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Subject: State Aid SA.51956 (2018/N) – Germany
Aid scheme for the promotion of rail freight transport

Sir,

1. PROCEDURE

- (1) Pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (hereafter "TFEU"), on 3 September 2018, Germany notified an aid scheme in support of rail freight transport in Germany.
- (2) On 18 October 2018, the Commission requested additional information from the German authorities on the notified scheme. On 25 October 2018, the German authorities submitted additional information to complement their notification.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1 Objective and main characteristics

- (3) According to Germany, the current modal split of rail freight has been stagnating at 17-18 % for years. The main objective of the aid scheme is to make rail freight transport more competitive and to thereby contribute to a modal shift from road to rail. The scheme's aim is therefore to contribute to national and European climate goals by strengthening rail freight transport as a whole against road freight transport which, in comparison, is more emission-intensive.

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- (4) Germany intends to achieve this modal shift from road to rail freight transport by means of a partial funding of track access charges for eligible railway undertakings.

2.2 Beneficiaries

- (5) Beneficiaries of the scheme are railway undertakings providing or ordering rail freight transport services within the scope of the network statement by DB Netz AG. DB Netz AG is the infrastructure manager of Deutsche Bahn AG and is responsible to manage the approximately 33.300 km long rail network.
- (6) Rail freight transport for the purposes of this scheme are transport activities which serve the national or cross-border transport of goods. This comprises undertakings either providing rail freight transport services themselves or commissioning rail freight transport. Railway undertakings from other EU Member States that operate railway services in Germany are eligible to the same extent as German undertakings.
- (7) The direct and primary recipient of the aid is DB Netz AG which is a 100% subsidiary of the publicly owned Deutsche Bahn AG.
- (8) DB Netz AG subsequently passes on the aid in its entirety to the eligible railway undertakings, the beneficiaries.. No funding derived from the aid measure will remain with DB Netz AG.
- (9) The aid is granted through the partial financing by the State of the track access charges - which are examined and approved by the Federal Network Agency ("*Bundesnetzagentur*") - and is calculated based on the train-kilometres run.
- (10) Undertakings against which a recovery order has been issued by the European Commission may not benefit if the recovery amount has not been repaid.
- (11) Germany confirms that undertakings in financial difficulties¹ will not be considered eligible under the scheme.

2.3 Legal basis

- (12) The legal basis of the aid scheme is the national "Guideline for the promotion of rail freight transport via a partial funding of track access charges" (hereinafter the "Guideline") which will be adopted following the Commission approval of the present scheme.

2.4 Duration

- (13) The scheme will cover the period from 1 July 2018 to 30 June 2023. The scheme will only be implemented after the adoption of the present decision by the Commission.

¹ As defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249 of 31 July 2014, p.1.

- (14) According to the information submitted with the notification, Germany has ensured that the scheme was given ample public coverage before its notification, as early as from 2017.² Germany claims that thus railway undertakings and their customers have already taken the aid into account in their negotiations, although actual disbursement of the aid is still pending.

2.5 Budget

- (15) The budget is EUR 350 million annually. The scheme will be financed from German federal budget funds.

2.6 Eligible costs

- (16) According to Germany, the aid will relieve the eligible rail freight undertakings from about 40-45 % of the track access charges. Track access charges correspond to approx. 13% of the overall costs of rail freight transport, with a decreasing trend over time, according to a market study by the Bundesnetzagentur of 2016³. In sum, the notified measure will thus relieve the rail freight undertakings of a maximum of 6% of the cost of freight transport.
- (17) Germany grounds the measure on the reduction of external costs generated by rail freight transport compared to road freight transport. Therefore, the eligible costs correspond to the part of the external costs that are avoided by the use of rail freight transport instead of road transport. The quantification of the eligible costs under the notified scheme is thereby based on the results of the calculation of the external cost differential between rail and road transport modes.
- (18) Germany provided two studies on external costs, the INFRAS⁴ study of 2007 and the ISI⁵ study of 2011.

