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European Union Committee

24th Report of Session 2010–12

Tunnel vision? Completing the European rail market

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Sub-Committee Staff

The current staff of the Sub-Committee are Mark Davies (Clerk), Michael Torrance (Policy Analyst) and Elaine Morgan (Committee Assistant)

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. General enquiries 020 7219 5791. The Committee's email address is euclords@parliament.uk

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Evidence is published online at www.parliament.uk/hleub and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence;

Witness names without a question reference refer to written evidence as listed in Appendix 2.

SUMMARY

The European rail network plays an important role in facilitating the transportation of people and goods around the Single Market. The European Commission began its efforts to liberalise European rail services in 1991, and while much progress has been made, the network remains fragmented. We share the Commission's goal of moving more passengers from short-haul flights to rail travel over time; to do this, the European rail network must unlock its potential.

The Channel Tunnel forms a key part of this network. Opened in 1994, it is a symbolic and commercially significant link between the United Kingdom and mainland Europe. We therefore focus particularly on the Channel Tunnel's role in the context of the Commission's determination to complete the internal market in rail services. This is pertinent given the fact that while there is now more than one provider of freight services through the Channel Tunnel, Eurostar remains the sole provider of passenger-only services.

We begin by considering the current EU legislative and regulatory framework. While we believe that the liberalisation of international passenger rail services will achieve greater competition, continuing disparities between Member States' implementation of the Railway Packages present barriers to growth. The Commission should ensure their full implementation. We also support voluntary cooperation between European regulators and would like to see a better resourced and more proactive European Railway Agency.

We then examine the specific context of the Channel Tunnel. 25 years after the United Kingdom and France signed the Treaty of Canterbury agreeing the Tunnel's construction, we conclude that it is time for its terms to be reviewed, to ensure that it remains fit for purpose. Furthermore, we call for EU safety standards and the Railway Packages to apply in full. We are also concerned that the proposed Deutsche Bahn service, which intends to run from 2013, should commence on schedule.

We then consider other barriers to growth. In the light of the ample capacity available in the Channel Tunnel, we consider that high access charges should be reduced in order to encourage new services. We also support the development of more convenient forms of security and border controls, interoperability measures and the prioritisation of high-speed rail infrastructure under the next financial perspective—all of which will further stimulate the market, and encourage the development of inter-regional services.

Finally, we believe that the interests of the consumer should be paramount as the railway market develops. To this end, we support the approximation of passenger rights across all transport modes, the improved provision of pan-European through-ticketing and the clarification of how existing international conventions apply to international rail passenger journeys in the EU.

We conclude by stressing that the Channel Tunnel's full potential has yet to be realised. To achieve this, and help facilitate the further development of the European rail network as a whole, a concerted effort is required to overcome the remaining barriers to growth. If this can be done, the United Kingdom, and the EU as a whole, will reap the benefits of a liberalised international rail market.

Tunnel vision? Completing the European rail market

CHAPTER 1: INTRODUCTION

Achieving a Single European Railway Area

1. The European rail network plays a crucial role in facilitating the transportation of goods and people around the Single Market. However, this network is fragmented and therefore its ability to serve the Single Market is constrained. The European Commission began its efforts to liberalise international rail passenger and freight services in 1991. Since then progress has been faster for freight than for passenger services, with the domestic and international freight market opened up to full competition from 1 January 2007. A measure to open up international passenger rail services to competition was adopted in 2007 and entered into force on 1 January 2010.¹
2. The Commission published a White Paper, *Roadmap to a Single European Transport Area*, on 28 March 2011.² It sets out how the Commission intends to achieve a competitive and resource efficient transport system by 2050. One of its major aims is to move medium-distance passenger travel from road and air to rail. Some of its specific proposals for Europe's railways are summarised in Box 1 and these provide the backdrop to our inquiry.

BOX 1

Transport White Paper—Railway Proposals

- Completing the internal market for rail services in order to achieve a Single European Railway Area.
- Strengthening the role of the European Railway Agency in rail safety.
- The development of a European high-speed rail network by 2050.
- Developing a common approach for the internalisation of noise and local pollution costs on the whole rail network, as well as measures to increase capacity in the long-term.
- Developing a new funding framework for transport infrastructure.
- The development of a unified approach to passengers' rights across all transport modes.
- The liberalisation of domestic passenger rail services.

The Channel Tunnel

3. The idea of constructing a tunnel or bridge to connect the United Kingdom and France has been proposed sporadically since the early nineteenth

¹ Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

² COM (2011) 144

century, but never progressed beyond schematics or exploratory excavations due to problems over funding and engineering, and national security concerns. Substantive progress was eventually achieved with the signing of the Treaty of Canterbury³ on 12 February 1986, which was implemented in the United Kingdom by the Channel Tunnel Act 1987—4 years before the Commission began focusing on the development of the European railway market. Apart from giving “fresh impetus to relations between the two countries”, the Treaty’s preamble acknowledged its European dimension with a commitment to the “development of relations and of exchanges between the Member States of the European Communities”. The key provisions of the Treaty are outlined in Box 2.

BOX 2

Treaty of Canterbury—Key Provisions

- Article 1 provides for the construction and operation of a ‘Channel Fixed Link’ by private Concessionaires as the infrastructure managers, stipulating that the link was to be constructed “without recourse to government funds or to government guarantees of a financial or commercial nature”.
- Article 2 obliges the signatories to ensure that its operation is consistent with international obligations.
- Article 4 states that “frontier controls shall be organised in a way which will reconcile, as far as possible, the rapid flow of traffic with the efficiency of the controls”.
- Article 6 allows for the Channel Tunnel to be closed by either signatory in exceptional circumstances—such as natural disasters and acts of terrorism.
- Article 10 establishes an Intergovernmental Commission (IGC) to manage all aspects of the operation of the Channel Tunnel on behalf of the UK and French governments.
- Article 11 establishes the Channel Tunnel Safety Authority (CTSA). It makes proposals for safety measures that must also comply with “the national or international laws in force”, which the IGC is responsible for approving.
- Article 12 states that Concessionaires are free to determine their own commercial policy, in terms of charges they apply and what services they offer, as long it accords with EU law, including competition rules.

4. On 14 March 1986, a Concession Agreement for the construction, financing and operation of the Channel Tunnel was awarded to a Franco-British consortium of banks and construction companies for an initial period of 55 years.⁴ These became subsidiaries of a holding company called Eurotunnel, which contracted with TransManche Link to construct the Channel Tunnel.

³ Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link with Exchanges of Notes, signed at Canterbury on 12 February 1986.

⁴ These were organised into two separate Concessionaires as France-Manche SA and the Channel Tunnel Group. The Concession was subsequently extended to 2086 on 17 December 1997.

Work began in 1987 and the Tunnel opened on 6 May 1994, linking Folkestone in Kent with Coquelles in Pas-de-Calais. Both freight and passenger services began later that year. The tunnel's 38 kilometre undersea portion is the longest of any tunnel in the world, and in total it stretches for more than 50 kilometres. It now connects with two high-speed lines on both sides of the English Channel: LGV Nord in France and the Channel Tunnel Rail Link (now known as HS1) in the UK, which became fully operational on 14 November 2007.

5. The Channel Tunnel is now a vital link between the United Kingdom and mainland Europe, and provides the only method by which rail passengers can travel direct to destinations on the Continent. However, while there is now more than one provider of freight services through the Channel Tunnel⁵, Eurostar remains the sole provider of passenger-only services (although Eurotunnel also carries passengers on its vehicle Shuttle services). The Government retains a direct interest in Eurostar through its ownership of London & Continental Railways, which holds a 40% shareholding in the company.⁶ It has no interest in Eurotunnel, a private company whose only revenue is generated from access charges levied on railway undertakings.⁷

Infringement proceedings

6. The Commission began infringement proceedings against France and the United Kingdom on 29 September 2011 regarding their alleged failure to implement aspects of the First Railway Package⁸ in their joint management of the Channel Tunnel.⁹ Each of the Commission's concerns, including the lack of separation between infrastructure managers and railway undertakings and the insufficient implementation of provisions concerning access charging, independent regulatory bodies and capacity allocation, were raised by contributors to our inquiry and are addressed in our report.
7. The Commission's letters require a reply within two months. If the Member States' responses are deemed to be unsatisfactory, a reasoned opinion may be issued seeking the full implementation of the First Railway Package. If the Member States do not oblige then the Commission may choose to make a reference to the Court of Justice of the European Union. Any judicial proceedings are likely to take a number of years to complete.

The Committee's inquiry

8. The Committee has conducted two previous inquiries into the development of the European rail market from the freight perspective.¹⁰ We decided that

⁵ Operated by DB Schenker Rail (UK) (previously English, Welsh and Scottish Railway) and Europorte, a subsidiary of Eurotunnel.

⁶ The other two shareholders in Eurostar International Limited are SNCF, with a 55% stake, and SNCB, with a 5% stake. The company is incorporated under English law and is based in London.

⁷ Incorporated under French law as public limited company—Groupe Eurotunnel S.A.—listed on both the London Stock Exchange and Euronext Paris. After financial restructuring in 2006 it reported a profit for the first time the following year.

⁸ This Package was adopted in 2001 to open up the international rail freight market and comprises a number of Directives, which are discussed in more detail in the following chapter.

⁹ A Commission memo summarising the grounds for infringement proceedings is available at: <http://ec.europa.eu/transport/infringements/doc/2011-09-30-memo-rail-infringements-eurotunnel.pdf>

¹⁰ European Union Committee, 4th Report of Session 2004–05: *Liberalising Rail Freight Movement in the EU* (HL Paper 52) and 10th Report of Session 2008–09: *Recast of the First Rail Freight Package* (HL Paper 90).

the focus for this inquiry should be on passenger services, using the Channel Tunnel as a case study. Both passenger and freight services face similar challenges, however, so the freight perspective is also examined where appropriate. We chose the Channel Tunnel because, despite the continued importance of the Tunnel as a symbolic and commercially significant link between the United Kingdom and mainland Europe, more than 50% of its capacity remains spare.

9. We begin by considering the EU legislative and regulatory framework and the obstacles to progress. We then consider the governance structures put in place by the Treaty of Canterbury in the context of this framework, as most of the measures were not in place when the Treaty was signed 25 years ago. After considering other potential barriers to growth and to the completion of the Single European Railway Area, we then consider the consumer perspective, which we believe should be considered paramount in the future development of this sector.
10. We do not consider any ongoing commercial disputes. Our recommendations are restricted to the Government and its interests in the Channel Tunnel governance structures, as well as EU Institutions. They do not concern the French government (including regulatory authorities) or private companies such as Eurostar, Eurotunnel and Deutsche Bahn.
11. The members of the Internal Market, Energy and Transport Sub-Committee who conducted the inquiry are listed in Appendix 1, showing their declared interests. We are grateful for the written and oral evidence that we received for our inquiry; contributors are listed in Appendix 2. In particular, we are grateful to Eurostar, Deutsche Bahn and Eurotunnel for taking the time to travel to London to provide evidence to the Committee. The call for evidence that we issued is reproduced in Appendix 3, whilst a glossary of terms and abbreviations can be found in Appendix 4. The evidence we received is available online.¹¹
12. **We make this report to the House for debate.**

¹¹ <http://www.parliament.uk/documents/lords-committees/eu-sub-com-b/EuropeanRailMarket/EURailMarketev.pdf>

CHAPTER 2: LEGISLATION AND REGULATION

The beginning of liberalisation

13. The Commission began its attempts to liberalise the European rail market in 1991 with the adoption of a Directive which aimed to adapt the railway network to the requirements of the Single Market, as well as making it more efficient.¹² Its initial focus was the freight market. In order to allow ‘open access’ to domestic rail markets by new entrants, it required the separation of infrastructure managers—the bodies responsible for providing and maintaining the rail network—from railway undertakings—the train operating companies. This required separation in accounting terms; organisational separation was optional. The Directive also sought to prohibit discriminatory systems of infrastructure charging and capacity allocation. Around the same time the Government began to develop plans to privatise British Rail, which culminated in the Railways Act 1993.
14. In 1995, further EU Directives were adopted on the licensing of railway undertakings¹³, on the allocation of railway infrastructure capacity and the charging of infrastructure fees.¹⁴ Three Railway Packages were subsequently adopted between 2001 and 2007. These packages, which revised and extended these measures further to facilitate the development of the railway market, now make up the current legislative and regulatory framework.¹⁵

The Railway Packages

15. The First Railway Package was adopted in 2001 and focused on further liberalisation of the international rail freight market to ensure that operators could gain fair access to run services throughout the EU. Directive 2001/12/EC amended the 1991 Directive to require the functional separation of infrastructure managers from railway undertakings. While both functions could still exist within the same organisation, they were required to have independent decision-making procedures in addition to separate accounting. Directive 2001/14/EC laid down rules for setting infrastructure charges and for capacity allocation. It included a requirement for infrastructure managers to publish network statements setting out the infrastructure capacity, as well as the access arrangements and charges. It also required each Member State to establish a regulatory body to oversee the rail market. Such regulators, although allowed to be part of the transport ministry of the Member State, were required to be independent in organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant.
16. Since the First Railway Package came into force, two subsequent packages have been agreed. The Second Railway Package¹⁶ was adopted in 2004 and made provision for the complete opening of the international and domestic freight rail markets, increased network interoperability and for a common

¹² Directive 91/440/EEC on the development of the Community’s railways.

¹³ Directive 95/18/EC

¹⁴ Directive 95/19/EC

¹⁵ These measures do not apply to either Malta or Cyprus, neither of which has a railway system.

¹⁶ The Second Railway Package consists of Directive 2004/51/EC, Directive 2004/49/EC, Directive 2008/57/EC and Regulation 881/2004.

approach to be adopted regarding safety matters. This common approach not only required each Member State to establish a safety authority¹⁷, but also established a European Railway Agency to advise the Commission on safety and interoperability issues. On 26 September 2007 the Third Railway Package was adopted, with the intention of liberalising international passenger services by 1 January 2010. To this end, Directive 2007/58/EC governs the allocation of infrastructure capacity and the charges imposed for the use of railway infrastructure; Directive 2007/59/EC makes provision for international train driving licences; and Regulation 1371/2007 ensures basic rights for passengers (including those with reduced mobility) regarding insurance, ticketing and access.

