



Unbundling and Regulatory Bodies in the context of the recast of the 1st railway package

Presentation of briefing notes to the
Committee on Transport and Tourism

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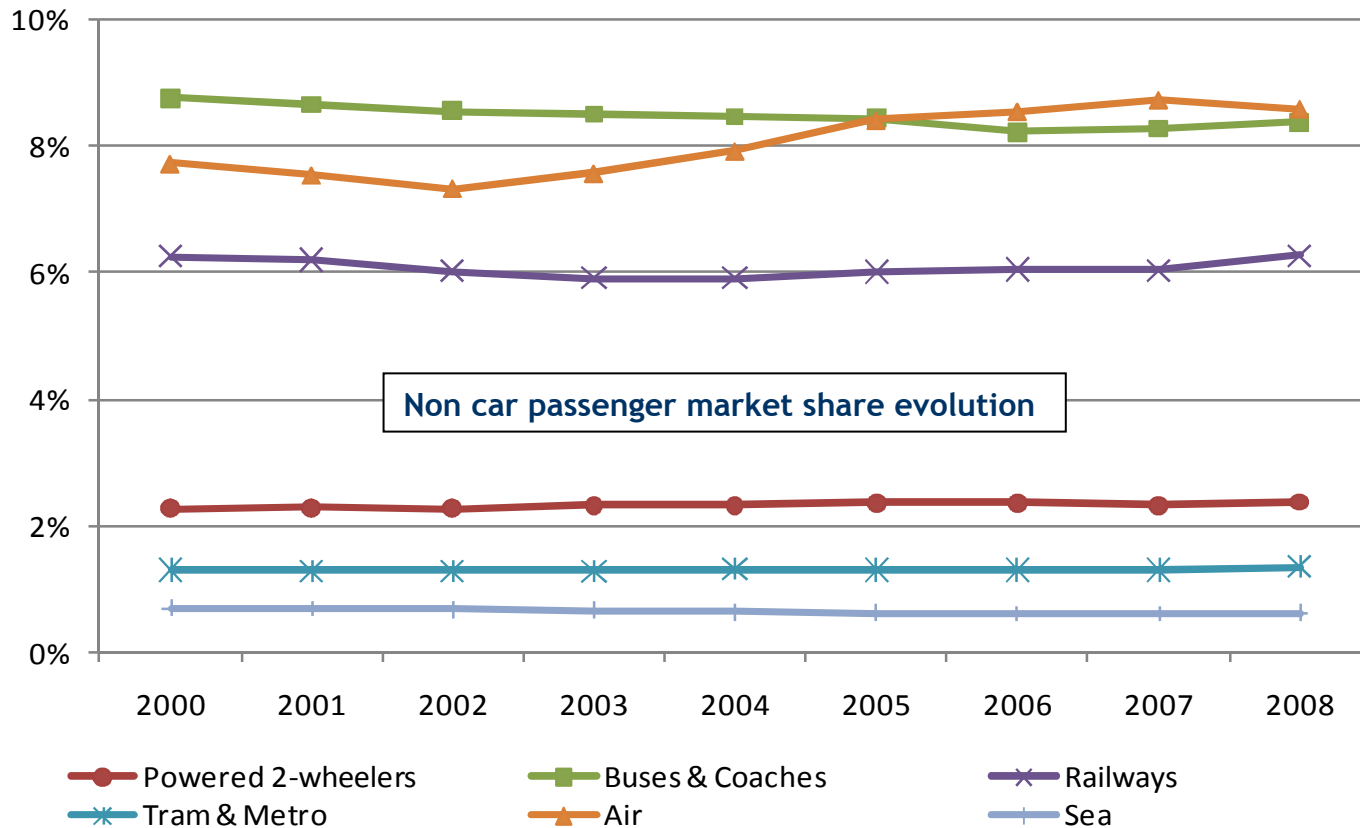
Introduction

- The TRAN Committee has requested two briefing notes on:
 - **Typology and structure of Regulatory Bodies**
 - **The impact of the separation between infrastructure management and transport operations**

- Aim: To gather a comprehensive overview of different models of regulation in force across Member States and the existing cases of vertical separation compared to cases of vertical integration.