² See press release of 23 June 2017 by Minister for Transport Alexander Dobrindt announcing a budget of annually EUR 350 million to support the reduction of track access charges, <https://www.bmvi.de/SharedDocs/DE/Pressemitteilungen/2017/085-dobrindt-masterplan-schienengueterverkehr.html>. See also e.g. <https://www.allianz-pro-schiene.de/presse/pressemitteilungen/regierungsfraktionen-trassenpreise-noch-2018-runter/>; <https://www.eurotransport.de/artikel/bundestag-senkt-trassenpreise-175-millionen-euro-fuer-die-schiene-10217545.html>.

³ Bundesnetzagentur Marktuntersuchung Eisenbahnen 2016, page 60, see <https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Eisenbahn/Unternehmen/Institutionen/Veroeffentlichungen/Marktuntersuchungen/MarktuntersuchungEisenbahnen/MarktuntersuchungEisenbahn2016.pdf>. The figure of 17% shown in this study relates to infrastructure costs as a whole; according to Germany, track access charges account for around 76% of such infrastructure costs.

⁴ INFRAS, Externe Kosten des Verkehrs in Deutschland, Update 2005, Schlussbericht, Zürich, 2007. See https://www.infras.ch/media/filer_public/e0/9d/e09d6897-1e68-4359-b559-d62b90890eec/070300_externe-kosten_management_summary.pdf.

⁵ CE Delft (INFRAS/Fraunhofer ISI, "External costs of Transport in Europe, update study for 2008", Delft, 2011. See https://www.cedelft.eu/index.php?/publicatie/external_costs_of_transport_in_europe/1258.

- (19) The data of the INFRAS study of 2007 illustrates that rail freight transport generates far less external costs than the use of road transport, see table 1 "Total external costs of freight transport in Germany". According to the INFRAS study the total external costs of freight transport in Germany were at EUR 17.1 billion in 2005. Of this total amount, around EUR 0.9 billion (accounting for 5.3 %) were caused by rail freight transport, whereas EUR 15.8 billion (92 %) were due to road freight transport.

Table 1: Total external costs of freight transport in Germany, 2005, in million euros

	Road	Rail	Aviation	Inland waterway
Accidents	2927	5	1	0
Noise	4014	315	4	0
Pollutants	3324	182	1	235
Climate-related costs	3050	41	8	138
Nature and Agriculture	835	8	2	36
Upstream and downstream processes	1352	289	1	31
Additional costs for urban areas	250	64	0	0
Total	15753	904	16	440
Total cost of freight transport: 17113				

- (20) The ISI study essentially confirms this ratio for the year 2008 (92.3% of external costs caused by road and 4.5% by rail freight transport without taking into consideration the costs of freight air transport).
- (21) The INFRAS study also compares average external costs of various transport modes for freight transport in Germany in 2005 (see table 2): costs for freight rail transport (EUR 9.5 per 1000 tonne-kilometre 'tkm') were around four times lower than costs for freight road transport (EUR 38.9 per 1000 tkm).

Table 2: Average external costs of freight transport in Germany, 2005 (in Euro/1000 tkm).

	Road	Rail
Accidents	7.2	0.1
Noise	9.9	3.3
Pollutants	8.2	1.9
Climate-related costs	7.5	0.4
Environment	2.1	0.1
Pre- and post- transport processes	3.3	3.0
Additional costs for urban areas	0.6	0.7
Total	38.9	9.5

- (22) The ISI study provides data on average external costs for all European countries in 2008 by country and transport mode. In Germany, average costs for freight rail transport amounted to EUR 9.3 per 1000 tkm whereas average costs for road transport were at EUR 52.9 per 1000 tkm.
- (23) The German authorities consider that the figures are still applicable, as no significant changes have been made in the method used to calculate external costs and the costs of rail and road transports have not significantly changed over time.
- (24) According to Germany, the results of the ISI and INFRA studies are furthermore confirmed by the Commission's study on "Freight marginal average costs of transport per country" of 2016.⁶

2.7 Eligibility criteria and calculation of aid amount

- (25) The aid is granted based on the actual number of train-kilometres run. The basis for the calculation are the track access charges as charged by DB Netz AG and as approved by the *Bundesnetzagentur*.
- (26) The aid amount is calculated according to market segments⁷. DB Netz AG calculates the aid amount for each of the market segments individually.
- (27) The basis for the calculation are the approved track access charges, the projected operating performance⁸ for the specific market segments and the available budget. The operating performance indicates the volume of train transport for freight within a given timetable period for train paths and is measured in train-path kilometres.
- (28) The rate of State support is calculated as follows: The available budget in Euro is divided by the product of the segment-specific approved track access charge and the segment-specific projected operating performance.

