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Independent
Regulators' Group - Rail

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Subgroup Charges for Service Facilities

Update of the Overview of Charges and Charging principles for Freight Terminals

November 2021

Introductory Remarks

The IRG-Rail working subgroup "Charges for service facilities" created this updated document to analyse more in-depth several topics related to charging practices for freight terminals, which were initially studied in the overview paper published in November 2020. This paper aims at making a more profound analysis of those topics that were identified initially, but for which the original paper could not analyse in-depth. It also contains new related topics to charges at freight terminals.

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I. Introduction

In 2020 IRG-Rail published an overview document on charges and charging principles for freight terminals. That document focussed on the analysis of services related to intermodal freight transport, which, for the purpose of the paper, were classified as intermodal services. The paper mainly studied charges for the service of handling containers, as it is commonly conceived as the main service related to intermodal freight transport. The analysis was based on the experiences and data collected from 41 terminals around Europe, as well as on the understanding and practices of the regulatory bodies (RB) that participated in the study.

This updated document addresses topics that are directly related to charges and charging practices at freight terminals that were not included in the original paper or that were not studied in-depth. By expanding this analysis, IRG-Rail continues its contribution to the understanding of charges and charging practices at freight terminals. This document addresses two main blocks of topics and other minor, related issues.

First, the paper focuses on freight terminals as complex facilities. This concept of complex facility is based on the idea of a facility that involves the participation of several parties or companies that coincide in the same space and perform different tasks. In this regard, the analysis covers the interactions between the rail infrastructure and the service facility itself, including the identification of the limits that separate one from another, and the practicalities regarding different charges within the facility. This part of the paper also leverages on other studies carried out by IRG-Rail on that field and decisions from the European Court of Justice and their implications on charges. Finally, the paper also analyses more in-depth freight terminals located in seaports and intermodality.

The second main topic addresses practicalities regarding the provision of the services at freight terminals and how that affects charging principles. Initially, this part analyses the possibility that freight terminal's operators bundle services and charge a single component for the provision of multiple activities. The original paper showed that some terminals provided several services related to the service of handling containers bundled together with it. This paper reflects on the regulation on this matter and its interpretation by the participating RBs. In addition, this chapter presents some scenarios in which differences in the practicalities of providing the services (e.g., quality standards, equipment or automatization) within the same terminal could affect charges at freight terminals and justify different tariffs for the same or similar services.

The final part of the document is devoted to other minor, related topics and national experiences, such as the relevance of rolling highways in the different national freight markets and its connections with charges at freight terminals.

II. Freight terminals as a complex facility

Recital (8) of Implementing Regulation (EU) 2017/2177 on access to service facilities and rail-related services establish that "[*d*]*ifferent entities may be in charge of deciding on access conditions for a service facility, allocating capacity in the service facility and supplying rail related services in the facility. In such cases, all entities concerned are to be considered operators of a service facility within the meaning of Directive 2012/34/EU*". Such cases fall within the concept introduced in the original paper of "complex facilities".

In these complex facilities, there are different entities that perform multiple roles. Indeed, these entities or companies might cooperate to provide access and the set of services supplied or compete providing the same or a substitutive service. These entities are not necessarily considered SFOs, since, as the same recital (8) states, "*only the entities effectively responsible for providing the information and deciding on requests for access to the service facility and use of rail-related services should be considered as the operators of the service facility*".

Regardless of their actual classification as SFOs, the existence of several entities operating at the terminal has implications regarding charging for access to the terminal and for the provision of rail-related services.

In addition, according to the definition of rail infrastructure set by Annex I of Directive 2012/34/EU (hereafter, the Directive), some of the physical parts composing a freight terminal might not be classified as service facility. Therefore, this issue poses more challenges for charging systems.

This chapter analyses the role of different parties at freight terminals, regardless of whether they also operate the terminal itself and focuses on the implications for charging systems of the fact that different elements within the same space are classified as either service facility or rail infrastructure. Therefore, it studies more in-depth the charges for track access within terminals, as well as the definition of the rail infrastructure that might be located within the facility.

The chapter focuses, in particular, on freight terminals in ports, which are essential facilities for intermodal traffic. The paper analyses the role of the port authority and the possible solutions regarding charging for access, as well as practicalities regarding how services are provided and charged at these facilities.

A. Interaction between rail infrastructure and services at the facility: Track access charges and what parts belong to the rail infrastructure

The fact that several entities perform different or similar tasks within a freight terminal implies that such facilities become more complex. The concept of complex facility was used in the original paper to classify those facilities in which there are several operators performing different roles. This situation has some regulatory particularities that deserve to be analysed.

The original paper showed that, in practice, the ownership/operational structure of freight terminals is quite diverse between and within countries. While some terminals are owned and operated by the IM, in others, ownership and operation are split between the IM and the SFO as an independent party, or do not involve the IM at all. Depending on the concrete structure, there might be connections or interactions between different parties that have regulatory implications for charging systems at freight terminals.

One of those regulatory issues has to do with track access to the terminal. The original paper presented some differences between terminals, although available information was limited. In some cases, access to the terminal was granted and controlled by the IM, while in others it was not completely clear how that works in practice.

