

The Liberalization Process of the Railway Sector in Romania and European Union Countries

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Abstract

While the railway sector has historically been an important component of the transport industry in the EU, it has seen, in the last 30 years, its market share constantly declining in comparison with other modes of transport (especially road transport), both for freight and passenger transport. Furthermore, this was a sector characterized by national markets, the presence of a monopolistic operator controlling the infrastructure and the services as well as major State subsidies, which did not encourage efficiency. This article makes an overview of the Romanian Railway sector, analyzing the impact of the liberalization process and institutional reforms in Romania on the Railway industry.

Keywords: *liberalization process, railway sector, legislative framework, competition rule, country development*

JEL classification: G34, G38, O16

Introduction

The liberalization of the railways is a critical element of the internal market. The European Commission considers it to be an objective of utmost importance, not only for EU transport policy, but also for economic policy at large (Finger and Künneke, 2006). An efficient railway transport is critical for EU competitiveness as railway services constitute a considerable input in various sectors of the economy. It is also a critical element of the single market and brings benefits for all consumers throughout the EU (Mihail, 2014). The EU aims to develop a sustainable transport policy which meets the society's economic, social and environmental needs (Banacu et. al., 2013). Effective transportation systems are essential to Europe's prosperity, having significant impacts on economic growth, social development and the environment (Héritier, 2001; Busu, 2015). The transport industry accounts for about 7% of European GDP and for around 5% of

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employment in the EU. It is an important industry in its own right and makes a major contribution to the functioning of the European economy as a whole (Bošković and Bugarinović, 2015). Mobility of goods and persons is an essential component of the competitiveness of European industry and services (Busu et. al, 2015). Finally, mobility is also an essential citizen right.

Timely implementation of EU legislation is also important from a legal viewpoint. Abiding by legislation enacted by the European Parliament and the Council is a critical element of membership to the European Union (Laperrouza, 2009). Failure to comply could lead to action before the Court of Justice (“Court”) and, ultimately, to fines and periodic penalty payments (Kunneke and Finger, 2007). Under certain circumstances, the Court has also allowed individuals the possibility of redress where Directives have been transposed inadequately or too late (Busu, 2014). The Court considers that a Directive has direct effect towards the Member State when the deadline for transposition has elapsed (i.e. a railway undertaking may rely on it in court even if not transposed into national law). Even before their implementation deadline has elapsed, Member States cannot ignore EU Directives, as the case law of the Court specifies that, even before the formal deadline for implementation, Member States must “*refrain [...] from adopting measures liable seriously to compromise the result prescribed.*”

1. The legislative EU framework

The European Commission launched a liberalization process of the railways sector in the early nineties by promoting a progressive opening to competition, starting essentially with freight and international routes to progressively include passenger and domestic routes. The process has evolved through the railway packages, which have progressively refined and strengthened the original objective of reducing the importance of national boundaries and bringing competition into the rail sector.

To advance the liberalization process, the European Commission used the EU competences under Articles 90 to 100 and 170 of the Treaty on the Functioning of the European Union (“TFEU”) to adopt various legislation to progressively open up the railway sector. After the adoption of the first Directives, the EU adopted three legislative packages, and one Directive recasting several former Directives into one document in 2012. The Council and the Parliament are currently discussing the possible adoption of a Fourth Package. These various sets of legislation are further described below.

The First Package expands the liberalization process and effectiveness of the EU railway network functioning by extending equal and non-discriminatory access to the infrastructure to any railway operator licensed within the EU for providing freight services. While first limited to the TERFN (from March 2003), it was to be extended to the entire European Rail Network from 15 March 2008 for international freight services (although there was no provision for cabotage).

The First Package was implemented in Romania by the Government Urgency Ordinance (“GUO”) no. 125/2003, approved by the Law 128/2004 completing the

GUO No. 12/1998 regarding transport on Romanian railways and the reorganization on the National Railway Company.

Based on a new White Paper entitled European Transport Policy, the **Second Railway Package** of 2004 has accelerated the liberalization process in particular for rail freight services by fully opening the rail freight market to competition as from 1 January 2007. This Package emphasized the importance of standardization in all aspects of the railway sector (safety, licences, levying charges, interoperability, access rights to freight services). Finally, it establishes a European Railway Agency (“ERA”), whose competences are gradually increasing.