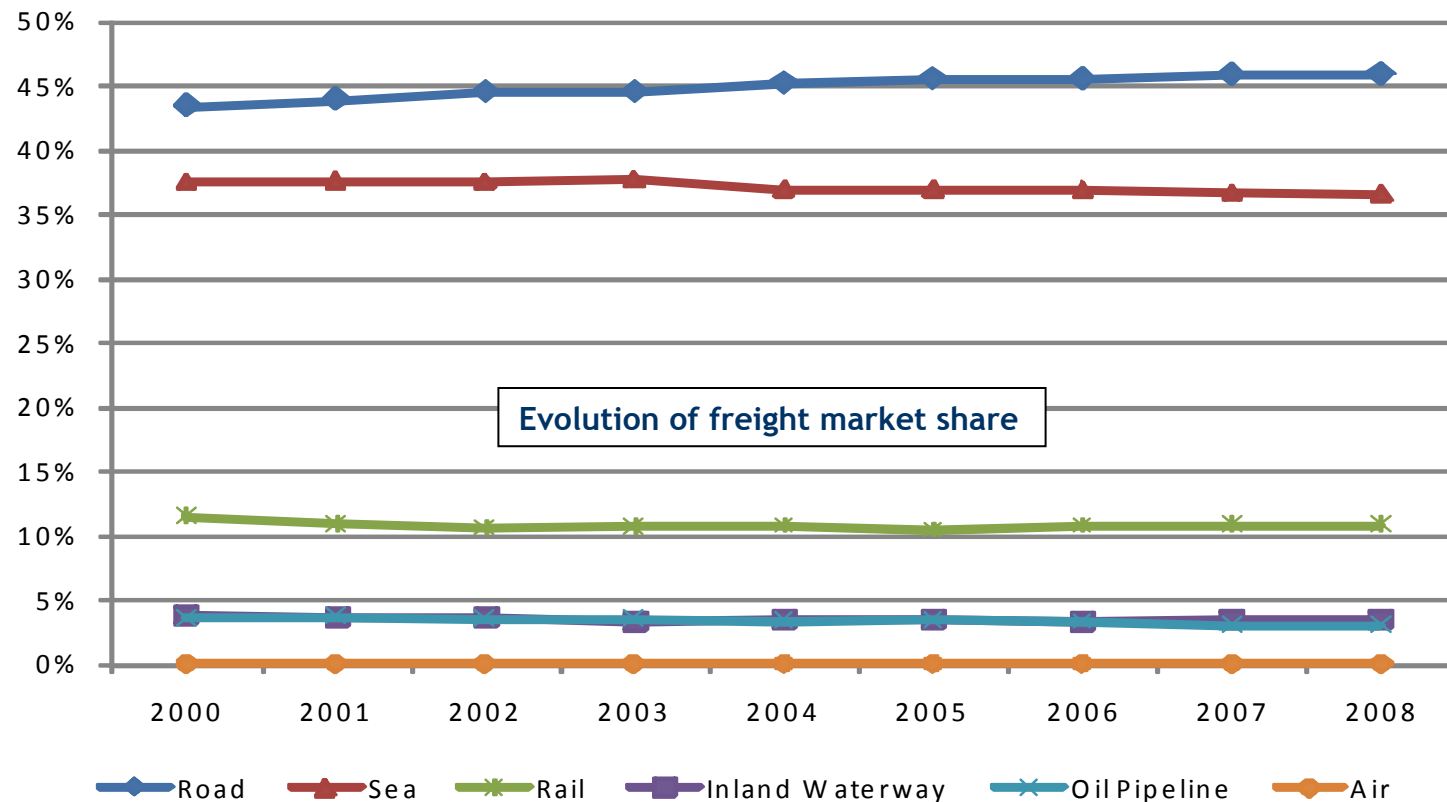
Market review (1) - Trends in rail passenger transport since 2000

- Rail share of total passenger transport at around 6%. Significant growth in Denmark (+41.9%), UK (+36.4%) and Belgium (+35.7%).



