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ROUNDTABLE ON CONCESSIONS

Contribution from the Netherlands

-- Session I --

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ROUNDTABLE ON CONCESSIONS

1. Summary

1. Recently the Dutch government has decided which companies are to be the infrastructure managers of the conventional main-lines railway network with mixed rail transport and of two new rail infrastructure lines, the high speed line from Amsterdam/Schiphol to the Belgian border (HSL), which is a line designated for high speed passenger transport, and the Betuweroute from the harbour of Rotterdam to the German border (BR), which is a designated line for freight transport. The concessions differ from each other. Those differences are caused by the specific characteristics of the rail network, respectively the railway lines HSL and BR. For example the differences in the uncertainties about the volume of transport services, the possibilities of optimize (the maintenance of) the infrastructure, the insight in (the quality of) the infrastructure-elements, the number of private companies which could supply infrastructure elements and systems and the necessity and possibilities of private funding. These different characteristics influenced to a high degree the choice of using competitive mechanisms during the allocation process of the concessions.

2. A concession of the conventional main-line railways network has been granted to ProRail for the period 2005-2015 without an auction or tendering. The concession of the Betuweroute will be granted, for the period of 2007-2009/2010, to a new formed consortium of four private and public companies to bridge the first years with big risks in the amount of freight transport. After this period a concession will be granted for a longer period to a private company after a tender for the concession. The overall management of the High Speed Line will probably be granted to ProRail, but the construction and maintenance of the rail infrastructure will be managed and done by Infrasppeed, a contractor combination that has won the contract after a tendering organised by the Dutch Ministry of Transport for the construction of the line (5 year period) and the maintenance (25 year period). A new Railways Act, which is in force since the 1st January 2005, was enforced to make it possible to issue these concessions.

2. The old Railways Act of 1875

3. The old Railways act of 1875 was based on the idea that private companies build, maintain and operate rail infrastructure lines. A private company had to ask permission of the King (since 1848 the Crown) to build, maintain and operate a new line including the transport of passengers and freight. The permission was given for a concession for an indefinite period. It was an exclusive vertically integrated concession (infrastructure and transport). During the first period (the first concession was given in 1835) a lot of different private companies existed. The King did not subsidize either the building or the maintenance or the operations of these companies. He only gave, if necessary, state guarantees during the construction period. But during the thirties of the last century companies performed badly. New ways of transport came into use: buses and private cars. This, combined with economic depression times, caused big losses for the companies. Though a number of mergers took place at that time, it was not enough. In the end, in 1937, the government intervened severely and took over all the shares of the remaining companies and created one railway company: the Dutch Railways (NS). So the model with competitors ended at that time and continued until 1995. During this period there was one railway company with an indefinite concession.

3. The new Railways Act

4. In 1995 the government signed an agreement with NS to make competition possible in the railway sector. The predecessor of the currently existing vertically separated infrastructure manager ProRail was formed and freight transport was liberalised. In the agreement provisions were made for the new Railways Act which had to be drawn up. Nearly ten years later, since the first of January of 2005, this new Railway Act is in force. In this Act not only the directive 91/440/EEC is implemented but also the first Railways package (EU-directives 2001/12/EG – 2001/16/EC). Although the European directives only prescribe the separation in the accounting system of the infrastructure manager and the railway company, the Dutch Government went further. The Railway Act states that the Minister of Transport is obliged to give a concession for the management of the rail infrastructure to a (private) infrastructure manager. There is no obligation for a competition auction or to tender before the allocation of the concession, but it is possible to do so. A concession can be issued per corridor or railways network. It is also possible to split up rail infrastructure management into three processes: the allocation process of rail infrastructure capacity, traffic control activities and the maintenance of the infrastructure. Each process/task can be given to a different company. In the Railway Act the duration of the concession period is not mentioned.

4. Allocation of transport services in the Netherlands

5. Although it was decided in 1995 to liberalize the rail transport market, it was unclear for a long period in what way competition would be introduced in the public transport market. A lot of discussions and an experiment later, the Dutch Government decided for competition-for-the-market and not for competition-in-the-market. The New Concession Act, in force since the 1st January 2005, prescribes a tender process before the allocation of national and regional public passenger transport concessions. The duration of the concession period has been appointed. The Dutch Parliament decided to grant the first concession for the mainline network to the NS until 2015 without any auction or putting out a tender. The transport of international public passenger transport, realised by a cooperation of railway companies and private passenger transport, is liberalised.

6. At present, besides the NS, there are already 23 new railway companies operating on the Dutch Railway network, a network of only 2800 kms (6500 kms of rails).

