

Rail market study I Portuguese competition authority I EPR/2024/8

Additional comments by Rail Europe to the Authority's recommendations

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Introduction

Rail Europe would like to thank the Autoridade da Concorrência for its continued interest in our input to its rail market study. We have taken note of the Authority's Recommendations to the Portuguese Government in terms of mitigating barriers to the provision of ticketing. In this document, Rail Europe provides additional comments to the Recommendations. These are based on Rail Europe's experience in other European rail passenger markets and are intended to support the case for market liberalisation in Portugal.

1. Recommendation 13 (I): exemption request on the applicability of Article 10(2) of Regulation (EU) 2021/782

As an independent rail ticketing platform, Rail Europe endorses the Authority's recommendation that the Portuguese government should revoke its request for exemption from this article. In our experience throughout Europe, the differential treatment of travel information by type of rail service (suburban, regional, long-distance) could likely prove counter-productive to the objective of increasing ridership on rail services to support the shift to sustainable transport to reduce CO2 emissions.

The travelling public – both domestically and internationally – is increasingly interested in having access to information on, and bookability of the entire transportation chain. That means that travellers expect sufficient information on timetables, fares and availability of combinations of suburban or regional with long-distance services in order also to cover the so-called last mile.

Equally, the availability of suburban and regional services in independent retail platforms addresses the needs of the nearly 20m international visitors to Portugal (2025) as a sizable majority will use such platforms rather than a national operator to book rail and public transport on a tool of their choice.

2. Recommendation 14 (I): ensuring fair and non-discriminatory treatment including independent ticketing platforms

Rail Europe recommends that the opening of the Portuguese rail passenger marketing provides a level-playing field (FRAND) for independent ticketing platforms in regard to the ticketing and retail activities of the incumbent rail operator, CP.

3. Recommendation 14 (IV): avoid restrictive contractual clauses in the contracting of the services of rival ticketing service providers

In Rail Europe's experience, some incumbent operators in Europe resort to restrictive practices enshrined in contracts with independent ticketing platforms. To complement this Recommendation, these are:

- Withholding special fares, especially promotional tariffs (whether time- or geographically-limited);
- Restrictions for independent platforms in digital marketing, e.g. the use of the operator's brand for keyword bidding on Google.

We would also point out that such practices are not limited to incumbents, but have also been observed from new entrants and private operators without a dominant market share in national rail markets. Regardless of the market share position of any operator, such practices represent an unfair advantage for the operator and should be disallowed.

4. A framework for market governance

The process of opening up the market for rail passenger services may give rise to challenges and conflicts in terms of market behaviour of the various actors. Rail Europe appreciates that the Portuguese government may be formulating its specific view as to the governance of the process. While ticketing and retailing is a subset in the process framework, we recommend that specific governance for this sector is taken into consideration sooner rather than later. We believe that this question can be addressed along the following continuum:

- A full regulation model: a government authority or agency takes charge of monitoring and enforcing a regulatory framework to ensure the proper functioning of an open rail passenger market.
- At the opposite end, a model of industry self-regulation: market actors commit to a regulatory framework and police compliance through an industry body. This can be coupled with an independent watchdog („ombudsman“) with the power to sanction non-compliant behaviour on appeal.

Both models have pros and cons in terms of effectiveness and efficiency, and there are variations in between these two poles. Nonetheless, the question of governance could be



the subject of a separate enquiry as an effective solution will substantially support the proper functioning of an open market in the interest of travellers and ridership growth.

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