

Stakeholders' seminar: the impact of non-charge-related barriers on the development of the rail services market in the Channel Tunnel

IGC Report

Introduction

In its capacity as regulatory body for the Channel Tunnel Fixed Link, the IGC held its second stakeholders' seminar in Lille on 9 October 2014.

This event represented an extension of the seminar held on 22 March 2013, which sought to provide an initial overview of economic regulation issues associated with the Channel Tunnel, and in particular the infrastructure manager's charging system.

The meeting on 9 October was prepared by the Joint Economic Committee (JEC), which assists the IGC in its role as regulator. It was devoted exclusively to non-tariff barriers of any kind which might pose an obstacle to access to the Channel Tunnel for new passenger or freight operators.

A detailed questionnaire was sent to all stakeholders identified by the IGC in the first instance. Of the 50 questionnaires sent out, eight responses were received, from the infrastructure manager and all railway undertakings using the Tunnel or intending to do so.

In the light of these responses, which were presented as an overview and discussed at the start of the meeting, the IGC put forward three specific topics for discussion by the participants preceded by presentations:

- technical and safety questions: presentation by the Safety Authority (CTSA)
- security and border control matters: presentation by the Joint Security Committee (JSC)
- other non-tariff barriers (Eurotunnel presentation).

The presentations can be accessed online on the IGC website. Readers of this report are invited to consult these presentations for further details.

1. Opening of the meeting

The current Chairman of the IGC, Christopher Irwin, opened the meeting. He stressed the need to analyse problems jointly and consider possible solutions. He stated that, under the terms of Directive 2012/34/EU (recast of the First Railway Package), responsibility for economic regulation of the Tunnel would be transferred from the IGC to the French and UK regulators – ARAF and the ORR respectively – within approximately 6 months (the deadline set by the Directive is 16 June 2015). Chris Irwin pointed out that the IGC and the two future regulators were making every effort to facilitate the transition, specifically by setting up a mechanism to promote cooperation between these bodies.

He noted that, under the terms of the new legislation, the railway undertakings and the infrastructure managers would also be required to cooperate more closely to meet the challenge posed by internationalisation of rail services.

2. Follow up to the 2012 survey

Brian Kogan, co-chairman of the JEC and a member of the IGC, reiterated the questions highlighted by the survey carried out by the IGC in 2012: tariff barriers for freight and passenger services, barriers linked to content and to the absence of transparency with regard to technical and safety requirements.

He reported that positive changes have taken place over the course of the last two years, with specific reference to the publication of safety rules and the removal of certain safety rules which had become obsolete, and also the reduction in freight charges introduced by Eurotunnel.

Brian Kogan asked the participants to assess the importance of these factors and the positive or negative impact of the changes which have been made since 2012.

3. Results of the questionnaire on non-tariff barriers

Michel Bellier, co-chairman of the JEC and a member of the IGC, presented the results of the survey. The non-tariff barriers regarded as considerable or very considerable were as follows:

- a) for freight traffic:
 - Other routes preferable to achieve a better loading / return ratio
 - Technical differences and restrictions between countries
 - Gauge differences between the United Kingdom and the rest of Europe
 - Non-standardised electrification in Kent
 - Costs and disruptions caused by security requirements
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- b) for passenger traffic:
 - Costs and disruptions caused by security requirements
 - Costs and disruptions caused by border controls
 - Competitive prices for low-cost flights
 - Safety procedures and technical requirements specific to the Tunnel
 - Complexity and cost of access to stations

In addition, two barriers which were not included in the questionnaire were identified in the responses: the lack of visibility in the railway undertakings' strategies and the limited tonnage of the trains.

During the subsequent debate, the following key points were highlighted:

Follow-up to the 2012 survey

- The IGC's efforts to achieve more transparency with regard to operating costs and justification of the infrastructure manager's charges are making good headway and should be continued.
- The IGC should focus on the question of performance schemes.