17. We published a report which considered all three Packages in 2005¹⁸. We considered, among other things, that the Channel Tunnel posed “major constraints on the ability of the United Kingdom to benefit from rail freight liberalisation”. To remedy this, the Committee urged the British and French governments to ensure full compliance with the First Railway Package with respect to their joint interest in the Channel Tunnel, and to work together to ensure fair and open access through it, including by setting more competitive access charges.¹⁹

Liberalisation of international passenger rail services

18. It has been only two years since international passenger services in the EU became open to competition and so far only one new service has commenced operating as a result. Nevertheless, all of our witnesses were enthusiastic about the prospects for achieving greater competition in this part of the market and some, not unreasonably, considered that it was too early to judge whether the operation of this measure had been successful so far.²⁰
19. However, Deutsche Bahn highlighted a potential shortcoming of the Third Railway Package in Directive 2007/58/EC. Article 1 allows Member States to restrict market access in instances where the introduction of an international service may have a detrimental impact on an existing local or regional service covered by a public service contract.²¹ The Man in Seat Sixty-One provided an interesting example of this provision being applied to a new international rail service in northern Italy.²² While we are aware that the Commission has attempted to clarify this provision’s application in a 2010 Communication²³, it is likely that this issue will require close attention. We hope that it will also be considered as part of the Commission’s report on the implementation of the Directive which is due to be published by the end of 2012.²⁴
20. Looking further ahead, the Commission’s White Paper contains a proposal to liberalise domestic passenger services. Unlike the majority of Member

¹⁷ Under Article 16 of Directive 2004/49/EC

¹⁸ At which stage the proposed Third Railway Package had not yet been adopted.

¹⁹ European Union Committee, 4th Report of Session 2004–05: *Liberalising Rail Freight Movement in the EU* (HL Paper 52)

²⁰ Q 7, Q 204, Alstom and Ivor Morgan

²¹ Q 91

²² Q 236. This service is discussed in more detail in the following chapter.

²³ Q 91 and Deutsche Bahn

²⁴ By virtue of Article 1(10), Directive 2007/58/EC, the Commission must submit a report to all concerned by 31 December 2012.

States, Germany, Italy and the United Kingdom already allow open access to their domestic passenger railway services. As a result the Office of Rail Regulation (ORR) suggested that this measure, once adopted and implemented, was unlikely to have as much impact on the British market as it would in other Member States.²⁵

21. **We support the liberalisation of international passenger rail services and believe that the Directive 2007/58/EC forms a sound basis for ensuring more services and greater competition, including through the Channel Tunnel.**

Continued fragmentation of the European railway market

22. All of our witnesses were enthusiastic about the Commission's ongoing attempts to liberalise the rail market, and most were positive about the prospects for growth in the international passenger and freight rail markets. However, it was clear that many were disappointed with the lack of progress and the inconsistent implementation of the Railway Packages in different Member States, rather than the legislation itself.²⁶
23. Some witnesses suggested that the European rail market was still dominated by incumbent national rail companies.²⁷ Ferrovie dello Stato, the Italian national rail infrastructure operator, told us that while liberalisation had taken place in the United Kingdom, Italy, Germany, Sweden and Denmark, it had not taken place elsewhere. It felt that this asymmetrical liberalisation had led to "unfair competition between those railway undertakings operating in open markets and those enjoying monopoly in their own countries".²⁸ Deutsche Bahn also stressed the importance of consistency, symmetry and harmonisation across the EU to market development.²⁹ Professor Vickerman referred to the "Balkanisation" of rail services across Europe, and the difficulties involved in achieving a "balance between competition and regulation".³⁰ David Briginshaw, editor of the *International Rail Journal*, pointed to the paradox that while "incumbent national railways generally do not welcome open access operators, particularly in France, Italy and Germany ... on the other hand they are actively looking to operate in other countries, often through joint ventures with or shareholdings in private operators".³¹ The Government, who strongly support greater liberalisation, told us that "barriers to market entry throughout Europe are caused by the different and varying level of implementation of the First Railway Package across EU Member States, insufficient administrative capacity and powers vested in the regulatory bodies, the lack of technical and operational harmonisation, and the failure to provide open access to service and terminal facilities across the whole of Europe".³²
24. This asymmetry is also described in the 2011 IBM Rail Liberalisation Report. It describes six countries as being at an "advanced" stage of liberalisation, 15

²⁵ Q 194

²⁶ RFG, Ferrovie dello Stato, Network Rail, Alstom, HS1 and the ERA

²⁷ Alstom, Professor Vickerman and *The Man in Seat Sixty-One*

²⁸ Ferrovie dello Stato

²⁹ Q 110

³⁰ QQ 2-3

³¹ IRJ

³² Q 265

as “on schedule” and six as “delayed”. The Report also suggests that, while most countries had improved since the survey was last conducted in 2007, the gap had widened between those in the former two groups.³³

25. **We regret the continued fragmentation of the European rail market. We therefore support the White Paper’s call to overcome all remaining technical, administrative and legal obstacles that still impede entry to national railway markets in order to complete the internal market for rail services. This will result in a better deal for European rail passengers and freight users.**

Problems with implementation: infringement proceedings and the ‘Recast’

26. In 2006 the Commission decided that the implementation of the First Railway Package had been inadequate and commenced infringement proceedings against 24 Member States.³⁴ This included the United Kingdom and France, but did not concern their joint management of the Channel Tunnel.³⁵ On 24 June 2010, 13 of these Member States were referred to the Court of Justice of the European Union.³⁶ It is clear that there is still a long way to go before full compliance with the First Railway Package across the EU is achieved. Problems also persist with regard to the implementation of the Second Railway Package. On 16 June 2011, the Commission made a formal request to eight Member States, including the United Kingdom, to implement fully the Directive 2008/57/EC on interoperability.
27. On 17 September 2010 the Commission also adopted a draft proposal to ‘Recast’ the First Railway Package.³⁷ This sought to simplify the package by consolidating the three Directives into a single measure, as well as clarifying certain provisions in an attempt to tackle identified market problems. The Recast is still subject to negotiation in the Council and the European Parliament. We discussed the proposal to Recast the First Railway Package in a previous report, which recommended, among other things, the full separation of infrastructure managers from railway undertakings and the need for strong, independent and well resourced rail regulators.³⁸ When the Recast proposal was published following our report, we were pleased to note that some of its provisions go some way towards achieving these recommendations.³⁹

National regulators

28. During our inquiry, concerns about the implementation of the First Railway Package were raised frequently by our witnesses. Despite the

³³ IBM 2011 Rail Liberalisation Index, April 2011, pp 11–12. The Report studies the 25 EU Member States with rail networks, as well as Norway and Switzerland.

³⁴ The one exception was the Netherlands.

³⁵ As we have already noted, though, subsequent infringement proceedings were initiated in this respect on 29 September 2011.

³⁶ They are the Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Slovenia and Spain, as well as Austria, France and Portugal, but with reduced scope.

³⁷ Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast), COM (2010) 475

³⁸ European Union Committee, 10th Report of Session 2008–09: *Recast of the First Rail Freight Package* (HL Paper 90)

³⁹ See Articles 55–57

requirement under the First Railway Package to establish national regulators, many contributors suggested that this had not been achieved consistently across the EU. Professor Vickerman stated that some Member States had been “dragging their feet”; he argued that the European Railway Agency could get involved in ensuring Member States’ compliance in this respect.⁴⁰ The ORR emphasised the importance of having independent regulators in place in order to foster greater competition⁴¹ and Eurostar expressed a desire for regulators to have more “bite” in this respect.⁴² In December 2010 France established an independent rail regulator—the Autorité de régulation des activités ferroviaires (ARAF)⁴³—a development which was welcomed by the ORR and Network Rail.⁴⁴

Separation between infrastructure managers and railway undertakings

29. Other witnesses expressed concerns that the required degree of separation between infrastructure managers and railway undertakings had also not yet been achieved.⁴⁵ We understand that following the publication of their White Paper, the Commission intends to publish a further proposal on this particular topic before the end of 2012.
30. **Continuing disparities between Member States’ implementation of the Railway Packages create barriers to entry and discrimination. We reiterate our recommendation that the Commission should use the powers at its disposal to ensure the full implementation and enforcement of the First Railway Package, including the full separation of infrastructure managers from railway undertakings and the establishment of strong, independent and well-resourced regulators.**
31. **We regret that a significant number of Member States have yet to achieve these obligations, which continues to present a significant barrier to the development of the European rail market with negative consequences for consumers and railway operators.**

Is greater regulation required?

32. The regulation of the rail sector is split into three: economic matters, safety/technical issues and security concerns. In the United Kingdom, the ORR is responsible for economic and safety regulation⁴⁶ and the Department for Transport is responsible for security.⁴⁷ The IGC handles the first two matters with respect to the Channel Tunnel, which is considered in more detail in the following chapter.

⁴⁰ Q 7 and Q 10

⁴¹ Q 178

⁴² Q 60

⁴³ Italy also established an independent regulator, Ufficio per la Regolazione dei Servizi Ferroviari, in 2010.

⁴⁴ Q 164 and Network Rail

⁴⁵ IRJ, Alstom and HS1

⁴⁶ ORR is designated as the economic regulatory body for the UK under Article 30 of Directive 2001/14/EC and as the national safety authority under Article 16 of Directive 2004/49/EC.

⁴⁷ The Land Transport Division of their Transport Security (TRANSEC) section.

33. During our inquiry into the Recast of the First Railway Package, some witnesses called for an EU-level economic regulator. However, we concluded, in line with most witnesses, that such a step would be premature. Instead, we considered that cooperation between independent regulators and infrastructure managers was sufficient to mitigate the cross-border problems that were outlined. However, given that national regulators continue to be disparate, it was necessary during this inquiry to look again at the merits of having an EU-wide economic regulator, or investing greater powers in existing EU bodies such as the European Railway Agency.

Independent Regulators Group-Rail (IRG-Rail)

34. The Independent Regulators Group-Rail (IRG-Rail), established on 9 June 2011, is comprised of independent regulators from 16 European countries.⁴⁸ The group aims to facilitate the creation of a single, competitive, efficient and sustainable internal railway market in Europe. It has already established a number of working groups on infrastructure charges, the regulation of international corridors and the Recast, among others, as well as initiating dialogue with other European rail organisations.⁴⁹ This development is in line with the existing requirement under Directive 2001/14/EC for cooperation between national regulators.⁵⁰ The group is firmly of the view that an EU-wide economic regulator would be “neither useful nor necessary”.⁵¹
35. Most witnesses welcomed the establishment of IRG-Rail.⁵² Alstom said that it would have a useful role to play in “sharing common issues and sharing best practice”.⁵³ The ORR, a founder member of IRG-Rail, endorsed the group as a way of overcoming “cultural or legal differences in approach that regulatory bodies take”.⁵⁴ While Theresa Villiers MP, Minister of State for Transport, also welcomed its creation, she emphasised that the Government did not want it to evolve into a “single regulator for rail matters across the EU”. Such an evolution, she asserted, would raise sovereignty concerns and result in inherent practical difficulties.⁵⁵
36. **The creation of an EU-level economic regulator would be premature. Informal cooperation between regulators should be sufficient to resolve cross-border problems. We welcome the establishment of the Independent Regulators Group-Rail and urge independent regulators from the remaining Member States to join it. We encourage IRG-Rail to produce regular reports on their progress toward a Single European Railway Area.**

⁴⁸ The participating countries are: Austria, Croatia, Denmark, Estonia, Finland, France, Former Yugoslav Republic of Macedonia, Germany, Hungary, Latvia, Luxembourg, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. Further information, including about the working groups, can be found on the organisation’s website at: <http://www.irg-rail.eu/>

⁴⁹ The European Rail Freight Association (ERFA) and the Community of European Railway and Infrastructure Companies (CER)

⁵⁰ Article 31

⁵¹ IRG-Rail Recast Position Paper—European Rail Regulatory Body, 6 September 2011

⁵² Network Rail, Q 148 and Q60

⁵³ Q 222

⁵⁴ Q 170

⁵⁵ Q 263 and Q 264

*European Railway Agency (ERA)***BOX 3****European Railway Agency (ERA)**

The European Railway Agency (ERA) was established in 2004 and began operating in 2006. Based in France its overall objective is to “contribute, on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system, in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety”.⁵⁶ Its specific roles include:

- Making recommendations for secondary European legislation such as Technical Specifications for Interoperability (TSIs) or Common Safety Methods (CSM), drawn up by working parties composed of representatives of the competent authorities from the Member States and the European railway representative bodies;
- Providing opinions upon matters within its competence, such as national technical or safety rules, and refusals by national safety authorities to authorise placing railway sub-systems or vehicles in service;
- Acting as a neutral facilitator and coordinator to encourage understanding of common problems affecting the competitiveness of the railway sector, common understanding of priorities and consensus solutions; and
- Providing technical opinions on safety related matters, if requested to do so by the national regulatory bodies referred to in Article 30 of Directive 2001/14/EC.

37. Following the establishment of the ERA in 2004, there has been substantial progress in fostering EU-wide cooperation on safety and technical harmonisation. The ORR told us that it had already established a strong relationship with the ERA and that both worked together closely in various working groups.⁵⁷
38. Some witnesses argued that the ERA needed more powers to enhance its status⁵⁸ and others supported the status quo.⁵⁹ Deutsche Bahn supported calls for stronger powers for the ERA, including closer supervision of national regulatory authorities on homologation⁶⁰ matters. Despite this, it considered the creation of a much stronger agency to be a distant prospect.⁶¹ Eurotunnel were relaxed about a more robust ERA; indeed, it wanted the ERA to become a “regulator of the regulators”—increasing interoperability and standardisation between Member States, including the rules which apply

⁵⁶ ERA

⁵⁷ Q 167

⁵⁸ Q 10, Q 220, Alstom, and the RFG

⁵⁹ Q 171, Network Rail, QQ 145–146 and the Government

⁶⁰ A technical term for the granting of approval by an official authority

⁶¹ Q 108 and Deutsche Bahn

to the Channel Tunnel.⁶² The ERA themselves appeared open-minded about assuming more powers and responsibilities in due course.⁶³

39. Other witnesses were more cautious about greater powers for the ERA. High Speed 1 considered that the provision of impartial advice by the ERA when called upon, which had proved to be a beneficial arrangement, could be lost if its role became more formalised.⁶⁴ Professor Vickerman also emphasised the importance of subsidiarity and a local approach to regulation.⁶⁵ We agree. We do not condone the suggestion by Ferrovie dello Stato that, in time, national safety authorities should become “national branches” of the ERA.⁶⁶
40. **The case has not been made for the expansion of the European Railway Agency’s remit or powers. The ERA should be more proactive in its approach. The Commission should ensure that the agency is resourced adequately and support its efforts to achieve greater harmonisation by enforcing the relevant safety and technical measures already in place.**

⁶² Q 346

⁶³ ERA

⁶⁴ HS1. The Government agreed with this view.