In some cases, apart from the SFOs that ultimately supply the services, there is a coordinating entity that grants access and charge for it. This is the case for some port authorities, who are in charge of the activities that apply to the whole complex facility, and not just the freight terminal located within. Ports, by definition, are complex facilities that usually involve the participation of several entities and the provision of different services in an intermodal context. In this scenario, port authorities generally perform a coordinating role and sometimes are in charge of general activities within the facility, such as granting access and train control. Therefore, there is a debate regarding the actual role of ports or port authorities, and whether they act as IMs or SFOs, at least in part of their activities. There might be, however, freight terminals, even when not located within ports, that might fall within the concept of complex facility. This is the case, for instance, when they are part of a bigger facility and share spaces with other entities. In these cases, relationships between different parties might be set differently.

Therefore, the existence of several entities performing different roles has important implications for charging systems as different elements or activities are charged by different companies. In this regard, a clear definition of these roles is key to understanding the different charges at freight terminals.

Another regulatory issue that has implications for charging systems is connected to the debate of whether some parts of the freight terminal as a service facility should be classified rather as part of the rail infrastructure. One example is related to classification of tracks in ports.

A study carried out by IRG-Rail SG Access to Service Facilities working group shows that classification of tracks in ports depends on many different factors and that there is no common understanding on 'permanent ways' or 'sidings' among IRG-Rail members. In this regard, there is a mixed experience between countries, especially regarding the tracks that are connecting service facilities within a port. Differences in the classification, respectively handling of tracks within ports, can be traced back to a different understanding of the term permanent way including sidings. This might be valid for all intermodal terminals as well.

Initial results from this study also show that, when the function of the tracks can mainly be attributed to a typical service facility function, like storage or loading/unloading of goods, most IRG-Rail members consider the track as a service facility track. Accordingly, in most countries the tracks within freight

terminals in ports are classified as service facility tracks. In regard to charging, the report points out that even if the classification of tracks determines which charging rules are applied – classification is not necessarily crucial for the actual level of charges within a port, since fees are also influenced by many other factors.

This is just an example in seaports, which are just a particular type of facility. However, there are other parts or spaces physically located within a freight terminal that might fall within the concept of rail infrastructure following its definition by Annex I of the Directive, such as good platforms or access ways for goods. Indeed, this issue has raised an interesting legal debate that even reached the European Court of Justice.

In 2020, the Czech Regulatory Body Úřad pro přístup k dopravní infrastructure were handling a complaint about access to good platforms and the related siding tracks. During this investigation, the Regulatory Body requested a preliminary decision from the European Court of Justice on the following questions:

- "*Does the place of loading and unloading for the transport of goods, including related tracks, constitute part of railway infrastructure as defined by Article 3(3) of Directive 2012/34?*
- *Is it in accordance with Directive 2012/34 that an infrastructure manager may at any time change prices for the use of railway infrastructure or service facilities to the detriment of freight forwarders?*
- *Is Directive 2012/34 binding for Správa železnic, státní organize (the Railway Administration) pursuant to Article 288 of the Treaty on the Functioning of the European Union?*
- *Can the rules set out in a network statement be deemed discriminatory if they are not consistent with the EU legislation to which the Railway Administration is obliged to adhere?*"

The answer to the question raised in Bulletpoint No 1 may have an impact on current charging models of freight terminals. Presumed the place of loading and unloading is considered to be part of the railway infrastructure (article 3(3) of Directive 2012/34), the charging principle of direct costs as in art 31 (7) of Directive 2012/34 needs to be applied. This will lead to a different and most likely lower level of charges.

When writing this paper, the European Court of Justice did neither publish the opinion of the advocate general nor the decision in this case. IRG-Rail is considering this issue important and, therefore, will follow it actively.

In conclusion, there are different elements that compose the physical space of a freight terminal that might fall within the definition of rail infrastructure. In this regard, the distinction between rail infrastructure and service facility in a freight terminal affects not only the physical parts of the terminal but also the role of the parties involved in the operation, particularly in complex facilities.

This debate has various regulatory implications. One of those has to do with the charging system. If some parts of the freight terminal are considered as part of the rail infrastructure, (such as, for instance, the above-mentioned tracks within ports or good platforms), then the charging scheme that applies is not the cost orientation plus reasonable profit regulation set by article 31 (7) and (8) of the Directive, but rather the regulation set by point (3) of the same article, which indicates that charges for those parts or activities "*shall be set at the cost that is directly incurred as a result of operating the train service*".

Charging at direct cost presents major differences with regard to the standard charging scheme in service facilities, including freight terminals. As opposed to charging regulation for services provided at SF, direct cost charging implies that charges are to be calculated according to Implementing Regulation (EU) 2015/909, which deals with direct cost calculation. This standard is a proxy for marginal cost and it is calculated by subtracting non-eligible costs (usually fixed costs) from total cost of provision of the services, or by means of an econometric or engineering estimation. For total cost recovery, this scheme allows for levying mark-ups for the different segments and subject to a market-can-bear test according to article 32 (1) of the Directive.

The experience is mixed between countries, and there are different points of views on what parts of the freight terminal facility are, indeed, rail infrastructure and, as such, shall be charged at direct cost. Preliminary results from the IRG-Rail study on classification of tracks in ports shows that classification is influenced by many different factors and that RBs' decisions on classification often need to be performed on a case-by-case basis. In addition, some countries also have national regulation on charges at particular facilities, such as seaport national laws.