Rate of support

$$= \frac{\text{Budget}}{\text{segment specific approved track charge} \times \text{projected operating performance}}$$

The aid amount in euro for the specific market segment per path kilometre is calculated as the product of the rate of State support and the segment specific approved track charge.

⁶ See also update of the Handbook on External Costs of Transport by Ricardo-AEA, 8 January 2014, <https://ec.europa.eu/transport/sites/transport/files/themes/sustainable/studies/doc/2014-handbook-external-costs-transport.pdf>.

⁷ Track access charges are based on market segments as defined in the Network Statement like heavy, dangerous goods, short distance freight transport, for the 2018 Network Statement see https://fahrweg.dbnetze.com/resource/blob/1355080/73b726c305d57b51bc41a4fa8cc3b096/nbs_2019_at-data.pdf

⁸ Based on the date of approval of the track access charges.

- (29) If the support is limited to a certain time-span of the applicable timetable period for train paths only the segment specific projected operating performance for that limited period is taken as the basis for the calculation.

2.8 Procedure for granting the aid

- (30) The granting authority is the Federal Railway Authority (*Eisenbahn-Bundesamt*). DB Netz AG is obliged to inform the final beneficiary undertakings of the possibility of receiving a grant for the intended track use. The beneficiaries shall then authorise DB Netz AG to apply and receive the payment on their behalf. DB Netz AG as the direct recipient of the aid submits an application to the granting authority immediately after the approval of the charges for the upcoming timetable period. For the funding period 2018 the grant application can be made immediately after the entry into force of the Guideline, for the period 2019 the application can be introduced as from 1 January 2019. The grant application needs to contain the calculation as described in section 2.7
- (31) Once authorised by the granting authority, the aid is disbursed to DB Netz AG who retrieves the aid on behalf of the final beneficiary. DB Netz AG computes the remaining part of the track access charges that is to be paid by the rail freight undertaking after the deduction of the aid from the track access charges. The beneficiary rail freight undertaking thus only bears these reduced costs.
- (32) According to the Guideline, the final beneficiaries are obliged to inform their customers of the aid amounts and to take the aid into account in their pricing.
- (33) The Guideline and all associated regulations as well as the applied aid amounts per market segment will be published on the website of the Federal Railway Authority.

2.9 Cumulation

- (34) According to Section 6(3) of the Guideline, cumulation with other State aid pursuant to Art. 107(1) TFEU or with other Community financing is not permitted if such cumulation results in exceeding the maximum allowed aid intensity according to point 107 of the Railway Guidelines⁹, i.e. 30% of the total transport cost and 50% of the eligible costs.
- (35) In March 2018 the Commission approved an aid scheme¹⁰ (“the offshore surcharge scheme”) to the benefit of railway undertakings which operate electrical rail transport. That scheme provides for reductions from the offshore surcharge, which is to be paid by electricity consumers, to the benefit of energy intensive users including railway undertakings which operate electrical rail transport. The offshore surcharge scheme aims at containing the electricity costs of energy intensive users and thereby maintaining the intermodal competitiveness of railway undertakings.

⁹ Communication from the Commission – Community guidelines on State aid for railway undertakings, OJ C 184 of 22.7.2008, p. 13.

¹⁰ Commission Decision of 27 March 2018 in case SA. 50395 – Germany – Offshore surcharge reduction for railway undertakings, OJ C 317 of 7 September 2018, p. 1.

