

Netzwerk Privatbahnen

Vereinigung Europäischer Eisenbahngüterverkehrsunternehmen e.V.
(Network Private Rail – Association of European Rail Freight Operators)

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1. The Situation

Good for a surprise

In the last few months of the previous year, rail politics has brought much hectic and distraction: the 'ownership protection model' for the **partial privatisation** of the integrated rail group has collapsed. Now those involved may address the new 'Holding Model' (see number 3 below).

The privatisation discussion will gather momentum again after the Hamburg elections, if at all. The privatisation issue is possibly too much of a burden for the fragile grand coalition for the rest of the legislature period. On the contrary, the problem might be solved quite suddenly: the government coalition, as the largest common denominator, could finally agree to **reduce the DB AG to the railway** and **sell the global logistics** division as a whole. That would require neither a law nor would a decision need to be made about separating the rail network from transportation. The coalition would be demonstrating its ability to take action. There will never be more money available for logistics as there is currently. By selling the logistics division (without rail), DB AG would solve its equity and debt problems in one fell swoop. This would not solve the problem of 'rail privatisation' but would postpone it. However, the complexity of this issue would be significantly reduced and the Finance Minister would no longer have to answer questions about what he has to do with 12,000 DB employees in India (and in Cloppenburg, see below 9.).

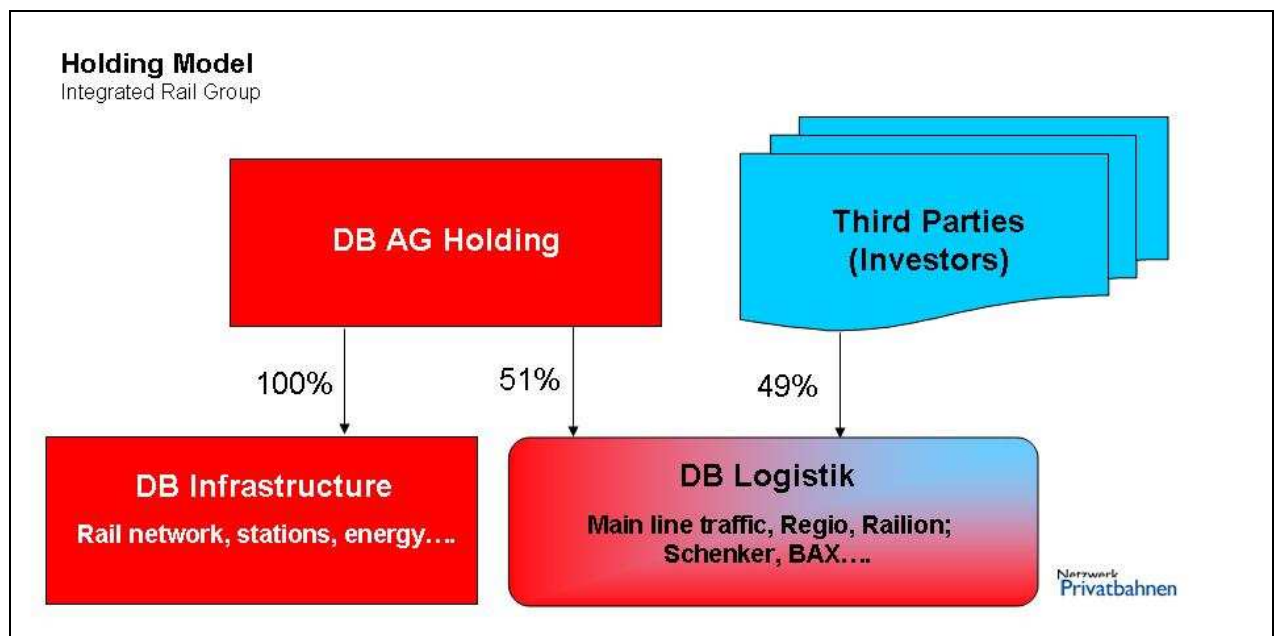
2. Profiteers of the strike?

Everyone's talking about private rail freight operators

Nobody has benefited from the train drivers' strike. Netzwerk Privatbahnen has often been asked by the media if private rail operators were **the profiteers of the strike**. This was denied, a) because the strike damaged the entire sector and b) because capital-intensive locomotives and wagons of private rail operators must be operated at full capacity, there is hardly any free capacity. Private rail operators were only able to come to the rescue in individual cases, sometimes at the request of Railion Deutschland AG. However, positive is the fact that many loaders are now considering reducing their dependence on one single large freight railway. But certainly private rail freight operators have never been so talked about as during the strike. The train drivers of private rail freight operators did not go on strike.

3. The Holding Model

Negative incentives dominate



If the SPIEGEL magazine is to be believed, this structure model comes from BahnTower and was prepared long beforehand as a fall-back model. At first glance, this privatisation model deserves the neutral grade, 'charming'. Network and transportation are – at least with the DB AG as the umbrella company – separate. It is positive that everything is possible from this model, especially – one day – the total privatisation of the logistic division and the associated reduction of DB Holding to infrastructure only.