This scenario that some parts within the area of a freight terminal are considered rail infrastructure and are operated by one single entity brings major challenges for terminal operators as SFO, such as:

- Implementation of a dual charging system: if two different systems apply to the same facility, there might be interconnections regarding common areas or spaces. Therefore, cost models shall properly allocate costs to the different activities and incorporate cost drivers when some elements and assets are shared by different activities.

- Administrative load: SFOs might be forced to update and design new and more complex cost models to meet regulatory standards.

- Estimation of direct cost: as opposed to the rest of the rail infrastructure, where IMs estimate direct cost as the cost that is directly incurred as a result of operating the train service, SFOs might find difficulties with applying such concept to the areas of the terminal that are

considered rail infrastructure. Studies and analyses designed for the rail network might not simply be applicable to these parts of the facility.

- Assessment of the market-can-bear test: if the operator of the facility wants to recover full cost through charges and mark-ups, there should be a positive result of a test on the market's ability to pay. This issue raises the debate on how to differentiate between segments and whether it make sense to perform such test in a scenario in which RUs and other applicants might already being paying for the full cost of the service.

Apart from the mentioned challenges, SFOs might be uncertain regarding the level of charges for the provision of minimum access package in the elements classified as rail infrastructure. In this regard, an analysis of the market ability to bear a mark-up for full recovery can render a negative result, meaning that SFOs cannot charge above direct cost. As mentioned before, this is unlikely if SFOs are already charging full cost plus reasonable profit for those elements.

However, as a pre-requisite for levying mark-ups, it is necessary to identify market segments, which might imply that mark-ups differ between segments according to their ability to bear a higher charge.

Therefore, a change in the charging scheme that applies to these parts or activities in freight terminals might have profound implications for SFOs, who will have to adapt their cost models and charging systems to match the regulation.

Nevertheless, there is still much uncertainty regarding this issue. Indeed, the fact that several entities provide services or perform different roles at the facility also makes the scheme more complex for SFOs, given the interconnections between different parts of the facility and the services provided within.

B. Freight terminals in ports and intermodality

Hereby, the paper presents the primary outcome of a roundtable held by the working group Charges for Service Facilities in which the participants discussed several practical issues related to how services are provided and charged in freight terminals.

The outcome of this roundtable discussion helped to clarify some issues that arose in a national case related to services in terminals within ports, but that may also be applicable to other service facilities, which are not the focus of this paper.

In 2019, an intermodal transport organiser complained to the Polish Regulatory Body (UTK) about the methodology of setting charges for services provided at one of the largest intermodal seaports in Poland. The complaint concerned the fee charged to the entity, the amount of which was determined in a lump sum. The port operator argued that the fee is charged for specific services that must be performed in connection with transport by rail. However, the complainant argued that he doesn't order these services and doesn't need them at all.

Under the Railway Transport Act, the complainant is qualified as an applicant. Section 36(a) of the Railway Transport Act (and the relevant provisions relating to the service facilities) relates only to the provision of services in SF to railway undertakings. Pursuant to the Railway Transport Act, which implements the provisions of the Directive 2012/34/EU, the President of UTK, as the rail market regulator, supervises only services provided at port terminals to railway undertakings. Therefore, if fees are collected from another entity, such as intermodal transport organiser, the President of UTK was not in a position to issue a decision in this case. The President of UTK requested a change in Polish regulations, making possible ordering services also by applicants, which would extend the range of entities that would have been supervised by the regulatory body. European regulations make it possible to introduce such a change.

The second problem that emerged during the investigation of the Polish case is the impossibility to clearly distinguish between services provided at port terminals under Directive 2012/34/EU (subject to supervision by the regulatory body) and services provided at port terminals under Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on financial transparency of ports (hereinafter "Regulation 352"). According to Annex II of the Directive 2012/34/EU, services provided at freight terminals should be offered as part of the access to such facilities. The regulations indicate that services provided at SFs are "rail-related services", but it is not possible to define them precisely based on the applicable definitions. Regulation 352, on the other hand, indicates that transhipments between watercraft and land should be classified as port services and are subject to the provisions of that regulation. It is not clear how to qualify other services, e.g., container handling within a terminal, train-to-ship transhipments, etc. In order to determine the scope of services regulated by the regulatory body, it is necessary to clearly delineate which services should be treated as "rail-related services" as referred to in Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services.

The regulatory uncertainties associated with this case law have given rise to a broader discussion related to the interpretation of the terms contained in the Directive and Implementing Regulation

2017/2177, as well as related to the identification of a category of costs or a group of costs which may with certainty be recognised as costs of access to service facilities or costs of providing services in service facilities. For this reason, the issue of the operation of rail freight terminals in seaports was raised in the IRG-Rail working subgroup on charges for service facilities and the IRG-Rail working subgroup on access to service facilities.