- (36) In July 2018 the Commission approved an aid scheme for the promotion of energy efficiency in electric rail¹¹ ("the energy efficiency scheme"). Its objective is also to make electrical rail transport more competitive compared with other, more emission-intensive modes of transport and to thereby contribute to a modal shift from road to rail. The scheme provides for support investment in measures improving energy efficiency.
- (37) The offshore surcharge scheme and the energy efficiency scheme cover partially the same eligible costs as the present scheme, i.e. the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.¹² In the context of the offshore surcharge scheme Germany has committed that should the aid under that scheme be cumulated with other means of public funding, the total aid amount will stay within the limits set by the Railway Guidelines.¹³ Pursuant to the energy efficiency scheme, aid may be cumulated with other subsidies or de minimis aid from local, regional or national resources concerning the same eligible costs provided the cumulation rules are respected.¹⁴

2.10 Repayment mechanism and monitoring

- (38) The granting authority monitors the correct use of the aid. A use in contrast to the objective of the scheme will lead to recovery of the aid which will follow the rules set out in general administrative law.¹⁵
- (39) The authority requests proof of use on an annual basis. An evaluation of the measure is scheduled for 2021.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of Aid

- (40) Pursuant to Article 107(1) TFEU *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be compatible with the internal market"*.

¹¹ Commission Decision of 26 July 2018 in case SA. 50165 – Germany -Aid scheme for the promotion of energy efficiency in electrical rail transport, not yet published in the OJ, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_50165.

¹² See recitals 46 et seq. of the offshore surcharge scheme.

¹³ See recital 21 of the offshore surcharge scheme.

¹⁴ See recital 27 of the energy efficiency scheme.

¹⁵ Procedure of recovery is set out in paragraphs 48, 49a of the law for administrative procedures (*Verwaltungsverfahrensgesetz*) and paragraphs 23, 44 of the budgetary law (*Bundshaushaltsordnung*).

(41) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, for a measure to constitute State aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled. The aid must:

- be granted by the State or through State resources
- favour certain undertakings or the production of certain goods
- distort or threaten to distort competition, and
- affect trade between Member States.

3.1.1. Economic activity and notion of an undertaking

(42) The concept of an “undertaking” covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Any activity consisting in offering goods and services on a given market is an economic activity.

(43) As the scheme is aimed at undertakings which provide rail freight transport on a given market, the beneficiaries in question are undertakings according to this definition.

3.1.2. Selective advantage

(44) Measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without being subsidies in the strict meaning of the word, are similar in character and have the same effect are considered to constitute aid¹⁶.

(45) The notified scheme contains an advantage for railway freight undertakings compared to undertakings providing other modes of freight transport – such as road freight transport or air freight transport – which do not receive aid for using infrastructure. Operating costs of the supported undertakings will be reduced compared to non-aided undertakings.

(46) As the advantage is confined to certain segments of the transportation market (rail freight transport) it is of selective nature.

3.1.3. State resources and imputability

(47) The aid is granted through State resources as it is financed of the German federal budget and is imputable to the State as it is granted by law through the Federal Railway Authority (see recital (15)) .

¹⁶ Judgment of the Court of Justice of 15 March 1994, *Banco Exterior de Espana and Ayuntamiento de Valencia*, C-387/92, ECLI:EU:C:1994:100, paragraph 13; Judgment of the Court of Justice of 17 June 1999, *Kingdom of Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraph 23.

3.1.4. Distortion of competition and effect on trade between the Member States

- (48) In accordance with settled case law¹⁷, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on liberalised markets.
- (49) The Commission notes that when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.
- (50) Since the scheme in question concerns markets which have been liberalised, the Commission considers that the measure is liable to distort competition and to have an affect on intra-EU trade.

3.1.5. Conclusion on the existence of aid

- (51) For the reasons stated above, the Commission considers that the notified aid scheme constitutes State aid.

3.2. Lawfulness of the aid

- (52) Germany has not yet put the planned aid measure into effect. Thus Germany complied with the standstill clause set out in Art. 108(3) TFEU.

