With the unveiling of the Fourth Railway Package in January 2013, the European Commission (EC) has taken a further step towards the establishment of a Single European Railway Area¹ by proposing new legislation mandating that all passenger rail services provided under public service contracts (PSC) in the EU become subject to mandatory competitive tendering from December 2019.

This article considers the current state of passenger rail market liberalisation in selected European countries and the extent to which further market opening can be expected between now and 2019 in light of these regulatory developments.

¹ The objective of creating a Single European Railway Area was established in the EC’s Transport White Paper “Roadmap to a Single European Transport Area” (March 2011), where it stated that remaining barriers must be removed as a matter of priority.
A Single European Railway Area

Over the last 20 years, the EU has introduced three packages of railway directives aimed at opening up domestic and international rail passenger and freight markets to competition. To date, however, the extent of any legislation implemented has varied across national governments, resulting in a situation where the stage of market liberalisation varies significantly from country to country. Whilst some countries, most notably the UK but increasingly Sweden and Germany (in the regional rail segment), have reached an advanced stage of liberalisation, others, such as Italy, Spain and France, have made less significant moves towards introducing competition.

In a bid to remedy this disparity and achieve its objective of establishing a Single European Railway Area, the EC unveiled a fourth package of railway legislation on 30 January 2013. Importantly for rail owning groups (whether privately or publicly owned), the package includes proposals to open all domestic passenger rail markets to competition from December 2019 via the introduction of:

• Mandatory tendering of passenger rail services provided under PSCs where state subsidy is required; and
• Open access competition in commercial segments.

According to the EC, the former currently accounts for more than 90% of rail journeys in the EU.

UK

The UK has the most liberalised passenger rail market in Europe. 25 rail franchises were created by the privatisation of the UK network in 1996/97. Following the consolidation of some of the original contracts into larger operating areas, there are now 17 heavy rail franchises in the UK.

Unlike the model adopted by the EC, it is not only regional and suburban services that are subject to competitive tendering but also the commercial inter-city routes. To date, the presence of open access operations has been very limited. However, this may change as Deutsche Bahn/Arriva is currently finalising plans to launch a number of new open access inter-city services on the UK West and East Coast Mainlines from 2013, via its subsidiary Alliance Rail.

After a pause in franchise tendering, following the aborted West Coast competition in 2012, the UK Department for Transport in March 2013 announced plans to re-let all but two UK heavy rail franchises by 2018.

The UK passenger rail market is intensely competitive with 10 separate companies either operating or having a stake in franchises at present. These are Abellio, Deutsche Bahn/Arriva, FirstGroup, Go-Ahead, Keolis, MTR, National Express, Serco, Stagecoach and Virgin.

Sweden

Sweden has one of the most liberalised passenger rail markets in Europe. The first steps towards liberalisation were taken in 1988, when responsibility for local and regional services was transferred to 21 regional transport authorities, resulting in the first PSC contracts being competitively tendered in 1989/90. Large sections of the regional network have since been tendered and international operators, such as Deutsche Bahn/Arriva, Veolia Transdev, DSB and NSB, have taken significant market share from SJ, the incumbent state operator. By the end of 2011, SJ’s overall share of the Swedish passenger rail market had reduced to circa 55%.

Operators can apply for open access paths for any service, local or long distance, provided they can be provided on a commercial basis. Whilst the majority of the inter-city segment is governed by open access competition, some long distance services require public support and these are tendered by the Swedish Transport Administration, Trafikverket.

2 The loss of market share has been almost exclusively in the regional segment with SJ retaining a 90% market share in the long-distance segment (over 100 km).
Germany
The liberalisation of the German regional passenger rail market is advancing, driven by a ruling by the German Federal Court of Justice in February 2011 mandating that all regional passenger rail contracts be competitively tendered (except in exceptional cases). By the end of 2011, competitors to the state operator, Deutsche Bahn, had increased their market share to nearly 25%.

Whilst individual contracts tend to be significantly smaller than rail franchises tendered in the UK, competition is strengthening with growing interest from international players such as Keolis, Abellio, Trenitalia (via Netinera) and National Express.

