The Voice of European Railways

POSITION PAPER

Modalities for the determination and computation of direct cost

October 2013

COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES - COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE - GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN

CER aisbl Avenue des Arts, 53 B-1000 Bruxelles Tel: +32 2 213 08 70 Fax: +32 2 512 52 31 contact@cer.be www.cer.be

Contents

1. INTRODUCTION AND LEGAL BASIS 3

2. AN ECONOMIC CONCEPT FOR DIRECT COST 3

3. AVERAGING AND UPDATING OF CHARGING FORMULAE 5

1. INTRODUCTION AND LEGAL BASIS

Rigorous, transparent and fair calculation of track access charges (TAC) is of fundamental importance in order to provide correct economic incentives to infrastructure managers (IMs) and railway undertakings (RUs).

While the total level of TAC may also include mark-ups (Article 32 of the Recast Directive), this note deals with the calculation of the cost directly incurred, or direct cost (Article 31, paragraph 3). Other relevant principles for direct cost are contained in Article 30, paragraph 8, and in recital 39 (cost causation). Article 31, paragraph 6 (computation of averages) should also be taken to be relevant for the present discussion.

As a reminder, CER wishes to stress the fact that, according to Article 32(1), the total level of charges "shall not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear."

The aim of specifying the notion of 'direct cost' is two-fold: enabling the infrastructure manager to recover the costs directly incurred (the other costs being covered by revenues from mark-ups and from state funding), and sending fair but effective price signals to railway undertakings which may contribute to limiting infrastructure costs, e.g., where feasible, by incentivising the use of rolling stock that causes less wear-and-tear, other things equal.

2. AN ECONOMIC CONCEPT FOR DIRECT COST

There is no explicit definition of direct cost in EU legislation ([1]). CER would support a clarification of the underlying economic concept that Direct Cost is supposed to represent, while noting the appropriateness of maintaining a certain discretion for Member States to transpose and apply that term ([2]).

This would contribute to allowing different rail sector actors (in particular RUs and the IM) to reach a common understanding and acceptance of how Direct Cost is computed.

In CER's understanding, the intention of the Commission (Recast proposal) and of the legislators (Recast Directive) is to consider direct cost as relating to the cost of operating the infrastructure, i.e. of accommodating traffic on it, plus the cost of keeping it in steady state, i.e. relating to infrastructure wear-and-tear. Direct cost must therefore include the relevant maintenance and renewal costs.

[1] This is also highlighted in the recent case law (C-512/10; point 74) in reference to Directive 2001/14/EC. Directive 2012/34/EU recasting 2001/14/EC also does not offer any definition of the term.
[2] C-512/10, Commission vs. Poland, pt. 75.

If infrastructure wear-and-tear is found to be different than forecast, thus leading to either lower-than-forecast or higher-than-forecast maintenance and/or renewal needs, then the infrastructure manager should incorporate the necessary changes into direct cost.

CER therefore considers that the **Average Variable Cost (AVC)** of operating, maintaining and renewing the infrastructure represents a good approach for direct cost computation.

It should be clarified that direct cost should relate only to costs that vary with traffic and should therefore exclude fixed costs, i.e. those that do not vary with traffic. Fixed costs notably include capital outlays such as infrastructure upgrades (e.g. a new signalling system), new build, decommissioning of lines, and re-commissioning of lines ([3]).
CER notes that marginal cost concepts, whether short-run or long-run, pose obvious problems of implementation. In theory, marginal cost pricing is indeed the optimal approach, provided that the price would be sequentially adjusted for each successive customer. But that would violate the principle of non-discriminatory pricing, i.e. that equivalent charges apply for services of an equivalent nature ([4]). In addition, it is interesting to note the argument of the Advocate General Jääskinen, in his recent opinion on the infringement of the first railway package case against the Czech Republic ([5]) that "*the real marginal cost for the use of the railway infrastructure is also dependent on the characteristics of the train, the locomotive and the rails. However, the provisions of Directive 2001/14* [namely the provision on non-discriminatory charges referred to above] *limit the possibilities for taking into account all the individual traffic characteristics.*"

As a result, CER believes that only a concept based on average cost can actually be implemented in practice.

Step costs incurred in order to accommodate higher traffic volumes

CER supports the inclusion of 'step costs' relating to strong mid-term increases or decreases of traffic which directly cause a verifiable change in costs, e.g. a need for more employees, more physical capital and, in some cases perhaps, for a new operational centre. Such costs depend on traffic volume and should therefore be captured within Direct Cost in some form.

[3] In (C-512/10; pt. 81-83) a clear demarcation is also made between costs that vary with traffic and costs that do not.
[4] See Article 29(3) of Directive 2012/34/EU.
[5] 13 December 2012, Advocate General Opinion, C–545/10, Commission vs. Czech Republic, point 73.

3. AVERAGING AND UPDATING OF CHARGING FORMULAE

Article 31(6) implies that a compromise should be sought between exactly attributing direct costs to individual cases and applying averages over types of services and time periods in order to avoid 'disproportionate fluctuations'. In practice, averages are taken of cost items relating to operations and maintenance for different time periods and/or categories of rail vehicles and/or services (e.g. freight trains typically cause more wear-and-tear than regional passenger trains; high-speed lines require costlier maintenance).

It could therefore be recommended that, for the purpose of computing average direct cost over several types of services or time periods (as relevant), infrastructure managers should regularly update the relevant weighting schemes, e.g. every two years, in order to reflect changes in patterns of use on the part of railway undertakings, thus providing incentives to railway undertakings to adjust their patterns of use in order to reduce infrastructure costs.

Disclaimer

Community of European Railway and Infrastructure Companies (CER) AISBL

Avenue des Arts 53
B-1000 Brussels
Belgium

Tel +32 2 213 08 70
Fax +32 2 512 52 31
contact@cer.be