5. The allocation of three Dutch infrastructure concessions

7. Since the new Railway Act came into force (1st January 2005) the Dutch Government has granted only the concession of the infrastructure management of the conventional main-line railway network to ProRail. This network is used for passenger as well as for freight transport services. It is the existing network in which the oldest line has been in use since 1839 (Haarlem-Amsterdam) and the most recent since 2005. Besides this existing network the Minister has made the main decisions about the concessions for two new lines: the HSL and BR. The HSL is the High Speed Line from Amsterdam/Schiphol to the Belgian border, a line designated for high speed passenger transport, and the BR is the Betuweroute, a line designated for freight transport from the harbour of Rotterdam to the German border. These new lines will be in use on 1st January 2007.

8. Each concession has its own quality. Characteristics related to specific features of the network, respectively for the HSL and BR, are, for example, the differences in the uncertainty about the volume of transport services, the possibilities of optimising the maintenance of the infrastructure, the insight in (the quality of) the infrastructure-elements, the amount of private companies who can supply infrastructure-elements and systems and the need and possibilities of private funding. These characteristics influenced to a high degree possibilities for the use of the competitive mechanisms during the allocation process of the concessions. The characteristics will be described below in a systematic way.

6. Factors influencing the possibilities to use competitive mechanisms

6.1 *First mover advantages for the incumbent operators*

9. The incumbent rail infrastructure manager in the Netherlands is ProRail. ProRail is the legal owner of the ground under the rail infrastructure which is already in use, although the transfer of ownership is foreseen in the Act. As long as this transfer is not realised it is not possible to allocate a concession after an auction or tendering procedure. Another stand-in-the-way of an auction for the conventional network is the exclusive right of NS to exploit all the existing railway stations. The government owns the ground of the new lines, the HSL and BR. ProRail is an infrastructure manager which contracts out the construction and maintenance of the infrastructure. The allocation of the infrastructure capacity and traffic control activities is done by its own employees. Especially the traffic control employees are specialised personnel only employed at ProRail.

10. The competitive chances for new entrants can also be influenced by informational disadvantages. This depends for instance on the fact whether the infrastructure is new or not. The infrastructure to which the three concessions were granted, differ highly in this respect. The HSL is a completely new infrastructure, fitted out with the new European systems for safety (ERTMS/ECTS) energy (25 kV) and telecommunications (GSM-R). The BR concession exists as a new line combined with existing lines in the port of Rotterdam. The conventional main-lines railway network are lines in use, the oldest one having been in use since 1839, the newest since 2005. Asset management is not yet completely introduced in rail infrastructure management. Because there is no complete register of the infrastructure elements, their technical remaining lifecycle period and the quality, it is impossible for other rail infrastructure managers to assess the maintenance costs of the whole network. Moreover, on these lines typical Dutch systems are in use, for instance the energy system (1500 V) and the safety system (ATB). For the safety system there is only one company which can supply the necessary infrastructure components. Competition mechanisms are less easy to introduce in a market with only one supplier who owns exclusive rights.

11. These characteristics in the infrastructure were jointly responsible for the decision to give the first infrastructure concession to ProRail. In this concession provisions have been made for the set up of an infrastructure register and to implement asset management. As a competitive mechanism in this concession, ProRail is obliged to make a benchmark every four years with comparable infrastructure managers in other states.

6.2 *Efficiency considerations*

12. It is possible to split rail infrastructure management into three processes: the allocation process of rail infrastructure capacity, the traffic control activities and the maintenance of the infrastructure. In the Netherlands each process/task can be given to a different company. In a small country such as the Netherlands, besides the problem that only ProRail employs specialised personnel, it is difficult to split the allocation process of the rail infrastructure capacity and traffic control activities into networks of a smaller scale than the Netherlands. The possibilities of realising efficiency in these tasks by splitting them into smaller networks is difficult and this will cause new coordination problems. In all three concessions (conventional network, HSL and BR), ProRail, the Dutch rail infrastructure manager has a leading role in the allocation process and the traffic control activities. The concessions do not differ in this respect.

13. Our experience is that the best possibilities of introducing competitive mechanisms are in the third task: the financing, construction and maintenance of the rail infrastructure. The possibilities are influenced in a high degree in the uncertainties about the volume of transport services. Uncertainties in volume of transport are translated into concession-price.

