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Relations between railway undertakings and buyers of rail transport services in international combined transport

Relations entre entreprises ferroviaires et acheteurs de prestations de transport ferroviaire en transport combiné international

Beziehungen zwischen Eisenbahnunternehmen und Käufern von Bahn-Transportleistungen im Rahmen des internationalen Kombinierten Ladungsverkehrs



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Summary

The purpose of the present leaflet is to:

- establish principles governing the provision of rail transport services by a railway undertaking to its customers, who either consolidate it into their own international combined transport product, or who use the service themselves. The leaflet does not cover any of the following ancillary services which may also be offered: supply of wagons and ITUs, organisation of handling in yards and of terminal run sections;
- define a cooperative framework in line with the needs of international combined transport partners to develop their product range and effectively compete with other transport modes.

1 - General principles

1.1 - The purpose of this document is to

- establish principles governing the supply of railway services to Customers by a railway undertaking, hereafter referred to as RU, either for consolidation into their own international combined transport product (hereafter ICT) or else for the sole use of these Customers themselves. The following potential ancillary services are not covered: supply of wagons and ITU, organisation of handling in yards and of terminal run sections;
- establish a framework for cooperation in line with the needs of ICT partners to develop their product and face competition from other modes of transport.

1.2 - The following principles underlie this document:

- With the entry into force of *EEC directive 91/440* (see [Bibliography - page 31](#)), all RUs established in a member state, whether operating individually or in cooperation, are in a situation of potential or actual competition for rail transport services in ICT. As a result, a purchaser may approach the RU of its choice, which will then decide whether to accept the request depending on its possibilities.
- Moreover, contracts for carriage by rail shall be drawn up under conditions which ensure non-discriminatory treatment under equivalent conditions and enable the Customer to envisage a return on investment. ICT is a complex technique which necessitates research and investment costs resulting in considerable financial risk for all partners in the chain, Customers and railway undertakings.
- The complexity of the ICT chain therefore requires close cooperation between the partners involved and in particular railway undertakings and combined transport operators.

2 - Rules governing relations between the RU and the purchasers

2.1 - Relations between the RU and the purchasers of rail transport services in international combined transport are governed by:

- the rules that follow,
- the model contracts given in Appendices **A - page 11** and **B - page 20**.

2.2 - The production and supply of rail transport for ICT are the responsibility of the RU, acting on a Customer's request or on its own initiative.

2.3 - There are two methods for marketing these transport services:

- capacity sales,
- ITU (unit) sales,

each of which is governed by its own rules and common rules.

3 - Capacity sales

3.1 - Definition and characteristics

3.1.1 - Capacity sales in the context of this leaflet shall be understood as a bilateral pledge covering transport services using either a complete train or operating system, or using part of a train or operating system, expressed in gross hauled tonnes and in metres.

Under the terms of this contract, the RU has a dual obligation: (1) to reserve a given capacity for a Customer; (2) as a principal service, to carry from one point to another the goods handed-in for carriage.

3.1.2 - Given the scale of fixed costs generated by the running of a train, there is a point of equilibrium beyond which the RU may reserve the right to refuse carriage requested by one or more Customers.

In commercial negotiations this point of equilibrium shall be calculated in terms of minimum operating capacity (CME), expressed in gross tonnes hauled by the RU and applied to all purchasers on a non-discriminatory basis.

3.2 - Capacity sales scenarios

3.2.1 - Contract renewal for a train or operating system already in existence.

3.2.1.1 - Customers who have already reserved capacity on a train or a operating system may qualify for priority treatment. This entitlement is granted for the renewal of existing contracts not exceeding the capacity which they possessed previously.

3.2.1.2 - The RU shall inform the users concerned of the technical and financial conditions under which these preferential rights may be applied. Each user is granted a period of one month within which to accept the proposal made, starting from the date of notification.

If the incumbent operator does not accept the technical and financial conditions of the renewal, the railway undertaking or railway undertakings may sell these services to other customers. However, if following refusal by the incumbent operator the railway undertakings amend the technical and financial conditions which had been proposed, the new conditions must be presented to the incumbent operator so that they have the opportunity to exercise their preferential rights and avoid all risk of discrimination.

3.2.2 - Capacity sales on a train or operating system to be created

3.2.2.1 - Sale on request from purchaser

A contract of capacity sale on a train or operating system to be created shall be concluded with the Customer making the request, assuming no capacity shortage costs.

3.2.2.2 - Sale on the initiative of the RU

1. When leadership for this creation is taken by the RU, the invitation to tender shall be advertised in at least five specialised transport publications with a circulation within the European Union, as well as in the other State (or States) concerned if the service is an international combined transport movement between the Community and a third country or countries.

The advertisement shall give precise details of the technical characteristics of the offer (contract duration, timetable, speed, axleload, maximum hauled load, length, etc.) as well as the deadline for tendering. All purchasers shall be given the price of the minimum operating capacity, on request by the agent of the seller indicated for this purpose in the advertisement.

2. Contracts shall be drawn up with the purchasers whose acceptance has been received by the seller's agent, on expiry of the deadline, assuming no capacity shortage exists.