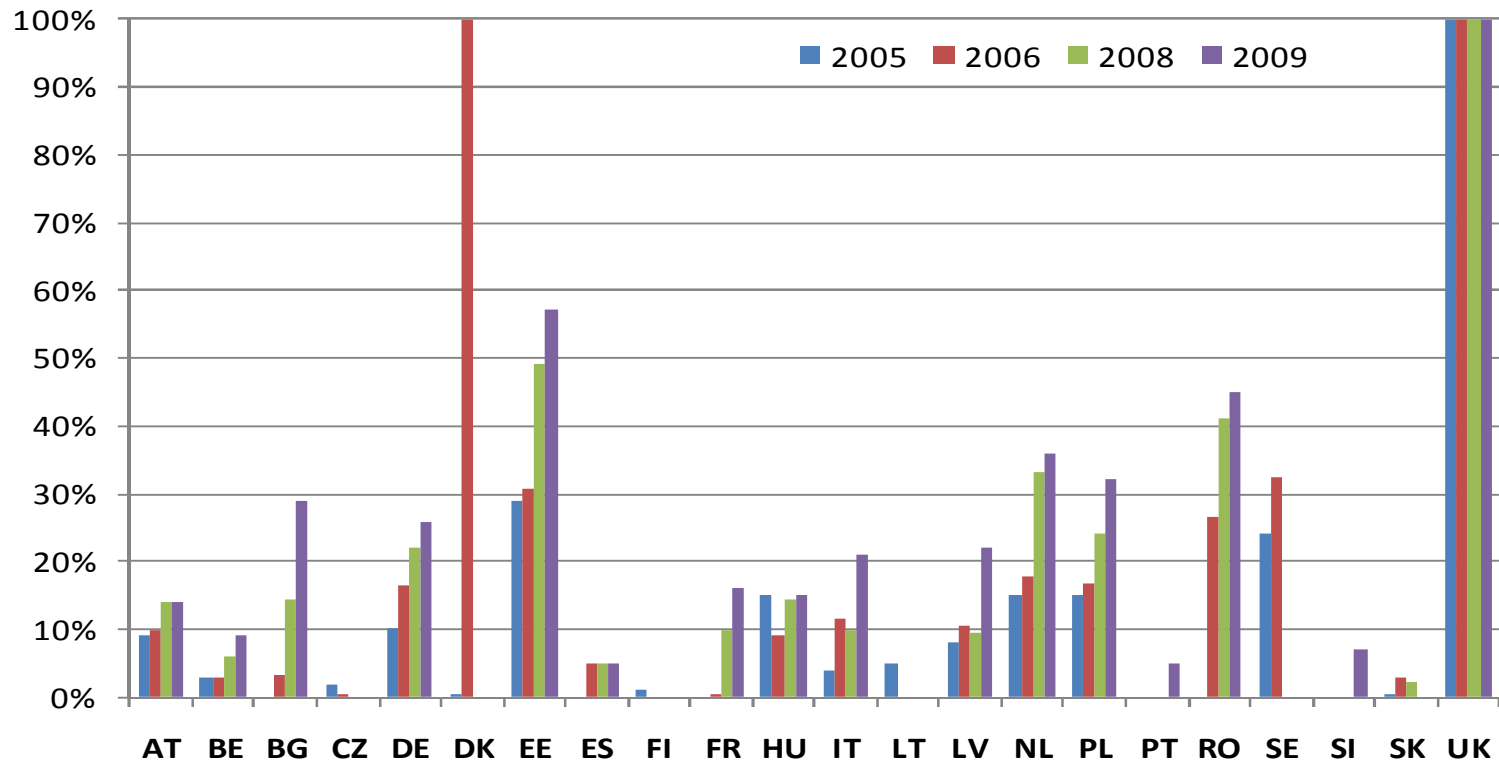
Market review (2) - Trends in freight rail transport since 2000

- In freight transport rail share slightly greater than 10%. Significant growth in Latvia (+55.3%), Germany (+44.1%) and Austria (+42.5%).



Market review (3) - evolution of freight market shares

- Market shares of non-incumbent RUs: UK (100%), Estonia (57%), Romania (45%), the Netherlands (36%) and Poland (32%).
- Average market share increased from 10.5% in 2005 to 22% in 2009





TYOLOGY AND STRUCTURE OF REGULATORY BODIES IN THE EU RAILWAY SECTOR

Introduction on Regulatory Bodies (RBs)

- Primary objective: to ensure independent and impartial oversight of the market, to ensure free market access to new RUs.
- Article 30, Directive 2001/14/EC requires RB to be independent of the IM, RU and charging and capacity allocation bodies.
- The ongoing parliamentary debate on the recasts of the 1st railway package has shown that the role of the Regulatory Bodies, as supervisors of the railway market, should be improved.

Types of Regulatory Bodies

- RBs have different powers, financial resources, staff and structure.

| | |
|-------------------------------|--|
| Standalone | Bulgaria; Czech Republic; Greece; Spain; France; Hungary; Italy; Latvia; Lithuania; Austria; Poland; Portugal; Romania; Slovenia; Slovakia; UK |
| Integrated | Wider transport regulator: Belgium; Denmark; Finland; Sweden Wider utilities regulator/competition authority: Estonia; Germany; Luxembourg; Netherlands |
| Completely independent | Czech Republic; Germany; Estonia; Greece (transition to be completed shortly); France; Hungary; Luxembourg; Netherlands; Austria; Finland; Sweden; UK |
| Tied to Ministry | Belgium; Bulgaria; Denmark; Spain; Italy; Latvia; Lithuania; Poland; Portugal; Romania; Slovenia; Slovakia |