The discussion on the IRG-Rail forum initiated by the Polish regulatory body (UTK) concerned the following issues:

- What is the typical practice of ordering services?
- Are RUs the party of service contracts in terminals?
- What is the percentage share of contracts with RUs and with other applicants?
- Does your national law define "rail-related services"?
- Which services provided in terminals are considered as basic service within the meaning of Annex 2 to the Directive 2012/34?
- Were there in your country any complaints to the regulatory body about the rates of access to services not listed in Annex II to Directive 2012/34?
- What actions were taken by the regulatory body then?
- How is it interpreted in your country "supply of services in SF", referred to in article 31 (7) and (8) of the Directive 2012/34?
- What costs are included into this category? What costs are not included?
- Is the cost of supplying service different from the cost of providing access to SF? If so, how are the costs of providing access to SF calculated?

The information gathered during the roundtable session allows the following conclusions to be drawn, but it should be noted that due to the varying levels of information provided by service facility operators to the regulatory bodies, this is still only a very general overview of the situation. Hereby, the paper presents the main conclusions that are relevant for the focus of the paper.

Conclusions on the party that requests services

Although having non-discriminatory access to freight terminals as SF, railway undertakings are not always the party that makes requests for all the components of the access to the freight terminal and the use of related services. In Austria and France, RUs usually only request track access. Direct contractors of the services are traditionally shippers or intermodal transport operators or (as in Finland) owners of the goods. Detailed data about the share representing each applicant are not available.

The role of the RU as the contracting party may depend on the type of facility and the distribution of responsibilities between the several SFOs that may cohabit on a given facility.

In some countries, RU's participation in contracts with the terminal operator affects the range of supervision of the regulatory body. Where national law regulates access to SF only for the railway undertaking, and not for the applicant, the regulatory body's supervision of terminal services is very limited and may be difficult (even impossible, such as in the abovementioned Polish case). This is the case in Poland and the Netherlands. In these cases, there is no legal basis for the regulatory body to intervene on shippers or intermodal transport operator's behalf.

Conclusions on service provision and comprised activities

The roundtable also addressed broader topics related to the provision of services and the understanding of the activities included in the service. According to article 31 (7) and (8) of the Directive, the charge imposed for track access within service facilities referred to in point 2 of Annex II, and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit. The same regulation applies to services listed in points 3 and 4 of Annex II if they are offered by just one supplier.

It was found that the majority of the countries participating in the round table does not have its own official definition of supplying of services in service facilities. However, it is mainly interpreted as all the activities that are needed to successfully provide the service that is being agreed for, at least, the two parties (the SFO and the RU or third party that requested the service). In the Netherlands, in the ACM's guide on the related services and service facilities, an interpretation is given that if a service is provided within the service facility and is related to performers offering a railway transport service, then it is regarded as supplying service in the service facilities. In Slovenia, there is no definition of rail-related services. However, the services themselves must be clearly defined by signing the special agreement between IM, RU and SFO. The only exception is Spain, where the RB provided an official definition of the service of container handling, although other services are not defined.

As opposed to other SF in which access to the facility means actually accessing the service (eg., storage sidings), in freight terminals it is possible to separate both activities and charge them separately. In the case of seaports, it may not be the same as in freight terminals, where access is usually included within the provision of their services. In some cases, access to terminals in ports and to other services in ports is not regulated by rail regulation. In some freight terminals, access and services are tied together, so costs associated to access might be included within the charge for the service itself.

In other cases, terminal operators might want to separate charges for access and the services. It is also possible to differentiate costs associated with each activity (access and those related to the provision of the service) and calculate separate charges. However, the outcome should be equal, as the same costs must be used to calculate separate charges or a single charge.

Conclusions on costs and charges calculation

Finally, the roundtable addressed the topic of what costs are considered when calculating charges for the provision of the services in freight terminals. Charges imposed for track access within service facilities referred to in point 2 of Annex II (therefore, including freight terminals and seaports), and the

supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit. Usually, the cost of providing the service means all the costs allocated on the grounds of the reasonable criteria of allocation. The concept of all costs is interpreted freely by each member state. In Austria, Finland and Poland full costs are the basis.

In Spain, all costs associated with those activities, including CAPEX and OPEX, as well as indirect costs, are taken into account. These costs shall be imputed to the concrete activities or services just for the corresponding share, meaning that when shared by different services, they shall be split according to their relevance. Also, these costs can only be allocated to activities or services if they are actually related to the service provision. Finally, reasonable profit is understood as cost of capital, for which the WACC methodology is usually followed. This may include the costs related to the access to the facility itself (costs associated to the maintenance of the tracks, control of the train and security if necessary).

In Slovenia, the charge for track access to the SF is not applied. However, the services and supply of services are charged in accordance with special agreement signed by RUs with the operators of SF. Besides, a new methodology for calculating the user charges is being prepared, which, among other, will be the basis for determining the level of user charges for access to the railway service facilities.

In Germany, all costs belonging to the regulated area are factored into the cost basis for determining charges for access to the service facility. This refers to the costs as stated in the financial statements, including depreciation, but excluding extraordinary items. Additionally, costs of capital are included as a measure for a reasonable profit.