6.3 *Uncertainties for future profits*

14. Uncertainties of future profits are highly influenced by the uncertainty of the volume of transport. The uncertainty of the volume of transport differs per concession. The uncertainty is the greatest in the BR-concession. On this line there is no long term appointments with transport companies because this is a liberalised freight market. The competition with other transport modes (inland water transport, road transport) is great, especially for container transport and influenced by political decisions; for instance the introduction of the Maut in Germany and the decision to close the coalmines in Germany. Besides which, the volume of freight transport in the Netherlands is highly influenced by economic developments in Germany, because a great amount of international rail freight transport goes to Germany. In addition the BR is not the only East-West freight line. There are parallel routes, for instance the line Rotterdam-Utrecht-Emmerich and Rotterdam-Venlo. Which route a freight transport company will use, will be dependent of the price for the use of the infrastructure, the availability of train paths and the costs for the railway company. Typical for the BR is that the railway companies have to use locomotives fitted out with the new European safety system ERTMS/ECTS. None of the railway companies nowadays have locomotives fitted out with this system. Rebuilding existing locomotives or buying new locomotives generates extra investment costs. After consultation of the market the government decided that the uncertainties at that moment concerning these aspects made it impossible to get a good concession price for a long period concession. The government decided to give a short term concession for the Betuweroute for the period of 2007 to 2009/2010 to bridge the first years, with big uncertainties about the volume of freight transport services. After this period a concession will be given for a longer period to a private company after a competition auction. The short term concession will be given to a new formed consortium of four private and public companies: the port authority of Rotterdam, the port authority of Amsterdam, Prevail and Towrail. The port authorities have influence on the complete transport chain from shipment to the end destination and has contacts with a lot of transport operators in this chain. Towrail is a new company with the ambition of improving the way the maintenance can be carried out and to introduce new infrastructure related services for railway companies.

15. For the other concessions there is less uncertainty about the volume of transport, because the transport market is mainly public passenger transport. Because of the concession system for this market the government has made an agreement with a public transport company during the concession period for the infrastructure. The problem of the parallel routes of the HSL are less then the BR because the passenger transport company of the HSL does not have transport rights on the parallel routes and the quality for the passengers of the HSL is better because it is used as a high speed line.

6.4 *Other factors*

16. The maintenance costs are highly influenced by the maintenance roster. In a passenger market there is much pressure from the railway companies to do the maintenance work during night time and in a short period. The safety regulations, the noise nuisance regulations and the regulations concerning working conditions make it very expensive to do the maintenance during night time and in short periods. Nevertheless the government decided to prescribe the maintenance roster for the maintenance contractor of the HSL (every night for two hours). In the allocation process of this concession there where the least possibility of reducing the maintenance costs by optimising the maintenance roster. Optimising was possible using infrastructure elements during the construction period which was lacking maintenance. The infrastructure manager of the conventional main-lines railway network has a maintenance roster with longer periods for maintenance, at night time as well as during daytime. The infrastructure manager of the concession for the Betuweroute is free in the choice of reducing the maintenance costs and is not forced to a maintenance roster prescribed by the government.

17. Besides the above mentioned characteristics of the HSL (the government is owner of the infrastructure, it is a new infrastructure, European systems, prescribed maintenance roster, more certainty about volume of transport, less competition on parallel routes) there were other aspects that made it possible to introduce competitive mechanisms for allocation of the concession of the HSL for the task of building, financing and maintaining the infrastructure. The government decided to tender the combined order for building finance and maintenance of the infrastructure during a lifecycle period (25 years of maintenance after building). This combined order made it possible for the contractor to invest more in building if this investment has an economic profit during the maintenance period. The government decided to pay for the availability of the infrastructure (output financing) and has prescribed very precisely the quality of the infrastructure at the end of the concession period. The last requirements prevent the destruction of the infrastructure at the end of the concession period.

7. Result of the allocation process

18. The result of the allocation process in the Netherlands of these three concessions is that the concession of the conventional rail network has been given to ProRail for the period of 2005-2015 without a competition auction. The concession of the Betuweroute will be given for the period of 2007-2009/2010 to a newly formed consortium of four private and public companies to bridge the first years with large risks in the amount of freight transport. After this period a concession will be given for a longer period to a private company after a competition auction. The overall management of the High Speed Line will probably be given to ProRail, but the building and maintenance of the rail infrastructure will be looked after by Infraspied, a contractor combination which has won the contract after a competition auction organised by the Dutch Ministry of Transport for the building of the line (5 year period) and the maintenance (25 year period). The most competitive mechanisms were used in the allocation process of the building, finance and maintenance of the HSL.

8. Conclusions

19. The use of competitive mechanisms is very limited to nihil in the following situations: if the government does not own the infrastructure; if specialised personnel employed only by the incumbent infrastructure manager is necessary; if economies of scale aspects have a negative influence on the possibilities of splitting the network; if there is not a good register of the infrastructure elements, their technical remaining lifecycle period and their present quality; and if the uncertainty in the volume of transport services is great. In the Netherlands we have positive experiences with using competitive mechanism in the construction and maintenance of the infrastructure including the financing of the task of newly constructed infrastructure lines. Used mechanisms: putting a tender; output financing (availability of infrastructure); the obligation of making benchmarks during the concession; giving the infrastructure manager possibilities to reduce the maintenance costs by optimising the maintenance roster and giving him the opportunity to use infrastructure elements during the construction period, when no maintenance is required. It is necessary to prescribe very precisely the quality of the infrastructure at the end of the concession period to prevent destruction of the infrastructure. A concession period which fits in with the technical lifecycle of the infrastructure (under the condition of certainty about the volume of transport services) gives the best concession price possible. Sometimes, if the uncertainty in the volume of transport services is too great, it is necessary to grant a short term concession to bridge these uncertainties.