⁶⁵ Q 7

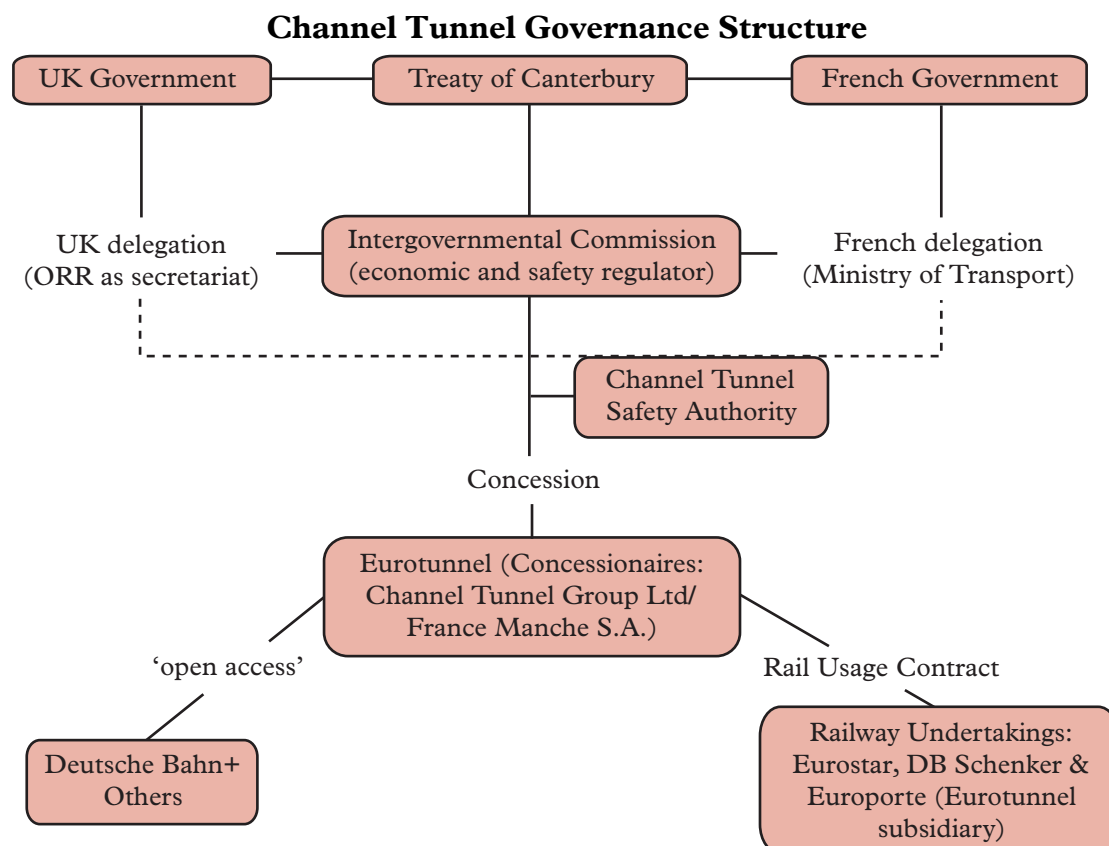
⁶⁶ Ferrovie dello Stato

CHAPTER 3: THE GOVERNANCE OF THE CHANNEL TUNNEL

The Channel Tunnel in the EU regulatory context

41. The Channel Tunnel, as a major cross-border transport corridor between two Member States, is subject not only to English and French law but also to bi-national regulations adopted by the IGC, and EU law.⁶⁷ As discussed in the previous chapter, under the terms of the Railway Packages Member States must ensure adequate separation between infrastructure managers and railway undertakings, as well as establishing independent regulators. These requirements apply to the governance of the Channel Tunnel, as do the various Directives concerning safety, interoperability and infrastructure access. The governance arrangements for the Channel Tunnel, as stipulated in the Treaty of Canterbury, are delineated in Figure 1 and also summarised in Box 4.
42. Witnesses disagreed as to whether the Channel Tunnel constituted a bottleneck in the future development of the European rail market.⁶⁸ As the Channel Tunnel was conceived before the development of EU legislation and regulation, we sought to examine whether its governance arrangements adhered to the EU framework, or whether they were instead a barrier to growth of the European rail market.

FIGURE 1



⁶⁷ Q 334

⁶⁸ Professor Vickerman, RFG, DB Schenker Rail (UK) Ltd and Deutsche Bahn thought it did, while Alstom, Eurotunnel, Eurostar (Q 53) and the Government did not.

BOX 4

Channel Tunnel Governance Arrangements

Intergovernmental Commission (IGC)

The Intergovernmental Commission (IGC) was established under Article 10 of the Treaty to manage all aspects of the operation of the Channel Tunnel on behalf of the UK and French governments. This includes drawing up and enforcing regulations applicable to the Channel Tunnel, including transposing any relevant EU measures, and liaising with the two governments and Concessionaires as necessary.

The IGC also has a role in economic regulation, as the designated regulatory body responsible under Article 30 of Directive 2001/14/EC for allocating infrastructure capacity and charging for its use. In this role it is assisted by a Joint Economic Committee composed of experts from both countries. As each government retains sovereign competence for their territorial security, a Joint Security Committee brings together relevant officials from each country to advise the IGC on such matters.

Channel Tunnel Safety Authority (CTSA)

While the IGC is also designated as the requisite safety authority under Article 16 of Directive 2004/49/EC, it is the Channel Tunnel Safety Authority (CTSA), as established under Article 11 of the Treaty, which is responsible for all safety matters. This includes making safety proposals to the IGC, drawing up, monitoring and enforcing safety regulations, and investigating and reporting on any safety incidents.

UK and French delegations

The UK and French governments each appoint half the members of the IGC. It must include at least two representatives of the CTSA, which is also composed equally of British and French government representatives. Three members of the UK delegation to the IGC (the respective heads of the delegations to the IGC and CTSA and an economic delegate) are nominated by the Secretary of State for Transport on the advice of the ORR, which acts as the secretariat to the UK's IGC and CTSA delegations but has no decision-making role in either body. The head of the UK delegation to the CTSA is automatically a member of the UK delegation to the IGC. The chairmanship of the IGC and CTSA alternates annually between the head of each national delegation but neither can chair both bodies at the same time.

The French arrangements are different, with their delegations to both bodies being drawn directly from their ministry of transport. There is no formal role for the newly established independent regulator, the Autorité des activités ferroviaires (ARAF) or the safety authority, the Établissement public de sécurité ferroviaire (EPSF). Decision-making by the two national delegations must be unanimous, otherwise inter-governmental consultations must begin under Article 18.

Revision of the Treaty of Canterbury

43. Some of our witnesses were cautious about revising the Treaty. The ORR warned that, “if you put all your effort into changing the structure rather than making it work, you lose some time and you have to be quite careful on

that”.⁶⁹ Eurostar also urged caution, stating that the existence of a unified regulator had proved effective for their purposes.⁷⁰ The Government and Eurotunnel went further and argued that the governance structure of the Channel Tunnel had been sufficiently flexible to accommodate subsequent British, French and EU developments over time.⁷¹ The Minister stressed that there would have to be a “very compelling case for saying that all the hassle, all the resources, all the energy needed to unpick the Treaty of Canterbury is really worth doing”.⁷² Eurotunnel suggested that any governance problems emanated from the approach of the IGC and national regulators rather than defective provisions in the Treaty.⁷³

44. Others suggested that governance structures were out of step with EU requirements and should be reformed, necessitating revision of the Treaty. Professor Vickerman was clear that the current structure was “no longer fit for purpose” and considered the IGC to be a redundant layer of bureaucracy in light of the subsequent EU measures adopted since the signing of the Treaty. He stated that the managing organisations for the Channel Tunnel should be “nested within the structure of the new arrangements rather than entirely separate from them”.⁷⁴ DB Schenker Rail and the Rail Freight Group also argued that the current arrangements were inadequate. The latter, however, conceded that renegotiating the Treaty would be difficult. It advocated a gradual approach, with the economic and safety regulation of the Channel Tunnel being transferred to the UK and French national regulators in the short term, with the IGC being “abolished completely” in the long term.⁷⁵ Deutsche Bahn agreed, noting that the existence of the IGC had “not proved to be particularly helpful”. It also suggested the nomination of an independent figure to mediate between the two sides should the need arise.⁷⁶
45. **While the terms of the Treaty of Canterbury may have been adequate at the time the Channel Tunnel was first conceived, the Treaty has been overtaken by events including the growth of EU legislation and the liberalisation of the market. The 25th anniversary of the Treaty provides an opportunity for the UK and French governments to review the terms of the Treaty, with reference to the EU legislative and regulatory framework.**

Achieving better bi-national regulation

Decision making

46. Network Rail told us that the IGC operated too slowly⁷⁷. Deutsche Bahn agreed and argued that this was caused by the need to coordinate its decisions with two Member States and their national regulators.⁷⁸ While

⁶⁹ Q 185

⁷⁰ Q 75 and Eurostar

⁷¹ Government, Q 347 and Eurotunnel

⁷² Q 283

⁷³ Q 348

⁷⁴ Q 32

⁷⁵ DB Schenker and Q 309

⁷⁶ Deutsche Bahn

⁷⁷ Network Rail

⁷⁸ Deutsche Bahn

Eurotunnel told us that they had a positive relationship with the IGC and CTSA, with whom they meet every two months, they also stated that the IGC's processes in authorising new services could be quicker.⁷⁹

Recent improvements

47. Brian Kogan, the UK economic delegate to the IGC, recognised that there was room for improvement in the way that it functioned and stated that making the existing regulatory framework work better was its priority. It noted some areas of progress: the IGC now published its decision-making procedures, including complaints and appeals about their decisions, as required under the First Railway Package.⁸⁰ He also highlighted the IGC's work with Eurotunnel to prompt the development of a performance regime, another legal requirement⁸¹, as well as its efforts to incentivise improved performance from Eurotunnel and other operators.⁸² High Speed 1 praised these recent improvements⁸³ but called for greater transparency regarding the Channel Tunnel's regulatory and contractual arrangements, as well as their alignment with EU rail measures.⁸⁴

The French regulatory approach

48. Brian Kogan stressed that the bi-national nature of the IGC sometimes generated problems when each country approached regulatory issues differently, but argued that some degree of bi-national oversight would always be necessary.⁸⁵ He did not, though, consider that the French regulatory approach undermined the effective management of the Channel Tunnel and pointed to the recent establishment of an independent regulator as a positive development.⁸⁶ Roy Griffins, head of the UK Delegation to the IGC, contrasted the UK's pragmatic approach to the regulatory framework with France's less flexible approach. In light of this, he concluded that any changes would have to be "evolutionary rather than revolutionary".⁸⁷
49. **In the short-term, the UK delegation to the Intergovernmental Commission should seek to ensure that decision-making methods are quicker and more transparent and that it complies with the Railway Packages in full. The delegation should also seek to ensure fair and open access through the Channel Tunnel.**
50. **In the long-term, we support direct governance of the Channel Tunnel by the UK and French national regulators. This should be considered as part of any review of the Treaty of Canterbury. Such arrangements would be less cumbersome, would minimise delays in the provision of new services, and would be in line with the management of other cross-border rail infrastructure within the EU.**

⁷⁹ Q 347 and Eurotunnel

⁸⁰ Q 166

⁸¹ Under Article 11 of Directive 2001/14/EC

⁸² Q 174 and ORR

⁸³ Q 156

⁸⁴ Q 158 and HS1

⁸⁵ Q 164 and Q 185

⁸⁶ Q 172

⁸⁷ Q 284

Conflict of interests

51. Brian Kogan flagged up the potential conflict of interest between Eurotunnel and the operation of its freight subsidiary, Europorte, because of its responsibility for granting access and allocating capacity to other freight operators⁸⁸, but stated that progress was being made in this area by the IGC.⁸⁹ Eurotunnel assured us that its corporate structure ensures that the undertakings are kept completely separate in terms of legal and management structures, decision-making and accounting. It emphasised that, as Europorte only represented 10% of rail freight traffic through the Channel Tunnel, discriminatory practices would be counter-productive. Furthermore, it noted that operators could appeal to the IGC if they felt unfairly treated.⁹⁰
52. The Commission are not convinced by this explanation, as reflected in the terms of the recent infringement proceedings. The UK and French governments' direct involvement in the IGC as the economic regulator is also under scrutiny in this respect, with another conflict alleged to arise due to their majority interest in Eurostar as a railway undertaking.⁹¹ We do not seek to suggest that either arrangement stands in the way of authorisation being granted to competitor freight and passenger services in the Channel Tunnel, but there is an arguable perception of unfairness. We understand that the UK Government and LCR are open, in principle, to selling their share of Eurostar, which would presumably resolve this particular conflict of interest.
53. The alleged conflicts of interest concerning the UK and French governments and Eurotunnel raise sensitive commercial and legal matters. These fall within the scope of the infringement proceedings, which we will monitor with interest.

Safety Issues

54. There have been three fires in the Channel Tunnel—in 1996, 2006 and 2008—all of which involved heavy goods vehicles on board Eurotunnel shuttles. Since the last fire on 11 September 2008, Eurotunnel has invested in a “new and revolutionary fire-fighting system”, to suppress fires on shuttles. It was confident that this should significantly reduce the risk of infrastructure damage in future, facilitate passenger evacuations and allow better access for the emergency services.⁹²
55. In the past, inclement weather has resulted in trains becoming stuck in the Channel Tunnel, including an incident in December 2009 which resulted in some passengers being stranded in the Channel Tunnel overnight in unpleasant conditions. An independent review subsequently recommended that Eurostar improve its communications and emergency procedures to avoid future incidents of this nature. These incidents serve to emphasise the importance of maintaining high safety standards in the Channel Tunnel.

Competing safety standards

56. The safety standards applied to the Channel Tunnel by the IGC are distinct from those outlined by the ERA, as contained in the Safety in Railway

⁸⁸ Eurotunnel's Shuttle service is not classified as a railway undertaking under Article 1(4), Directive 2001/14/EC

⁸⁹ Q 174

⁹⁰ QQ 359–360

⁹¹ Commission memo summarising the infringement proceedings:

<http://ec.europa.eu/transport/infringements/doc/2011-09-30-memo-rail-infringements-eurotunnel.pdf>

⁹² QQ 351–353

Tunnels Technical Specifications for Interoperability (TSI).⁹³ Box 5 contains more information on TSIs. Some witnesses considered that these differing standards could present a barrier to greater competition⁹⁴; others saw no reason why the existing safety rules should not apply to the Channel Tunnel in full.⁹⁵ The Rail Freight Group was especially critical of this arrangement, and endorsed a letter from the ERA to the IGC which challenged this situation, disagreeing with the IGC's position that the Channel Tunnel was a 'special case'.⁹⁶

BOX 5

Technical Specifications for Interoperability (TSI)

TSIs are the standards set for specific items of rail infrastructure or equipment in order to ensure interoperability across the European rail network. TSI-compliant equipment, such as trains, are automatically authorised to run on infrastructure that applies the relevant TSI. They are made, on request of the Commission, by the ERA after consultation with national regulators and should normally prevail over national rules that apply to Trans-European rail networks such as the Channel Tunnel.

