BRUSSELS RAIL TRANSPORT BRIEF: MARCH 2020

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European Regulatory Alert

By: Miguel A. Caramello Alvarez, Philip Torbøl, Alessandro Di Mario, Nicolas Hipp, Francesca Lai

ANTITRUST AND COMPETITION

The Court of Justice of the EU Confirms the Legality of Certain Commission's Inspections

On 30 January 2020, the Court of Justice of the EU ('CJEU') has rejected appeals filed by the Czech national railway operator, České Dráhy ('CD'), against two judgments from the lower court of the EU (the General Court of the EU, 'GCEU'), regarding Commission decisions to inspect CD's premises.

In January 2012, the Czech Competition Authority ('CDA') opened formal proceedings against CD over an alleged abuse of its dominant position by offering predatory pricing on the Prague-Ostrava passenger transport line. In this context, the CDA carried out unannounced inspections (so-called dawn raids) at CD's premises.

While these proceedings were ongoing, in April 2016 the Commission adopted a decision ordering CD to submit to an inspection ('Falcon Decision'). The decision notably indicated that the Commission had obtained information suggesting that, at least since 2011 when private competitors started to offer passenger transport services, CD engaged in predatory pricing notably on (but not limited to) the Prague-Ostrava line and in other forms of infringements. The decision also mentioned that the Commission was aware of the ongoing national proceedings regarding the same conduct and that the CDA had carried out dawn raids in 2012. During its own inspection, the Commission found material regarding another potential competition law breach (anticompetitive agreements). Two months later, in June 2016, the Commission adopted another decision ordering CD to submit to an inspection ('Twins Decision'). This second decision concerned alleged anticompetitive agreements regarding the sale of used rolling stock.

Regulation 1/2003 gives a wide range of powers of investigation to the Commission in the context of alleged infringements of antitrust rules. Under Article 20(4), the Commission can conduct inspections based on a binding decision, to which concerned companies are legally required to submit. Such a decision must specify, inter alia, the subject matter and purpose of the inspection.

In June and August 2016, CD brought two actions before the GCEU seeking the annulment of the two Commission decisions on inspection of their premises.

In the action against the Falcon Decision, CD argued that the delineation of the subject matter and purpose of the inspection was too wide, covering almost all possible behaviour in the passenger rail transport sector in Czech Republic.

CD also argued that the Commission had no evidence giving grounds for suspicion of an anti-competitive conduct, which would support the adoption of an inspection decision. The GCEU noted that, at the time it adopted the Falcon Decision, the Commission had reasonable grounds for suspecting predatory pricing on the Prague-Ostrava line from 2011. However, it added that this was not the case with respect to other lines and other practices than the alleged predatory pricing practices. As a result, the GCEU partially annulled the Falcon Decision, insofar as it concerned practices other than the alleged predatory pricing on the Prague-Ostrava line from 2011.

In the action against the Twins Decision, CD argued that the Commission could not use material obtained during a previous inspection, which was carried out on the basis of the Falcon Decision, which is illegal. It also argued that, although the material was obtained during the Falcon inspection, it was outside the scope of the Falcon Decision, as it only covered an abuse of a dominant position, but not an anticompetitive agreement. The GCEU first noted that it had only partially annulled the decision ordering the Falcon inspection. Therefore, such an annulment could not automatically lead to the annulment of the Twins Decision. The GCEU added that the document that served as the basis of the Twins Decision were in the admissible scope of the Falcon inspection as it contained specific information on CD's costs, which are relevant for the assessment of an abuse of a dominant position. As a result, the GCEU dismissed the second appeal in its entirety.

CD appealed these judgements' to the CJEU, which dismissed both appeals in their entirety. In the first appeal, CD considered that the Falcon Decision was not sufficiently reasoned, considering that the Commission should have rely on the detailed information from the Czech Competition Authority. The CJEU replied that the Commission did not have to rely on the information from the national authority to justify the inspection, moreover since this information was collected on the basis of non-EU legal provisions. The CJEU added that the Commission had sufficient evidence to establish a suspicion of a breach of EU antitrust rules and did not have to consider elements of defence at this stage of the proceedings. Indeed, the administrative or judicial proceedings give concerned companies the opportunity to respond. In the second appeal, CD asked the CJEU to set aside the GCEU's judgment regarding the Twins Decision since the GCEU's judgment regarding the Falcon Decision should be set aside. The CJEU replied that there is no need to assess such a plea since it dismissed CD's first appeal.

The CJEU's judgements' provide additional clarity regarding the Commission's powers of inspections. Especially, it clarifies that the Commission's duty to state reason in an inspection decision does not require detailed information on the alleged infringement. It also confirms that findings of unrelated additional breaches of competition law found within the course of an inspection on other grounds may be used.