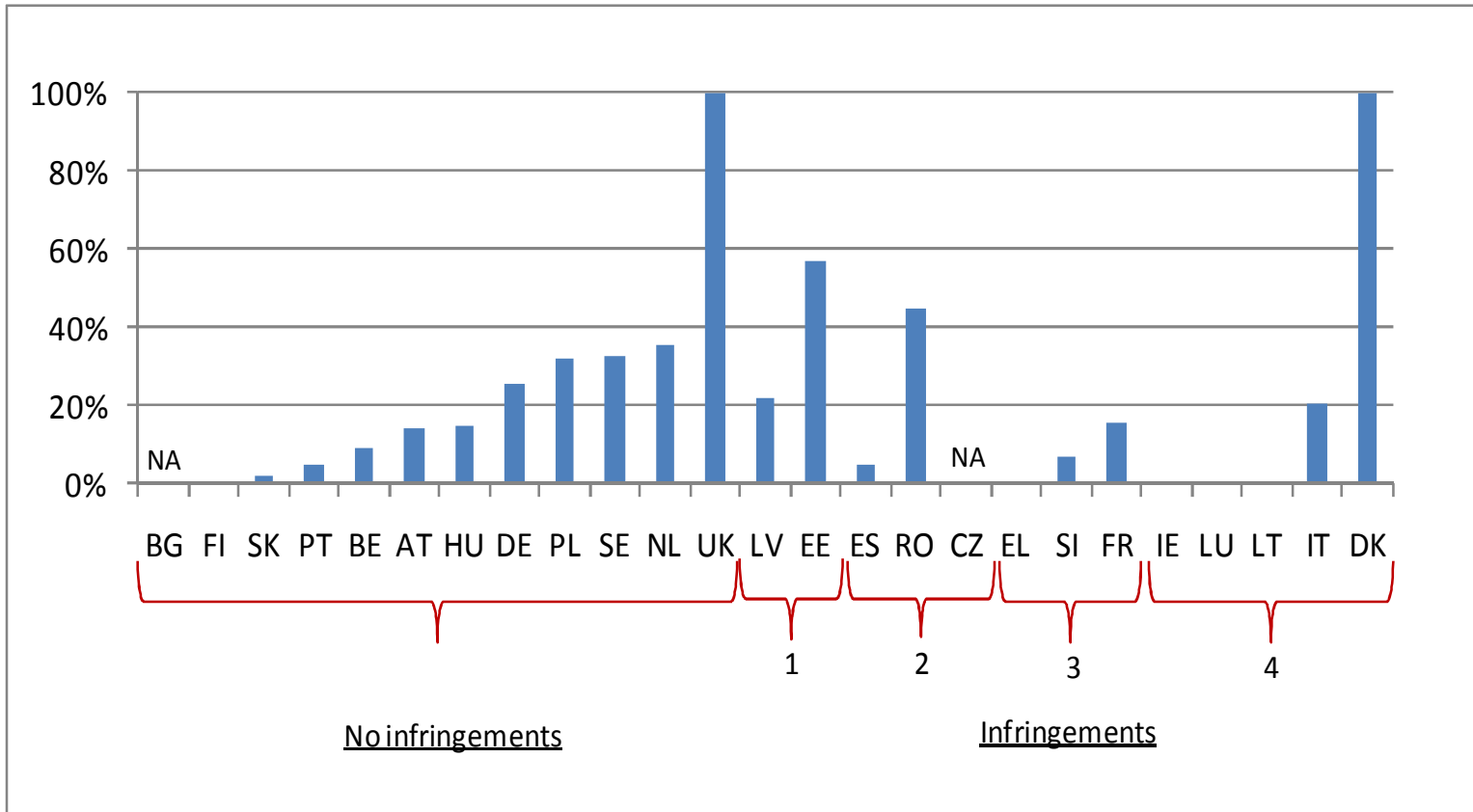
Overview of infringements identified by the Commission

- European Commission identified (2009) problems with implementation of Article 30

| MEMBER STATES | OBSERVATIONS |
|--|--|
| Denmark, Greece, Spain, France, Italy, Lithuania, Luxembourg, Romania, Slovenia | Insufficient independence of RB from the (incumbent) RU and/or the IM. |
| Czech Republic, Denmark, Estonia, Spain, Lithuania, France, Luxembourg, Latvia, Slovenia | Insufficient power of RB to monitor competition in the rail service market. |
| Czech Republic, Denmark, France, Greece, Italy, Lithuania, Luxembourg | Insufficient enforcing powers of RB to take and enforce the necessary decisions. |
| Denmark, Greece, Italy, Lithuania, Luxembourg, Romania Slovenia, Spain. | Part of or subject to the same ministry that contributes to control the state owned RU . |

