Brussels, 6 March 2026

Observations on the Public Consultation – Competition in the Rail Sector in Portugal

ALLRAIL is the European association representing new entrants and private rail operators, active both in open access services and in services subject to Public Service Obligations (PSO). Our association promotes the opening of the European rail market, in line with the liberalisation and competitive tendering mandate set out in Regulation (EC) No 1370/2007.

Below are ALLRAIL's recommendations to the Autoridade da Concorrência following its public consultation on competition in the rail sector in Portugal.

The findings of the report are consistent with evidence observed across Europe: where competition is introduced, either on the tracks (open access) or for the tracks (competitive PSO tendering), passengers benefit.

Portugal now stands at a critical juncture. The decisions taken in the coming years (particularly regarding PSO contracts, rolling stock, and market access) will determine whether rail becomes a dynamic, competitive sector or remains structurally constrained.

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Overall Assessment of the AdC Study

ALLRAIL broadly agrees with the AdC's diagnosis. In particular, we strongly support the recognition that:

- directly awarded Public Service Obligations (PSOs) must remain exceptional and should not become the default model
- access to rolling stock and human resources are major barriers to entry
- capacity allocation and framework agreements can entrench incumbents if poorly designed
- ticketing data access is essential for competition and consumer choice

These are not isolated Portuguese issues; they are structural European challenges, and Portugal now has an opportunity to address them decisively.

The Current Situation of Public Service Obligations in Portugal

According to our experience and the relevant case-law, it is first necessary to assess whether a genuine market failure exists before establishing a Public Service Obligation, in line with the jurisprudence of the European Court of Justice[1] and the Land Transport PSO Regulation, as well as the general SGEI framework.

In our view, the current situation in Portugal does not fully meet these criteria. In particular, long-distance services, especially those connecting major cities, should not, in general, be considered as PSOs. In this respect, premium long-distance services such as *Alfa Pendular* and *Intercidades* should be excluded, in any case, from the Public Service Contract due to their commercial nature.

In any event, a thorough market analysis would be required to assess the real necessity of any remaining PSO services. Furthermore, in accordance with the accounting separation requirements introduced by the Fourth Railway Package

[1]Case T-454/13, Société nationale maritime Corse Méditerranée (SNCM) v European Commission (General Court judgment of 1 March 2017, ECLI:EU:T:2017:134), where the General Court upheld the Commission's finding that compensation linked to public service obligations was unlawful because the public service obligation was not clearly defined and no market failure justifying State intervention had been demonstrated .

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and Annex I of Regulation (EC) No 1370/2007 "Land PSO Regualtion"[2], any Public Service Compensation received by CP should be clearly separated.

- Moreover, **the current definition of the "minimum offer services" fall outside the current definition of a Public Service Obligation, since they are services of commercial nature and unduly reinforce the role of CP as the only long-distance rail operator in Portugal.**

The current contract, which runs until 2029, should not be renewed. Instead, the Transport Ministry should carry out the above-mentioned market study to reassess the appropriate scope of the Public Service Obligation in Portugal. This approach is already being followed in comparable services in Italy, namely Intercity and Intercity Notte, which are due to be tendered this year[3].

We see **no justification for renewal in light of Article 4(4) of the Land PSO Regulation, particularly given the level of public funding involved**. The proposed extension until 2034 would not comply with the requirements set out in the recently published PSO Guidelines[4]. These guidelines clearly state that an extension must be justified by demonstrating that, without it, the remaining contract duration would not allow for meaningful amortisation of investments. They also require that both the possibility and conditions of any extension be clearly specified in the tender documents and the contract itself.

In this case, no such justification has been provided. Combined with the significant role of public funding in the rolling stock and the absence of reverse

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[2] Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road

[3] Italian Ministry of Infrastructure and Transport, "*Trasporto ferroviario: pubblicato preavviso procedura di gara per l'affidamento dei servizi*", available at: https://www.mit.gov.it/comunicazione/news/trasporto-ferroviario-pubblicato-preavviso-procedura-gara-affidamento-servizi

[4] European Commission, "Commission Notice on the interpretation of Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road" (2023/C 222/01), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023XC0626%2801%29

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provision for that rolling stock, ALLRAIL considers that extending the contract would be incompatible with both the Commission's PSO Guidelines and Land PSO Regulation.

CP Governance

It is essential that CP operates independently from the relevant ministries and on a commercial basis, within the framework of a competitive railway market.

In this respect, it is necessary to ensure that:

- no overcompensation takes place under the Public Service Contract
- there is no excessive intervention from the Ministry of Transport that could foreclose potential competition in the Portuguese rail market

Transparency

It is key to ensure that any future national programmes, such as subsidised passes or initiatives to relaunch connections—are limited to cases where they are strictly necessary. Initiatives such as the "*Passe Ferroviário Verde*" should be open to future competitors and private operators, as is already the case with the *Klimaticket* in Austria, where private operators such as Westbahn participate in the scheme.

Market-Oriented Rail Capacity Management

It is necessary to ensure the full implementation of market-oriented capacity management principles, as foreseen in the future EU Regulation on Rail Capacity Management, to be enforced by *Infraestruturas de Portugal*.

In particular, new approaches should be designed to allow potential new entrants to secure multiannual capacity through market-oriented Framework Agreements.