Alstom to Acquire Bombardier's Rail Activities

On 17 February 2020, the Canadian company Bombardier has announced it will sell its rail activities to the French industrial and rival company Alstom. Bombardier gave a transaction value of €7.45 billion, and set a closing deal for the first half of 2021, subject to regulatory approvals. The move would allow Alstom to become the global number two rail manufacturer and Bombardier to focus its 'energy and capital' on its aviation activities. An acquisition of Bombardier's rail business by Alstom would constitute a move to counter Chinese competition — particularly from CRRC — and would undoubtedly lead to scrutiny from antitrust regulators around the world (including from the Commission). This announcement comes not long after the Commission stopped the planned merger of Alstom with the German company Siemens a year ago, a move that prompted the fury of governments in both Paris and Berlin and led to intense lobbying from the two countries to trigger a change in Europe's merger control rules.

Network Rail and Achilles Heard in Court over Competition Dispute

Hearings have taken place in the Achilles/Network Rail case: the dispute started in 2018 when Achilles sued the rail infrastructure operator Network Rail for competition damages over the provision of its mandatory supplier-assurance scheme under the Railway Industry Qualification Scheme. Network Rail, Achilles argued, locked it out of supplying the assurance program by using only one scheme, at the expense of potential rivals. The British Competition Appeal Tribunal sided with Achilles in July 2019, which prompted Network Rail to appeal the decision of the Court of Appeal, arguing it was ill founded on several grounds. In answer to Network Rail's arguments, Achilles attacked the appellant's grounds of appeal, saying that Network Rail should set reasonable and proportionate standards of assurance for providers to meet instead of unreasonably locking them out. The Court of Appeal is expected to render its judgment at the earliest opportunity.

The UK's Rail Regulator to Look into Rail Signalling

On 27 January 2020, the UK rail regulator, the Office of Rail and Road ('ORR'), opened a probe to investigate rail-signalling suppliers. Given the significance of rail signalling and its share in the British infrastructure manager Network Rail's spend (€4.73 billion over the period 2014-2019), the ORR said it wants to focus on competition for tenders and examine whether any barriers to new entrants or innovation are hampering competition. The ORR particularly looks at whether there is a fair and commercially reasonable access to interlocking technology and other necessary infrastructure to the delivery of big signalling projects in the UK. This focus on signalling comes as signalling infrastructure's costs are expected to rise amid digital railway rollout — the ORR says it does not want competition issues to slow down the project and drive up its costs.

EU Under Pressure to Update Competition Law Enforcement

Some of the largest EU Member States called on the Commission to review its horizontal merger guidelines. In a letter addressed to the Commission Executive Vice-President in charge of competition, Margrethe Vestager, France, Germany, Poland and Italy argued that the EU's competition 'toolbox' must be modernized in light of current challenges such as globalization or digitization. This letter comes as the Commission is updating its competition guidelines in the midst of a crisis that started after its decision to prohibit the Alstom/Siemens decision last year — a move that prompted strong criticism from Member States like France and Germany. Particularly, the authors of the letter asked the Commission to review its market definition notice to take better account of international competition and give the European merger review regime more flexibility. Moreover, they called on the Commission to consider behavioural remedies, which are currently seldomly used, and to provide more information to stakeholders when assessing a merger's efficiencies.

The letter also address other issues, which have been in the Commission's line of sight for some time. For example, Mrs Vestager announced that she is looking into new transparency requirements for foreign state-owned enterprises active in the EU market. Her declarations come as the Dutch government proposed heightened transparency obligations on such companies, particularly Chinese ones. Mrs Vestager also hinted at a reform of competition law in the field of data sharing, as (at least competing) companies suffer from legal uncertainty under the current rules when sharing data. The new rules may allow undertakings to share data without contravening competition law. In that regard, Mrs Vestager announced that she will act to ensure companies have better access to data possessed by other undertakings and to promote data pooling and use, as part of a broader strategy for data unveiled on 19 February 2020.
The new guidelines are expected for 2021.

Romania Must Recover Illegal State Aid Received by Rail Freight Transport Service Provider Societatea Naţională de Transport Feroviar de Marfă

The Commission has found that the Romanian state-owned rail freight operator, Societatea Naţională de Transport Feroviar de Marfă ('CFR Marfa'), has received at least €570 million of incompatible state aid through a debt write-off and a failure to collect debts from the company. The Commission considered that Romania, acting in its capacity as a public authority rather than a shareholder of the company, granted an unfair economic advantage to CFR Marfa by allowing the state-owned freight operator to write off its debt and abstained from actively enforcing the repayment of debts for years without a sufficient monetary compensation. These measures constitute a state aid within the meaning of EU rules, and Romania must now recover €570 million of illegal aid, plus interest, from CFR Marfa.