57. Many witnesses, in contrast, argued that the Channel Tunnel was indeed unique and therefore required specific safety standards. For Alstom, the extensive undersea portion made it unique; a point with which the Minister agreed.⁹⁷ Eurostar agreed that specific standards for the Channel Tunnel may be necessary and pointed out that the Safety in Railway Tunnels TSI permitted specific safety rules for tunnels more than 20 kilometres in length, which included the Channel Tunnel at more than 50 kilometres.⁹⁸ Deutsche Bahn stated that while some of the Alpine tunnels were longer than the Channel Tunnel they were nevertheless still TSI-compliant.⁹⁹ The ORR did not consider the Alpine tunnels and the Channel Tunnel to be necessarily comparable.¹⁰⁰
58. Some contributors disagreed strongly with the justification. The Rail Freight Group considered the special case pleaded for the Channel Tunnel to be disingenuous.¹⁰¹ Professor Vickerman stressed that length was the key consideration; for him, "being several hundred metres underneath the top of a mountain and being several hundred metres under the bed of the sea does not make a huge difference".¹⁰²
59. Despite the operation of distinct rules, there is regular cooperation between Eurotunnel and other infrastructure managers, which is welcome. This was particularly the case regarding the construction of the Lyon-Turin high-

⁹³ Commission Decision of 20 December 2007 concerning the technical specification of interoperability relating to 'safety in railway tunnels' in the trans-European conventional and high-speed rail system

⁹⁴ IARO and DB Schenker

⁹⁵ ERA, Eurotunnel, Interfleet and the IRJ

⁹⁶ RFG. A copy of the letter, dated 30 May 2011, is available on their website at: <http://www.rfg.org.uk/>. The ERA also submitted a copy with their evidence.

⁹⁷ Alstom and Q 297

⁹⁸ Q 56

⁹⁹ Q 101

¹⁰⁰ Q 182

¹⁰¹ Q 309

¹⁰² Q 13

speed rail line, which will include a 57km base tunnel under the Alps, and we heard that some Eurotunnel staff had recently been seconded to the project's contractors.¹⁰³

IGC safety review and the ERA's technical opinion

60. During 2009, the IGC consulted on proposed changes to the Channel Tunnel-specific passenger train safety rules.¹⁰⁴ After these were notified to the Commission in December 2010, the IGC requested a technical opinion from the ERA regarding their compliance with the Safety in Rail Tunnels TSI and other EU measures. The ERA stated, in their 21 March 2011 opinion, that there was no justification for the IGC to exclude trains from the Channel Tunnel which conformed to EU safety and interoperability standards—including the Safety in Rail Tunnels TSI—and they made a number of suggested changes to the regulations on this basis.¹⁰⁵ Most of these recommendations have not yet been put in place, except for that permitting the use of trains using distributed power, which was implemented in June 2011.¹⁰⁶ This would include Deutsche Bahn's ICE trains, which it intends to run through the Channel Tunnel from 2013. However, though the ERA stated that Deutsche Bahn's proposed use of shorter rolling stock should not be prohibited due to prescriptive IGC rules, this matter remains outstanding.
61. Caroline Wake, head of the UK delegation to the CTSA, explained that both delegations to the CTSA were committed to working with the ERA to address some of their concerns.¹⁰⁷ However, the ERA said that it was still waiting for any economic and safety justifications for why distinct rules should apply to the Channel Tunnel, so that these could be reflected in any changes to the Safety in Railway Tunnels TSI. The ERA suggested that, as the IGC was small in comparison to national safety authorities, it had found it more difficult to engage in their working parties.¹⁰⁸
62. **EU-wide Technical Standards for Interoperability (TSIs) set out comprehensive safety standards. We have not been convinced that the Channel Tunnel is a unique safety case requiring its own safety standards, and so the TSIs should be applied in full. The Intergovernmental Commission should respond fully to the matters raised in the European Railway Agency's technical opinion as a matter of urgency. Unduly burdensome safety requirements must not deter new entrants to the market.**

¹⁰³ Q 362

¹⁰⁴ The IGC issued a subsequent consultation on the safety rules specific to freight trains transiting the Channel Tunnel on 30 March 2011.

¹⁰⁵ Q 179. ERA Technical opinion regarding the safety related aspects of the IGC's conclusions, ERA/OPI/2011-05:

<http://www.era.europa.eu/Document-Register/Pages/ERA-Technical-opinion-regarding-conclusions-of-the-IGC.aspx>

¹⁰⁶ This was also a contentious issue during Eurostar's procurement exercise to acquire new rolling stock in 2010. Siemens, a German company, was eventually named as the successful bidder but the use of distributed power on their trains caused safety concerns in some quarters. Alstom, a French company who provided the original rolling stock to Eurostar, but lost this bid later took legal action against Eurostar, partly citing safety grounds. The French transport minister at the time also issued a press release raising safety concerns about the decision.

¹⁰⁷ Q 284

¹⁰⁸ ERA

63. **To achieve a fully liberalised and interoperable rail network, common standards must be applied consistently, with minimum derogations only when absolutely essential. The Intergovernmental Commission and Channel Tunnel Safety Authority should work with other long tunnel managers to exchange best practice and to ensure consistency across the whole network.**

The authorisation of new international passenger services through the Channel Tunnel

64. There are reportedly high levels of interest from operators, including Deutsche Bahn, to take advantage of liberalisation and provide new services through the Channel Tunnel.¹⁰⁹ High Speed 1 cited economic factors and existing entry conditions as hindrances to the introduction of new services¹¹⁰, and the ORR warned that “these nascent developments will be smothered” if these barriers are not removed.¹¹¹

The current state of the market

65. There are few examples of competition on international rail routes.¹¹² Nevertheless, Eurostar is enthusiastic about the opportunities provided by market liberalisation and increased competition. It intends to provide more services to other Member States as well as increasing its market share of other routes.¹¹³ Deutsche Bahn also wants to expand its long-distance network, in light of research suggesting that there was substantial untapped demand on the routes it planned to develop between Amsterdam and Frankfurt to London.¹¹⁴
66. Eurotunnel was hopeful of further developments; as a private operator, it stated expansion was “very much in our interest”, which it was “very, very keen to see happen as soon as possible and in as continuous a manner as possible”. It also suggested that it had been ready and willing to accept international passenger services since 2006, when it had made its contractual, safety and tariff conditions public.¹¹⁵ However, Roy Griffins gave a different perspective, stating that the IGC was applying pressure on Eurotunnel to become more transparent in terms of economic regulation, and to provide more information to operators. He also considered that Eurotunnel had been slow to take liberalisation seriously until pressed to do so by the IGC, despite the “new dawn” for international passenger liberalisation which began in January 2010.¹¹⁶

¹⁰⁹ Deutsche Bahn. Trenitalia are also reputedly interested as per an article in the Railway Gazette International, 5 August 2010:

<http://www.railwaygazette.com/news/single-view/view/trenitalia-orders-50-high-speed-trains.html>

¹¹⁰ HS1

¹¹¹ ORR

¹¹² Q 90 and Deutsche Bahn. Deutsche Bahn and Thalys run services, which commenced before the liberalisation of international passenger services, between Brussels and Cologne, while the trans-Alpine rail passenger service from Munich to Verona, Bologna, Milan and Venice, began after liberalisation. This service is operated by a consortium of Deutsche Bahn, the OBB (Austrian Federal Railways) and Le Nord (a non-incumbent northern Italian passenger rail service) and competes with Ferrovie dello Stato, the Italian incumbent.

¹¹³ Q 44 and Q 51

¹¹⁴ Q 124 and Q 127

¹¹⁵ Q 341

¹¹⁶ Q 291 and Q 294

The authorisation process

67. Before new international passenger services can run through the Channel Tunnel under the open access rules, potential operators must enter negotiations with the relevant regulatory bodies and infrastructure managers in order to obtain the requisite licenses, safety certificates and authorisations. In addition, they must also satisfy a number of security requirements and demonstrate how they will comply with UK immigration and customs law. This is a complicated process and the Government have produced a guide to assist potential new operators in this regard.¹¹⁷ Despite this assistance, some of our witnesses considered that the authorisation process was too long-winded.¹¹⁸
68. As we have already heard, Deutsche Bahn is engaged in this authorisation process to run its ICE trains through the Channel Tunnel. It said it had “good working relations” with the IGC and CTSA and was optimistic that the authorisation would be in place so that it could commence the new service by the end of 2013.¹¹⁹
69. The Minister was very supportive of new international services, and was not aware of any significant problems that might delay the schedule to which Deutsche Bahn was working.¹²⁰ Eurotunnel told us that it had played a “central role” in this process since January 2010, and had been working closely with Deutsche Bahn on the company’s bid. This included work with Deutsche Bahn on its application to the IGC for a safety certificate on 11 July 2010 and assistance with test runs through the Channel Tunnel, including a full evacuation.¹²¹
70. We were disappointed to hear from Eurotunnel that the anticipated schedule might not be adhered to. Eurotunnel explained that Deutsche Bahn had not yet received its safety certificate from the IGC and that there was no “certainty” as to when it would be received. It explained that if the safety requirements for the Channel Tunnel were based on the Safety in Rail Tunnels TSI, this part of the process would have been significantly more streamlined. It thought that this protracted safety approval process may discourage other, smaller, operators from coming forward with applications for authorisation, as only major operators such as Deutsche Bahn had “the time, patience and courage” to persist with such an undertaking.¹²²
71. **We welcome the interest from new providers of international rail services, including Deutsche Bahn’s proposed services from Amsterdam and Frankfurt to London. Authorisation should be granted without delay. All parties should work together to ensure that the prospective new international passenger services are introduced on schedule.**

¹¹⁷ Department for Transport, 2010 Rail Liberalisation of International Passenger Services—Contact Guide for Potential New Operators:

<http://www.dft.gov.uk/pgr/rail/passenger/europe/liberalisation/pdf/operators.pdf>

¹¹⁸ HS1 and Q 202

¹¹⁹ Q 88

¹²⁰ Q 254 and Q 257

¹²¹ Q 343. This process included an ICE train pulling into St Pancras International on 19 October 2010.

¹²² Q 344

CHAPTER 4: OTHER BARRIERS TO GROWTH

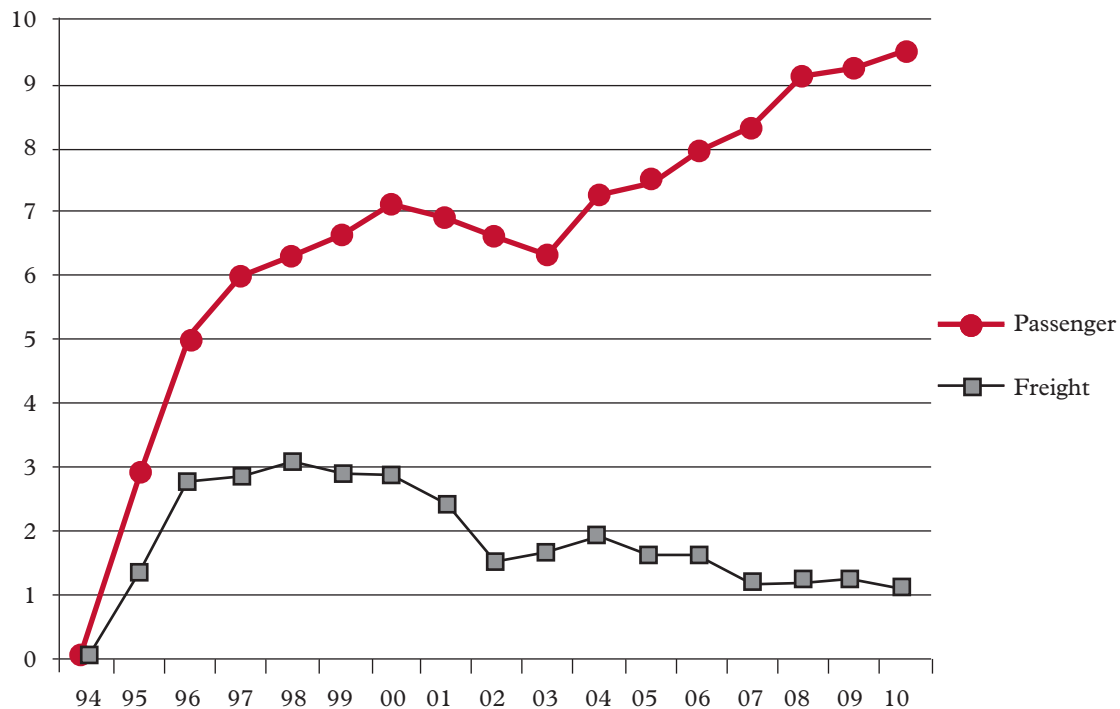
72. Apart from the governance structure of the Channel Tunnel, there are a number of other potential barriers to growth. Some are particular to the Channel Tunnel, while others apply to the European rail market as a whole.

Projected passenger and freight levels

73. The projected levels of passenger and freight services were both overestimated when the Channel Tunnel was conceived. Initial British and French forecasts estimated around 17–20 million passengers per annum. Instead, figures have ranged between 6–7 million in 2004 and 9–10 million today. Eurotunnel was confident that there was potential for the market to grow to 15 million passengers within the next decade, and up to 20 million in the long term if necessary improvements were made. For freight services, the initial forecast was 8–10 million tonnes per annum. However, after rising to only 3 million tonnes per annum shortly after the Channel Tunnel opened, it stagnated at this level until 2001 and then declined. Eurotunnel told us that, after a near collapse of the market in 2007, it worked with the respective governments to recover the market, which preserved traffic at a level of one million tonnes. After a further dip in 2010 it is now growing at rate of 15% per annum in 2011. As a result, Eurotunnel is confident that the level can be increased to 3 million tonnes and indeed beyond 6 million tonnes over a longer period of time.¹²³ Figure 1 plots both passenger and freight levels since 1994.

FIGURE 2

Number of passengers and tonnes of freight (in millions) from 1994 to 2010



Source: Eurotunnel annual traffic figures

¹²³ QQ 339–340 and Eurotunnel

Capacity

74. Capacity within the Channel Tunnel is not a constraint. Eurotunnel told us that it allocated pathways between passenger and freight services, and of these less than 50% of the passenger capacity was used, with only about 10% utilisation for freight. They further explained that a 50:50 split of overall capacity was currently in place between the railway network connections and the road network connections. The Eurotunnel Shuttle services used the latter connection and there were occasionally periods when 100% utilisation of their capacity was achieved.¹²⁴ Roy Griffins, head of the UK delegation to the IGC, told us that 50% of the Channel Tunnel's capacity was currently reserved for Eurostar and the freight operators under the current Rail User Contract, with the remaining 50% being available for other operators to enter the market under the open access rules.¹²⁵ High Speed 1 told us that there was also spare capacity on their infrastructure¹²⁶, though the ORR indicated that there were some issues on the network in northern France.¹²⁷
75. There is therefore a great deal of spare capacity available in the Channel Tunnel in which further international passenger and freight services could easily be accommodated.

Access charges

76. Our earlier report recommended that the Government should work with the French government to ensure fair and open access through the Channel Tunnel, with competitive access charges.¹²⁸ Despite this, many of the contributors to this inquiry considered high access charges to be the main barrier to growth in international passenger and freight services through the Channel Tunnel. While the Minister told us that an operator unhappy with the charges set by Eurotunnel could appeal to the IGC¹²⁹, Network Rail suggested that the IGC should examine Eurotunnel's charges to see if they were consistent with the "letter and spirit of EU rules".¹³⁰ In any event, the principles on which these charges are actually formulated remain unclear.

A barrier to growth?

77. Many witnesses called for Eurotunnel to reduce their access charges in order to stimulate greater competition.¹³¹ The Rail Freight Group called for Eurotunnel to cut these charges by a third as a first step to increasing competition.¹³² Eurostar explained that the high charges set a minimum on the fares they could offer to customers and suggested that these charges would limit future growth of international services. It also suggested that different operators appeared to be charged different tariffs and argued that

¹²⁴ QQ 336–338 and Eurotunnel

¹²⁵ QQ 290–291

¹²⁶ Q 135

¹²⁷ Q 184

¹²⁸ European Union Committee, 4th Report of Session 2004–05: *Liberalising Rail Freight Movement in the EU* (HL Paper 52)

¹²⁹ Q 288

¹³⁰ Network Rail

¹³¹ DB Schenker, Eurostar, Deutsche Bahn, Professor Vickerman and the RFG

¹³² Q 307

the charging regimes should be fairer and more transparent between different types of operators.¹³³ Deutsche Bahn also argued that the access charges were too high—representing 50% of total charges on some services—and that lower costs would make higher service frequencies and more destinations possible.¹³⁴

78. Brian Kogan, a member of the IGC, stated that access charges to the Channel Tunnel were “extremely high relative to other networks”, but that he did not know whether they were “just inexcusably high or ... justifiably high”.¹³⁵ He considered it to be a “no-brainer” that reduced charges would increase competition; however, he warned that they could not simply be reduced to an uneconomic level, as Eurotunnel needed to “make a living”.¹³⁶ He stated that the IGC was reviewing Eurotunnel’s charging scheme and confirmed that the IGC has the power to direct Eurotunnel to lower access charges, as well as to enforce any such decision.¹³⁷ Roy Griffins noted, though, that the IGC had received only one appeal from a railway undertaking about the charges that applied.¹³⁸
79. The Minister argued that access charges should be for the market to determine and suggested that a reduction in charges would result in additional Government subsidies to freight operators, thus placing greater burdens on the taxpayer.¹³⁹ The Rail Freight Group strongly disagreed with the Minister’s view. It referred to Article 8(1) of Directive 2001/14/EC, which states that the freight charges should, as a minimum, be what the market can bear. It stressed that if charges went down then the level of traffic would increase as a result.¹⁴⁰ However, Article 8(2) allows for different charging principles to be applied for specific long term investment projects: higher charges may be imposed if the project could not have been undertaken without such higher fees. This provision could, ostensibly, apply to the Channel Tunnel.

Rail User Contracts and network statements

80. The Treaty of Canterbury prohibits subsidies to Eurotunnel, but allows it the freedom to make its own commercial decisions regarding the operation of the Channel Tunnel. The Treaty also allowed Eurotunnel to conclude a Rail Usage Contract (RUC) with the then state-owned UK and French railway companies. After privatisation, Eurostar and English Welsh and Scottish Railway assumed British Rail’s preferences and liabilities under the contract through ‘back-to-back’ agreements, which account for 50% of Eurotunnel’s capacity. The contract guarantees a minimum level of income for Eurotunnel, which helped it meet its liabilities for construction costs and now also serves as the basis for how access charges are levied on all railway undertakings using the Channel Tunnel.¹⁴¹

¹³³ Q 77 and Q 79

¹³⁴ Q 121 and Q 123

¹³⁵ Q 174

¹³⁶ Q 188

¹³⁷ QQ 189–190

¹³⁸ Q 292

¹³⁹ QQ 287–288

¹⁴⁰ Q 307

¹⁴¹ Q 176

81. Each infrastructure manager, including Eurotunnel and High Speed 1, publishes a network statement which specifies the charges that apply to rail passenger operators and rail freight operators, alongside the conditions of use.¹⁴² Following criticism from the IGC, we heard that improvements have been made to the statement which is published annually by Eurotunnel.¹⁴³ The charges in that statement sometimes differ from those in the Rail Usage Contract, which are subject to negotiations between Eurotunnel and the operator and remain confidential. Brian Kogan considered the current charging scheme to be too “opaque” and suggested that more transparency was needed.¹⁴⁴

Domestic access charges

82. Eurostar asserted that the calculation of charges was influenced too much by domestic funding conditions, and argued that there should be more EU involvement in their future development in order to ensure greater affordability and predictability.¹⁴⁵ Eurotunnel stressed that it received no public subsidy and was the only infrastructure manager in Europe to be funded entirely from access charges, unlike its national equivalents who were primarily funded by their taxpayers. Its level of access charges were now set at approximately the sum of both these national access charges and were also subject to an indexation formula—RPI minus 1.1%—that had been in place since 1987, resulting in no increase in real terms since then. Eurotunnel maintained in supplementary evidence that the increases were as a result of the significant rise in the levels of access charges levied by the UK and French infrastructure managers, which it said should be limited. It also called for the indexation formula to be applied to all infrastructure managers in the EU, in order to reverse the upward trend in charges at the national level.¹⁴⁶ None of our other witnesses raised any concerns about national infrastructure charges.
83. While it stressed that it was for the UK and French governments to justify the current level of composite access charges that applied to services running through the Channel Tunnel, Eurotunnel also stated that these charges were set at an “appropriate level” and were “bearable”, with prospective new operators assessing that new services would be profitable. However, it admitted that problems might arise in the long-term, if charges continued to rise, with operators potentially withdrawing services through the Channel Tunnel.¹⁴⁷
84. **Access charges set by Eurotunnel and the United Kingdom and French governments constitute a large part of the cost of running a service through the Channel Tunnel. However, we appreciate that Eurotunnel is a private company, and that its access charges constitute a significant share of its income. It should be free to set**

¹⁴² As required under Article 3, Directive 2001/14/EC

¹⁴³ Q 174. 2012 Eurotunnel Network Statement:
<http://www.eurotunnelgroup.com/WorkArea/DownloadAsset.aspx?id=4742>

¹⁴⁴ Q 188. RFG and Professor Vickerman agreed.

¹⁴⁵ Eurostar

¹⁴⁶ Q 349 and Eurotunnel

¹⁴⁷ Q 349

access charges at a market rate subject to their obligations under EU law.

85. **New entrants could be deterred from seeking authorisation to provide services if access charges are not fair, predictable and available more easily. We recommend that the Intergovernmental Commission’s review of access charges is expedited and any changes, whether by Eurotunnel or by the United Kingdom or French governments, are made without delay. We would welcome a reduction of the charges in the medium-term as a means of encouraging use and increasing revenue.**

Security and border controls

86. Most international trains travelling through Member States on the Continent do not have to worry about security and immigration controls, as they are part of the Schengen Area. The border control system for services running through the Channel Tunnel is explained in Box 6.

BOX 6

The Schengen Area and Juxtaposed Border Controls

The Schengen Area includes 25 EU Member States alongside Norway, Iceland and Switzerland. The Schengen rules became part of EU law when they were incorporated into the Amsterdam Treaty in 1999. Bulgaria, Romania and Cyprus will also join the Schengen Area in due course. Internal border controls no longer exist within the Area. The United Kingdom and the Republic of Ireland, which maintain a Common Travel Area between them, are not full members of the Schengen Area¹⁴⁸ and therefore still maintain border controls with the other Member States.

As a result, Eurostar services between London, Brussels and Paris must still operate border controls. This is achieved by so-called “juxtaposed controls” at the station of departure. A traveller leaving London will be checked first by the United Kingdom Border Agency (UKBA) and then by French or Belgian officials before boarding the train. The passenger does not need to show his passport on arrival. This means that UK officials have to operate on French and Belgian soil, and the French and Belgians on UK soil. A similar arrangement would be necessary for any extension of the service to other countries such as Germany or the Netherlands.

87. The question we posed was whether the system was necessary and viable in an expanding market. Many witnesses were satisfied that a greater volume of traffic through the Channel Tunnel did not pose any additional security risks to the infrastructure.¹⁴⁹ Eurostar supported the current system of juxtaposed border controls between Belgium, France and the United Kingdom but suggested that they might not work for other, smaller, destinations.¹⁵⁰ Some argued that the security and immigration requirements for travel through the Channel Tunnel were already too onerous—negating some of the advantages

¹⁴⁸ But they can apply to the Council to participate in some aspects of the Schengen *acquis*. The UK successfully applied to participate in police and judicial cooperation but not in immigration matters.

¹⁴⁹ Network Rail, Deutsche Bahn, IRJ, HS1, EIM and the Government

¹⁵⁰ Q 44 and Eurostar

- of train travel over flying. The International Rail Journal considered the check-in times for Eurostar services at stations in Lille and Brussels to be too long¹⁵¹, while High Speed 1 and the International Air Rail Organisation favoured on-board passport checks as a quicker alternative.¹⁵² The Man in Seat Sixty-One also supported on-board security and immigration checks as a means of cutting journey times and benefiting the consumer. He suggested that the current juxtaposed system might hinder the development of other international routes due to the complexities involved of setting up such checks at new stations.¹⁵³ Deutsche Bahn also suggested that there may come a time when prospective new operators would examine the arrangements and say, “This is too expensive for us and we cannot afford it”.¹⁵⁴
88. Eurotunnel considered that the continued application of passenger and luggage searches would limit the growth of international passenger services, as only the major stations—Paris, London and Brussels—could accommodate the necessary infrastructure costs. It viewed the checks as discriminatory and excessive, given that similar procedures do not apply to passengers on domestic British and French rail networks, notwithstanding the fact that the only major terrorist attack to have occurred in either country targeted domestic rail services.¹⁵⁵
89. The Minister suggested that the juxtaposed border controls system may no longer be viable with respect to new services, including the prospective Deutsche Bahn operation, “because neither Germany nor the Netherlands is currently keen on the idea of UK border officials on their territory”.¹⁵⁶ She suggested that an alternative would have to be found, possibly involving an increased reliance on the United Kingdom’s e-Borders system, the use of Advanced Passenger Information and on-board checks. She also suggested that an interim procedure might allow the Deutsche Bahn service to commence in the short term, to be replaced by a more permanent arrangement in due course.¹⁵⁷
90. **The development of new international services may render the current system of juxtaposed border controls unsustainable. We welcome the Government’s open-minded approach to this matter, and would welcome a statement on their proposals. All feasible solutions should be considered, including the reintroduction of on-board passport checks. Any revised security policy must be proportionate and avoid an adverse impact on passenger waiting times.**

Interoperability

91. To take advantage of expansion opportunities in the European rail market, interoperability is integral; rolling stock must be compatible with infrastructures across Member States. A new service running through the Channel Tunnel from London to Amsterdam would need to run on HS1,

¹⁵¹ IRJ. Minimum recommended check-in times are 30 minutes for standard class and 10 minutes for business premier class passengers.

¹⁵² Q 143 and IARO

¹⁵³ Q 248. Deutsche Bahn agreed with this view.

¹⁵⁴ Q 105

¹⁵⁵ Q 363 and Eurotunnel. The 7 July 2005 bombings in London.

¹⁵⁶ Q 255

¹⁵⁷ Q 272

Channel Tunnel, French, Belgian and Dutch infrastructures. Alstom explained some of the issues: “There are several systems ... The question is whether the train can carry the technical systems on board to switch between the two. On top of that ... there are 25 train protection systems in operation in Europe across the countries ... A train can go everywhere but it will be an expensive train. That will not change by 2020, but it will be improved”.¹⁵⁸ High Speed 1 pointed to other constraints including platform lengths, station layouts and signalling issues.¹⁵⁹

92. A number of Directives have been adopted in order to facilitate progress in this area.¹⁶⁰ The ERA also provides advice and assistance in promoting interoperability, in part, by producing a number of Technical Standards for Interoperability (TSIs). Funding and technical support is also provided for projects like the European Rail Traffic Management System, which is described in Box 7. Alstom was enthusiastic about this project, regarding it as providing “a pillar for the future of European rail”. While the system was progressing well so far¹⁶¹, they considered faster deployment to be the “highest priority” for the future development of an EU rail market.¹⁶² The Government favours greater interoperability and suggested that Trans-European Transport Network (TEN-T) funding for high-speed projects should become conditional on compliance with the relevant TSIs.¹⁶³

BOX 7

European Rail Traffic Management System (ERTMS)

The European Rail Traffic Management System (ERTMS) aims to increase safety and interoperability on Europe’s high speed rail network. It uses Global System for Mobile communications–Railways (GSM-R) to transmit data about a train’s location and speed. This, coupled with automatic train protection (ATP), enables the automatic supervision of the train’s speed and braking. High-speed trains can therefore travel more frequently and safely on ERTMS routes. The provision of ERTMS is a condition of EU funding for infrastructure upgrades which incorporate signalling improvements.

93. Deutsche Bahn also considered that there was still work to be done to remove technical and administrative market entry barriers, particularly with respect to the homologation of rolling stock. However, it suggested that progress was being made by the ERA to increase the predictability and transparency in obtaining safety certificates.¹⁶⁴
94. **Providing a cross-border rail service will continue to be expensive as long as rolling stock is required to meet multiple safety and interoperability standards. TSIs should be extended in scope wherever possible in order to facilitate market entry for new operators. We urge the European Rail Agency to be more proactive in this area.**

¹⁵⁸ Q 202

¹⁵⁹ QQ 136–138

¹⁶⁰ These are Directive 96/48/EC, which applies to high-speed rail, Directive 2001/16/EC, which applies to conventional rail and Directive 2004/50/EC, which aligned both these measures and extended their scope. These have since been superseded by Directive 2008/57/EC, which also contains safety provisions.

¹⁶¹ Q 218

¹⁶² Alstom

¹⁶³ Government

¹⁶⁴ Q 91

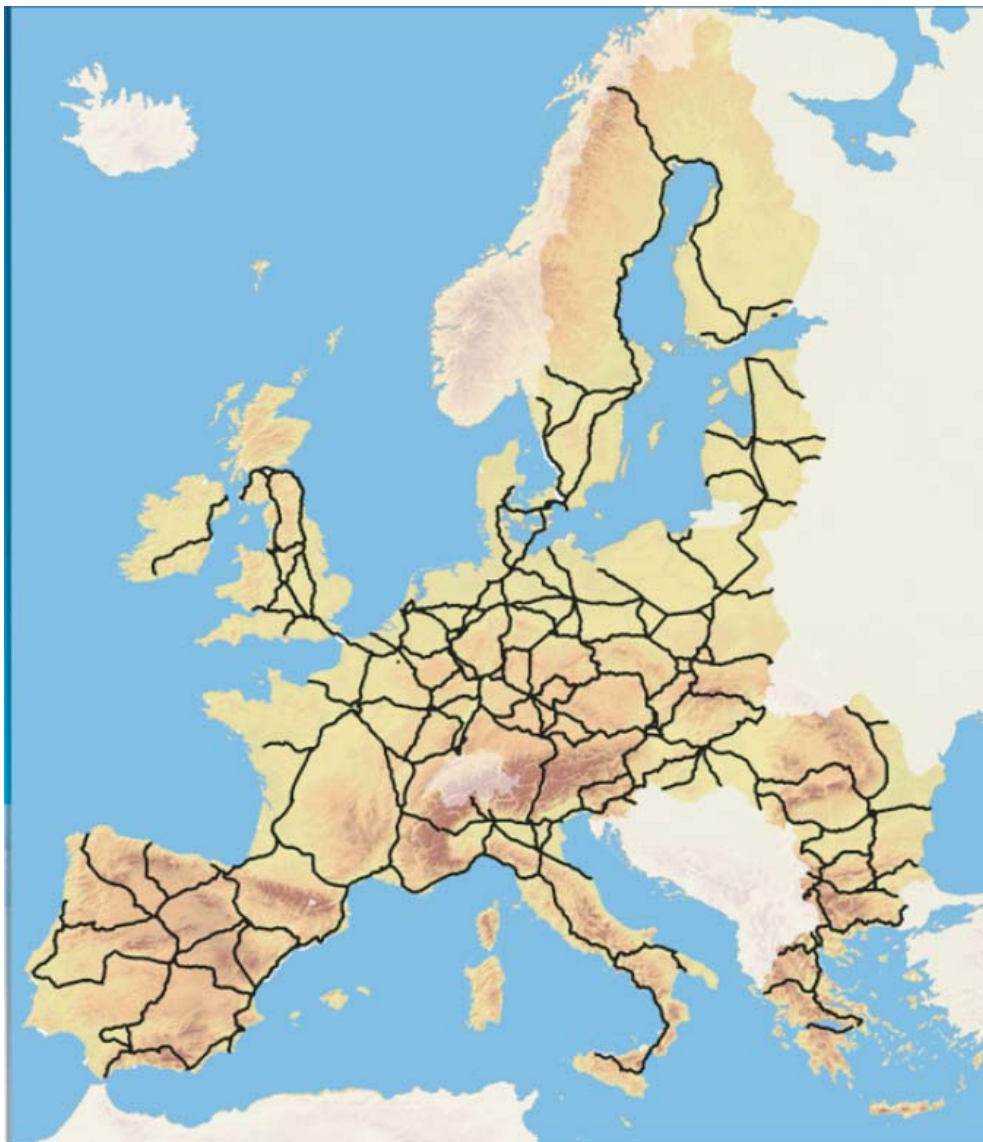
95. **We endorse the continued rollout of the European Rail Traffic Management System, subject to the costs being controlled adequately. Alongside other interoperability initiatives, this will be crucial for the future development of the European rail services market.**

Infrastructure

96. The Channel Tunnel and HS1 should be seen in the context of Europe-wide infrastructure development. The Commission's *Transport White Paper* argues that "no major change in transport will be possible without the support of an adequate network and more intelligence in using it".¹⁶⁵ However, rail infrastructure is variable across Europe and is generally more developed in the West than the East, and the EU has identified priority areas for EU infrastructure through its Trans-European Transport Network (TEN-T) designation. The core network envisaged for 2030 is shown at Figure 3.

FIGURE 3

TEN-T 2030 Core Network Map



Source: European Commission, *Revision of TEN-T Guidelines*

¹⁶⁵ COM (2011) 144, p. 4

97. TEN-T funding was previously used to build HS1 and the TGV Est, which operates between Paris and Strasbourg. However, transport infrastructure funding to date has been criticised as serving national rather than cross-border interests. Delays and environmental concerns have also beset other projects such as the Turin-Lyon rail tunnel, and there is evidence of under-spend in other areas.

Future priorities

98. Witnesses were divided as to whether funding should be focused on developing high speed lines¹⁶⁶, or upgrading existing normal speed lines.¹⁶⁷ The Minister argued that the priorities could not be split. She said that the focus should be on where the most significant economic return in terms of jobs and growth could be achieved.¹⁶⁸
99. Alstom called for a higher funding allocation to be made under the next MFF to TEN-T rail infrastructure, with a focus on cross-border projects with high European-added value.¹⁶⁹ This was echoed by the European Rail Infrastructure Managers.¹⁷⁰ The Minister said there was a case for prioritising limited resources on transport but that a better result could also be achieved if regional and cohesion funding was looked at alongside TEN-T funding.¹⁷¹
100. Network Rail argued that TEN-T funds should focus on core networks, removing bottlenecks, and on projects that would not proceed without assistance and where return on investment was considered to be high.¹⁷² High Speed 1 and the Minister also argued that the resolution of bottlenecks was paramount.¹⁷³ Deutsche Bahn suggested that TEN-T funding should be based on assessment of the contribution to traffic development, the environmental impact, the safety advantages, the network effects and the saving in travelling times. They argued that funding should be allocated so as to encourage optimum interoperability.¹⁷⁴
101. Some witnesses suggested that TEN-T funding should be contingent upon other factors such as compliance with EU measures¹⁷⁵, the promotion of low-carbon and sustainable transport, interoperability, the use of the ERTMS and meeting project deadlines.¹⁷⁶ Eurostar cited HS1, which was built with TEN-T funding, being standardised with high speed rail lines in Belgium and France¹⁷⁷, in accordance with the relevant TSIs.¹⁷⁸ The Government

¹⁶⁶ Eurostar, Q 63 and Q 225

¹⁶⁷ Q 111 and Ivor Morgan

¹⁶⁸ Q 268

¹⁶⁹ Q 228 and Alstom

¹⁷⁰ EIM

¹⁷¹ QQ 269–271

¹⁷² Network Rail

¹⁷³ Q 151 and Q 268

¹⁷⁴ Deutsche Bahn

¹⁷⁵ RFG

¹⁷⁶ Alstom

¹⁷⁷ Q 62

¹⁷⁸ Q 139

agreed with condition-based funding, arguing for compliance with High Speed Rail TSIs and the implementation of the ERTMS.¹⁷⁹

102. **TEN-T funding should be prioritised for cross-border transport infrastructure projects that contribute to economic growth by overcoming bottlenecks and helping to achieve the completion of the Single Market. The decision should not be prejudiced in favour of either conventional or high-speed rail projects. It is imperative that the risks should be properly assessed before funding is allocated.**
103. **If funding is to be provided at EU-level, projects should advance EU aims to develop a competitive and resource efficient transport system. Conditions on interoperability and fair access should be attached to any such funding.**

Revision of TEN-T funding

104. On 19 October 2011 the Commission published a new infrastructure package, including a proposed revision of the TEN-T guidelines¹⁸⁰ and a “Connecting Europe” funding instrument, as part of the next Multiannual Financial Framework for 2014 to 2020. Under “Connecting Europe”, the Commission intends to invest €31.7 billion upgrading infrastructure, building missing links and removing bottlenecks in order to increase the flow of goods and people around Europe.¹⁸¹ This will be aimed particularly at sustainable cross-border transport links, but funding is also likely to be earmarked for the further development of the ERTMS. The package also designates 10 core cross-border corridors, including Dublin-London-Paris-Brussels and Warsaw-Berlin-Amsterdam/Rotterdam-Felixstowe-Midlands, which should be completed by 2030. This will be supplemented by a comprehensive network of feeder routes at regional and national level, to be completed by 2050 and mainly funded by the Member States.
105. The new infrastructure package also focuses on the use of innovative funding instruments¹⁸² and other means to secure more private sector investment. Alstom supported the use of such instruments, while the European Rail Infrastructure Managers and High Speed 1 argued for more private investment. They stressed that a stable regulatory climate, which accepted a reasonable return for investors, was needed to facilitate such support.¹⁸³ Ferrovie dello Stato suggested that public-private partnerships should play a more significant role in funding high speed rail projects.¹⁸⁴
106. **In the interests of promoting economic growth, funding for the development of the European rail network should be a priority during the next financial perspective. We welcome the inclusion of €31.7bn of “seed capital” in the next Multiannual Financial Framework to help**

¹⁷⁹ Government

¹⁸⁰ Proposal for a Regulation of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, COM (2011) 650/2

¹⁸¹ Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility, COM (2011) 665/3

¹⁸² The provision of financial support from the EU budget through instruments other than pure grant funding. See Appendix 4 for further information.

¹⁸³ EIM, Q 152 and HS1

¹⁸⁴ Ferrovie dello Stato

complete necessary cross-border links which might not otherwise be built.

107. **Given the constraints on European public funding for the foreseeable future, policies should be developed which seek to maximise contributions from the private sector whilst ensuring a fair allocation of risk. A more predictable EU regulatory framework and the use of innovative financial instruments where appropriate should be pursued to facilitate more commercially viable propositions.**

Inter-regional services and intermediate stations

108. When Eurostar began operating services in 1994, it was anticipated that regional and ‘Nightstar’ sleeper services from Paris and Brussels to locations beyond London would also be introduced. While rolling stock was ordered for these services, they were eventually abandoned due to concerns about their economic viability. The feasibility of regional services was revived during the construction of HS1¹⁸⁵; but while domestic services now use this line at a lower speed, alongside faster Eurostar services¹⁸⁶, no such services have been introduced since it opened fully in 2007. Professor Vickerman suggested services between Kent and Nord-Pas de Calais were feasible, and made clear his support for their introduction. He pointed to similar services between France, Belgium and the Netherlands that had been successful.¹⁸⁷ However, he acknowledged that while it would be technically possible to run such a service, a major constraint was the access charges to the Channel Tunnel that, on a short journey, would represent a large part of the operator’s service cost.¹⁸⁸
109. We have already noted the spare capacity available in the Channel Tunnel for new services, including inter-regional ones, but we received evidence that longer-distance operators were disinclined to stop at intermediate stations on HS1 because of time considerations.¹⁸⁹ Eurostar stressed that the bulk of their market was between the big cities—Brussels, Paris and London. Intermediate stops would increase journey times and make services less competitive with airlines.¹⁹⁰ High Speed 1, though, are working to make stations such as Stratford International appealing for international operators.¹⁹¹ The Minister stressed that stopping at Stratford International was a business decision for international operators to make but considered that the 2012 Olympics could only bolster such a business case.¹⁹²
110. **While the increased provision of inter-regional services through the Channel Tunnel is desirable, it is ultimately a commercial decision for the operators. Fixed costs, such as access charges and train control systems, mean that longer-distance international services should be more viable. Ways of rendering such services more sustainable and making stoppages at intermediate stations more attractive should be examined further.**

¹⁸⁵ Q 155

¹⁸⁶ Q 133

¹⁸⁷ Q 21

¹⁸⁸ Professor Vickerman

¹⁸⁹ These include Stratford International, Ebbsfleet International and Ashford International.

¹⁹⁰ Q 71. Eurostar currently offer a once-daily service from Ashford International to Brussels.

¹⁹¹ Q 154

¹⁹² Q 272. Stratford International is located within the eastern boundary of the London Olympic Park.

Fair competition between different transport modes

111. The Commission's Transport White Paper states that: "by 2050 the majority of medium-distance passenger transport should go by rail".¹⁹³ The question is how to achieve this. Some witnesses told us that there was already healthy competition between rail and air on the London, Paris and Brussels routes, with Alstom reporting that the displacement from air to rail travel was significant where high-speed rail routes were available.¹⁹⁴ The Man in Seat Sixty-One attributed an increase in enquiries he received from people interested in switching from air to rail to the desire for reduced stress—avoiding "the airport checks, the delays and the extra charges"—and environmental concerns. He estimated an 80:20 split: "80% stress of flying versus 20% carbon footprint".¹⁹⁵ Some witnesses argued that the key factors that influenced choice of transport mode were journey times, competitive pricing and efficacy of services.¹⁹⁶ However, the Government suggested that factors underlying modal shifts were more complex, including infrastructure improvements, and argued that people should not be coerced into changing travel modes.¹⁹⁷
112. Eurostar and High Speed 1 stressed the importance of consistent application of regulatory principles across rail, road and air in order to facilitate modal shift, and also emphasised the environmental benefits that would result from such an approach.¹⁹⁸ Examples of disparity cited include the exemption of cross-border flights from VAT (unlike cross-border rail), and the application of the EU Emission Trading System.¹⁹⁹ Deutsche Bahn also called for equal treatment between these transport modes in terms of taxation.²⁰⁰ Alstom argued that modal shift not only required fairer taxation, but also fairer infrastructure charging. It called for the internalisation of external costs²⁰¹ and the full application of the polluter-pays principle.²⁰²
113. Against this, the Minister did not accept that there was currently unequal treatment between the two modes in terms of taxation. She argued that although airlines did not pay VAT, Air Passenger Duty was levied on flights and noted that the aviation industry was soon to be included in the EU Emission Trading System. She further argued that adopting a uniform approach to taxation across transport modes would rule out imposing higher taxes on the most polluting forms of transport and said that "we do not rule out the option of aligning the tax system more closely to the emissions of the transport mode in question".²⁰³
114. **Achieving a greater degree of competition between rail and air transport, in terms of taxation and the application of the EU**

¹⁹³ COM (2011) 144, p. 9

¹⁹⁴ Deutsche Bahn and Q 200

¹⁹⁵ Q 235

¹⁹⁶ Network Rail, Alstom, EIM and HS1

¹⁹⁷ Government

¹⁹⁸ Eurostar and HS1

¹⁹⁹ Q 44, Q 66, Q 68 and Eurostar

²⁰⁰ Q 115 and Deutsche Bahn

²⁰¹ Such as charging road users for the environmental and noise consequences of their transport choice.

²⁰² Alstom

²⁰³ QQ 276–281

Emission Trading System, is necessary before rail travel will become an attractive alternative to short haul flights.

CHAPTER 5: CONSUMERS

115. The consumer's perspective should be a primary consideration in the further development of the international passenger rail services market. This perspective is often overlooked when regulatory matters are being discussed, but there is a Regulation which attends specifically to the rights and obligations of international rail passengers (see Box 8).

BOX 8

Regulation 1371/2007 on rail passengers' rights and obligations

The Regulation on rail passengers' rights and obligations entered into force in December 2009. It is part of a suite of measures designed to safeguard passengers' rights across all modes of transport.²⁰⁴

The Regulation makes provision for passengers to be given relevant information about their journey and to allow them to purchase tickets either from ticket offices, selling machines, on board trains or through widely available information technology.

In the case of delays or cancellations passengers are entitled to compensation, alternative transport to their destination and reasonable accommodation and refreshments if necessary. The Regulation also sets rules about compensation for loss of luggage, access for persons of restricted mobility and ensuring the personal security of passengers.

116. The Commission's White Paper includes proposals to enhance passenger rights further, as well as making them consistent across all transport modes. These include plans to harmonise the interpretation of EU law on passenger rights as well as to produce a Charter of Basic Rights applicable across transport modes. It also envisages measures covering multimodal journeys with integrated tickets under a single purchase contract, and plans to improve journeys for passengers with reduced mobility.²⁰⁵
117. Some of our witnesses supported the Commission's plans to strengthen the Regulation in the context of harmonising passenger rights across modes.²⁰⁶ Others disagreed, with Deutsche Bahn considering that the current Regulation struck a reasonable balance between passenger protection and economic burdens on operators. It felt, as High Speed 1 did, that raising the level of rights would have a detrimental effect on the launch of new services.²⁰⁷
118. **In principle, we support the approximation of passenger rights across all transport modes, as proposed in the Commission's White Paper. We will look forward to scrutinising the proposal when it is published.**

²⁰⁴ Regulations 261/2004 and 1107/2006 concern the rights of air travellers; Regulation 1177/2010 concerns the rights of those travelling by sea and inland waterway; and Regulation 181/2011 concerns the rights of bus and coach passengers.

²⁰⁵ COM (2011) 144, p. 23

²⁰⁶ IRAO and Passenger Focus

²⁰⁷ Deutsche Bahn and HS1

Pan-European through-ticketing

119. Although one of the Regulation's aims was to make purchasing tickets easier for rail passengers, we received evidence that problems are still common when buying cross-border tickets. Professor Vickerman considered that the lack of convenient through-booking and integrated ticketing services discouraged greater competition.²⁰⁸ The Man in Seat Sixty-One cited a number of potential difficulties, including identification and availability of the cheapest tickets, booking online in another Member State and the lack of information on the timetabling of interconnecting services. He argued that all of these problems would frustrate would-be rail passengers and discourage modal shift.²⁰⁹
120. The Commission, alive to the importance of this issue, adopted a Regulation applying the Telematics Applications for Passenger Services (TAP) TSI on 5 May 2011.²¹⁰ This requires operators to standardise their data on fares and timetables to ensure maximum interoperability and to ease their exchange between operators throughout the EU, including ticket vendors. Operators will also be legally obliged to place such data in the public domain. The Commission's White Paper also contains a proposal for a complementary measure that would require operators to approximate their IT systems in order to allow easier data transfers between them, which could be used in different rail booking and ticketing systems throughout Europe.²¹¹
121. The Minister argued that any solution should be led by the private sector. She told us that none of the rail companies had "come looking for a Government solution", and noted that there were commercial incentives to encourage such developments.²¹² She noted that Eurostar had already worked with partners through Railteam²¹³ to make purchasing through-tickets to continental destinations easier, as well as working with UK operators to increase links with their services domestically.²¹⁴ Eurostar told us that through-ticketing was an important issue, and confirmed that it had worked with SCNB, SNCF and Dutch national railways, as well as with other partners in the EU, to develop this matter. However, it stressed that any new service would have to be commercially sound and avoid any "white elephant" IT systems. It agreed that a solution could best emanate from the private sector.²¹⁵ Deutsche Bahn thought progress was best achieved through the application of the TAP TSI and through market, rather than Commission, initiatives.²¹⁶
122. Other witnesses were more sceptical about the likelihood of market-led progress in this area. Professor Vickerman suggested that the market might not be sufficiently large to take the lead. He said that, other than Eurostar

²⁰⁸ Professor Vickerman

²⁰⁹ The Man in Seat Sixty-One

²¹⁰ Commission Regulation 454/2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system. This TSI is related to Regulation 1371/2007 and obliges undertakings to offer the lowest price and fastest connection. It also obliges all undertakings to offer ticketing information in the same format, thereby making it accessible to others.

²¹¹ COM (2011) 144, p. 24

²¹² Q 295

²¹³ Railteam is an alliance of European high speed rail operators, including Eurostar, Deutsche Bahn, SNCF and SNCB.

²¹⁴ Q 295

²¹⁵ Q 83

²¹⁶ Q 125. However the Man in Seat Sixty-One believed (as per his written evidence) that there were problems with the operation of Deutsche Bahn's online ticket booking system in this respect.

and Thalys, even on international trains the proportion of those actually crossing the border was quite small, although he acknowledged that this situation was somewhat “circular”.²¹⁷ The Man in Seat Sixty-One was more optimistic. He suggested that commercial interest was growing in this area in spite of commercial operators having previously seen rail ticketing as “niche, and a black art”. He argued that implementation of the TAP TSI would help, as all undertakings are required to present data in the same format, but that it would still have to be connected and made available through one source, such as National Rail Enquiries in the UK. At present, it was difficult to obtain permission to connect to an undertaking’s ticket information, whereas domestic operators in the United Kingdom were legally obliged to make such data available to National Rail Enquiries.²¹⁸

123. **The provision of pan-European through-ticketing is crucial for developing the European rail market and achieving greater competition. The Commission has a key role to play in facilitating cooperation between operators, including through the Telematic Applications for Passenger Services (TAP) Technical Standard for Interoperability (TSI). We welcome strongly the adoption of the TAP TSI as a fundamental building block of pan-European ticketing and support the additional measures contained in the Transport White Paper.**

Convention concerning International Carriage by Rail (COTIF)/International Convention for the Transportation of Passengers (CIV)

124. Buying a through ticket is one complication of travelling long distances by rail. Another is the number of connections required and the interaction between those services, which may involve several modes of transport. Delay or cancellations of one section can have severe consequences for onward connections. In theory, a degree of protection is offered by the Convention for the transportation of passengers.

BOX 9

The Convention concerning International Carriage by Rail (COTIF) and the Convention for the Transportation of Passengers (CIV)

The Convention concerning International Carriage by Rail (COTIF) was signed in 1985. It established the Intergovernmental Organisation for International Carriage by Rail (known by its French acronym, OTIF), which included 45 participating countries from Europe, North Africa and the Middle East. It is responsible for developing international railway measures, including the measure described below. The EU acceded to OTIF on 1 July 2011.

The Convention for the Transportation of Passengers (again, known by its French acronym, CIV) seeks to offer a similar level of protection to rail passengers as enjoyed by air travellers under the Warsaw Convention and sea travellers under the Athens Convention. Under the CIV, transport carriers are required to deliver the passenger and their luggage to their destination, as shown on their ticket, and to provide alternatives in the case of missed or cancelled connections.

²¹⁷ Q 40

²¹⁸ Q 250

125. The Man in Seat Sixty-One stressed the importance to rail travellers of making onward connections, and identified problems with the current operation of the CIV. He noted that the CIV was written during a previous railway age and had not adapted for the new deregulated rail market. In particular, he pointed to problems concerning the purchase of multiple tickets for international journeys. The CIV applies theoretically to these but it sometimes proves difficult to obtain redress for missed connections. He argued that the problem had become worse in recent years because there were now fewer long-distance through-trains, with more connections required as a result. This had resulted in rail operators issuing several non-refundable, non-flexible tickets, rather than one single, flexible ticket to cover the whole journey. Increased liberalisation has also meant that more operators are now involved.²¹⁹ Ivor Morgan echoed these concerns and argued that the CIV provisions should be clarified in order to remove these grey areas.²²⁰ Professor Vickerman thought it was difficult to apply CIV to multi-modal journeys as the existence of separate tickets, and thus separate contracts, created a “murky area of liability”.²²¹ The Minister argued that the current regime was adequate and did “not see at the moment that there is a gap in passenger protection that needs filling with a change in the rules”.²²²
126. The application of, and interaction between, consumer rights protection via the CIV and the Passenger Rail Rights Regulation is opaque and in need of clarification, especially regarding the issue of multiple tickets for a single journey. This is especially so as easier ticket purchasing following the implementation of the TAP TSI will result in a greater proliferation of tickets, albeit sometimes issued by a single ticket vendor.
127. **We recommend that the Government work with their partners in the Intergovernmental Organisation for International Carriage by Rail to clarify the application of the Convention for the Transportation of Passengers to international rail passenger journeys in the EU. The definition of a single contract of carriage should be made clear, to outline what guarantees a passenger can expect with respect to onward connections.**

²¹⁹ Q 239

²²⁰ Ivor Morgan

²²¹ Q 26

²²² Q 295

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

128. We support the liberalisation of international passenger rail services and believe that the Directive 2007/58/EC forms a sound basis for ensuring more services and greater competition, including through the Channel Tunnel. (para 21)
129. We regret the continued fragmentation of the European rail market. We therefore support the White Paper's call to overcome all remaining technical, administrative and legal obstacles that still impede entry to national railway markets in order to complete the internal market for rail services. This will result in a better deal for European rail passengers and freight users. (para 25)
130. Continuing disparities between Member States' implementation of the Railway Packages create barriers to entry and discrimination. We reiterate our recommendation that the Commission should use the powers at its disposal to ensure the full implementation and enforcement of the First Railway Package, including the full separation of infrastructure managers from railway undertakings and the establishment of strong, independent and well-resourced regulators. (para 30)
131. We regret that a significant number of Member States have yet to achieve their obligations under the Railway Packages, which continues to present a significant barrier to the development of the European rail market with negative consequences for consumers and railway operators. (para 31)
132. The creation of an EU-level economic regulator would be premature. Informal cooperation between regulators should be sufficient to resolve cross-border problems. We welcome the establishment of the Independent Regulators Group-Rail and urge independent regulators from the remaining Member States to join it. We encourage IRG-Rail to produce regular reports on their progress toward a Single European Railway Area. (para 36)
133. The case has not been made for the expansion of the European Railway Agency's remit or powers. The ERA should be more proactive in its approach. The Commission should ensure that the agency is resourced adequately and support its efforts to achieve greater harmonisation by enforcing the relevant safety and technical measures already in place. (para 40)
134. While the terms of the Treaty of Canterbury may have been adequate at the time the Channel Tunnel was first conceived, the Treaty has been overtaken by events including the growth of EU legislation and the liberalisation of the market. The 25th anniversary of the Treaty provides an opportunity for the UK and French governments to review the terms of the Treaty, with reference to the EU legislative and regulatory framework. (para 45)
135. In the short-term, the UK delegation to the Intergovernmental Commission should seek to ensure that decision-making methods are quicker and more transparent and that it complies with the Railway Packages in full. The delegation should also seek to ensure fair and open access through the Channel Tunnel. (para 49)
136. In the long-term, we support direct governance of the Channel Tunnel by the UK and French national regulators. This should be considered as part of any review of the Treaty of Canterbury. Such arrangements would be less cumbersome, would minimise delays in the provision of new services, and

would be in line with the management of other cross-border rail infrastructure within the EU. (para 50)

137. EU-wide Technical Standards for Interoperability (TSIs) set out comprehensive safety standards. We have not been convinced that the Channel Tunnel is a unique safety case requiring its own safety standards, and so the TSIs should be applied in full. The Intergovernmental Commission should respond fully to the matters raised in the European Railway Agency's technical opinion as a matter of urgency. Unduly burdensome safety requirements must not deter new entrants to the market. (para 62)
138. To achieve a fully liberalised and interoperable rail network, common standards must be applied consistently, with minimum derogations only when absolutely essential. The Intergovernmental Commission and Channel Tunnel Safety Authority should work with other long tunnel managers to exchange best practice and to ensure consistency across the whole network. (para 63)
139. We welcome the interest from new providers of international rail services, including Deutsche Bahn's proposed services from Amsterdam and Frankfurt to London. Authorisation should be granted without delay. All parties should work together to ensure that the prospective new international passenger services are introduced on schedule. (para 71)
140. Access charges set by Eurotunnel and the United Kingdom and French governments constitute a large part of the cost of running a service through the Channel Tunnel. However, we appreciate that Eurotunnel is a private company, and that its access charges constitute a significant share of its income. It should be free to set access charges at a market rate subject to their obligations under EU law. (para 84)
141. New entrants could be deterred from seeking authorisation to provide services if access charges are not fair, predictable and available more easily. We recommend that the Intergovernmental Commission's review of access charges is expedited and any changes, whether by Eurotunnel or by the United Kingdom or French governments, are made without delay. We would welcome a reduction of the charges in the medium-term as a means of encouraging use and increasing revenue. (para 85)
142. The development of new international services may render the current system of juxtaposed border controls unsustainable. We welcome the Government's open-minded approach to this matter, and would welcome a statement on their proposals. All feasible solutions should be considered, including the reintroduction of on-board passport checks. Any revised security policy must be proportionate and avoid an adverse impact on passenger waiting times. (para 90)
143. Providing a cross-border rail service will continue to be expensive as long as rolling stock is required to meet multiple safety and interoperability standards. TSIs should be extended in scope wherever possible in order to facilitate market entry for new operators. We urge the European Rail Agency to be more proactive in this area. (para 94)
144. We endorse the continued rollout of the European Rail Traffic Management System, subject to the costs being controlled adequately. Alongside other

interoperability initiatives, this will be crucial for the future development of the European rail services market. (para 95)

145. TEN-T funding should be prioritised for cross-border transport infrastructure projects that contribute to economic growth by overcoming bottlenecks and helping to achieve the completion of the Single Market. The decision should not be prejudiced in favour of either conventional or high-speed rail projects. It is imperative that the risks should be properly assessed before funding is allocated. (para 102)
146. If funding is to be provided at EU-level, projects should advance EU aims to develop a competitive and resource efficient transport system. Conditions on interoperability and fair access should be attached to any such funding. (para 103)
147. In the interests of promoting economic growth, funding for the development of the European rail network should be a priority during the next financial perspective. We welcome the inclusion of €31.7bn of “seed capital” in the next Multiannual Financial Framework to help complete necessary cross-border links which might not otherwise be built. (para 106)
148. Given the constraints on European public funding for the foreseeable future, policies should be developed which seek to maximise contributions from the private sector whilst ensuring a fair allocation of risk. A more predictable EU regulatory framework, and the use of innovative financial instruments where appropriate, should be pursued to facilitate more commercially viable propositions. (para 107)
149. While the increased provision of inter-regional services through the Channel Tunnel is desirable, it is ultimately a commercial decision for the operators. Fixed costs, such as access charges and train control systems, mean that longer-distance international services should be more viable. Ways of rendering such services more sustainable and making stoppages at intermediate stations more attractive should be examined further. (para 110)
150. Achieving a greater degree of competition between rail and air transport, in terms of taxation and the application of the EU Emission Trading System, is necessary before rail travel will become an attractive alternative to short haul flights. (para 114)
151. In principle, we support the approximation of passenger rights across all transport modes, as proposed in the Commission’s White Paper. We will look forward to scrutinising the proposal when it is published. (para 118)
152. The provision of pan-European through-ticketing is crucial for developing the European rail market and achieving greater competition. The Commission has a key role to play in facilitating cooperation between operators, including through the Telematic Applications for Passenger Services (TAP) Technical Standard for Interoperability (TSI). We welcome strongly the adoption of the TAP TSI as a fundamental building block of pan-European ticketing and support the additional measures contained in the Transport White Paper. (para 123)
153. We recommend that the Government work with their partners in the Intergovernmental Organisation for International Carriage by Rail to clarify the application of the Convention for the Transportation of Passengers to international rail passenger journeys in the EU. The definition of a single contract of carriage should be made clear, to outline what guarantees a passenger can expect with respect to onward connections. (para 127)

APPENDIX 1: SUB-COMMITTEE ON INTERNAL MARKET, ENERGY AND TRANSPORT

The Members of the Sub-Committee which conducted this inquiry were:

Lord Bradshaw
 Lord Brooke of Alverthorpe
 Lord Clinton-Davis
 Lord Fearn
 Lord Haskel
 Lord James of Blackheath
 Baroness O’Cathain (*Chairman*)
 Lord Plumb
 Lord Rowe-Beddoe
 Lord Ryder of Wensum
 Baroness Valentine
 Lord Walpole

Declaration of Interests

Lord Bradshaw
Adviser, OXERA (economics consultancy)
Vice-Chair, All-Party Parliamentary Rail Group

Lord Brooke of Alverthorpe
Past Government Partnership Director, National Air Traffic Services Ltd
Member, All-Party Parliamentary Rail Group

Lord Clinton-Davis
Honorary Life President (retired), British Airline Pilots Association

Lord Fearn
No relevant interests

Lord Haskel
No relevant interests

Lord James of Blackheath
No relevant interests

Baroness O’Cathain
No relevant interests

Lord Plumb
No relevant interests

Lord Rowe-Beddoe
No relevant interests

Lord Ryder of Wensum
No relevant interests

Baroness Valentine
Chief Executive and Board Member, London First

Lord Walpole
President, North Norfolk Orbital Railway

A full list of Members’ interests can be found in the Register of Lords Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/hleub and is available for inspection at the Parliamentary Archives (020 7219 5314).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. All other witnesses submitted written evidence only.

Oral Evidence in chronological order

- * (QQ 1–41) Professor Roger Vickerman, Professor of European Economics, University of Kent and Dean, University of Kent, Brussels
- * (QQ 42–86) Eurostar
- * (QQ 87–131) Deutsche Bahn AG
- * (QQ 132–162) High Speed 1 (HS1)
- * (QQ 163–198) Office of Rail Regulation (ORR)
- * (QQ 199–233) Alstom
- * (QQ 234–252) The Man in Seat Sixty-One
- * (QQ 253–299) Theresa Villiers MP, Minister of State, Department for Transport; Roy Griffins, Head of UK Delegation to the Channel Tunnel Intergovernmental Commission and Caroline Wake, Head of UK Delegation to the Channel Tunnel Safety Authority
- * (QQ 300–330) Rail Freight Group (RFG)
- * (QQ 331–366) Eurotunnel

Alphabetical list of all witnesses

- * Alstom
- David Briginshaw, Editor-in-Chief, International Rail Journal
- * Department for Transport
- * Deutsche Bahn AG
- European Rail Infrastructure Managers (EIM)
- European Railway Agency (ERA)
- * Eurostar
- * Eurotunnel
- Ferrovie Dello Stato
- * High Speed 1 (HS1)
- Interfleet
- International Air Rail Organisation (IARO)
- * The Man in Seat Sixty-One

- Ivor Morgan
- MDS Transmodal
- Network Rail
- * Office of Rail Regulation (ORR)
- Passenger Focus
- P&O Ferries
- * Rail Freight Group (RFG)
- DB Schenker Rail (UK) Ltd
- * Professor Roger Vickerman

APPENDIX 3: CALL FOR EVIDENCE

The Internal Market, Energy and Transport Sub-Committee of the House of Lords Select Committee on the European Union, chaired by Baroness O’Cathain, are conducting an inquiry into the development of international rail passenger services in the EU, focusing on the Channel Tunnel as a case study. The Committee seeks evidence from anyone with an interest.

Written evidence is sought by **7 June 2011**. Public hearings will be held in June and July 2011. The Committee aims to report to the House, with recommendations, in autumn 2011. The report will receive a response from the Government, and may be debated in the House.

The European Commission began its efforts to liberalise international rail passenger and freight services from 1995 onwards through the adoption of a number of rail packages. Progress has been faster for freight than for passenger services, and the international freight market was opened up to full competition from 1 January 2007 onwards. However, the third railway package which was adopted in 2007 included a Directive (2007/58/EC) to open up international passenger rail services to competition. This entered into force from 1 January 2010.

The Channel Tunnel is a vital link between the UK and mainland Europe, and currently the only method by which rail passengers can travel direct to the Continent. In 1986 the Treaty of Canterbury established two Franco-British authorities: the Channel Tunnel Intergovernmental Commission (IGC), which was initially responsible for monitoring the construction of the tunnel and now supervises its operation, and the Channel Tunnel Safety Authority (CTSA), which reports to the IGC and is responsible for advising on safety matters in the tunnel. The UK’s representation on and engagement with both bodies is supported by the Office of the Rail Regulator (ORR). Eurostar is currently the sole operator of a passenger rail service through the tunnel, but Deutsche Bahn have announced that they intend to run their ICE trains through the tunnel from 2013.

The Commission’s 2011 White Paper *Roadmap to a Single European Transport Area* sets out how a competitive and resource efficient transport system will be achieved across all transport modes. It seeks to move medium distance passenger travel from road and air to rail. With respect to railways, specific proposals include:

- Completing the internal market for rail services in order to achieve a Single European Railway Area.
- Strengthening the role of the European Rail Agency in European rail safety.
- The development of a European high-speed rail network by 2050.
- Developing a common approach for the internalisation of noise and local pollution costs on the whole rail network, as well as measures to increase capacity in the long-term.
- Developing a new funding framework for transport infrastructure.
- The development of a unified approach to passengers’ rights across all transport modes.

Witnesses are encouraged to address any aspect of EU passenger or freight rail regulation they feel is relevant to the terms of the inquiry. However, the

Committee would be particularly interested to receive answers to the following questions:

- (1) How can more competition in international rail passenger services in the EU be achieved, and what barriers still exist?
- (2) How has the liberalisation of the international passenger rail market has been developing since January 2010?
- (3) Should the European Rail Agency should have a stronger role in this regulating rail safety? What relationship should be adopted between the ERA and national rail authorities such as the ORR? How should the safety certification for the Channel Tunnel be undertaken within this context?
- (4) How can EU infrastructure funding (TEN-T) be most effectively used in the development of high-speed rail? What conditionality should be attached to funding for TEN-T projects?
- (5) Should existing regulations be applied more vigorously on the TEN-T core network? Are special procedures necessary to make this happen?
- (6) What measures are most necessary to ensure passengers switch from road and air to rail? What impact would greater use of rail have on these modes of transport, and others such as cross-Channel ferries?
- (7) Are passengers satisfied with international rail services in the EU? Do passengers' rights need to be strengthened?
- (8) In the light of developments with the EU regulatory framework and liberalisation of the market since the 1990s, are structures governing the management of the Channel Tunnel fit for purpose? Does the Treaty of Canterbury need to be revisited?
- (9) The 2011 Transport White Paper puts emphasis on the multimodality of freight and passenger journeys across Europe. How can this best be achieved? Does the Channel Tunnel represent a bottleneck to this approach? If so, what can be done to solve the problem?
- (10) What are the security implications of greater volumes of passenger services running through the Channel Tunnel?

This inquiry will not deal with:

- Any matter which is *sub judice*, particularly as a result of legal proceedings between private companies regarding the provision of materials or services within the European railways market; or
- Infringement proceedings between the Commission and Member States regarding the implementation of the first railway package, or any other matter which is similarly legally or commercially sensitive;
- The internal operation of the IGC or CTSA.

You need not address all of these questions.

The inquiry will not address in detail the development of international rail freight services as these have been covered in two previous reports; *Liberalising Rail Freight Movement in the EU* (4th Report, Session 2004–05, HL Paper 52) and *Recast of the First Rail Freight Package* (10th Report, Session 2008–09, HL Paper 90). However, responses dealing with freight would be welcome where there are common issues with, or a direct impact on, the passenger market.

The inquiry will also not concentrate on the domestic rail market, other than in areas where it has a direct impact on the international market.

APPENDIX 4: GLOSSARY OF TERMS AND ABBREVIATIONS

| | |
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| Access charges | Access charges are levied by infrastructure managers on railway undertakings who wish to use their tracks and other facilities in order to provide their freight or passenger services. |
| API | Advanced Passenger Information is the data—usually contained in passports—which passengers are sometimes required to provide to transport operators—typically airlines—before they check-in for their journey. |
| Air Passenger Duty | An excise duty which is charged on the carriage of passengers flying from United Kingdom airports on planes which meet a specific weight and seat threshold. The rate paid depends upon the total distance travelled to destinations in Europe and beyond. |
| ARAF | <i>Autorité des activités ferroviaires</i> : The independent French rail regulator. |
| Capacity allocation | This is the process of allocating pathways and managing capacity of the rail network between different train operators. |
| CTSA | The Channel Tunnel Safety Authority is responsible for all safety matters in the Channel Tunnel. |
| CIV | Convention for the Transportation of Passengers, under which transport carriers are required to deliver the passenger and their luggage to their destination, as shown on their ticket, and to provide alternatives in the case of missed or cancelled connections. |
| COTIF | The Convention concerning International Carriage by Rail, which established the Intergovernmental Organisation for International Carriage by Rail and is responsible for developing international railway measures. |
| Distributed power | Distributed power, or traction, refers to a series of motors spread out beneath the floor of a train. Other trains have motors in dedicated carriages at either end of the train. |
| EPSF | <i>Établissement public de sécurité Ferroviaire</i> : The French railway safety authority. |
| EU ETS | The EU Emission Trading System was introduced in 2005 to help the EU meet its greenhouse gas emissions targets under the Kyoto Protocol. The cap and trade scheme requires Member States to distribute allowances to installations covered by the scheme. They can emit more than their allocation by buying allowances from the market or sell its surplus allowances if they emit less than their allocation. |
| ERA | The European Railway Agency was established to advise the Commission on the development of common technical standards and approaches to safety within the rail industry. |
| ERTMS | The European Railway Traffic Management System is designed to provide a single advanced signalling system |

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| | throughout Europe, replacing those of Member States; therefore increasing capacity and reliability. |
| HS1 | High Speed 1: Officially known as the Channel Tunnel Rail Link (CTRL), HS1 is the high-speed rail line which connects St Pancras International Station with the entrance to the Channel Tunnel at Folkestone. HS1 Ltd manages the infrastructure as the concessionaire. High Speed 2 (HS2) is the proposed high-speed rail link between London and the Midlands and North of England. |
| HSR | High-speed Rail is a type of passenger train that travels significantly faster than normal trains. Examples include ICE trains in Germany and TGV trains in France. |
| Homologation | A technical term for the granting of approval by an official authority. |
| ICE | The brand name for Deutsche Bahn's Intercity-Express high-speed trains. |
| Incumbent operator | Incumbent operators are the established, usually state-owned, dominant national operator. Examples include SNCF in France and Deutsche Bahn in Germany. British Rail was the incumbent operator in the United Kingdom before it was privatised in the 1990s. |
| IRG-Rail | Independent Regulators Group-Rail is a voluntary group of independent rail regulators from 16 European countries. |
| Infrastructure manager | The infrastructure manager is responsible for providing and maintaining national railway infrastructure, including tracks and sometimes also stations and signalling systems. |
| Infringement proceedings | This is the method by which the Commission can enforce the implementation of EU legislation by Member States. |
| Innovative financial instruments | The provision of financial support from the EU budget through instruments other than pure grant funding, including a combination of EU grants and loans from financial institutions to support EU projects. The instruments can include debt measures which provide financing to recipients who experience difficulties in accessing finance; or equity/risk capital measures which allow risk to be shared with financial institutions in order to leverage the impact of the EU budget intervention. |
| IGC | The Intergovernmental Commission was established under the Treaty of Canterbury to manage all aspects of the operation of the Channel Tunnel on behalf of the UK and French governments. |
| Interoperability | Interoperability refers to the ability of diverse systems, including track gauges and signalling systems, to work together across the European rail network, therefore facilitating the further development of international rail travel. |
| LCR | London and Continental Railways was selected by the Government to build and operate HS1. LCR also retains a 40% stake in Eurostar International Ltd. |

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| MFF | Annual EU budgets are based on an Multiannual Financial Framework, which is usually agreed between the European Parliament, Council and Commission for a six-year period. The MFF sets the maximum amount of commitment appropriations in the EU budget each year for broad policy areas and fixes an overall annual ceiling on payment and commitment appropriations. The current MFF covers the period from 2007 to 2013. Its successor, for the period from 2014 to 2020, has been proposed recently by the Commission. |
| National regulatory authority | These can be responsible for the economic or safety regulation of a national rail network. The Railway Packages require these to be established as independent entities in each Member State. The Office of Rail Regulation in the United Kingdom is responsible for discharging both functions. |
| Network statement | A network statement sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity allocation schemes, including how operators should apply for the use of infrastructure. |
| ORR | The Office of Rail Regulation is the independent safety and economic regulator for Britain's railways. |
| Railway Packages | These are packages of EU legislative measures—Directives and Regulations. Three have been adopted between 2001 and 2007, which have aimed to liberalise the international freight and passenger rail markets in Europe. |
| Railway undertaking | A railway undertaking, or operator, is a business that provides services for the transport of goods and/or passengers by rail. |
| Recast | A recast is used to consolidate pieces of legislation and to make substantive changes to the legislation. |
| RFF | <i>Réseau Ferré de France</i> : The infrastructure manager of the French rail network. |
| Rolling stock | Rolling stock includes all vehicles that move on a railway, such as locomotives, railroad cars, coaches and wagons. |
| SNCB | <i>Société Nationale des Chemins de fer belges</i> (Belgian National Railway Company). |
| SNCF | <i>Société Nationale des Chemins de fer français</i> (French National Railway Company). |
| TAP TSI | The Telematics Applications for Passenger Services TSI requires operators to standardise their data on fares and timetables to ensure maximum interoperability and to ease their exchange between operators throughout the EU, including ticket vendors. |
| TSIs | Technical Standards for Interoperability are the standards set for specific items of rail infrastructure or equipment, in order to ensure interoperability across the European rail network. They are developed by the ERA. |

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| TGV | <i>Train à Grande Vitesse</i> : France's high-speed rail network, which is operated by SNCF, as well as the rest of the national rail network. |
| TEN-T | Trans-European Transport Networks are a planned set of rail, road, air and water transport networks across Europe, which form part of a wider system of energy and telecommunications networks. The EU supports the development of these networks through a combination of guidelines and funding. |
| UKBA | The UK Border Agency is an agency of the Home Office and is responsible for border control. |