

So let me begin by telling you about IRG-Rail.

COORDINATING WITH OTHER EUROPEAN REGULATORS - IRG-RAIL CHAIR

IRG-Rail is short for the Independent Regulators Group Rail.

It was founded in 2011 in The Hague, 50 minutes by train from Amsterdam.

Initially, IRG comprised the rail regulators from 15 countries.

Now, we are 25, including some non-EU members.

The idea of IRG-Rail is that we can be more effective as national rail regulators if we learn from each other, cooperate in particular in cross border issues, and define common positions on drafts for new European legislation.

Furthermore, we want to achieve a harmonized interpretation of European legislation.

If each individual country interprets the rules in its own way, then a well-functioning European internal rail market will still be far away.

Already after these first four years, we find that our voice in Brussels is better heard and we can achieve more.

In this way, we contribute to the European goal of having a single effective, competitive and sustainable railway market in Europe: the Single European Railway Market.

For the benefit of the customers: the passengers and the freight transporters.

So what do we do in IRG-Rail?

We have four working groups, in which experts from various countries address various topics.

The Legislative Developments working group focuses on the 4th Railway Package.

The Access working group focuses on freight transport and corridors.

It also looks at access to service facilities.

The Charging group studies the rates for these service facilities and for the use of infrastructure.

Finally there is a Market Monitoring group which works on providing comparable data and reports on the railway market in the member states.

Twice a year, the heads of the rail regulators convene to decide on common positions and on the agenda of the working groups.

IRG-Rail maintains good relations with various stakeholders at the European level:

With the European Commission and the European Parliament:

a meeting with Commissioner Bulc is scheduled for the end of May

earlier this year I met with MEP and rail rapporteur Wim van de Camp

And also with CER, EIM, ERFA and EPTO.

Through IRG-Rail, the regulators from various Member States speak with one voice.

We are proud to have built a well-functioning organization that has kept on growing.

The Italian regulator recently joined as a member.

We are becoming more and more important as a partner in the policy dialogue.

This year's priorities for IRG-Rail are:

- Effective liberalization of national passenger transport,
- Safeguarding access to rail services, and
- Eliminating barriers for international freight transport.

You have heard other speakers at this conference about their experiences in a liberalized railway market.

Also for us, the ongoing discussions at the moment often concern the liberalization of the railway market and the creation of the right preconditions to make it work.

This brings me to the second topic I would like to discuss today: the 4th Railway Package.

FOURTH RAILWAY PACKAGE: WHAT IS THE STATE OF PLAY?

I mentioned the European objective of a well-functioning Single European Rail Market.

With the Fourth Package, the European Commission has put forward proposals to move towards that objective by regulating the liberalization of national rail markets and harmonizing technical standards and requirements.

The technical pillar is largely agreed by all stakeholders.

But the market pillar, or political pillar, which contains the liberalization rules, is hotly debated.

Why exactly is liberalization of passenger rail markets good for the customers, for the passengers?

One important lesson from economics is that, by their very nature, monopolies tend to be inefficient.

Not only in terms of costs, but also in terms of innovation, customer service, etcetera.

Competition has shown to provide powerful incentives for efficiency.

Under competition it is in the interest of the railway undertaking itself to act as efficiently and customer-friendly as possible.

Hence a liberalized market can provide the best results for passengers and for taxpayers.

That is why IRG Rail is a proponent of open access and competitive tendering.

Direct award of concessions is second best, if only because of the difficulty in stimulating a railway undertaking to operate efficiently in case of a direct award.

If you do opt for direct award, you will have to design all the incentives and write them into the contract, which is no easy task and probably less effective in the end.

First, it is very difficult to choose a good and complete set of measurable targets – too much focus on one or a few performance measures will result in bad scores on the others.

Second, in judging the actual performance you face an information problem.

Often only the railway undertaking itself has all the information required to assess performance.

In addition, there is the risk of political interference.

When the choice of operator is not driven by objective criteria, the result is likely to be sub-optimal.

This explains why IRG Rail is not a big fan of direct awards.

In our opinion, public tendering provides the best incentive for the incumbent operator to deliver the best quality at the lowest costs.

On top of that, the tendering authority has a better bargaining position.

Several Dutch regions and the UK offer proof that public tenders, if properly carried out, lead to higher levels of customer satisfaction and lower costs.

A 2013 Eurostat study has revealed that travelers in the UK (after the Finns) are among the most satisfied travelers in Europe.

Similar results have been obtained in studies covering Dutch regions.

That is why IRG Rail supports the current proposal of the Latvian presidency, in which direct awards would be only allowed in situations where there is only one interested party, in emergency situations, in small concessions, and in case of highly complex technical specifications.