State Aid & Public Services Obligations: The Court of Justice Issued its Judgment in the Buonotourist and CSTP State Aid Cases

In its judgment from 4 March, the Court of Justice of the European Union ('CJEU') dismissed in its entirety the appeal filed by Buonotourist against a judgment of the EU General Court from 18 July 2018 confirming a Commission decision from 2015 finding that Buonotourist had benefited from State aid incompatible with the EU's internal market. In its decision, the Commission ordered that the aid be recovered by Italy. The aid was granted by the region of Campania following an Italian administrative court ruling in favour of Buonotourist's request to be compensated by Campania for losses it endured when it provided services related to public service obligation (in particular, a concession for bus route networks in the Regione Campania). As a result, the region of Campania paid Buonotourist the requested compensation, but before the Commission could issue a decision on the compatibility of the aid following a notification by Italy. The Commission therefore treated the payment as an unlawful State aid (i.e., implemented without prior Commission authorization).

The CJEU confirmed the Commission's and General Court's conclusion that the aid was incompatible and notably that the aid did not meet the Altmark test. In the 2003 Altmark judgment, the CJEU held that a public service compensation does not constitute a State aid when four cumulative conditions are met. The CJEU noted that appellant did not demonstrate the presence of a public service obligation unilaterally imposed on Buonotourist (the first Altmark condition). As a result, since the first condition of the test was not met, the CJEU did not assess whether the second condition was met.

The CJEU also recalled that, although national courts can determine whether an aid is unlawful, only the Commission is competent to assess the compatibility of an aid. This exclusive competence remains even when a national court already issued a judgment on the matter. Indeed, the appellant argued that the Commission lacked the competence to adopt a decision on the compatibility of the aid since the Italian Council of State had already adopted a decision on the matter, which has the force of res judicata.

On the same date, the Court of Justice gave a similar judgment in CSTP Azienda della Mobilità v Commission (C-587/18 P). In the mentioned case, the aid was granted by the same public authority.

Denmark Unveiled New Turnover Calculation Rules

The Danish competition authority, the Competition and Consumer Agency ('CCA'), has changed the way it calculates undertakings' turnover, following a change in the Denmark Competition Act (entered into force on 1 January 2020). Changes were made to the turnover order, which contains rules on how to calculate a company's revenue when determining whether a merger needs to be notified to the CCA. The changes are minor and pertain to the determination of merging companies and the way the revenues in Denmark are calculated. Other changes include the way the calculation of public companies' turnover is done, which was harmonized with EU rules, and the update of the CCA guidelines in relation to the new rules.

Italian Bid Rigging Fines Confirmed

The Italian supreme administrative court confirmed the two fines imposed by the Italian competition authority on EL.CA. Elettromeccanica Campana and another anonymized company. They were fined €210,000 and €119,000 respectively for bid rigging Trenitalia's tenders for the provision of electric coils and repair services between 2008 and 2011. The companies were sanctioned in 2015 and subsequently contested the decision in court, where they challenged the legality of the transcripts of intercepted phone calls.

The companies took the matter to the supreme administrative court after the lower court ruled in their disfavour, but the supreme court confirmed the two fines, noting that the competition authority's decision was not only based on evidence obtained through criminal proceedings but also on information exchange and negotiations held on the phone, through meetings and emails. The supreme court also notes the relevance of two databases in the authority's examination of the prospective allocation of the bids.

Belgium to Adopt New Simplified Merger Review Rules

New complementary rules on the Belgian simplified merger control procedure were published on 20 January 2020 in the country's official gazette Moniteur belge. The Belgian competition authority, using its power to adopt specific rules pertaining to simplified notifications under the Belgian Economic Code, established the complementary rules. After a public consultation, the authority drafted new rules, which allow the authority to render a decision within 15 working days in certain circumstances (detailed in the official publication). The new rules are designed to deal more quickly with mergers that do not pose substantive competition issues.

A Sino-Canadian Joint Venture to Supply Chinese High-Speed Lines

A Canadian-Chinese joint venture between Bombardier and Sifang (Qingdao) has won a €390 million tender to supply the Chinese State Railway Group with new trainsets by mid-2020. This is the third time the company gets to supply trains to the Chinese Railway Group, following orders dating from 2018. The Canadian-Chinese joint venture is also the only foreign co-owned company to ever supply Chinese high-speed lines.