All commercial services should be treated equally, and priority criteria should depend solely on the nature of the service, not the operator. Greater flexibility

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and multiannual planning of available capacity are essential. Morevoer, in neighboring Member States, such as Spain[5], capacity allocated through framework agreements can take precedence over PSO services.

It is also necessary to ensure a process whereby the needs of potential operators are assessed in advance, through consultations during the multiannual planning phase. Any deviation from the input received (e.g. rejection of framework agreements) should be duly justified by *Infraestruturas de Portugal.*

Access to Rolling Stock

Given the specific characteristics of the Portuguese market, the creation of a ROSCO is recommended. As mentioned in the consultation report, this approach already exists in Spain, where national legislation enabled the creation of Renfe Alquiler and the intervention of the CNMC to supervise the conditions and pricing for leasing idle rolling stock from the incumbent operator to new entrants, both for commercial services and PSO services.

Given Portugal's specific conditions—such as network characteristics and Class B (Convel) systems that make rolling stock authorisation more complex—the role of a ROSCO would be particularly important, both for commercial services and to ensure participation in PSO tenders, in line with Article 5a of the Land PSO Regualtion.

In any event, rolling stock procured for PSO services and co-financed by the Ministry of Transport and European funds must be made available to third parties on a fair and non-discriminatory basis. This principle is already reflected

[5] See Article 17 *Orden FOM/897/2005, de 7 de abril, relativa a la declaración sobre la red y al procedimiento de adjudicación de capacidad de infraestructura ferroviaria* : "If the line as a whole, or a section or infrastructure thereof, has been declared congested, the following allocation priorities shall be taken into account, in descending order: a) The possible existence of framework agreements providing for the allocation of that capacity request. b) The existence of specialised infrastructure and the possibility of accommodating such requests on that infrastructure.c) Public Service Obligations"

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in other Member States. In Italy, for example, new rolling stock for long-distance PSO services is owned by the Ministry of Transport, ensuring broader accessibility beyond a single operator.[6]

Furthermore, regional contracts with the incumbent Trenitalia, financed through regional and/or European funds, systematically include a reversion clause, whereby the rolling stock returns to the public authority at the end of the contract.[7]

Such a clause is, in our view, essential and should be incorporated into the Public Service Contract between CP and the Ministry.

Ticketing: From Data Access to Real Market Opening

The AdC's focus on ticketing and data access is both timely and welcome. However, experience across Europe shows that data access alone is not sufficient.

According to a YouGov survey (October 2025), 42% of passengers want booking platforms to display all available train services, rather than only those of a single operator[8]. This reflects a structural market failure.

In many Member States, the incumbent rail operator is closely integrated with its market-dominant in-house ticket vendor, both online and offline, allowing it to act as a gatekeeper at the point of sale by limiting the visibility of competing services.

In practice:

- passengers are presented with only a partial view of the market
- new entrants remain commercially invisible

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[6] Italian Ministry of Infrastructure and Transport, Ministerial Decree No. 475 of 29 November 2021 on the allocation of public resources for the procurement of rolling stock for rail services. Available here.

[7] See for instance the similitudes between PSO contracts for Sicily Region (here) or Campania region (here)

[8] Please find here our two position papers on the upcoming EU proposals on MDMS and SDBTR, which provide more relevant evidence on fair access to ticketing and through-ticketing ALLRAIL Position Paper: The Great Rail Ticket Unbundling | ALLRAIL - The Future of Passenger Railways

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- competition on the tracks is undermined by a lack of competition in distribution

ALLRAIL has identified a “triple lock-in” effect:

- market-dominant in-house ticket vendors favour their own operators
- incumbent operators withhold essential data
- closed systems prevent multi-operator journeys

Market-dominant ticket vendors, such as CP Ticketing website, must:

- display and sell all willing operators’ services
- on fair, reasonable and non-discriminatory (FRAND) terms
- without discrimination

Operators with significant market power (such as CP) must provide full, real-time data access to third-party ticket vendors on FRAND terms. These elements are complementary: competition in rail transport cannot function if distribution remains closed.

As highlighted in the report, the current national exemptions from Regulation (EU) 2021/782 regarding access to real-time passenger and traffic data for regional and suburban services should be withdrawn.

Given that CP operates the vast majority of these services under the existing PSO contract, maintaining such exemptions risks enabling discriminatory practices. In particular, it may allow the incumbent to restrict access to essential data, thereby disadvantaging potential competitors and undermining the development of a fair and transparent market.

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Service Facilities

In our view, ensuring fair and non-discriminatory access to service facilities, as well as to rail-related services such as heavy maintenance for high-speed rolling stock (e.g. Alfa Pendular trains), is essential to enabling effective competition.

This requires greater transparency in access conditions, pricing, and available capacity. At the same time, *Infraestruturas de Portugal* should be encouraged to take a more proactive role in facilitating the development of new service facilities under its direct management. Such facilities would help guarantee neutral, fair access for all operators and prevent the foreclosure of key inputs necessary to enter and compete in the market.

Summary of Recommendations to the AdC

ALLRAIL respectfully invites the AdC to reflect the following key recommendations in its final report:

- **Make competition the default model**: Ensure that open access is assessed first for all route, particularly long-distance, and that competitive tendering becomes the standard for PSO contracts.
- **Improve access to rail capacity to make more attractive for potential new entrants**, particularly, when it comes to the availability of stable Framework Agreements and fair priority criteria
- **Ensure fair access to rolling stock**: Promote transparent, cost-oriented access and consider a neutral leasing model

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