The Second Railway Package also integrated a Decision on the EU’s Accession to the Convention concerning International Carriage by Rail (“COTIF”). The COTIF includes, mainly, uniform rules concerning

- (i) contracts for the international carriage of passengers and goods;
- (ii) contracts for the use of vehicles in international rail traffic; and
- (iii) infrastructure access contracts.

Based on a review of the 2001 White Paper, the Parliament and the Council adopted the **Third Railway Package** in October 2007. It provides for the opening up of the international passenger transport market by 1 January 2010. Access rights thus apply for international rail passenger services, including cabotage. In addition, the Third Package launched a European driver licence allowing train drivers to circulate on the entire EU network. Finally, the Package strengthened the rail passengers’ rights by setting up minimum quality standards (e. g., non-discrimination of persons with reduced mobility and availability of train tickets and personal security of passengers at each stage of their journey, guaranteed to each passenger on all lines, as well as specific rights guaranteed to the long-distance travellers).

On 30 January 2013, the European Commission unveiled a proposal for a **Fourth Railway Package** in order to achieve its true Single European Railway Area. It includes a general Communication as well as six legislative proposals. The Package seeks first to finalize the liberalization process by opening up competition to the domestic rail passenger market and achieving its liberalization by December 2019.

The Package seeks to harmonize (standards and approvals) to reduce the administration costs of rail companies. The Fourth Package would make ERA a “one-stop shop” issuing EU wide vehicle authorizations for placing on the market as well as EU wide safety certificates for operators. Currently, rail authorizations and safety certificates are issued by each Member State.

The Fourth Package will improve infrastructure governance by:

- i. Strengthening infrastructure managers so that they control all the functions at the heart of the rail network (e.g. infrastructure investment planning, day-to-day operations and maintenance, as well as timetabling). The new proposals will ensure that only a single entity – the infrastructure manager – performs all the functions related to the development, operation, including traffic management, and maintenance of the infrastructure.

- ii. Ensuring that the network is developed in the interests of all players, the Commission is proposing the establishment of a Coordination committee which will allow all infrastructure users to express their needs and ensure that the difficulties they encounter are properly addressed. The aim is to make infrastructure managers more market-oriented and guarantee that their infrastructure allocation, charging, maintenance and renewal policy meet the demand of all users of railway infrastructure.
- iii. Strengthening cross-border cooperation between infrastructure managers. The Commission is proposing the creation of a Network of Infrastructure Managers to ensure that the issues of cross-border and pan-European nature are properly addressed by infrastructure manager in a coordinated manner. These issues include the implementation of the TEN-T network, rail freight corridors and ERTMS deployment plan.
- iv. Separating management of the tracks and running of the trains. The EU considers that the infrastructure managers must have operational and financial independence from any transport operator running the trains. This is in order to try to remove potential conflicts of interest and give all companies access to tracks in a non-discriminatory way.

Hence, as a general rule, the Commission's proposal confirms institutional separation as the simplest and most transparent way to achieve the necessary independence. The institutional separation between infrastructure managers and railway undertakings (without ownership relations between the two types of entity) would become the applicable rule by default from the time of the Fourth Package's entry into force. Based on the proposal, it would not be possible to create holding structures in the rail sector anymore unless it puts in place strict "Chinese walls" to ensure the legal, financial and operational separation, including for example: totally distinct decision-making bodies preventing discriminatory practices; separate financial flows; separate IT systems to avoid leaking of confidential commercial data; and stringent cooling-off periods for transfer of staff to eliminate conflicts of loyalty. Rail undertakings, independent of infrastructure managers, will have immediate access to the internal passenger market in 2019.

2. Overview of the Romanian railways sector

The Romanian railway network under management of CFR Infrastructura. Other State-owned companies are CFR Calatori (rail passenger operator), CFR Marfa (rail freight operator), CFR Gevaro (services linked with restaurant cars); and SAAF (company dealing with excess rolling stock to be sold, leased or scrapped). Private rail freight operators have also entered the Romanian railways sector, in particular Grup Feroviar Roman (GFR), Servtrans Invest, Cargo Trans Vagon, Unifertrans, DB Schenker Rail Romania, and Transferoviar Grup. The Romanian State has made several attempts to privatize CFR Marfă, the last of which dates from October 2013.