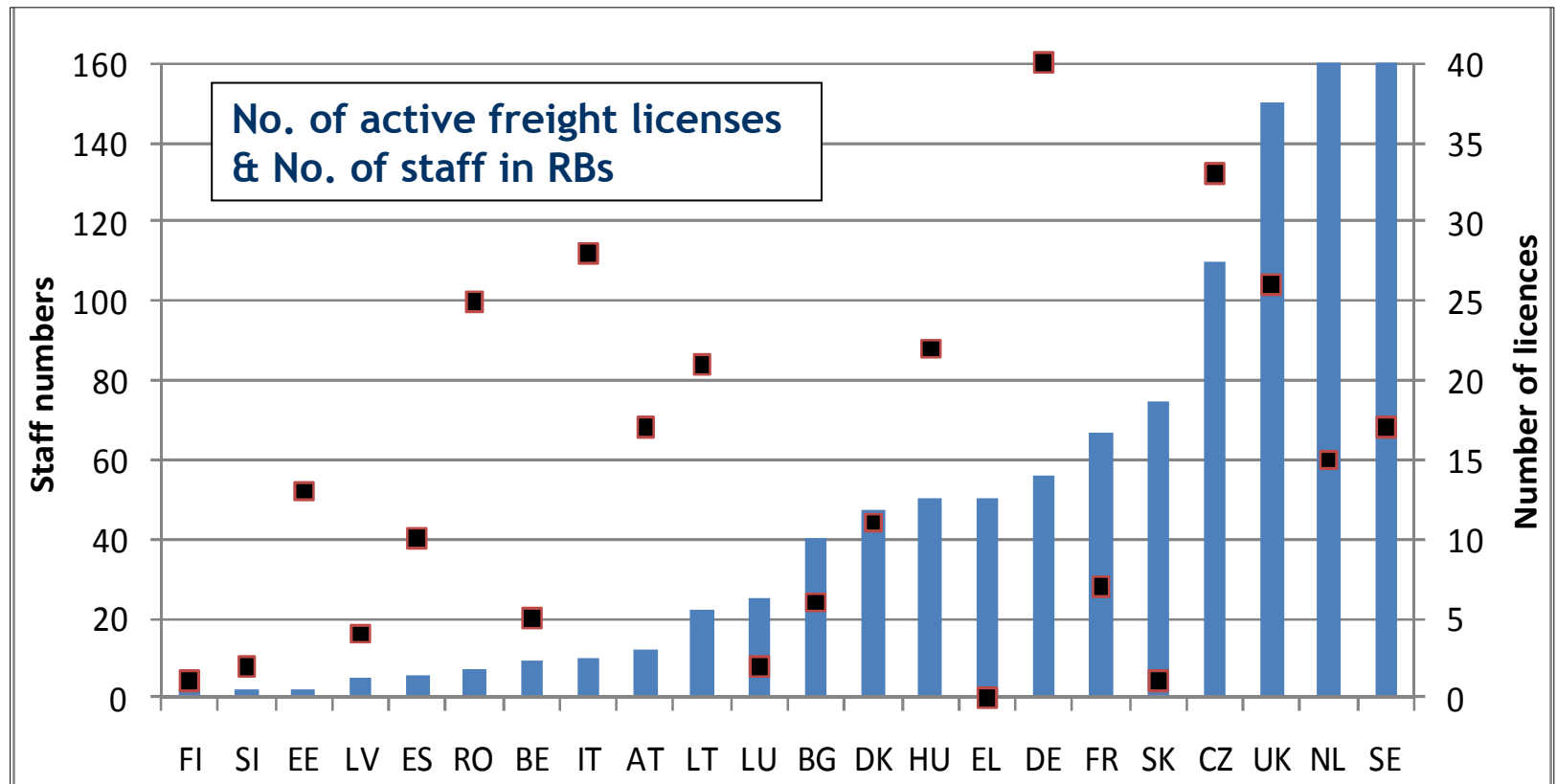
- In 2010 the European Commission referred Greece, Czech Republic, Germany and Spain to ECJ

Market share of new entrants and infringements



Review of administrative capacity

- Most RBs <60 staff. Half employ around 20 staff. e.g. Italian RB with 10 staff (budget of €30,000 + salaries) oversees a market of >25 operators.