In France, each freight terminal is either referred to as a "cour de marchandises" (goods yard) or as a "chantier de transport combiné" (combined transport yard). In the goods yards, the only service is provided by SNCF Réseau itself and comprises only the access and use of the terminal tracks. The railway undertaking that uses the terminal should handle the goods (loading/unloading) by its own means. The RU may also ask SNCF Réseau for storage area, which could be provisioned and charged separately. In the yards of the combined transport, the access and use of tracks are also the only services provided by SNCF Réseau. But in these facilities, the handling of the ITU (Intermodal Transport Unit) is delegated by SNCF Réseau to a third party, the terminal operator, who is fully responsible for its services (description and rates should be documented and provided to the IM in order to be included or attached to the NS). The French regulatory body monitors the books where IM presents detailed costs, mostly related to maintenance and surveillance of tracks and terminals, rail traffic management, internal management cost and taxes. A reasonable profit is also considered. Regarding SNCF Réseau's rates which are charged for access and use of tracks, the following costs are taken into account:

- maintenance and surveillance of tracks, OPEX and CAPEX,
- in goods yards but not in combined transport yards, maintenance and surveillance of the terminal (which only consists in a handling area), OPEX and CAPEX,
- rail traffic management in/out of the terminal,

- internal management costs (marketing and other overhead costs),
- taxes that are directly related to the activity.

Whenever capital expenditures are considered, it matches the sum of the amortisation annuity and the evaluation of what a reasonable profit would be for the current year.

Other services such as traction current or storage area provisioning, if requested and available, are charged separately (identical to running lines for current traction and according to a preliminary quote for storage). Assistance to abnormal circulation (very rare in France in the last years) would also be charged separately upon preliminary quote.

In Finland, track access that connects to service facilities is covered by the infrastructure charge. When it comes to the service facility itself, appropriate cost shall be calculated plus a reasonable profit.

In Romania, the access to the service facilities and the services provided in the service facilities are separated. The access to the service facility is simply judged by the direct cost plus a profit margin. For the services provided, they are charged at full cost (direct costs overhead & general cost) plus a profit margin. Depending on the specific service, there are special formulas for calculation of the charge, but the principles are identical.

III. Charging practices at freight terminals

The original paper on charges for freight terminals included an overview on the different services provided in a sample of selected terminals in Europe. According to the gathered data, those terminals provided services other than the service of handling containers, such as storage, shunting or maintenance, among others. The overview also provided information on the means (number of cranes, employees, etc.) and the capacity of the different facilities. The purpose of such analysis was to understand the way SFOs provide services at freight terminals, and how that affects charges. Due to the limited scope of the paper and the limitations of the data, the initial analysis could not study charging practices in-depth.

Nevertheless, the original paper showed that, in practice, some terminals provided several bundled services for which they charge a single tariff. It also showed significant differences regarding the level of charges, not only between terminals and countries, but also within the same facility. Indeed, at some terminals there were different tariffs for the same or similar services that depend on the way of provision.

This chapter revisits some of the issues regarding charging practices and provides a more in-depth analysis, as well as looks at how national regulation and RBs approach these practices.

A. Bundling of services

The Directive, when regulating charges for services in its article 31 (7) and (8), specifies that the charge imposed for the supply of services in service facilities listed in point 2 of Annex II (basic services), and for additional and ancillary services when offered by just one supplier, shall not exceed the cost of providing the service plus a reasonable profit.

This regulation leaves the door open for different interpretations regarding how charges are to be implemented in practice by SFOs when several related services are provided at the same facility.

One possibility might be interpreted in the way that charges shall reflect just the cost of individual services and their corresponding reasonable profit. This interpretation implies that, since the Directive just mentions "*the cost of providing it*" (the service), it implicitly set a limit for the charge of individual services. Following such reasoning, this limitation might act not only as a guarantee against setting tariffs above the level of actual costs of provision, but also as a signal that provides information to the applicants on the particular services. This signal might relate the level of charges with the provision of the service and its means, thus allowing applicants to get to know how expensive a concrete service is and allowing comparison with charges set in other terminals. Therefore, this way of understanding the regulation might lead to not permitting the practice of bundling services and to setting charges separately for each service.

This interpretation is supported by Implementing Regulation (EU) 2017/2177. Its recital (4) claims that "[*t*]*ransparency on conditions for access to service facilities and rail related services and information on charges is a pre-requisite for enabling all applicants to access service facilities and services supplied in those facilities on a non-discriminatory basis*". Additionally, recital (13) explicitly mentions that SFOs "*should not oblige applicants to purchase services offered in a facility, which the applicant does not need*". The Implementing Regulation reiterates this mandate in its article 8 (2) stating that "[*o*]*perators of service facilities shall not make the access to the facility or supply of a rail- related service subject to mandatory purchase of other services which are not related to the service requested*".

However, according to the data gathered for the original paper, some terminals supplied multiple services bundled together with the service of handling containers and charge a single tariff for them. In some countries, such as in Spain, this practice derives from the official definition of the service as provided by the RB, which, apart from the handling of the container, also includes its storage for up to two days at the terminal, control of the access to the facility, security and surveillance. Other terminals also bundle these and other services, which implies that all the costs related to the supply of all the bundled services are accounted for in order to calculate the cost of the overall provision of services.

These charging practices concerning the service of handling container that is observed in some freight terminals might be supported by an alternative way of understanding article 31 (7) and (8) regarding the possibility of bundling services. According to this interpretation, services and activities can be bundled (meaning that they are provided and charged together under a single tariff) if they are directly interrelated.