New York and Singapore-Based Investors Finalize Genesee & Wyoming Acquisition

The New York- and Toronto-based Brookfield Infrastructure affiliates and the Singaporean investor GIC have completed their €7.67 billion acquisition of the freight company Genesee & Wyoming, at a rate of €102.27 per share. The deal, announced in July 2019, encompasses all of Genesee & Wyoming, which employs 8,000 people and serves 3,000 customers through the ownership or lease of 119 freight railways.

INTERNATIONAL TRADE

The EU Agrees on Negotiating Guidelines for Future EU-UK Relationship

On 25 February 2020, ministers of the EU authorized the opening of negotiations for a new relationship with the UK, and formally designated the Commission to negotiate on their behalf. In that regard, they also adopted negotiating guidelines for the Commission when designing the future relationship between the EU and the UK. The mandate granted to the Commission puts strong emphasis on the need to ensure a EU-UK level playing field for open and fair competition, and stresses the willingness of the EU to keep cooperating closely with the UK on regulatory aspects, including in the field of mobility and transport. The EU and the UK will now start negotiating rounds. This comes as British Prime Minister Boris Johnson has been pushing for the conclusion of a trade deal with the EU before the end of 2020, something EU officials have deemed unfeasible, or only on a limited number of points. Michel Barnier, Head of the EU's task force for relations with the UK, declared in that regard that a deal on transport would not be reached before the end of this year.

PUBLIC PROCUREMENT AND NEW PROJECTS

The Austrian federal railway links Vienna to Brussels with a night train line

As the Commission unveiled its new climate policy under the name of 'European Green Deal', night trains made their return to Brussels, following an initiative from Austrian Federal Railways ('OBB'). With the arrival of the OBB's night jet, Brussels Midi Station saw the first night train enter its tracks in over a decade. With other countries like the Netherlands and Sweden pushing to reintroduce night trains, EU officials used this opportunity to show how a return to night trains could help Europe move forward on its climate objectives, as flights are increasingly seen as a nuisance to the environment. Other officials were however more sceptical, citing that the disappearance of night trains from Belgium was due to a lack of customers.

Sweden to Connect Night Trains to Köln in 2022

After the launch of the Brussels–Vienna night train lines, the Swedish agency for transport announced that a Malmö–Köln night train could be opened as soon as 2022. This announcement comes after the Swedish government commissioned the Swedish transport agency to study the feasibility of a wider project to connect Sweden to the rest of the continent. In a draft of the report, although the project was deemed feasible, several issues were highlighted. Particularly, the draft report points out the need to negotiate and conclude agreements with other countries and the need to appoint an operator for the night train lines, probably through a tender. As for the plans put forward by the transport agencies, Köln would be connected first because of its central location and numerous connection possibilities, but other cities like Hamburg, Basel or Brussels would follow. The final report should be released in April this year.

Deutsche Bahn Turns Down €400 million Delivery from Bombardier over Technical Defects

Deutsche Bahn rejected 25 new intercity trains from Bombardier after it found several technical defects upon reception. The €400 million delivery was strictly rejected also against the background that other trains that DB had ordered from Bombardier had been having several technical problems while in service, contributing to the company's punctuality problems. The issues include long start-up times and train operating systems breakdowns. The German operator now wants to claim damages.

Eurostar Rivals Airplane Speed in Green Travel Push

Starting in April 2020, Eurostar will set up a direct link between Amsterdam and London, cutting current travel time by thirty minutes and making the trip competitive with a flight, the company argues. The announcement comes as more and more people and public authorities show concerns over climate change and carbon emission, which gives an advantage to Eurostar as a train ride saves up to 80% of CO2 compared to a flight between the two cities. Although competing with airlines seems for now out of reach, the company argues that a train ride saves time in control checks and bring passengers from city centre to city centre. The new offer comes as Eurostar and Thalys, both co-owned by Belgian and French national railway companies, have announced plans to merge and create a five-country train network that would be attractive enough to nearly double its number of passengers over the next ten years.

United Kingdom's HS2 to go ahead

British Prime Minister Boris Johnson confirmed on 11 February that the controversial project HS2 will go ahead, despite an array of financial constraints that have been burdening it and despite heightened opposition inside the Conservative Party. The project, aims at linking London and the north of England with high-speed trains. The decision comes as the budget has more than tripled since 2011. However, in an address to the British Parliament, Mr Johnson deemed the project essential to provide the country with adequate infrastructure, as the only high-speed line currently in existence in the United Kingdom is the one linking Saint Pancras station in London to the Channel Tunnel.

Renfe Opens Granada–Seville High-Speed Line

Spanish national operator Renfe opened a high-speed train line between Granada and Seville in February. The new service, named 'Avant', can run up to 250 km per hour and takes two hours, 22 minutes to link the two Spanish cities. This new link increases the high-speed service on the Granada-Antequera Santa Ana high-speed rail, which opened last year at the rate of 12 trains a day. Other high-speed lines in Andalusia link Granada with Madrid and Granada with Barcelona.