Independence and funding for RBs

| Member State | Same office address | Same website & email | RB & IM/RU overlap | Source of funding |
|--|----------------------------|---------------------------------|-------------------------------|--------------------------|
| Belgium, Latvia | No | No | No | Industry (IM) |
| Bulgaria, Czech Republic, Estonia, Finland, Germany, Netherlands, Portugal, Slovakia, Sweden | No | No | No | State |
| Hungary | No | No | No | Industry & State |
| UK | No | No | No | Industry (All) |
| Denmark, France, Lithuania, Luxembourg | No | No | Yes | State |
| Austria | No | No | No | Industry (RUs) |
| Poland | Yes | No | No | State |
| Italy, Slovenia, Spain | Yes | Yes | Yes | State |
| Greece | - | - | Yes | State |

Conclusions on Regulatory Bodies

- Effectiveness of RBs across the EU varies significantly.
- Clear case for strengthening existing legislation to better guarantee the independence of RBs. Also need adequate resources & ability to act quickly and effectively.
- A need for RBs to function independently of government, particularly where the latter has a direct interest in national RUs or IM.
- Future policy options should ensure that RBs are properly resourced and have appropriate powers, recognising that the need for regulatory intervention and oversight may vary between MSs.



THE IMPACT OF THE SEPARATION BETWEEN INFRASTRUCTURE MANAGEMENT AND TRANSPORT OPERATIONS IN THE EU-RAILWAY SECTOR

Introduction on unbundling/separation

- Other utilities subject to **vertical separation** and **liberalisation** to **increase competition**.
- Railways retain substantial **technological barriers** (interoperability).
- The **IM** must be **independent of any RU** for capacity allocation.
- There are a number of advantages and disadvantages to separation.
- **Different approaches** to vertical separation have produced different results, with differing impacts on competition.

Vertical separation in the railway sector

- Different MSs adopted different models:
 - **Full separation:** in legal, organisational and institutional terms. IM is independent of RU(s).
 - **Partial separation:** IM and RU(s) organisationally & legally separated. The main RU effectively retains responsibility for key infrastructure management functions.
 - **Partial integration:** IM and RU(s) organisationally separate, but are subsidiaries of the same holding company.
 - **Fully integrated:** no separation of IM and RU(s).

Degree of separation in Member States

- The degree of separation monitored by the Commission (RMMS 2009)

| CATEGORY | MEMBER STATE (2009) |
|---------------------|---|
| Full separation | Great Britain, Finland, Denmark, Netherlands, Norway, Spain, Sweden, Portugal, Slovakia, Lithuania, Romania, Czech Republic, Greece |
| Partial separation | Estonia, France, Hungary, Slovenia, Luxembourg, Latvia |
| Partial integration | Austria, Belgium, Germany, Italy, Poland |
| Full integration | Ireland, Northern Ireland |

- The Commission concluded that many of the current models **are not fully compliant** with the requirements of the 1st Railway Package.

Degree of independence of IM and incumbent RU

■ Links between IM and RU

| Member States | Common board members | Offices in same building | Incumbent undertakes some infrastructure management | Incumbent controls access to some assets |
|---|----------------------|--------------------------|---|--|
| Denmark; Great Britain; Netherlands; Norway; Spain; Sweden; | No | No | No | No |
| Germany; Portugal; Slovakia | No | No | No | Yes |
| Belgium | Yes | No | No | No |
| Austria | Yes | No | No | Yes |
| Czech Republic; France; Poland | No | No | Yes | Yes |
| Italy | No | Yes | No | Yes |
| Estonia | No | Yes | Yes | Yes |
| Slovenia | Yes | Yes | No | No |
| Hungary; Lithuania; Luxembourg; Northern Ireland; | Yes | Yes | Yes | Yes |

Overview of infringements identified by the Commission

| Member States | Date of EC action |
|---|--------------------------|
| 13 MSs referred to ECJ: Austria, Czech Republic, Germany, Greece, France, Hungary, Ireland, Italy, Luxembourg, Poland, Portugal, Slovenia and Spain | June 2010 |
| Reasoned opinions to 21 Member States | October 2009 |
| Opened infringement proceedings against all Member States except the Netherlands | June 2008 |

- Most common infringement: “not sufficiently ensuring the independence of the IM”

Case studies on vertical separation (1)

I Great Britain:

- Competitive franchise bidding has helped to stimulate market growth + encouraged service innovation.
- Costs increased substantially since 2000.
- Some argue that industry costs are excessive partly as a result of complexities and inefficiencies of the contractual matrix.

I Sweden:

- No evidence of coordination issues following separation.
- Improvement in performance & reduction in delays since separation.
- Excluding investments there has been a fall in the cost.

Case studies on vertical separation (2)

I Netherlands:

- Separation lead to improvements in punctuality, reliability, capacity and safety.
- No clear evidence of an increase in costs.

