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State subsidies for the 'national champion' Deutsche Bahn

Dear Dr Mehdorn,

ERFA, the European Rail Freight Association representing the interests of open-access rail freight operators, is deeply concerned by your request for political support to finance DB's expansion policy requiring an investment of up to €15 billion. To finance such an expansion, you are proposing that the Federal Republic of Germany allocate DB some €2-3 billion of the proceeds of privatisation. In actual fact, the requested political support for DB as national champion would jeopardise European transport policy and violate European competition law, as such government backing for 'national champions' gives the latter a clear advantage over their competitors.

In fact, in the letter dated 20 October 2006 that you sent to a member of the German parliament, you ask for political support so that you can prevail in a competitive environment. We find it quite astonishing that the top management of DB does not trust DB's capability to be successful, despite commanding a market share of approximately 90 % and having a holding structure that allows DB transport divisions to benefit from DB's infrastructure and DB's service divisions (see the energy court ruling). We would like to remind you of the situation faced by new entrants in Germany, who are competitive despite not enjoying the same structural and strategic advantages as those of a fully integrated, state-owned and politically protected railway group.

In your letter, you justify the requested political support and government subsidies as follows:

- Expansion of passenger traffic in France due to expected competition from SNCF in Germany: €900 million to enable 30 international ICE trains to run on the French network.
- Increasing DB's share in the container business: €1.5-2 billion for investments in marshalling yards, rolling stock, rail ports, depots and northern maritime terminals.
- Acquisition of integrated CEE railways: €1-3 billion to expand your infrastructure and transport networks.
- Development of the Trans-Siberian land-bound connection between Europe and Asia together with Russian railways: DB's share in the investment: €1-2 billion
- Increase in DB's share of the worldwide logistics market: €2 billion to acquire logistics companies
- Expansion of urban rail traffic in major European cities such as Prague, Lyon and Stockholm: €1-2 billion to win European urban transport calls for tenders.

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Neither DB nor any of ERFA's members could implement any such plans without government support. In Germany, this would mean:

- a constitutional obligation on the German State to support rail infrastructure having a positive impact on the credit rating and creditworthiness of DB;
- that the federal government would have to try and ensure that the EU's Public Procurement Directive (1091/61) is configured in such a way that DB can continue to receive contracts for regional rail transport worth billions from Germany's federal states without having to compete, i.e. win tendering procedures;
- that the federal government would have to support the integrated 'holding' structure, for instance by leaving train path allocation and charging up to the group, instead of entrusting both elements – which could potentially lead to discrimination – to a neutral body, as provided for by Article 4 of EU Directive 2001/14/EC;
- plans by the federal government to guarantee that DB continues to receive funds from the budget in the long term and allowing a future partially privatised DB to use these funds without the government interfering.

These investments would mean that DB's competitors would see their chances of competing successfully and fairly against DB significantly reduced. The same would apply to their capacity to offer competitive prices for container business and on potential European-Asian routes because, unlike DB, these competitors do not enjoy the same level of state support.

You seem to see subsidies as a means of boosting DB's rail freight business. This contrasts starkly with various findings of the European Commission suggesting that the rail freight market has actually expanded in those markets which have been most liberalised and offer all stakeholders the same market conditions. ERFA and its members fully support that approach and will continue to lobby for fair, transparent competition as a prerequisite for sustainable and profitable rail freight operation.

Bearing in mind the declared policy of the EU's DG Competition to drastically reduce national state aid, particularly to non-ailing companies, in a bid to avoid any unfair competition, we feel sure you will agree that DB does not fall into this category! The current revision of the First Railway Package by the EU's DG TREN for a neutral and independent market, and public statements made by your European association, CER, both favour liberalisation and competition. ERFA will not only inform these stakeholders about your request, but also look into joint actions on how to prevent unfair competition prompted by individual requests for state subsidies to new entrants and non-DB flag carriers.

Yours sincerely,



Monika Heiming
Secretary General



Luca Ronzoni
President