Subsequently, the last two years have seen strong tendering activity and up to 50% of the market is due to be tendered via 27 regional tendering authorities over the next 3-5 years.

In the inter-city segment, however, which is characterised by open access competition, rather than competitive tendering, Deutsche Bahn retains a near monopoly position.

Italy
As in Germany and Sweden, the Italian regional passenger rail market is governed by local transport authorities. Several regulatory attempts have been made to facilitate market opening, but whilst a law was passed in 2011 introducing mandatory competitive tendering of all PSC contracts, this was overruled by a new law passed in July 2012. However, increasing budgetary pressures are contributing to a gradually more pro-competition attitude amongst regional governments.

In practice, the only region to have awarded a tendered contract in the past five years was Emilia-Romagna which awarded a four year contract in 2008 to a JV of Trenitalia and the regional operator FER. A retendering process for this contract is currently underway. Several other Italian regions have binding contracts with Trenitalia, and other smaller state-owned regional operators, until 2014 (with options to extend until 2020). The opportunities for new entrants in the Italian regional market therefore appear to be limited in the short-term.

In the inter-city segment, open access competition is well established and a new entrant, NTV (20% owned by SNCF), started high-speed services between nine Italian cities in April 2012 in competition with Trenitalia. In response, Trenitalia has increased its low cost offering and adapted its timetable to compete directly with that of NTV on key services.

Spain
To date, all domestic passenger railway services have been operated by the state-owned operators RENFE-Operadora and FEVE. However, partly driven by budgetary pressures on central and regional Spanish governments, a process for the liberalisation of domestic passenger rail services was announced in July 2012.

The proposed regime will be aligned with the provisions of the Fourth Railway Package with competitive tendering for regional and suburban public service contracts and open access competition in commercial inter-city segments.

In February 2013, it was announced that the first sections of the Spanish rail network to be liberalised will be the long-distance tourist train segment which will be opened to competition from 31 July 2013.

A firm timetable for the liberalisation of the rest of the network is yet to be confirmed, but as a robust regulatory framework needs to be developed to effectively implement the new model, it is unlikely that tendering processes for suburban and regional services will commence until 2014, at the earliest.

France
France has one of the least liberalised passenger rail markets in Europe with SNCF retaining a monopoly by law on domestic passenger services. To date, only the minimum EU requirements for market access have been adopted.

Under the Sarkozy government, steps were taken to prepare for a gradual opening of the regional passenger rail market to competition from 2014, but the recent change of government appears to have halted these proposals. Whilst some French regions may be pro-competition, the market is now expected to remain largely closed until 2019. In the meantime, steps are being made to reform and streamline the French railway system in preparation for liberalisation.

continued overleaf…
Encouraging effective competition through tendering

As domestic passenger rail markets in the EU begin to open up, sustained efforts will be required to address the remaining barriers that exist in many countries to the establishment of a truly level playing field for competition. These barriers include:

- The absence of an effective rolling stock leasing market and access to maintenance depots, resulting in significant upfront capital requirements for new entrants as well as re-deployment issues when contracts end; and

- The fragmentation of tendered contracts and variability in approach across regional tendering authorities. Often contracts are too small or offer too little opportunity for commercial innovation to stimulate a genuine market interest.

In addition, the market power of national state operators, within specific networks, has historically had the potential to give rise to anti-competitive behaviour.

Anticipating change

Whilst the current stage of passenger rail market liberalisation varies significantly between EU countries and the exact nature and extent to which Member State Governments will implement the provisions of the Fourth Railway Package remains uncertain, the EC's proposals represent a significant step towards the establishment of a Single European Railway Area.

The introduction of competition to rail markets, if established and delivered in the most effective way, has the potential to deliver cost savings, improve service quality and lead to growth in rail use. These benefits may look increasingly attractive to national governments as budgetary pressure grows and they look to improve infrastructure performance in order to stimulate growth.

Rail owning groups will therefore continue to monitor market developments in the EU closely in order to position themselves for the opportunities which may arise. In addition, state-owned railway operators and infrastructure managers will seek to ensure that they are adequately prepared for what has the potential to be the most radical change in their history.