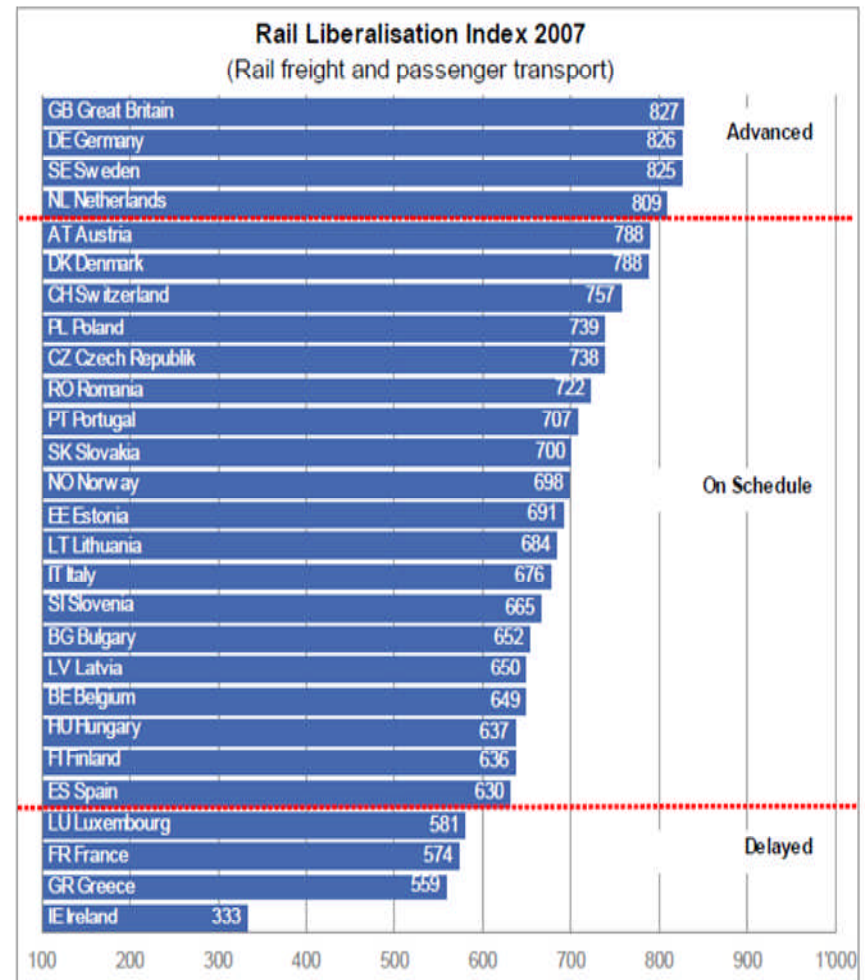
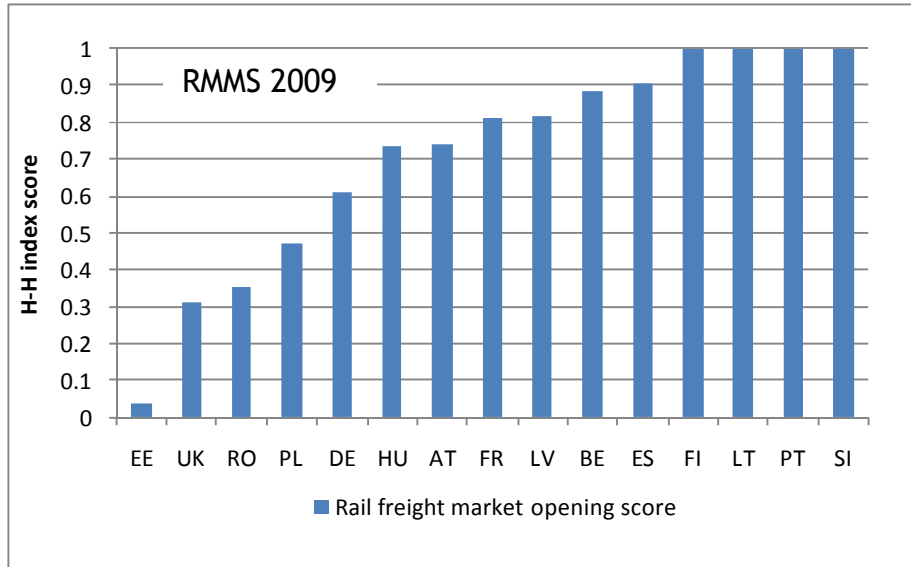
I Italy:

- Substantial entry into freight market.
- New entrant operators continue to identify barriers hindering access.
- No clear evidence of an increase in costs.