Management Issues Stalling Rail Baltica Project

Estonia, Latvia and Lithuania need to fix their management issues over the Rail Baltica project, Brussels says. The Commission has threatened to stop future financing if no effort is made to solve the problems. The ambitious project consists of a high-speed freight and passenger line that would connect Estonia, Latvia and Lithuania to the rest of the EU. While the project has been planned since the 1990s, the three governments finally signed an intergovernmental agreement in 2017. The project should be implemented by 2026. Management issues, however, have delayed the project, and some aspects are completely stalled. This is due to deep divisions among the three countries over how to proceed in the future. Lithuania seems to be reluctant to give the project company more control, which is one of the main criteria to keep funding coming, while Estonia and Latvia would welcome the idea. An answer on integrated governance for the construction phase shall be given by the Baltic leaders before the end of May. The EU's demands for reforms come as the project is asking for an extra €4 billion from the EU and €800 million from national governments, on top of the €1.7 billion the project has already cost. Catherine Trautmann, an ex-Member of the European Parliament and former mayor of Strasbourg, has been entrusted by the Commission to accelerate the project and declared that if no decision is reached, the EU will stop its funding.

The European Investment Bank Finances Projects Across the EU

In light of recent policy objectives aiming at supporting the development of sustainable transport modes, the European Investment Bank ('EIB') is providing €983 million funding for rail and maritime transport projects. The objective of the financing is to improve urban and regional railway connections.

These funds have already been used in several Member States: in Denmark, through a loan to fund the procurement of electric multiple units ('EMU'); in Germany, through a project for the procurement of new electric trains; in the Czech Republic, through a funding approved for the procurement of 37 new passenger trainsets; and in Estonia, through a project for the renewal and modernisation of the existing railway network. This series of investments has the main aim of expanding maritime and rail freight transport capacity on routes across Europe.

In Italy for example, the EIB has announced a €68 million loan to the railway management authority of the Italian region of Campania (Naples), Ente Autonomo Volturno, to help it purchase 40 new electric trains. The new trains will operate on six lines of the Circumvesuviana network, which serves Naples and its surrounding regions. The investment aims at reducing traffic congestion and air pollution in the city.

New Signalling Equipment Contracts Between Alstom and Deutsche Bahn

Deutsche Bahn recently awarded Alstom a contract to retrofit 19 additional high-speed trains with signalling system European Train Control System ('ETCS') Level 2, Baseline 3. The contract, worth €10 million, comprises the development, design and manufacture of the digital signalling system. Work linked to the retrofitting will be done in cooperation with several Alstom sites, while the Intercity-Express (ICE) plant in Hamburg-Eidelstedt will undertake the work for the conversion and recommissioning of the vehicles. The project should be fully implemented by September 2021.

Increased Budget for Czech Rail Modernization

Czech railway infrastructure manager Správa železnic also announced that it is planning to modernize more than 100 km of lines and 11 stations throughout 2020, for an investment value of €1.2 billion. The projects include the construction of a railway line between Prague, Václav Havel Airport and Kladno. The present plan represents a significant increase compared to 2019, a year during which Správa železnic invested €793 million. This comes as the Czech Committee of the State Fund for Transport Infrastructure recently gave the green light to an increase in budget of €166.74 million for railway infrastructure. The project should be implemented in 2020 and now amounts to a total of €1.73 billion. Part of the investment, €73.4 million, will be dedicated to the repair and maintenance of railway lines. The remaining sum of approximately €95.3 million will be used for strengthening investments to start new construction, including: the electrification of the Brno-Zastávka u Brna line, GSM-R installation on Chomutov-Cheb and Ústí nad Labem-Chomutov lines, ETCS deployment on the Beroun-Plzeň and Mosty u Jablunkova-Dětmarovice lines, the revitalization of the Chlumec nad Cidlinou-Trutnov rail connection, the modernisation of the Pardubice railway junction and Bartoušov station, the reconstruction of R110 kV at Jablunkov traction substation and strengthening the financing of construction already launched on the Valašské Meziříčí-Hustopeče nad Bečvou section of track adaptations at Žďár nad Sázavou railway station.

Railway Connection Between Slovenia and Croatia to be Improved

Croatian Railway, HŽ Infrastruktura and Swietelsky signed a €49 million contract for the reconstruction of a railway line linking Zagreb Western station and the town of Savski Marof (at the border with Slovenia). The reconstruction work should be completed within 27 months. Part of the investment has been covered by the World Bank (€28.2 million). The project includes the harmonization of the signalling and telecommunication system, rehabilitation of three bridges, culverts and underpasses renovation and the modernization of two stations.

Texas Central and Renfe Operadora Signed a €5.4 billion Contract for High-Speed Rail in USA

Spanish state-owned company Renfe Operadora and Texas Central have signed a €5.4 billion contract. The Spanish company will be responsible for the development and operation of a high-speed rail line between Houston and Dallas, which should be effective in 2026. The Houston-Dallas high-speed rail line will link the two cities, and once it becomes operational, it will complete a journey in less than 90 minutes. According to Renfe, the contract value for the design and construction phase is worth €279 million. Salini Impregilo and Lan Construction have been contracted to build the high-speed rail corridor. According to Texas Central, the project will lead to €32.2 billion in economic benefits state-wide over the next 25 years, including the creation of 10,000 jobs per year during construction and 1,500 permanent jobs when fully operational.

Polish Railways in Lower Silesia Announce Tenders

A railway operator in Lower Silesia, Koleje Dolnośląskie ('KD'), has announced its plans to purchase 11 new trains for an estimated value of €65.5 million. Six of these trains would be electro-diesel trains, marking the first introduction of electro-diesel trains in Poland. Part of the investment will be covered by the Centre for EU Transport Projects, and the Lower Silesian Voivodship will guarantee a bank loan for the procurement of new rolling stock. The hybrid trains will operate on the railway routes from Trzebnica to Świdnica, via Wrocław and Sobótka. In 2019, KD carried 14.1 million passengers, representing an increase of 2.4 million passengers compared to 2017.

RAIL REGULATORY AND POLICY

2021 to be the European Year of the Rail

On 4 March, the Commission officially proposed that 2021 becomes the 'European Year of Rail', in a bid to support the attainment of its ambitious climate objectives in the transport sector. The rail sector would be promoted throughout the year with a series of events, campaigns and initiatives designed to present rail as a sustainable, innovative and safe mode of transport. The program will also highlight rail's benefits for people, the economy and climate, and will focus on the remaining hurdles in the creation of a Single European Rail Area without borders. 2021 was chosen in particular because it will be 'the first full year in which the rules agreed under the Fourth Railway Package will be implemented throughout the EU'. It is also the 20th anniversary of the First Railway Package and the 175th anniversary of the first ever rail link between two European capitals (Paris and Brussels).

EU Climate Law

To reach its ambitious carbon neutrality goal, the Commission presented on 4 March 2020 a proposal for a Regulation establishing the framework for achieving climate neutrality ('the European Climate Law'), which would turn the EU's political green commitment into law. It establishes a legal framework for the gradual reduction of greenhouse gas emissions to net zero and sets out a binding objective of EU climate neutrality in 2050, in accordance with the Paris Agreement's goals.

The proposal also addresses the necessary steps to get to the 2050 target. For a start, by September 2020, the Commission should review the Union's 2030 target for climate and explore options for a new 2030 target of 50 to 55 % emission reductions compared with 1990 levels. In that regard, the Commission is seeking new powers under EU law to be able to review emission targets every five years and to impose tighter objectives over time.

To reach its ambitious carbon neutrality goal, the Commission also engaged to review relevant legislation by June 2021, which includes the Effort Sharing Regulation; the Land use, land use change and forestry regulation; and CO2 emissions performance standards for cars and vans, among others. On 4 March, the Commission also launched a roadmap on the creation of a Carbon Border Adjustment (CBA) mechanism, which is meant to ensure that the emissions reduction does not unduly penalize European businesses. This adjustment mechanism would take the form of a tariff on jurisdictions that do not have the same environmental requirements as the EU.

The next steps include the adoption of a Strategy on Adaptation to Climate Change by the end of 2020, which will set to strengthen preparedness efforts, from the insurance sector to the construction and renovation of buildings. The Commission will also review its rules on energy, in particular the TEN-E Regulation on trans-European energy networks, as well as the Energy Efficiency, the Energy Taxation and Renewable Energy Directives.

The Upcoming EU Transport Strategy

The European Commissioner for Transport, Adina-Ioana Valean, unveiled her transport strategy for the coming term. While addressing Members of the European Parliament's Transport Committee early in February, she highlighted the EU's goal to achieve carbon neutrality by 2050 and pledged that her policies will contribute to reaching that goal. To that end, she will propose two legislative proposals on alternative fuels, one for the aviation sector and the other for the maritime sector, and is committed to unlock funding for alternative fuel infrastructures (e.g. charging stations for electric cars). On other issues, the Transport Commissioner pledged to come up with specific proposals by 2021 to 'green' freight transport; she stressed the importance of railways in her policies, particularly as they help reduce carbon emissions but also road congestion. The Commissioner announced that her services would create tools that will allow transport users to evaluate their carbon footprint (i.e. 'carbon calculators'). On other matters, however, she remained silent or avoided questions, particularly regarding kerosene taxation and the inclusion of aviation and the maritime sectors in the EU's Emission Trading System. Lastly, she committed to make progress on the Single European Sky and the Eurovignette Directive, projects in which Member States have so far failed to reach an agreement.