This relationship between services and activities may imply that some services are a pre-requisite for the provision of container handling or usually follow it. Additionally, this relationship could also derive from the fact that applicants usually request the same services when requesting the provision of container handling. Finally, this link could be based on the fact that these services use common spaces or means of provision, or simply apply to all services in the terminal. In this regard, Measure 48 of the document issued by the Italian RB (ART) on the ex-ante regulation measures applicable to MAP and rail-related services[1] establishes that "[*c*]*harges may be related to "sets of services" only if such services are supplied to all users in a unified way (eg. cleaning service of station common areas and public information services)*".

Indeed, the provision of the service of handling containers is closely related to other services, such as storage, container inspection or shunting, and it is not always possible to clearly differentiate and separate the different activities that compose each service. In this case, the identification of individual charges reflecting the cost of each service becomes a complex task, or simply meaningless, as applicants will request all the services anyway. Therefore, under this scenario, the practice of bundling services might be justified and SFOs shall be able to set their offer for services applying a single charge. In addition, sometimes, the supply of different services implies the existence of common activities or common costs which are difficult to allocate to different services in a clear manner. Therefore, bundling them simplifies the calculation of charges.

Nevertheless, even if this interpretation is followed, regardless of the number of services that are included in the same charge, it shall not exceed the overall cost of providing them all. Therefore, in this case, the charge is still limited by the cost of the services that are included. However, as opposed to the first interpretation, the charge might not necessarily provide information on the cost of the individual services, as identifying individual components is not possible.

On the other hand, there might be cases in which bundling services is not justified on the grounds of a close relationship between the services or shared activities and costs. In these cases, setting a single charge covering several services, even if it does not exceed the cost of providing them all, might not be adequate or justified, as it might force applicants to request services that are not needed for the provision of the main service or for which they might not be interested. Indeed, as mentioned before, article 8 (2) does not allow SFOs to make access to the facility and the concrete service subject to the purchase of unrelated services.

Given the possible interpretations of the Directive regarding bundled services under the same charge, it is worth analysing the way national regulation and RBs understand and apply this charging practice. IRG-Rail distributed a short questionnaire among members aiming at retrieving information on how national regulation address this issue and how it is understood by RBs.

[1] https://www.autorita-trasporti.it/wp-content/uploads/2015/12/Determination-of-charges-for-access-and-use-of-railway-infrastructure_ARTs-Regulatory-measures1.pdf.

According to the outcome of the questionnaire, in 9 out of 10 respondent countries regulation set by article 31 (7) and (8) is literally transposed or include minor adjustments that do not distort the way they might be interpreted. Only the French law includes a different provision that might alter the interpretation of that regulation and seems to favour an individualised pricing of each service.

When asked about their interpretation of the possibility of bundling services in a single charge and the implications of art. 8 (2) of IR 2017/2177, RBs provided mixed responses. The Lithuanian and Polish RBs do not have an official opinion on the matter, while the French and Slovenian RBs responded negatively to that possibility. On the other hand, RBs in Germany, Italy, Spain and Sweden responded that services can be bundled subject to the condition of a close relationship between services and as long as the pricing is transparent, and the applicants are not forced to purchase services that they do not require. In this sense, the practice of bundling services would respect the provisions of IR 2017/2177. In Finland, the situation is quite close to the above-mentioned countries, and the cases are analysed case by case. Finally, Belgium responded that, in general, this practice shall not be permitted, although they leave the door open to analysing it case by case.

As explained before, in Spain, which is one of the countries where the charge for handling containers includes other services, the RB carried out a consultation procedure to retrieve information on how this service was provided in practice. As a result of the consultation, the RB identified common traits in the way SFOs provided the service of handling containers and reached the conclusion that beyond the activities composing the actual handling of the containers, other services, such as limited time storage, were commonly bundled together. These services, indeed, share common means and spaces and are closely related to each other. Therefore, the RB concluded that the service of handling containers shall include these other services and charge for them using a single tariff.

The practice of bundling services is observed in other countries, such as in Lithuania, where the IM has set a single charge for access to the intermodal terminals, handling of containers and free storage for 30 days. This is also frequent in Germany, where SFOs sometimes bundle the service of container handling with limited time storage and, occasionally, with other services as well. For other countries, such as Finland and Sweden, the RB is not aware of SFOs implementing this practice, although they cannot exclude the possibility.

Finally, the outcome of the questionnaire showed that only a few countries have dealt with cases that involved bundled services, apart from the above-mentioned consultation carried out by the Spanish RB.

The German RB analysed a case dealing with the mandatory charge of brake testing at several bimodal freight terminals operated by one big company. In this case, an applicant had requested to be exempted from using the brake testing equipment at the terminal arguing that the mandatory brake test could be done by the applicant himself without the use of the service facility. The RB decided that the terminal operator is allowed to charge for the use of the brake testing facility, regardless of whether the applicant actually uses the facility for testing the brakes. The decision was justified on the grounds that brake testing was mandatory before the transportation of the cargo, so the service is

related to the handling of containers. Also, the decision claimed that, as the use of the brake testing facility is significantly less time consuming than conducting the brake test without the use of the facility, bundling the services may increase the capacity of the service facility.

The German RB also analysed another case, in which a service facility operator was requested to separate the charge for using the service facility from the charges for using the track scale as well as the storage sidings, because some applicants did not need those additional services, as they only passed through the service facility.