3.3. Compatibility of the Aid

- (53) Article 93 TFEU states that "*aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement of the discharge of certain obligations inherent in the concept of a public service.*"
- (54) In this regard, the Commission notes that measures of coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose on society.
- (55) This approach reflects also the fact that, in view of Articles 3 Treaty on the European Union and Articles 6 and 191 TFEU, the environmental objectives of the Treaty have to be pursued inter alia through the Common Transport Policy. Rail transport generates lower negative externalities than road transport in terms of accident and pollution costs, noise, climate or congestion costs. In general, this transport mode also has considerable spare capacity and can therefore play a role in shifting traffic away from the congested parts of the road networks.
- (56) Thus, the Commission has assessed the notified aid scheme on the basis of section 6 of the Railway Guidelines (Points 85 to 117 – Aid for the coordination of transport) and its sub-section 6.3. (Points 101 to 112 – Criteria for aid for rail infrastructure use, reducing external costs and interoperability).

¹⁷ Judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, ECLI:EU:T:1998:77, paragraph 50.

- (57) According to Point 95 of the Railway Guidelines, aid that meets the needs of transport coordination is considered compatible with the TFEU. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to "meet the needs" of transport coordination it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in the aid must not jeopardise the general interests of the European Union. According to point 97 of the Railway Guidelines the aid scheme has to be limited to a maximum of five years, in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal.
- (58) According to Point 98 of the Railway Guidelines, aid for the needs of transport coordination can take several forms including aid for reducing external costs that is designed to encourage a modal shift to rail because it generates lower external costs than other modes such as road transport.

3.3.1. Eligible costs

- (59) The transport sector entails major negative externalities, for example between users (congestion), or in respect of society as a whole (pollution). These externalities are difficult to take into account, notably due to the inherent limits of including external costs in the pricing systems for access to transport infrastructure. As a result, there may be disparities between the different modes of transport, which it may be appropriate to correct by way of public support for those modes of transport which give rise to the lowest external costs.
- (60) According to Point 103 of the Railway Guidelines, "as regards aid for reducing external costs, the eligible costs are the part of the external costs which rail transport makes it possible to avoid when compared to competing transport modes." Point 104 of the Railway Guidelines adds that "[i]n that regard, it should be recalled that Article 10 of Directive 2001/14/EC explicitly allows Member States to put in place a compensation scheme for the demonstrably unpaid environmental, accident related and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail."
- (61) Point 105 of the Railway Guidelines provides that Member States have to provide a transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative options based on other modes of transport. The methodology used and calculations performed must be made publicly available.
- (62) To assess the eligible costs for the measure at stake, Germany provided the Commission with two studies as mentioned in recitals (18) *et seq.*
- (63) Germany concluded that the external costs generated by the rail freight sector have to be compared to those generated by road freight transport as the main competitor of freight railway transport is road transport. As road transport indeed represents the highest cost differential with rail, the Commission finds this approach reasonable.
- (64) The Commission notes that both studies mentioned in recitals (18) *et seq.* are public and can be accessed via the internet. They are based on data on external costs which the Commission finds methodologically sound. Both studies explicitly explain the methodology and calculations used.

- (65) The Commission compared the methodology of the two studies with the methodology used in the Commission's Handbook on External Costs of Transport by Ricardo-AEA¹⁸ and observes that the methodology of the two studies is very similar to that of the Commission's Handbook. In addition, the figures and values of the two studies and the handbook are in the same range of magnitude.
- (66) A study by the Joint Research Centre (JRC) of 2016 analysed the average external costs for railway and for road transport in Germany on the basis of the following cost elements: accidents, noise, pollutants, climate costs, infrastructure and congestion. This study estimates that total costs for Germany for rail freight transport amount to EUR 7.3 per 1000 tkm, whereas the same data for road freight transport result in an amount of EUR 30.6 per 1000 tkm.¹⁹
- (67) The two studies submitted by Germany show a similar result for rail freight transport (EUR 9.5 per 1000 tkm respectively EUR 9.3 per 1000 tkm; EUR 38.9 per 1000 tkm for road freight transport, see recitals (19) and (21)). although a three year period has passed in-between the studies. Based on the trend observed in the time span between the studies provided by Germany and the JRC study the Commission is confident that this trend has continued until today and that therefore no significant deviations in the external costs caused by the different modes of transport have taken place.
- (68) The Commission therefore considers that, despite the fact that the studies submitted by Germany date back to 2007 and 2011, the data contained therein remain valid and that the resulting conclusions can be taken into consideration for the compatibility assessment. The JRC study confirms the findings of the studies presented by Germany. The Commission concludes that the eligible costs of the scheme correspond to the part of the external costs which rail transport makes possible to avoid compared with road transport.
- (69) The eligible costs are the part of the external costs which rail freight transport makes it possible to avoid compared to road freight transport. Taking into consideration the significant difference between external costs from rail freight transport and external costs from road freight transport – external costs generated by rail freight constituting less than 25 % of the external costs caused by road freight transport - and the yearly budget of the scheme which is limited to EUR 350 million (against total external cost of road transport of EUR 15.8 billion) the Commission finds it unlikely that, even if more recent data slightly differed from the above mentioned studies, the aid amount would exceed the percentage of eligible costs set out by the Railway Guidelines.
- (70) The Commission therefore concludes - based on the transparent, reasoned and quantified comparative cost analysis in the two studies provided by Germany which is in line with point 105 of the Railway Guidelines - that the scheme is in line with points 103 to 105 of the Railway Guidelines.