EU Transport Commissioner Stresses Importance of Transport Corridors

In a speech at the European Parliament on 20 February 2020, EU Transport Commissioner Adina-Ioana Valean said restrictions on European transport corridors are not acceptable, as they risk to mark the end of the EU's internal market for transport. She was referring in particular to restrictions put on the Brenner Pass in the Austrian region of Tyrol, which is today the most used way across the Alps in Europe and is the main link between Germany and Italy. The restrictions were imposed as the Tyrolean administration is looking to have freight traffic reduced on its territory; to that end, a tunnel was built, but construction works on both the Italian and German sides are taking too long, the Austrian region argues. Mrs Valean tried to ease tensions, without much success.

The Commission Issued a Report on Member States' Transport Policies

The Commission issued reports on each of the EU's Member States' compliance with EU transport law in the framework of its 'European Semester', and in doing so, granted a large space for their respective transport policies. The reports also included recommendations on how to take account of the EU's Green Deal initiative aimed at greening the European economy. The Commission reports highlight divergences between countries, particularly in regard to infrastructure investment, congestion problems and emission cutting. All reports are available here.

The UK South Western Railway Risks Nationalization

The British Transport Secretary Grant Shapps announced a series of contingency measures in the event the South Western Rail ('SWR') franchise should become no longer financially sustainable. Under the 1993 Railway Act, it is up to the Secretary of State for Transport to ensure that services vital for passengers continue under any circumstances. The SWR directors warned that the franchise is at risk of being nationalized in a report published as a 28-day strike ended — the longest strike ever undertaken by the National Union of Rail, Maritime and Transport Workers. The warning comes as the franchise, which serves 600,000 passengers daily around London, has made an operating loss of €162.74 million in the year preceding March 2019. The latest accounts of SWR directors forecast continued lossmaking, which would exceed the aid that the franchise has received from its parent groups, Hong Kong Mass Transit Railway and FirstGroup. The uncertainty surrounding the future of the franchise has led the train operator to enter into talks with the UK Department for Transport over its terms of contract, and now risks nationalization. This comes as other British rail franchises face similar issues, as the UK government is nationalizing the Northern Rail franchise and has completed nationalization of the East Coast mainline. In the north, the Scottish government also announced it plans to terminate its contract with a private company for the operation of ScotRail three years before its planned end.

UK to Nationalize Northern Rail

The UK Transport Secretary Grant Shapps announced in January that the government would take over management and operation of running services on the Northern rail network franchise, after it was found to no longer be financially sustainable. The government's takeover took effect on 1 March 2020, and is now expected to adopt a series of measures designed to, among others, boost capacity in and around Manchester and Leeds, lengthen stations to allow longer trains to run, and ensure that wagons are clean. The Northern rail network serves 108 million passengers, provides 2,800 daily services and includes 528 stations throughout Northern England.

European Parliament Groups Agree on Common Stance on EU Green Deal

The European Green Deal, the EU's new far-reaching, horizontal environment policy, has had the four biggest groups of Members of the European Parliament ('MEPs') take a joint resolution last month, in which they adopted their common approach to the Commission's plans. The negotiations to agree on a common stance were reportedly hard, on all topics covered, but a text was finally agreed upon. In their resolution, MEPs call for more ambitious targets for carbon reduction by 2030 and 2040, with an aim to reduce global warming by 1.5 degrees Celsius. In recent months, green policies have been at the centre of EU rules making. In February, the Commission presented its Sustainable Europe Investment Plan, which aims at spending up to a trillion euro in green investment. Earlier this month, the Commission also unveiled its proposal for an EU Climate Law, which should enshrine its 2050 climate neutrality goal into law, as well as its New Circular Economy Action Plan, aimed at greening various sectors of the economy such as electronics, chemicals, the use of raw materials, etc. Specifically on transport, the EU Commissioner for Transport presented her strategy for the next term, which addresses the fight against climate change.

The German Government and Deutsche Bahn Signed a €86 billion Investment Scheme

On 14 January 2020, the German Federal Transport and Deutsche Bahn AG ('DB') signed a 10-year financing agreement for an amount of €86 billion. With this agreement, the financing plan sees an increase of 54%

compared to the previous five-year plan, and provides for the money to be spent on the maintenance and renewal of the German national rail network. The federal government will provide €62 billion, while DB will contribute €24 billion. The planned works include repair of bridges, stations and around 2,000km of tracks.