The Belgium RB has dealt with the possibility of bundling services in other service facilities (stations), deciding that a service package including PRM, communication and access, among others, should not be allowed. This RB is currently analysing the possibility of bundling all services related to communications at stations in a single package.

B. Differences regarding the quality of services at a terminal

With regards to setting charges for freight terminals, and the services supplied there, an interesting topic is how and if differences regarding the quality of services at the terminal should be taken into consideration when setting charges. This topic can be relevant for both the charging rule in article 31 (7) of the Directive and also for the more general objective of charges to be non-discriminatory in article 13 (2) of the Directive. The topic also serves as an example of potential cases where charges set in accordance with article 31 (7) can still be considered discriminatory.

The topic comes up at terminals where there are, for instance, differences between the quality of services/tracks in the terminal with regards to track or platform length, access to cranes/type of cranes, distance to container storage etc. With the example of tracks, some tracks could for instance be so short that multiple switching/marshalling operations are necessary for the entire train to be loaded/unloaded, while some tracks might not require switching/marshalling operations at all. In a complex facility with several railway undertakings using the terminal, an argument could be made that in the instance of the shorter tracks, the price should be lower to compensate for the additional cost of switching/marshalling that is necessary to use the tracks and to ensure non-discrimination. This could for example be in the case where an incumbent RU who owns and/or operates the terminal is already using the best quality tracks, and a newcomer is left to use the tracks of lower quality.

However, an opposite argument can be made with regards to the charging rule in article 31 (7); that is that as long as the operator of the service facility can prove that the charge for the lower quality services/tracks does not exceed the cost of providing, plus a reasonable profit, then differences in quality of the services at the terminal are not relevant with regards to setting charges.

These are complicated questions with no straightforward answers. Regulatory bodies will have to consider them on a case-by-case basis. For instance, with regards to the case with differences in quality present on a terminal and a newcomer RU being assigned the "lower quality" services, an important

consideration will be to investigate if the newcomer was given the possibility of non-discriminatory access to the "higher quality" services, or if they were reserved only for the incumbent RU. If the services were reserved, the right answer might be that the newcomer either should be provided access to the "higher quality" services, or that the charges for the "lower quality" services should be set to take the "lower quality" into consideration.

How to set the charges to take the "lower quality" into consideration, will depend on the service and situation in question. For instance, with the situation with some tracks being shorter than others, the initial charge could have been set as a flat charge per track without consideration of track length. In that case, the charge does not necessarily need to conflict with the charging rule in article 31 (7) of the Directive but will probably be considered discriminatory. Another approach may be to change to a price per meter of track used.

As a concluding remark for this section, it is important to note that the charging rule for service facilities does not, in all instances, necessarily guarantee non-discrimination. Operators of service facilities have the responsibility to be aware of this and take necessary measures to ensure that their prices are non-discriminatory.

The issue regarding possible discrimination of charges calculated according to regulation when applied in practice is a very complex and relevant topic that may be part of discussions in the future.

IV. Other related topics: Rolling highways

A. Introduction

Rolling highways are a form of combined traffic, which transports trucks by rail. Instead of other modes of combined traffic, not only freight is transported, but the whole truck and the drivers are transported. They are a form of piggyback transportation. Rolling highways are existing only in a few number of states in Europe and are often highly subsided. Therefore this paper presents results as Case Studies but does not compare them.

The main aim of rolling highways is to shift traffic from road to rail. They are often provided on transit routes so that a part of the journey of the trucks can be done by rail. The advantages for the freight forwarders are that the drivers can use the time on the train as a break or that high toll charges can be avoided by using the train on certain routes instead. To incentivise the use of these services, the government can give subsidies to freight forwarders using this service, as for example, in Austria, the service is directly subsidised. Another aim is to transport trucks where transport by road is not possible, like crossing the Channel, or where using the road is not economically beneficial, like crossing mountains where there is a railway tunnel, like the Gotthardtunnel or the Tauerntunnel.

One limitation is usually the maximum gauge height, which refers to the total size of the rolling stock plus load. If there is no extended gauge height on the line, like in the Channel Tunnel or in the Gottardtunnel, special rolling stock (flat cars) is needed to transport trucks

Rolling highways need freight terminals for their operations, namely for loading the trucks on the trains and unloading them. In contrast to other services for combined traffic, no gantry crane or reach stacker is needed, as the load has not to be lifted on the wagons. The trucks drive on the wagons/trains themselves, a much faster process than loading the cargo on the trains. Therefore only a small ramp is needed as well as a paved way to this ramp. As a number of terminals are using moveable ramps, only a pavement at rail level is necessary for trucks to go from the train and leave the freight terminal. A parking space for the trucks, including restrooms, are often also found on these freight terminals, providing these services. Also, storage is not essential for these services, in contrast to handling containers.

As the requirements for providing this service for freight terminals is significantly lower than for other services, it can also be provided in tiny terminals and will not need a significant investment for doing so.

B. Case study Austria

Rolling highways have been of great importance in Austria for at least the last thirty years as transit traffic has increased significantly. Especially the Brenner crossing (from Germany via Austria to Italy) is part of the Austrian transport policy to limit road traffic. As there has been a limitation on the numbers of trucks that cross this transit route, rolling highways have been a solution for shifting a number of these trucks to rail instead. Therefore, the Austrian government has subsidised rolling services.[2]

The Austrian government still subsidise rolling highways as part of a program to incentivise combined traffic. The level of the subsidy depends on the number of trucks transported and varies based on the time of day.

