



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate A - Policy coordination and security
A.5 - Legal matters & infringements

31 JUL. 2015

Brussels,
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Finnish Rail Passengers'
Association
C/o Mr Kalevi Kämäräinen
Chairman
Asematie 1 B 4 FI-75530
Nurmes FINLAND

Dear Mr Kämäräinen,

In your reply to our pre-closure letter of 6 January 2015 you take up a number of points. The Commission has thoroughly assessed your reply and comes to the following conclusions:

1. Scope of the concession contract and of exclusive right

In your reply you claim that the competent authority modified the scope of an exclusive right that it granted to VR, the public service contract holder, in a manner that would not be compliant with Art 2(f) of Regulation (EC) N° 1370/2007. However, the Commission Services cannot follow your argument that granting such an exclusive right on 'parts of the rail network' or on 'certain routes' would not be compliant with the definition of exclusive right in Art 2(f), which refers to such right on 'a particular route' or 'network' or in 'a particular area'.

The Commission Services cannot follow your argument either that this particular definition of an exclusive right in the public service contract with VR would lead to the conclusion that the compensation payments that VR receives from the competent authority constitute illegal state aid. The Commission holds no evidence that the public service contract awarded to VR is not subject to the provisions of Regulation (EC) N°1370/2007. Therefore, as there is no evidence that the provisions of the Regulation are not respected, we cannot conclude that compatibility with the Treaty according to Art 9 (1) of the Regulation is not ensured.

2. Duration of the contract and investments in rolling stock

In your reply you challenge that the condition of significant investment in rolling stock for services covered by the contract for an extension by up to 50% of the contract duration of Art 4(4) of Regulation (EC) N° 1370/2007 was fulfilled and hence the legitimacy of its duration until 2024. Even if your allegation were correct, I would like to remind you that as the contract was concluded on 30 November 2009, hence before the entry into force of this Regulation, with a duration of 10 years and including the option to extend its duration by 5 years until 2024 the transitory provision on the maximum

duration of existing directly awarded contracts of Art 8(3) point (d) of the Regulation applies. It stipulates that the contract may continue until it expires provided that it is of limited duration comparable to the durations specified in Art 4, i.e. 15 years in the case of rail contracts. Thus, no infringement of Regulation (EC) No 1370/2007 and in particular of Art 4 can be identified.

3. Scrapping of rolling stock

As to VR's alleged practice of scrapping of old rolling stock you do not provide evidence of a violation of EU law. Your information that a competitor of VR recently acquired modernised diesel locomotives from the Czech Republic seems to indicate that there appear to be ways for competitors to procure such rolling stock even though this may be admittedly less convenient than to buy such rolling stock directly from VR.

4. Helsinki City Rail Loop

You allege that an EU funding of the Helsinki City Rail Loop project would constitute a waste of EU money as its socio-economic benefit-cost ratio would be too low compared to alternative projects. However, as no infringement of EU law has been demonstrated by you this point cannot be retained.

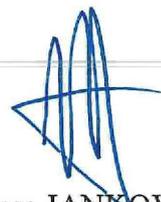
5. Procedural questions

In your reply you allege discriminatory treatment related to the fact that in our pre-closure letter we indicated that the Commission would close the case unless you provide any further elements indicating a clear infringement of EU law within 4 weeks following receipt of the Commission's letter whereas Member States have a 10 weeks response time in the framework of the EU-Pilot system.

The Commission does not see any discrimination in the different response times as the relationship between the Commission and a Member State is not comparable to the relationship between the Commission and a plaintiff. The EU Pilot is a system dedicated to formalised communication between public authorities (Commission-Member States). The rules of the EU-Pilot system, for instance, in terms of response times, do not apply to third parties such as a plaintiff. In our letter, we simply asked you to provide evidence to substantiate your allegations of an infringement of EU law within a reasonable time period.

In conclusion, according to our assessment in your reply to our pre-closure letter of 6 January 2015 you did not provide any further elements providing evidence of infringement of EU law. The Commission will hence proceed to the closure of the case.

Yours sincerely,



Barbara JANKOVEC
Head of Unit