

COMP/AT.39678, COMP/AT.39731 and COMP/AT.39915– Deutsche Bahn I/II/III
COMMITMENTS TO THE EUROPEAN COMMISSION

In accordance with Article 9 of Council Regulation (EC) No 1/2003 (**Regulation 1/2003**), DB Energie GmbH (**DB Energie**) and DB Mobility Logistics AG (**DB ML**) offer the following commitments (**Commitments**) to the European Commission (**Commission**), with a view to remedying the Commission's competition concerns as expressed in its preliminary assessment (**Preliminary Assessment**) dated 6 June 2013 in the context of its investigation in Cases COMP/AT.39678, COMP/AT.39731 and COMP/AT.39915 and enabling the Commission to adopt a decision confirming that the Commitments meet its concerns (**Commission Decision**).

Consistent with Article 9 of Regulation 1/2003, these Commitments may not be interpreted as an acknowledgement that DB Energie or DB ML or DB Energie's or DB ML's affiliates (**Affiliated undertaking**) have infringed competition law. DB Energie and DB ML act on the condition that, by accepting these Commitments, the Commission will discontinue the investigations with regard to all concerns and allegations raised in Cases COMP/AT.39678, COMP/AT.39731 and COMP/AT.39915, without concluding whether or not there has been an infringement of competition law.

This text shall be interpreted in light of the Preliminary Assessment, the Commission Decision, the general framework of Community law, and in particular in light of Articles 101 and 102 TFEU and Regulation 1/2003.

1 Definitions

For the purposes of the Commitments, the below terms shall have the following meanings:

Traction Current: Alternating current with a frequency of 16.7 Hz used for the electric traction of railways in Germany.

Third-Party Supplier: A supplier of Traction Current who is not affiliated to DB ML or DB Energie and/or to the affiliates of DB ML or DB Energie.

Customer: End customers (railway undertakings) who purchase Traction Current.

External Customers: End customers (railway undertakings) who purchase Traction Current and who are not affiliated with DB ML or DB Energie and/or the affiliates of DB ML or DB Energie.

Supply Price: Price for the supply of Traction Current.¹

Rebate: Any rebate granted to Customers of DB Energie in relation to the Supply Price for Traction Current based on the purchased volume or the duration of the contract.

Regulatory Authority: Independent national authority competent for the regulation of the Traction Current long-distance networks and responsible for supervising the fees for the utilisation of the 16.7-Hz Traction Current network. The current German Regulatory Authority is the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (*Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen*) which is based in Bonn.

Monitoring Trustee: A natural or legal person, independent from DB ML or DB Energie and their affiliated undertakings, appointed by DB Energie after approval by the Commission, whose duty it is to monitor compliance with the Commitments in accordance with its mandate.

Affiliated undertakings: All legal entities in which DB ML or DB Energie directly or indirectly hold a share or which directly or indirectly hold a share in DB ML or DB Energie, independent of the level of shareholding.

2 Commitments

2.1 Introduction of a new pricing system

DB Energie undertakes to introduce a new pricing system with separate Supply Prices for Traction Current and grid access fees, the latter as approved by the Regulatory Authority.² The new system will be introduced no later than on the date of entry into force of these commitments within the meaning of Section 5 below.

2.2 Renouncement of Rebates for the supply of Traction Current

¹ The fees for use of the Traction Current network, the associated metering and billing prices charged by the network operator, which are subject to regulation by the German Regulatory Authority following the judgement of the Bundesgerichtshof of 9 November 2010, case number *EnVR 1/10*, as well as taxes and duties and other mandatory costs (for example the EEG-Umlage levy) are not covered by these Commitments and are not part of the Supply Price for Traction Current.

² More detailed information on the implementation of the network access model, which is not covered by these commitments, is available on the website of DB Energie (in German): www.dbenergie.de/dbenergie-de/netzbetreiber/netzbetreiber_bahnstromnetz/2500898/bahnstromnetz_konsultation.html

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DB Energie undertakes not to grant any Rebates in relation to the Supply Price for Traction Current based on the purchased volume or the duration of the contract.

DB Energie will allow its External Customers to terminate in writing their contract for the Supply of Traction Current without penalty and with a notice period of six weeks effective on the end of the month that precedes the month in which the new pricing system is introduced.

As long as these commitments are in force, DB Energie will allow its External Customers to terminate their contract for the supply of Traction Current without penalty and with a two-month notice before the expiry of the contract. Contracts under the new pricing system will be concluded only for a maximum duration of 1 year.

These obligations enter into force at the same time as the introduction of the new pricing system within the meaning of Section 2.1.

2.3 One-time payment to External Customers as regards the supply of Traction Current

DB Energie undertakes to make a one-time payment to each External Customer, and such payment shall amount to 4% of the net price ("Nettobetrag") of its energy purchased, as stated in the monthly invoice of each customer, retroactively for the past 12 months preceding the introduction of the new pricing system within the meaning of Section 2.1. The one-time payment shall be paid within four months of the entry into force of these Commitments.

2.4 Transmission of information to railway undertakings

10 weeks before the date of introduction of the new pricing system as defined in Section 2.1, DB Energie will inform the External Customers about the prices under the new pricing system and will provide each External Customer with the data regarding its structure of demand for Traction Current for the years 2011, 2012 and the first half of the year 2013. This comprises the annual peak power purchased (in MW) and the energy consumption (in GWh), including a distinction between net and gross energy consumption (before and after energy recovery).

2.5 Notification to the Commission (Reporting)

DB Energie will each year, no later than on 1 July, provide the following information for the preceding year to the Monitoring Trustee and to the Commission:

- Supply Prices of DB Energie for the supply of Traction Current;
- for all External Customers combined and for each External Customer supplied by DB Energie with a minimum annual gross consumption of 20 GWh individually, as well as for Schenker Rail Deutschland AG and DB Fernverkehr AG respectively,
 - the structure of demand for Traction Current, i.e. the annual peak power purchased (in MW) and the energy consumption (in GWh), including a distinction between net and gross energy consumption (before and after energy recovery),
 - the net and gross sales of DB Energie, including the levy under the German Renewable Energy Act (*Erneuerbare-Energien-Gesetz – EEG*), and excluding VAT and electricity tax,

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DB ML will provide the following information to the Monitoring Trustee and to the Commission each year no later than on 1 July for the preceding year: the total volume of business activity (in tonne-kilometre for DB Schenker Rail Deutschland AG and in passenger-kilometre for DB Fernverkehr AG), the total revenue, other operating income and expenses, as well as the operating profit and results from ordinary operations.

Moreover, DB Energie will notify the Commission in writing of any change to its Supply Prices for Traction Current one month before such change shall come into effect, including an explanation of the key factors which have prompted DB Energie to change the price level (e.g. change of sales volumes, change of procurement costs, changes regarding energy policy or the legislative framework).

2.6 Monitoring Trustee

DB Energie shall appoint a Monitoring Trustee to monitor the compliance of DB Energie and DB ML with the commitments in accordance with the procedure set out in Annex I.

The Monitoring Trustee shall be independent from DB ML or DB Energie or the Affiliated Undertakings of DB ML or DB Energie, possess the necessary qualifications to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.

The Monitoring Trustee shall be remunerated by DB Energie in a way that does not impede the independent and effective fulfilment of its mandate.

Based on the information submitted to it by DB ML and DB Energie, the Monitoring Trustee shall:

- Within six months of the entry into force of the Commitments, provide a report to the Commission and DB Energie assessing whether DB Energie complied with its obligations set out in Sections 2.1, 2.2, 2.3 and 2.4 of the Commitments;
- On 1 September of each year, starting from 2014 and as long as the commitments are in force, provide a report to the Commission and to DB Energie on the compliance with the obligations set out in Sections 2.2 and 2.5 for the preceding year. The report shall assess,
 - whether DB Energie has complied with the commitments of Section 2.2,
 - whether DB Energie and DB ML have complied with their respective obligations in Section 2.5,
 - whether the Commitments are still valid as described in Section 3 and in particular whether the commitments should cease prematurely.

2.7 Separation between the business activities of Traction Current network operation and the supply of Traction Current

2.7.1 Separation of the accounts

In its internal accounting, DB Energie keeps separate accounts for its business activities of Traction Current network and the supply of Traction Current, in a way which would be required if the relevant activities were carried out by legally independent entities. The business activities of Traction Current network and supply of Traction Current will be stated separately in the annex to the annual financial statement. DB Energie shall send each year, no later than on the 1st of

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July, to the Monitoring Trustee and to the Commission a copy of such annual financial statement for the preceding year.

2.7.2 Informational separation

Notwithstanding legal obligations to disclose information, e.g. to the Regulatory Authority, DB Energie will ensure that the confidentiality of economically sensitive information disclosed to it in pursuit of its business activities as a network operator will be maintained. When disclosing information about its own activities as a network operator that may provide economic advantages, DB Energie will ensure that such disclosure will be conducted in a transparent and non-discriminatory way.

3 Duration of the Commitments

The commitments shall be valid for a period of 5 years following their entry into force as specified in Section 5.

By derogation to sentence 1 the commitment to renounce Rebates based on the duration of a contract shall be valid for a period of 3 years following its entry into force as specified in Section 5.

The commitments referred to in sentences 1 and 2 shall cease prematurely in the event that, for the period of a calendar year, at least 20% of the combined demand of Traction Current of all railway undertakings in Germany which are not affiliated with DB ML or DB Energie and/or the affiliated companies of DB ML and DB Energie is purchased from a Third Party Supplier.

The commitment to separate between the business activities of Traction Current network and the supply of Traction Current (section 2.7) shall be valid under the condition subsequent that the national legislator does not decide otherwise.

4 Review clause

Pursuant to Article 9 para. 2 (a) of Regulation 1/2003, DB Energie may request the Commission to reopen the proceedings with a view to modifying the Commitments where there has been a material change in any of the facts on which the Commission's Decision pursuant to Article 9 para. 1 of Regulation 1/2003 is based.

5 Entry into force

The Commitments shall enter into force three months after the adoption of the Decision pursuant to Article 9 of Regulation 1/2003 by which the Commission declares the Commitments binding on DB Energie and closes the proceedings opened on 13 June 2013 and at the earliest on 1 January 2014.

6 Final provisions

DB Energie shall publish a non-confidential version of these Commitments on its website.

Frankfurt, [...]

Berlin, [...]

English courtesy translation

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DB Energie GmbH

DB Mobility Logistics AG

[Name and position of signatory]

[Name and position of signatory]

Annex I: procedure for appointment and discharge of Trustee

1 Proposal by DB Energie

No later than two weeks after the entry into force of the Commitments, DB Energie shall submit to the Commission a list of at least one natural or legal person it proposes to appoint as Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee(s) fulfil the requirements set out in Section 2.6. The proposal shall include the full terms of the Trustee mandate, which shall detail all provisions necessary to enable the Trustee to fulfil its duties under these Commitments.

2 Approval by the Commission

The Commission shall have the discretion to approve or reject the proposed Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. The Commission will send its approval to DB Energie within one week of receipt of its proposal.

DB Energie shall appoint the Trustee from the names approved and to assign the mandate approved by the Commission, within one week of the approval of the Commission. It shall inform the Commission of the appointment.

If all the proposed Trustees are rejected, DB Energie shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with the requirements set out in Annex I.1.

3 Trustee nominated by the Commission

If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee in accordance with Annex I.2 and assign him a mandate approved by the Commission.

4 Replacement, discharge and reappointment of the Trustee

If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

- the Commission may, after hearing the Trustee, require DB Energie to replace him; or
- DB Energie, with the prior approval of the Commission, may replace the Trustee.

If the Trustee is removed, he may be required to continue in its function until a new Trustee is in place to whom he will hand over all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in Annex I.1 and I.2.

The Commission shall discharge the Trustee of its duties when:

- Commitments come to an end after their default 5 years duration – the last report submitted by the Trustee should thus cover the year 2018 and be submitted to the Commission and DB Energie on 1 September 2019;
- Commitments described in Sections 2.2. and 2.5. cease to be valid prematurely according to the condition set out in Sections 3.1. and 3.2. in which case the Commission shall discharge the Trustee of its entire obligations, including the monitoring obligations set out in Section 2.6.