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ASYMMETRIC REGULATION FOR ON-TRACK COMPETITION IN EUROPEAN RAILWAYS?

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Asymmetric regulation: Why it is relevant

- Some EU National Regulatory Authorities think the current regulatory framework (4th Package) might not ensure effective competition as there are very significant barriers to entry.
- Success of NRAs tends to be measured in terms of market share of newcomers.
- Solution: asymmetrical regulation

Asymmetric regulation: Definition

- Different regulatory obligations on competitors, based on the market power they have.
- Operators with market power, usually incumbents, would be obliged to provide access to some of the assets they have (ticketing systems, rolling stock, etc.) so barriers to entry are diminished for new comers.
- Even the conditions for access to the rail infrastructure could be asymmetric, that is, access could be ensured to new comers at a reduced rate.

Asymmetric antitrust: essential facilities

Very restrictive case law (*Oscar Bronner*):

- 1) The refused input must be ‘indispensable’ for competitors to carry out their activity in the downstream market. No actual or potential substitute.
- 2) The refusal must be likely to eliminate all competition in the market; and
- 3) The refusal has to lack objective justification.

In railways, limited role for essential facilities:

1. Only infrastructure is EF, but it is regulated.
2. Rest of facilities (ticketing systems, rolling stock, drivers, etc) do not seem to be EF.
3. EF as a “safety network”.

Asymmetric sector specific regulation

- Origin in US telecoms in 80's
- identify the competitive advantages inherited by the incumbent, the specific regulatory measures to compensate them, and the period that would be necessary keep such measures.
- Support among lawyers, criticism among economists

Asymmetric regulation for network access?

- Railways very different from telecoms.
- Railway infrastructure a natural monopoly
 - Structural obligation: Vertical separation
 - Behavioral obligations: Directive 2012/34
- No role for asymmetric regulation.
- Asymmetric access charges? Against Directive

Asymmetric regulation for other facilities?

- Service facilities: as infrastructure.
- Maintenance: no formal asymmetry in 4thP
- Ticketing systems: attention to platforms.
- Rolling stock: is it necessary/convenient?



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Thank you

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