I France:

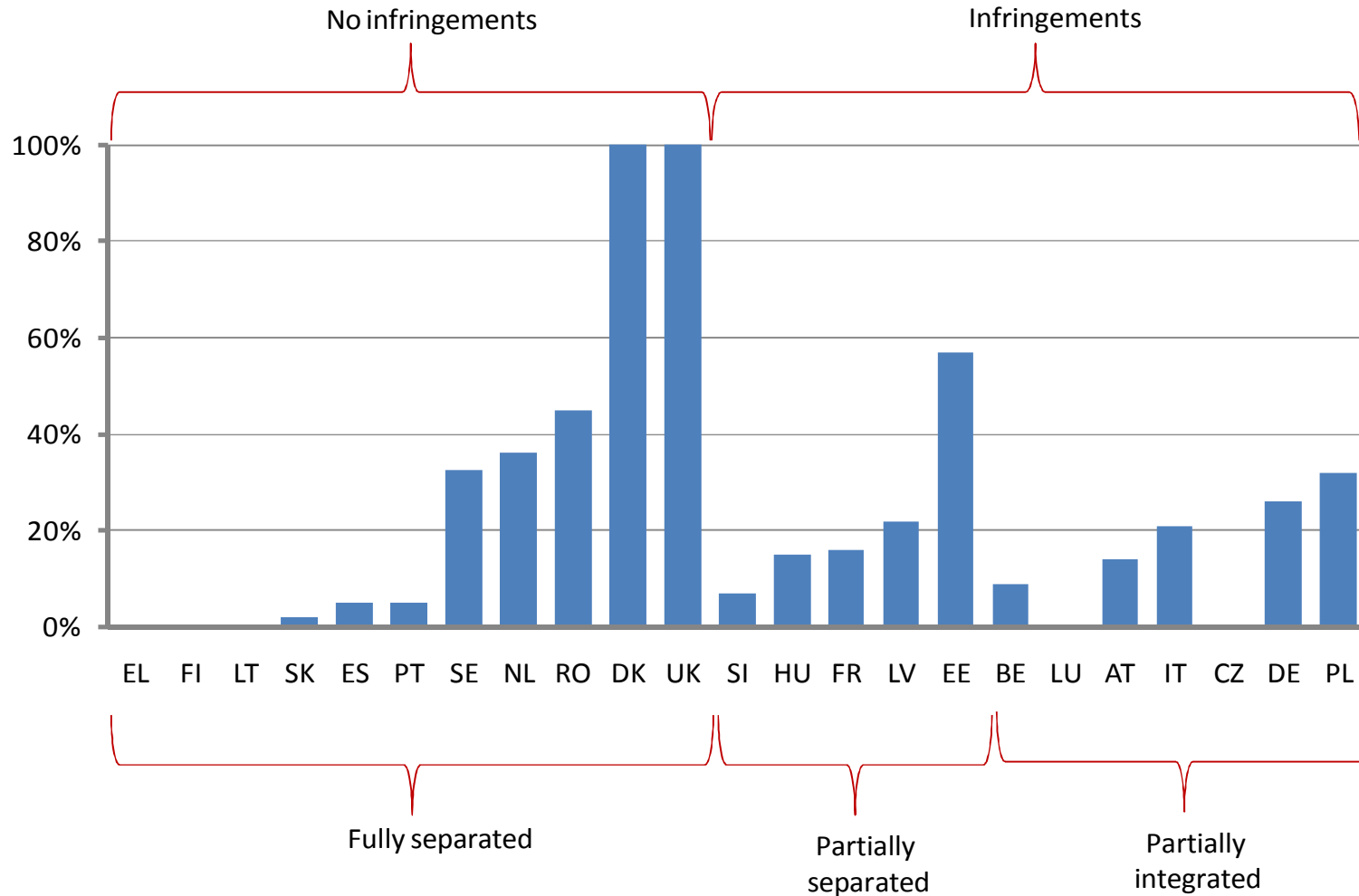
- Separation only partial.
- Some entry but competition delayed.
- 'GID' limiting potential entry.

Separation and liberalisation



- Different views on liberalisation
- Both agreed markets are now more open across Europe

Separation and market shares of non-incumbents



Conclusions on vertical separation (1)

- Despite structural changes, **established relationships between the IM and incumbent RU** remain in place in some MSs.
- Regulation alone is unlikely to guarantee non-discrimination in access.
- More rapid market opening is likely to depend on **greater separation of the IM and RUs** than has been achieved in many MSs to date.
- Issues, such as the ability of a dominant RU to unduly influence capacity allocation and other decisions through co-location with the IM should also be addressed.

Conclusions on vertical separation (2)

- Future mechanisms could assess the various policy options including independence of operational decision making as distinct from legal separation.
- Costs of vertical separation may be significant if complex contractual frameworks are required e.g. for timetable co-ordination, payment of liquidated damages for delays etc.
- Observed trends in costs, fares and service quality can be explained by a wide range of factors and cannot be attributed only to separation.

Thank you