3.2.2.3 - Common rules in case of capacity shortage

Where the volume of requests received under the terms of point 3.2.2.1 or of acceptances referred to in point 3.2.2.2, exceeds that of the capacity available to the RU in question, the latter shall arbitrate between the interested parties and apply, according to its choice - which must be indicated in the general conditions of carriage - one or other of the following procedures: either sign the contract with the purchaser(s) offering the highest price or, provided no new competitor is denied entry as a result, give priority to its own purchasers of rail transport services on the market concerned.

A Customer may withdraw its request on acceptance if the final offer made does not match the volume it had originally requested.

3.2.3 - Sale of residual capacity

Capacity not allocated on any existing train or operating system may be assigned on request from Customers or on the initiative of the RU. Customers who have already reserved capacity on this train or operating system may qualify for priority treatment within the limits in point 3.2.2.3.

3.3 - Termination of capacity sales

3.3.1 - Duration - the duration of capacity sales contracts may not exceed the period for which the train path in question has been allocated to the contracting RU. Subject to this proviso, contracts may be concluded for a maximum period of five years.

3.3.2 - Force majeure/inevitable event - the contract shall automatically cease to be operative when its execution is definitively impeded by circumstances which one of the parties cannot avoid and where remedial action does not depend on that party.

Withdrawal of a train path used is considered as **an inevitable event** where this withdrawal is imposed on the railway undertaking by external factors. The RU shall advise every purchaser concerned by this withdrawal without delay. Where execution of the contract is impeded only temporarily, the contract shall be suspended for the period in question. However, the parties may agree on a maximum suspension period at the end of which the contract will be terminated.

3.3.3 - Cancellation - if one of the parties fails to fulfil its obligations, the other shall call upon it to rectify the situation, and shall lay down a reasonable deadline to this effect. Failure to comply within this period shall result in automatic cancellation of the contract without further notice or proceedings.

The contract may also be cancelled automatically by the purchaser on losing the bulk of his business volume, subject to a notice period to be defined in the contract.

The RU may also cancel the contract automatically when, as a result of default on the part of one or more purchasers, the minimum operating capacity is no longer reached on a given train or operating system. The RU shall then guarantee the remaining purchasers a maintained service for a period to be defined in the contract, or until the date stipulated in the contract, whichever comes first.

In case of failure to observe the prior notice, the party initiating the cancellation shall pay damages to the other party on account of the damage sustained. In case of disagreement, the case shall be referred to the arbitrating body indicated in point **5.2.3 - page 9**.

3.3.4 - Guarantee - the Customer may be asked to provide banking (or assimilated), security, which shall be equal to the amount of the financial commitment corresponding to the period of payment granted.

4 - ITU sale

4.1 - Definition and characteristics

4.1.1 - ICT rail transport services may also be supplied on a "per-ITU" basis (container, swap body, semi trailer or other) or on a "per-wagon" basis.

4.1.2 - The Customer shall be committed either for a single trip or for a period to be agreed freely between the parties.

4.1.3 - ITU sales shall be concluded following the order in which requests are received (first come, first served).

4.2 - Tariff structure

4.2.1 - The establishment of tariff structures must not lead to price levels being fixed.

4.2.2 - Tariff structures must not generate unjustified disparity between RU Customers.

4.2.3 - Where the tariff structures are modified, steps shall be taken to ensure that the operation is financially impartial with regard to all parties.

4.2.4 - The same tariff structure shall apply without discrimination to all purchasers of ICT rail transport services.

4.2.5 - Minor changes may be made to the tariff structure following consultation with the purchasers and subject to one year's prior notice.

4.2.6 - New tariff structures shall generally be valid for at least five years.

4.3 - Price

4.3.1 - The RU shall guarantee the basic price of the service for a period of one year.

4.3.2 - RUs shall publish (conversion tables) for their route sections, to enable end-to-end prices to be calculated for international wagon-sort traffic.

5 - Joint rules

5.1 - Customer transport request

5.1.1 - Submission of request.- a Customer may submit a request to an RU in writing for ICT rail transport services.

5.1.2 - Any RU established in the European Union may be presented with a request of this kind, whether it is established in one of the member states actually served by the train/operating system in question or not.

5.1.3 - Where the request cannot be met by the RU in question, the latter may propose a transport service with equivalent or similar characteristics.

5.1.4 - Refusal of request - the RU may reject the request in the following cases in particular:

- when it considers the technical or financial capabilities of the applicant to be insufficient, or its credibility to be inadequate;
- when the purchaser does not provide the financial guarantee referred to above (see point 3.3.4 - page 6) ;
- when demand is below the minimum operating capacity;
- when it is not possible, for technical reasons, to execute the transport operation (lack or unsuitability of traction stock or necessary staff);
- when the train path is not available, following arbitration by the infrastructure manager;
- in the case of dishonesty.

5.2 - Contract contents

5.2.1 - Mutual obligations

5.2.1.1 - ITU and capacity-sales contracts define the scope of the obligations incumbent upon the parties.

More particularly, the RU shall:

- pledge to operate or continue to operate the trains or transport schedules necessary for the agreed transport to be effected;
- ensure that the goods are transported as agreed with their accompanying documents, while observing the contractually specified quality of service;
- ensure that destinations are served and yard-shunting is performed in under the agreed conditions;
- keep the parties informed of any incidents affecting the wagons and their ITU loads during rail transport, as well as those resulting in non-compliance with the agreed timetable;