¹⁸ Update of the Handbook on External Costs of Transport by Ricardo-AEA, 8 January 2014, <https://ec.europa.eu/transport/sites/transport/files/themes/sustainable/studies/doc/2014-handbook-external-costs-transport.pdf>.

¹⁹ See Joint Research Centre, European Commission, Freight marginal average external costs of transport per country, 26 May 2016, available at <https://dataverse.harvard.edu/file.xhtml?fileId=2836353&version=RELEASED&version=0>.

3.3.2. Necessity and proportionality of the aid measures

- (71) The Railway Guidelines state in sub-section 6.3.2. (Points 107 to 111) that for aid to reduce external costs, the aid has to be strictly limited to compensating the opportunity costs connected with the use of rail transport rather than with the use of a more polluting mode of transport. There is a presumption of necessity and proportionality of the aid when the intensity of the aid for reducing external costs stays below 30 % of the total costs of rail transport, and does not exceed 50 % of the eligible costs, see point 107(b) of Railway Guidelines.
- (72) Where there are several competing options which cause higher levels of pollution than rail transport, the aid has to be limited to the highest cost differential among the various options pursuant to point 109 of the Railway Guidelines. As stated above (see recital 62), the Commission deems it appropriate to assume that road transport represents the highest cost differential with rail.
- (73) The Commission notes that in the present case, the intensity of the aid stays below 50 % of the eligible costs. According to the studies submitted by Germany, the difference between total external costs for rail freight transport (EUR 904 million) and road freight transport (EUR 15.753 billion) amounts to around EUR 14.8 billion per year. 50 % of this amount are EUR 7.4 billion per year. The total eligible costs for which the presumption of necessity and proportionality applies therefore amounts to EUR 7.4 billion per year whilst the total yearly budget of the scheme only amounts to EUR 350 million which is far below the limit of EUR 7.4 billion.
- (74) The Commission also finds that the aid intensity does not exceed the maximum of 30 % of the total costs of rail freight transport. Track access charges only constitute a small part of the total costs generated by rail: Based on the data provided by Germany, the costs for track access charges only account for around 13 % of the total costs of rail freight transport (see recital (16)). This is confirmed by the JRC study of 2016, according to which the overall infrastructure costs – of which track access charges account for about 76% according to Germany - account for 17.8% of the total costs of rail freight transport.
- (75) The Railway Guidelines stipulate in Point 110 that: *"At any rate, where the aid recipient is a railway undertaking it must be proved that the aid really does have the effect of encouraging the modal shift to rail. In principle this will mean that the aid has to be reflected in the price demanded from the passenger or from the shipper, since it is they who make the choice between rail and the more polluting transport modes such as road"*.
- (76) The Commission takes note that the aid scheme contains a provision which obliges the beneficiary rail freight undertakings to pass on the aid to their customers. The Commission furthermore notes that under the scheme beneficiaries are explicitly required to inform their business partners about the aid received. Rail freight undertakings receiving the aid are thus obliged to inform their customers about the granting of the aid and to adapt their prices accordingly, thereby allowing their customers to benefit from a reduction of transport costs for freight transport.