There have been several routes, where rolling highways have been provided to cross the Alps on different ways and between Eastern European states and Germany. At the moment, only three different routes are operating:

- Wörgl (close to the German border) to Brenner (on the Italian border)
- Wörgl (close to the German border) to Trento (Italy)
- Wels to Maribor (Slovenia)

[2] For further information please see: Allgemeine Fördermaßnahmen (bmk.gv.at).

Rail Cargo Austria, the national incumbent in freight services and a subsidiary of the OEBB-Group, is the only provider of these services.

The national IM, OEBB-Infrastruktur AG, is offering services for rolling highways in its terminals. At the moment, these services are provided in three terminals of the national IM[3]:

- Brenner
- Wörgl
- Wels

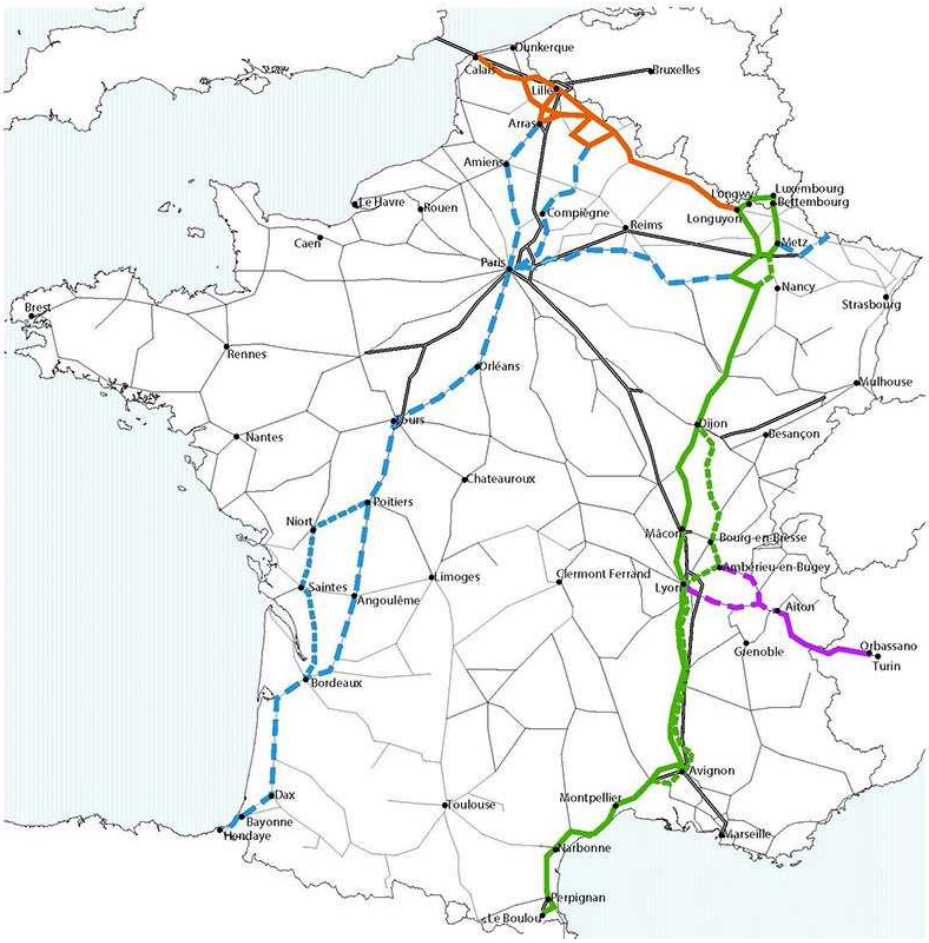
For this service, two charges are applied: one per wagon and one per train. The charge per wagon covers using the railway infrastructure in the terminal as well as the access ways to the loading track. The charge is 0,55 € per wagon. In addition, a charge is applied for loading and unloading the train. This charge varies by terminal between € 79,60 and € 88,70 per train.

C. Case study France

The French rolling highway network is structured around two historical axes. The first to be commissioned was, in 2003, the link between Chambéry (Aiton) and Torino (Orbassano, Italy) through the Fréjus tunnel in order to de-bottleneck one of the busiest transalpine road in the wake of the deadly 1999 Mont Blanc tunnel fire.

The second major axis goes from Perpignan (Le Boulou, near the Spanish border) to Luxembourg (Bettembourg) and Calais (see map below).

[3] Terminals - ÖBB-Infrastruktur AG (oebb.at)



Rolling highway routes in France, existing (coloured solid lines) and proposed (dotted), 2017

In 2019, most routes are served by 4 to 5 return trip per day. It's worth noting that French rolling highway convoys do not enjoy specific rail lines and use the national network thanks to low-loader wagon manufactured by Modalohr.

The main operator of this network is VIIA, a wholly-owned subsidiary of the SNCF group, who offers both the transportation service and operations in terminals.

Rolling highways account for 6% of the rail freight traffic in France and for less than 1% of the overall land freight.