2.1 Romanian railway network

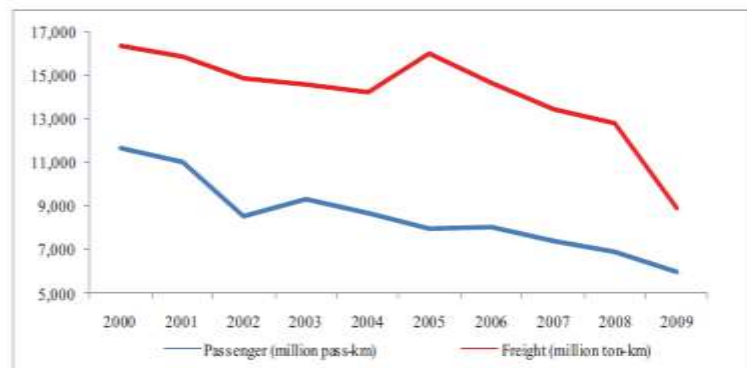
Today, the entire railway network under management of CFR Infrastructura is approximately: 20.077 line-kilometers long in 2012. The Romanian state is crossed by two Trans-European Transport Network (TEN-T) rail corridors (figure 1):

- i. Corridor IV, which links Arad to Bucharest; and Constanta, starting in Dresden and ending in Istanbul; and
 - ii. Corridor IX, which connects Romania to Moldova, Bulgaria and beyond.
- The network density is equivalent to the EU average.



Figure 1 Romania railway network
(Source: World Bank)

Over the last decade, the rail traffic in Romania has been declining (figure 2 below). The combined traffic of CFR Calatori (49%) and CFR Marfa (67%) declined by 59% over the period 2000-2009.



Source: UIC.

Figure 2 Railway Traffic in Romania - Freight and passenger (2000-2009)
(Source: UIC)

By way of comparison, the following chart shows that, excluding the year 2009, the evolution of traffic steadily increased in the entire EU (figure 3 below).



Source: Eurostat.

Figure 3 The EU market for Freight and Passenger Services
(Source: Eurostat)

2.2 The impact of the liberalization process and institutional reforms in Romania on the Railway industry

In 1998, Romania separated the national operator into different companies, following a "vertical separation" model, and introduced competition among freight operators through the provision of "open access" to the infrastructure.

CFR separation. The Romanian railways reform dates back to 1998, when Romania decided to split the then-existing SNCFR, into five independently-administered companies. While strictly separated, those companies nevertheless remain owned by the Romanian State today. The five companies are the following:

CFR Infrastructura (infrastructure manager);

CFR Calatori (rail passenger operator);

CFR Marfă (rail freight operator);

CFR Gevaro (services linked with restaurant cars); and

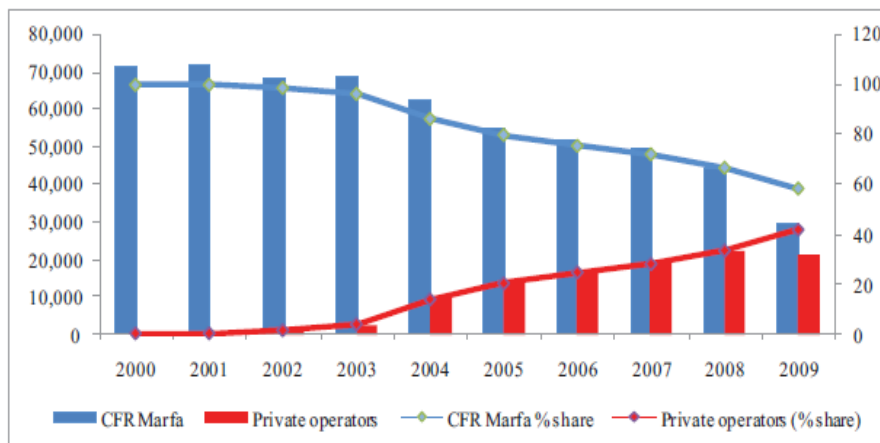
SAAF (company dealing with excess rolling stock to be sold, leased or scrapped).

This reform was triggered to a certain extent by the efforts deployed by Romania in fulfilling the criteria to join the European Union and its main objective was to allow the new companies to operate on a commercial basis and to ultimately also allow the possibility of privatizing the companies.

The Romanian State has made several attempts to privatize *CFR Marfa*, the last of which dates from October 2013. None has been successful so far. The main activity of CFR Marfa consists of rail freight transport within the local and international traffic with full wagons and intermodal transport units, which are all accessory rail freight services. The company's activity area is represented by the entire Romanian railway network. The company is organized in 4 branches: Muntenia-Dobrogea, Banat-Oltenia, Transilvania and Moldova, 89 management stations, 8 depots operating locomotives (907 locomotives) and 12 wagons revisions (22.000 locomotives). CFR Marfa also recorded a major staff restructuring in the last few years, as the company has reduced its the number of employees by 70%.