Herr Mehdorn is being unfairly treated when critics allege that the rail boss has 'fallen down' because infrastructure and transport would be separated in the Holding Model. The rail boss has not fallen down. Rather, the discrimination incentive is further strengthened in the Holding Model. To date, the management of the group has been identified as the sole driving force for instrumentalising infrastructure. In the Holding Model, the rail boss now has strong, new allies: the private shareholders who want to see maximum return on their investments each year. This is the new driving force when it comes to slimming the rail network to death, making life difficult for irritating competitors on the rail network and 'making' the Länder award major transport contracts in regional rail transport without tenders. But there is no reason to write-off the Holding

Model. Compared to all its predecessors, it is an open model. The real separation, the neutrality of infrastructure is 'programmable'. In terms of completing the rail reform, this is no breakthrough, but modest progress.

4. Minimum wage for the rail sector

DHL leads the way

The introduction of a minimum wage is a proven means of getting rid of competitors. DHL is leading the way¹. Minimum wage has driven numerous competitors into bankruptcy and made thousands of workers unemployed within weeks. The Bahn AG, also a monopoly, is thinking about introducing a minimum wage, the rail unions applaud this action.

It is no coincidence that state-owned companies are concerned with this issue. As monopolies, they live or lived in a kind of reservation park, and have put on so much weight that competitors can produce more cost-effectively. If the state now interferes in wage autonomy, this is another major step towards a state-directed economy. One does not need to point out the collapse of communism in order to prove that state-directed economies do not work. One only need look at the German health system, social pensions system and the EU agriculture sector.

What drives the government and many parliamentarians (apart from the killer argument of the 'justice gap')? The national champion syndrome: the state gives the company its little finger, and the national champion never lets go of its arm again. On its own, the national champion cannot survive long term as the stiff wind of competition does not unfold its selective impact. The national champion also becomes so large and so dominating that you can't possibly allow it to go bust. The introduction of a minimum wage sends the wrong signal for more rail traffic and does not encourage to invest in the rail sector.

5. Unbundling

Netzwerk Privatbahnen initiatives

Germany has very wilfully implemented the 1st EU Railway Package into national law. Not as planned, the discriminating-relevant functions of **track allocation** and **fees** are not carried out by a neutral party outside the integrated group. German legislation has allocated these functions within the DB AG (DB-Netz). Certainly, they should be carefully kept away from the Bahn AG's other activities, like an island of competitive neutrality within the group. Netzwerk Privatbahnen has criticised the special German method of unbundling with the Commission². It is said that preparations are being made in Brussels to initiate infringement proceedings.

In addition, Netzwerk Privatbahnen was early in initiating investigations into cases of violations of unbundling rules. It was found that the 'neutral' German infrastructure manager (DB-Netz) is represented by lawyers of the DB Holding in discrimination-relevant matters³. The Holding's law department also represents the interests of all the DB transport companies, which are in stiff competition with private rail operators. The EBA (Federal Railway Authority) responsible for the unbundling has forbidden this

¹ According to DHL's website: €8.00 to €9.80 per hour

http://investors.dpwn.de/de/investoren/publikationen/archiv/2008/presentationen/dpwn_institutionalinvestors_2008_en.pdf

² http://www.netzwerk-privatbahnen.de/pdf/Update_EU-Beschwerde.pdf

³ http://www.netzwerk-privatbahnen.de/pdf/Abschrift_DBNetzAG.pdf

practice. DB AG initiated legal proceedings against the authority. All instances of administrative jurisdiction have confirmed the findings of Netzwerk Privatbahnen and EBA. Although one can be pleased with the result of this pilot trial, it is nevertheless regrettable that the Bahn AG has not deviated one millimetre when it comes to giving up their monopolistic position of power. DB-Netz is state (the 'AG' label changes nothing) and EBA is state. The Federal Government (the state), as the sole owner, is allowing the state railway to defend itself with legal proceedings against the state (EBA). – The separation of infrastructure and transport is sorely needed.

6. Netzwerk Privatbahnen applies the emergency brakes

Foolish act stopped

In 2006 a new Network Statement⁴ according to new Railway Law had to be installed by DB-Netz. Part of it was the so-called *Performance Regime*. This is a bonus and penalty system which should create incentives for network users and the network manager to reduce operational obstacles and increase network performance. However, in the application phase of the Performance Regime (since 12/2007) it proved to be fatal that DB-Netz was not penalised for blatant quality deficiencies (i.e. temporary speed restrictions – TSRs - and railway works). It maybe asked how, then, the performance of the network could be increased if quality deficiencies in the infrastructure are not subject to sanctions. Moreover, the rail operators receive penalties up to 20-times higher. One could conclude from this that the performance of the German rail infrastructure suffers from its users, whereas in fact the performance suffers from the TSRs and railway works of the infrastructure manager of DB-Netz. It is also remarkable that only DB personnel act as referees in the Performance Regime and that the burden of proof lies with the operators in case of unjustified sanctions.

