

Decision by the Rail Regulator under the Competition Act 1998

Alleged predatory pricing by English Welsh and Scottish Railway

Introduction

1. The Rail Regulator has made a decision, in relation to complaints against English Welsh and Scottish Railway (EWS) received by the Rail Regulator in April 2003 and June 2003, that EWS has not infringed the prohibition contained in Chapter II of the Competition Act 1998 (the Act) by engaging in predatory pricing or selective discounting.

Background

2. EWS is the leading provider of rail freight services in the UK. EWS offers a range of rail freight services including freight transfer, wagon hire, loading and unloading, local distribution and warehousing. EWS also offers a range of related equipment and services to the rail industry including: locomotive hire; haulage of empty passenger and freight vehicles; delivery of new and refurbished passenger stock; driver, groundstaff and supervisor hire and assessment; stabling and cleaning; train planning and control and storage of surplus rolling stock.

3. As part of this business, EWS is currently the largest licensed operator of charter passenger trains in the UK. There are only a small number of other companies who are currently licensed to operate charter passenger trains in the UK and it appears to the Rail Regulator that EWS may hold a dominant position in relation to the operation of such trains. However, for the reasons set out below, it has not been necessary for the Rail Regulator to reach a definitive view on that question or on the related issue of market definition in this case, since, even on the assumption that EWS is dominant in a market for the operation of charter passenger trains, he has concluded that there are no reasonable grounds to suspect an infringement of the Chapter II prohibition by EWS.

The complaint

4. In April 2003, the Rail Regulator received a complaint under Chapter II that EWS was engaging in predatory pricing in the charter passenger sector. The complaint related to EWS's dealings with a number of its customers and alleged several different forms of conduct by EWS which, according to the complainant, amounted to predatory pricing. The complainant alleged, specifically, that:

- (a) EWS had offered prices to certain customers that were substantially below its published terms;
- (b) EWS had offered prices to certain customers specifically designed to undercut the prices offered by a competitor; and
- (c) EWS had offered certain concessions on its usual terms of trade to specific customers, conditional on those customers continuing to deal exclusively with EWS - these concessions were, in effect, also designed to exclude a competitor.

In June 2003, the Rail Regulator received further correspondence from the complainant, containing an additional allegation in relation to the terms offered by EWS to one of the customers referred to in the original complaint.

The Regulator's conclusion

5. The Rail Regulator has reviewed the factual allegations contained in these complaints. The Rail Regulator has also conducted enquiries in relation to EWS's conduct with a number of purchasers of charter passenger train services, including several of the EWS customers specifically identified in the original complaint.

6. On the basis of this review and these enquiries, the Rail Regulator has concluded that he does not have reasonable grounds to suspect that EWS has engaged in conduct that would constitute an infringement of the Chapter II prohibition in the form of predatory pricing or selective price cutting.

7. The Rail Regulator's enquiries with charter passenger train customers generally did not support, and in a number of cases specifically contradicted, the factual allegations made in the original complaint. Specifically, those enquiries revealed only limited instances of EWS offering any form of discount to its customers.

8. In relation to this complaint, the Rail Regulator has concluded, therefore, that he has no evidence that would provide him with reasonable grounds to suspect, in particular, that EWS has charged prices below cost or offered prices or terms of trade to particular customers the purpose of which was to eliminate a particular competitor or particular competitors. The complainant's second letter did not contain any further information to cause the Rail Regulator to alter his view in relation to EWS's conduct in this respect.

9. The Rail Regulator has therefore closed his file on these complaints.

Steve Gooding
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