- (77) The Commission further notes that the Guideline, all associated regulations and the concrete applied market-specific aid amounts are publicly available. The public has therefore already been informed of the planned scheme from mid-2017. According to Germany the plan to introduce the scheme has attracted considerable attention in the sector and consequently risen the awareness of the rail freight undertakings' customers for a possible price decrease. Germany puts forward that the respective rail freight undertakings have already adjusted their potential price policy and investment pattern in anticipation of the forthcoming adoption of the aid scheme.
- (78) Given the publicity of the scheme and in particular as the scheme is in the public domain and has already been announced to the sector last year (see recital (14)), the Commission considers it plausible that the attention of the business partners of the final beneficiaries has already been drawn to the aid measure. The Commission is of the opinion that it can be expected that business partners of the beneficiaries will request in their price negotiations to participate in the advantage granted to the rail freight undertakings. Due to the highly competitive industry and the transparent depiction of the aid, the Commission takes the view that this is sufficient to achieve the required price effect in order to encourage the modal shift to rail.
- (79) Finally, according to Point 111 of the Railway Guidelines, there must be realistic prospects of keeping the traffic transferred to rail to that the aid leads to a sustainable transfer of traffic.
- (80) The Commission notes that rail freight undertakings are in a highly competitive situation. Therefore, the Commission is confident that financial benefits will be passed on to customers. The relief from track access charges will lead to lower costs to operate rail freight services. The reduction of these costs will thereby lead to lower prices for business partners for the reasons described above which will in turn contribute to maintaining a sustainable transfer of traffic from road to rail freight transport.
- (81) Hence, the Commission concludes that the aid is proportionate and necessary and that there are realistic prospects that the aid leads to a sustainable transfer of traffic.

3.3.3. The aid is granted on non-discriminatory terms and the aid scheme is transparent and time-limited

- (82) Germany confirms that access to aid will be granted in a non-discriminatory manner. Any eligible final beneficiary will have access to the aid. The level of support is the same for any beneficiary in the same market segment and will be granted in accordance to the uniform procedure set out in section 2.
- (83) The Commission further positively notes that the conditions for benefiting from the aid are clearly stipulated in the relevant legal acts which are publicly accessible and the commitment by the German authorities that they will ensure the publication of the relevant information on the notified scheme.

- (84) Finally, the duration of the scheme is limited in time, i.e. until 30 June 2023, in line with the time limits laid down in Point 97 of the Railway Guidelines.

3.3.4. No effects on competition contrary to the common interest

- (85) As regards competition between different transport modes, the measure is limited to reducing imbalances between rail freight transport and road freight transport.
- (86) The Commission therefore concludes that the aid scheme in question does not give rise to a distortion of competition to an extent contrary to the common interest according to Point 96 of the Guidelines.

3.3.5. Cumulation

- (87) As described in recitals 35 to 38 the aid received under this aid scheme may be cumulated with aid received under other schemes covering the same eligible costs provided the applicable maximum aid intensities are respected. Section 6(3) of the Guideline contains an obligation for the beneficiaries to declare possible conflicts. Germany commits that the maximum aid intensities will remain respected.
- (88) The Commission notes that the offshore surcharge scheme and the energy efficiency scheme serve partially the same beneficiaries as the present scheme. These schemes cover the same eligible costs as the present scheme, i.e. the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes. The Commission further notes that the objectives of the schemes named above partially overlap with the present scheme, as they also aim for maintaining and strengthening the competitiveness of the railway sector.
- (89) The estimated total aid amount from the offshore surcharge scheme is EUR 35 million per year and the yearly aid budget of the energy efficiency scheme is EUR 100 million. Adding the annual budget of EUR 350 million available under the present scheme leads to a total possible aid amount for railway undertakings of EUR 485 million. This amount does not exceed the maximum allowed aid amount of EUR 7.4 billion (50 % of eligible costs, see recital 73).
- (90) The Commission therefore concludes that the cumulation rules laid down in Point 124 of the Railway Guidelines are respected.

3.3.6. Conclusion

- (91) The present aid scheme fulfils the criteria of section 6 of the Railway Guidelines and can therefore be considered to meet the needs of coordination of transport.

4. DECISION

- (92) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 93 of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission