



European Commission
Directorate-General for Energy and Transport
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Brussels, 24th November 2006

Subject: Recent energy court ruling in Germany

Dear Mr Ruete,

ERFA, the European Rail Freight Association and EIM, the European Infrastructure Managers are seeking your support and assistance.

Two verdicts handed down on 19th September 2006 and 10th October 2006 by the Higher Regional Court in Frankfurt am Main mean that new rail companies could suffer serious competitive disadvantages in those countries where infrastructure related services are not fully independent from operations of individual railway undertakings.

According to the ruling, in a bid to boost their own competitiveness, integrated rail operators (those operators who have common legal ownership with infrastructure managers) can quite legally deliver cheaper traction current to their own subsidiaries than to their competitors without contravening the laws and regulations governing either competition or the railways. The court ruling was based on the observation that, under existing European rules governing the liberalisation of the rail market, the provision of traction current, which is of course essential to all rail operators, is not part of the infrastructure which has to be provided to competing railways on a non-discriminatory basis. The court appears to have ignored the fact that energy for rail operations cannot be supplied from other competing sources.

However, the members of EIM and ERFA consider that traction energy is indeed an intrinsic asset for rail operation like the infrastructure itself and must fall under the scope of railway legislation. There are two major arguments for this: Firstly, energy is a vital service allowing trains to run on the rails, which in turn determines the productivity and quality of rail operations to a large extent. Secondly, energy costs are on average 15 % of the total production costs of rail freight and passenger operators. Therefore, any lack or distortion of competition in the field of infrastructure and energy provision and pricing have very serious consequences for the entire market and therefore to the revitalisation of rail freight operations in entire Europe.

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Consequently, ERFA and EIM ask the European Commission to look into a stricter definition of energy supply as a mandatory service to be provided in a non discriminating fair and transparent way to all rail operators and to ensure that it falls under the scope of rail legislation. This is especially important in those national structures in which the traditional competitor and the energy supplier are organised in a uniform group of companies. EIM and ERFA are happy to support the European Commission in this task and to discuss also further, alternative options.

Most importantly, the European Commission must also take action to prevent the German court ruling sending out the wrong signal to other European countries. This would really mark the end of the European rail reform in which, after more than 10 years of hard work in liberalisation, the EU DG TREN services have taken a lead and already reached some major milestones.

We remain at your disposal to discuss the issue of energy supply with you and your services.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Robson', written in a cursive style.

Michael Robson
Secretary General

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A handwritten signature in black ink, appearing to read 'Monika Heiming', written in a cursive style.

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