2014 survey

- The barriers do not affect the various markets to the same degree: in other words, security checks would entail a much higher cost for a railway undertaking involved in cabotage due to the requirement to equip intermediate stations.

- In Eurostar's case, it was only able to launch new services to Lyon, Avignon and Marseille by breaking the return journey at Lille and making passengers get off the train to carry out physical security and immigration checks, i.e. checks when leaving the Schengen area and entering the United Kingdom, which take over an hour. As illustrated by a survey carried out amongst passengers, this situation does not encourage market development.
- As far as freight is concerned, the response rate was deemed to be pretty disappointing.
- Final users should have been consulted.
- It is a pity that the European freight corridor, which includes the Channel Tunnel, does not include HS1 and does not go beyond London, because key markets are located in the North.

4. Change in the regulations in 2015

Brian Kogan provided further details on the way in which both governments intend to proceed with a view to transferring regulatory functions from the IGC to the national regulators and transposing other aspects of Directive 2012/34 (“recast”).

He stressed that the rest of the regulatory framework remained unchanged and that considerable efforts were being made to ensure a smooth transition: taking inspiration from the recitals of the Directive, both regulators intend to coordinate on a constant basis; they intend to publish their decisions in parallel and to align the content of these decisions. They will remain in regular contact with the IGC.

Both governments will initiate a consultation process in the near future on the draft binational regulation to bring about the transfer process, including its appendix, which contains the charging structure for the Fixed Link.

Brian Kogan noted that the Directive as a whole, including those provisions that apply to the Fixed Link, would be the subject of national transposition exercises, as also proposed for consultation by the stakeholders. He informed the participants that the regulators would henceforth have powers to control the content of the Network Statements.

5. Technical and safety questions

Caroline Wake gave a presentation on the work achieved by the IGC, on the views of the Safety Authority, with a view to clarifying the specific rules that have applied to the Tunnel since it opened and to abolishing such rules in the event that they turned out to be obsolete or no longer justified. This work was carried out by close collaboration with the infrastructure manager, the railway undertakings and the European Railway Agency and has led to tangible results:

- there are no longer any specific requirements for freight trains
- for passenger trains,
 - *a number of specific requirements have been removed ("splittability", smoke-tightness, existence of a continuous internal corridor to allow people to walk the full length of the train),
 - *the remaining requirements, e.g. the "specific case" of 30 minutes' fire resistance in the case of passenger trains, have been justified, explained and publicised.

The next stages in this process will entail re-examining the rules that apply to vehicles, operational safety rules and technical rules that apply to fixed sub-systems.

During the subsequent debate, the following key points were highlighted:

- The progress made should be commended.
- Changes should continue to be made until a desirable conclusion is reached, i.e. complete standardisation of rolling stock, which should lead to a reduction in entry costs to the market.
- Given the unique nature of the infrastructure, there will still be requirements that are specific to the Tunnel.
- The participants considered the national rules to back up the specific case as set down in the TSI on safety in railway tunnels, which stipulates that passenger trains using the Tunnel must have a running capability of 30 minutes in the event of fire. The IGC explained that this rule had not yet been drafted but, in principle, it should set a maximum capacity below which passenger trains could have a fire resistance capacity of just 15 minutes, in accordance with the TSI, and be evacuated into the Service Tunnel, in response to a requirement specified by the European Railway Agency. In practice, the rule could specify a maximum number of carriages, although the IGC was concerned whether such a provision would be relevant in commercial terms and sought the views of the stakeholders. However, the IGC noted that, for reasons of commercial confidentiality, some potential newcomers did not wish to make themselves known or to participate in the consultation procedures.
- The rules concerning carriage of dangerous goods (Volume F of Eurotunnel's operating rules) are amongst the rules submitted for consultation by the IGC as part of the administrative re-examination of its initial notification of 2008.
- The rules relating to pulling freight trains (obligation to be able to start up a train again in the event of a partial breakdown) also form part of Eurotunnel's operating rules, but do not come under the jurisdiction of the Safety Authority. Eurotunnel is working with the stakeholders to reconsider these rules.

6. Security and border control matters

Patrick Lunet, a member of the JSC, presented the current procedure regarding security controls. He pointed out that this area came under the responsibility of the Governments, as embodied in internal laws and preserved in the legal framework that applies to the Channel Tunnel. Andrew Cook, a member of the JSC, presented the draft Declaration of Intent from the Governments (DOI), which contains the security principles that apply to the Tunnel. This draft, which will be submitted for consultation by the stakeholders, is accompanied by appendices describing the detailed measures that apply to each type of operator.

The presentations stressed the following points:

Assessment of the threat level

- the choice of protection level to be applied to the Tunnel is a political matter; it is based on an analysis of the threat level as provided by specialist services.

Border control

- physical security checks (train sterility, baggage control) should not be confused with border controls;
- the fact that the Tunnel represents a transition point from the Schengen area means that systematic checks need to be made on all third-party nationals and a random proportion of EU citizens;
- as far as the governments are concerned, the principle of 100% control of people entering and leaving the Schengen area cannot be jeopardised;
- with effect from 11 October 2014, all third-party nationals requiring a visa will have their fingerprints taken.

Physical security checks

- the methods described in the DOI may be adapted to suit the premises and technical feasibility.

During the subsequent debate, the following points were highlighted:

- for passenger transport operations, security constraints are a considerable barrier to introducing new destinations and to commercial development of the railway undertakings; they have a notable impact on their ability to compete with the air travel sector;
- other types of transport, and particularly freight, are also affected and in some cases security checks may represent an absolute barrier to opening up new markets;
- the particular case of freight trains being stopped at Dollands Moor is currently being examined. In the Fréthun freight area, the area is supervised by Eurotunnel and customs inspections are carried out shortly before the trains depart;
- according to some people, the security system applied to the Tunnel is regarded as an exceptional case which is hard to comprehend in comparison with other networks and in the light of experience; however, the authorities stress that the Tunnel is a particularly attractive target for groups or individuals with malicious intent;
- the main specific risk is of intrusions from illegal immigrants;
- there can be no question that the competent authorities consider that immigration checks are essential, however the physical check ratios are open to discussion and subject to change;
- when assessing risks, we need to consider the inherent nature of each means of transport needs to be taken into account; thus, the model used for air transport cannot be transposed to the Tunnel as it stands. By the same token, there is a difference between passenger trains and shuttles.
- as far as border control is concerned, new technological options, such as the "smart border" initiative, which has been examined by the European Commission, is well worth investigating, even though it is expensive. Options such as control on arrival or on the trains themselves have also been put forward.

7. Other non-tariff barriers

In connection with freight, the charging problems outlined in March 2013 have been substantially mitigated thanks to measures taken by Eurotunnel: simplification of the system, introduction of the ETICA programme to help launch new services (nine new services have been set up), and the introduction of a *Service Level Agreement*.

Other technical barriers are as follows:

- gauge restrictions in the United Kingdom;
- different standards between Member States, primarily train length;
- non-standardised electrification of tracks in Kent leading to the Tunnel;
- the fact that Class 92 locomotives are not authorised in France;
- the lack of special wagons adapted for travel in the United Kingdom.

During the subsequent debate, the following key points were highlighted:

- Eurotunnel's initiatives have, without any shadow of doubt, been useful;
- it would be good to quantify the cost of non-charge-related barriers;
- non-standardised electrification of tracks in Kent is a major barrier;
- the question of *off-peak* timetables is increasing in importance; consideration must be given to adapting these timetables and preventing the bottlenecks which are starting to arise.
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Conclusion

The participants were unanimous in agreeing that there were no conflicting viewpoints and that they were driven by a shared dynamic approach and by the same desire to improve the efficiency and image of the Fixed Link, even though some of the barriers considered during the meeting were beyond the remit of the latter.

The IGC is committed to conveying the views expressed during the meeting to the national regulatory bodies and authorities of both countries.