As the rail regulator has not picked up on this 'asymmetry', Netzwerk Privatbahnen has filed a so-called collective claim. In the course of the preliminary injunction, it was ensured that the results of the completely unsuitable and unfair Performance Regimes of the DB-Netz were invalidated.⁵ It is said that clandestine joy broke out even among those major rail operators who usually do not applaud the actions of private operators they are in competition with. All participants are now trying to install a new Performance Regime as quickly as possible. – How does the DB-Netz react? It appeals against the decision. A rationally deciding and market-economy oriented company wouldn't do that because it deploys its resources sensibly and because it might lose customers. However, in a natural monopoly customers cannot escape. The DB-Netz can even increase its prices every 12 months risk-free.

7. Route fees increased again

A subsidy sponge becomes a cash cow

In conjunction with the schedule changes in December, DB-Netz increased its route fees for the second time in one year. In 2006 it was an average of 4.6% and in December 2007 it was 2.2%. Everyone would have sympathy if the Bahn AG were not neglecting infrastructure, if they weren't closing down routes and stations and if the stations were clean. Alone in regional passenger transport for the *Verkehrsverbund Berlin/ Brandenburg* (VBB, Berlin/ Brandenburg transport association), price increases for 2006/07 lead to additional costs of €7.5 million and €3.6 million each year respectively.

⁴ Schienennetznutzungsbedingungen (SNB)

⁵ http://www.privatbahnen.com/pdf/PM07_13.pdf

And that with a reduction in regionalisation funds from the Federal Government for the VBB of €78 million (2008)⁶. Where that leads to, need not be explained here. Certainly not to more rail transport.

Citizens, tax-payers and the entire railway sector have a complete lack of understanding for the Chairman of DB AG when he publicly announces that in the first half of 2007, the rail network increased its operating result by 100% to €294 million⁷. Operational performance on the network in the first half of the year rose by on 4%. However, EBIT from the network and stations and energy for the same period rose from €288 million to €479 million, that's an increase of 60% (loc.sit.). According to the group's internal planning, EBIT from today's infrastructure division should increase **by 862%** from €120 million (2006) to €1,035 million (2012)⁸. This makes the national rail infrastructure the group's cash cow. As the infrastructure is highly subsidised, all the infrastructure company's profits are financed by the tax-payer and by the customers of DB AG.

Let's look at the UK where the rail network is managed under the supervision of a powerful regulatory authority: all profits from Network Rail have to be reinvested. This way, the need for state subsidies is reduced. While in the UK, only the output of Network Rail is discussed⁹, in Germany the discussion is reduced exclusively to input (budgets and price increases). Whether the many billions of euros in budget funds have improved the German rail infrastructure, whether the capacity and the performance of the rail network have increased or the flow of transport improved, remains a company secret. In contrast, Network Rail has realised an increase in efficiency of 31% during the expiring 5-year regulation period, as planned.

8. Netzwerk Privatbahnen

About us

In January, Netzwerk Privatbahnen has welcomed the following rail operators as new member companies:

CaRL, Berlin
AERS, Lörrach

In the last few days, you have been able to see on our website which routes the member companies of Netzwerk Privatbahnen regularly operate. The result is impressive. The route map is interactive: you can click separately on the individual rail operators' routes.¹⁰

⁶ http://www.mofair.de/db/news/meldung_2242_druckansicht.html

⁷ http://www.db.de/site/bahn/de/unternehmen/investor__relations/finanzberichte/halbjahresbericht/halbjahresbericht__2007.html

⁸ Chapter 1/2008, p. 110 ff. These figures refer to routes, stations, energy, services and construction projects.

⁹ <http://www.rail-reg.gov.uk/upload/pdf/330-rev3.pdf>

¹⁰ http://www.privatbahnen.com/Streckennetz/NP_Karte.html

9. And finally...

DB expands into Asia and southern Lower Saxony

Shocking news:

“DB Rent takes over Opel dealership in Cloppenburg”¹¹

Until the next newsletter

Yours sincerely,



(Arthur-Iren Martini)

The German version of this Infoletter ==> http://www.netzwerk-privatbahnen.de/pdf/Infobrief1_08.pdf

Incidentally, you can also order the newsletter from our website. We would welcome this for legal reasons → http://www.privatbahnen.com/index.php?option=com_content&task=view&id=51&Itemid=99

¹¹ DB AG press release from 31st August 2007
<http://www.dbfuhrparkservice.de/site/dbfuhrpark/de/unternehmen/presseinfos/dbrent/nsb20070831a.html>