Political reality, however, is that the Member States are deeply divided.

Over this issue, as well as over the next one.

IRG-Rail is in favor of a *vertical separation* between railway undertakings and infrastructure managers.

Chinese Walls are necessary to avoid that another railway undertaking is put at a disadvantage by the infrastructure manager.

We do not believe that non-discrimination is adhered to by the infrastructure manager if its own interests are intertwined with those of one operator in a single organization.

All participants in the rail market must be treated equally by the rail infrastructure manager. Discrimination and cross-subsidization are harmful to fair competition and can lead to the selection of less efficient operators.

In that light, I find it distressing to see that a protracted debate has already been taking place in the European Council for so long about diluting the suggestions of the Latvian chair to safeguard the Chinese walls between railway undertakings and infrastructure managers.

I know we also need to deal with the political reality, but progress on this issue is crucial for the internal rail market.

One final point on the fourth package.

In the position taken by the European Parliament, there appears to be an idea that many problems can be solved if only there is a strong regulator.

I want to be very clear here: just having a strong regulator is not enough.

To be effective, a regulator needs clear standards in the legal framework and effective instruments to enforce them.

Setting clear standards may be delegated to the regulator itself, provided it gets a solid legal foundation.

Otherwise we regulators will not be able to fulfill the promises that are made at the political level.

SERVICE FACILITIES - REGULATORY SUPPORT FOR OPERATORS IN LIBERALISED MARKETS

A good example of the need for clear standards are the rules concerning access to service facilities.

Service facilities include space and utilities at stations, ticketing machines, travel information, washing facilities, and maintenance facilities.

The European Recast directive regulates much more than is currently regulated in existing rules, and the new regulations are currently being implemented in national law.

However, that is not the end of it.

Next to the rules in the Recast, the Commission is writing an Implementing Act to formulate additional rules and specifications, based on the experiences of regulators.

The additional rules relate to the procedure by which one can obtain access to the service facilities and to further criteria for granting access.

This process is currently in full swing, and IRG-Rail is preparing a second position paper on the issues involved.

The first paper was released last September.

The right of access to service facilities is among the preconditions for liberalized markets.

The basic settings must be in place, otherwise the open rail market cannot work.

That, too, is a key priority of IRG-Rail in 2015.

The conditions for access to services that railway undertakings need in order to be active in the market must be transparent and easy.

In practice, however, it turns out that new entrants on the rail market are dependent on competitors for essential facilities such as access to stations, ticket machines, maintenance workshops and cleaning facilities.

More often than not, that competitor is the largest incumbent railway undertaking.

So what exactly are the bottlenecks when we are talking about access services?
Where could barriers to entry emerge?

First, it is price.

Second, it is the conditions that need to be met.

If those conditions are unfavorable, for example because of tying or the use of annual contracts, they can be quite a barrier to entry.

Another problem is refusal of access because a so-called *viable alternative* is claimed to exist.

Incumbent parties often say that there are viable alternatives for the entrants, so there is no need for them to grant access.

What we need is a clear definition of what does or does not constitute a *viable alternative*.
Currently, it is up to the regulator to decide on such questions.

I can tell you: absent a clear definition, that is a difficult task.

Do we really expect incumbents to voluntarily give up their comfortable and powerful position and to make available their service facilities to their competitors and challengers?
Everyone understands that they are not exactly excited about welcoming new entrants to their market, and that they will go a long way to maintain their positions.

That is why safeguards are needed that protect new entrants in the market.

Those safeguards are needed in areas like transparency, verifiability, dispute settlement procedures, clear definitions of terms like 'viable alternative' and clear rules for 'use it or lease it'.

As the chair of the collaborating regulators, I wish to advocate establishing these safeguards.

In conclusion, I have explained what IRG-Rail is and what we stand for.

We intend to contribute to the European goal of having a single effective, competitive and sustainable railway market in Europe: the Single European Railway Market.

For the benefit of the customers: the passengers and the freight transporters.

IRG-Rail is a proponent of open access, public tendering, and a clear separation between railway undertakings and infrastructure managers.

And I hope I have made clear that, in order to have a well-functioning market, access to rail services such as stations and maintenance must be arranged properly, with clear legal safeguards.

If the basic settings are in place, then all operators can compete fairly.

This will bring the best result for the passengers and the tax payers.

Because that is what it is ultimately about: the passengers.

They need to be served best at the right cost.

As collaborating regulators, we work every day to make that happen, so that passengers are able to travel by train comfortably, fast and at an affordable price.

Like me, when I take the train to my skiing destination.

Thank you very much for your attention.

I am ready to take questions.