The investment package is the largest in the German rail company's history and shall help creating a reliable and sustainable rail mobility in Germany. This investment package must be seen in the framework of greater German support for rail transport: For instance, Tax reordering measures on light of environmental concerns have triggered a reduction in German rail fares. Although the German Value Added Tax ('VAT') on short-distance rail journeys has been at 7% for several years, a recent change has brought VAT down to 7% also for long-distance trips. The German federal railway company, DB, expects the measure to induce an additional five million passengers a year to use its services. This tax change comes as more and more Germans express concerns about CO2 emissions and try to find alternatives to air transport, for which demand has been falling steadily over the past four months. To attract even more passengers, DB has also reduced charges on a number of services, such as bicycle fees, seat reservation and discount schemes.

EU Council to Vote on Electronic Freight Transport Information Rules

In a bid to make it easier for businesses to provide authorities with information relating to freight transport, the Commission presented in 2018 a proposal to digitize freight transport information. In November 2019, the European Parliament and the Council of the EU agreed on a common position, which must now be made official by the two institutions before it is passed into law. On 24 January 2020, the General Secretariat of the Council published a note to be approved by the institution, before it can be approved by the Parliament.

The new rules create an obligation for competent authorities in EU Member States to accept information made available electronically on certified platforms as proof from companies that they respect legislative requirements. Companies will still be able to provide authorities with information on paper if they choose to. The proposed Regulation also provides for an obligation for the Commission to adopt technical specifications within 30 months from the entry into force of the law, which will be aimed at ensuring interoperability between IT systems throughout the EU and setting common procedures for accessing and processing the provided information.

According to the Commission, the new regulation will provide Member States with a common legal framework for digitization that will alleviate the administrative burden businesses, transport operators and public authorities all suffer from, as most of the paperwork is currently exchanged in paper format. The proposal echoes a 2017 Resolution from the Parliament, which called to 'encourage the use of digital technologies', including paperless and standardized documents. The new regulation would come at the right point in time as freight transport is expected to rise by 50% before 2050.

Reform of EU Air Passenger Rights Proposed by Croatia

The country of Croatia, which is currently assuming presidency of the EU Council, sent a proposal to delegations of EU Member States in Brussels to reform the EU Air Passenger Rights Regulation and its rules governing compensation in case of delay. Under the proposal, passengers could only claim damages after a twelve-hour delay on flights going outside the EU and for more than 3,500km — as compared to four hours under current rules. The Croatian presidency also proposed to lengthen admissible delays from three to five hours for intra-EU flights, and from three to nine hours for flights ranging from 1,500km to 3,500km. Croatia also introduced a proposal that would prevent passengers to claim damages if they fly from or to an airport 1) with traffic of less than 1 million passengers a year; 2) that is located in the EU's outermost regions, or 3) that hosts government-subsidized flights. The proposal was presented on February 12 and is expected to be discussed by the end of June. The reform of EU air passenger rights is due to be finalized under the German presidency of the Council during the second half of 2020.

The Court of Justice of the EU Broadens Air Passenger Rights

In a case concerning a flight from Hamburg to London via British Airways, a second flight from London to Madrid and on to San Sebastian via Iberia, the CJEU ruled that the cancellation of the Madrid-San Sebastien flight entitled passengers to claim compensation, even if the delay took place in another country with another airline. In this case, passengers asked a German-based claim recovery agency to ask Iberia for compensation at a Hamburg court. The German court was unsure whether it could grant compensation for a delay that happened in Spain and at the expense of an airline that played no part in the Hamburg-London journey. Seized with the matter, the Court of Justice ruled that 'the compensation claims for the cancellation of the final leg of the journey may be brought before the courts of the place of departure of the first leg of the journey, even if they are brought against the air carrier in charge of the final leg.'

KEY CONTACTS

MIGUEL A. CARAMELLO ALVAREZ
COUNSEL

BRUSSELS
+32.(0)2.336.1946
MIGUEL.CARAMELLOALVAREZ@KLGATES.COM

PHILIP TORBØL
PARTNER

BRUSSELS
+32.(0)2.336.1903
PHILIP.TORBOL@KLGATES.COM

ALESSANDRO DI MARIO
SENIOR ASSOCIATE

BRUSSELS, MILAN
+32.(0)2.336.1938
ALESSANDRO.DIMARIO@KLGATES.COM

NICOLAS HIPP
ASSOCIATE

BRUSSELS
+32.(0)2.336.1921
NICOLAS.HIPP@KLGATES.COM