The activities of the operators in the Railway sector have posed some competition concerns in the past. The sector is dominated by state-owned companies: the National Railway (Infrastructure) Company (CFR SA), the National Railway (Passenger) Company (CFR Calatori) and the National Railway (Freight) Company (CFR Marfa), as well as some of their subsidiaries. However, new private rail freight operators entered the Romanian railways sector, and to date, the development of private freight operators has been strong (24 new private companies since 1998), eroding the market share of CFR Marfa. The main competitors of Marfa are: Grup Feroviar Roman (GFR), Servtrans Invest, Cargo Trans Vagon, Unifertrans, DB Schenker Rail Romania, Transferoviar Grup.

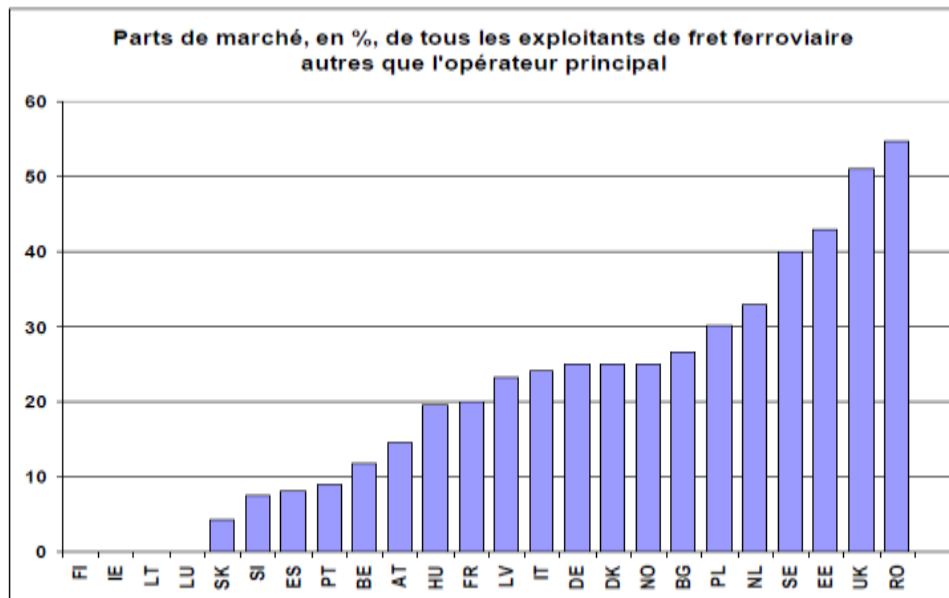
By the end of 2011, the market share percentage of CFR Marfa was reduced to about 45%.



Source: CFR Marfa.

Figure 4 CFR Marfa Traffic and market share in comparison with Private operators ('000 tons)

(Source: CFR Marfa)



Source: RMMS questionnaire completed by Member States in May-June 2011

Figure 5 Total Market shares 'expressed as a percentage of traffic in tone-kilometers) of freight operators other than the main operator at the end of 2010
(Source: RMMS)

Conclusions

To sum up, Romania has, at the present time, a substantial number of private operators managing rail freight transport. The evolution of rail freight transport indicates that private operators do exercise some competitive pressure on the former monopolist.

It should also be pointed out that Romanian Competition Council found, in 2005, that CFR Marfa abused its dominant position on the market of ancillary services for freight railway transport by differentiating and increasing the charges applied for its services, depending on their beneficiaries and refusing to deal with certain beneficiaries and to sign new service agreements therewith (Andrei and Busu, 2014).

As illustrated above, the EU legislator has considerably developed the EU railway sector by encouraging competitiveness and market opening.

Greater competition should make a more efficient and customer-responsive industry (Nastase, 2009). In parallel, measures should improve the interoperability and safety of national networks and promote the development of well-integrated rail systems leading to 'European', rather than 'national', rail systems.

In order to achieve these objectives, first, starting in 1990, some limited degree of market opening impelled the railways to improve efficiency by establishing management independence of railway undertakings from the state and

separation of accounts between infrastructure management and transport operations. The second step towards European railways was the adoption of packages of legislative measures in the years 2000.

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