

“Effective Competition“ in the Railway Markets

- Next to assuring “**safety**” and “**attractiveness of railway services**”, “**effective and undistorted competition**” is one of the main goals of the regulatory framework of the railways in Germany.
- The law also explicitly highlights the aim of **fair competition between different modes of transport** (§1 Abs. 3 AEG).
- In contrast to the Telecommunications Act, **the German General Railways Act does not provide an interpretation** of the concept of “effective competition”, however.
- **The regulator hasn’t provided any explicit guidance** as to how he interprets the notion of effective competition in the railways sector so far. The same holds true for the monopolies commission, which is obliged to report on the state and development of competition in the railways every two years (§36 AEG).

Yet, it seems that the regulator mainly refers to market shares as the relevant criterion:

- “This development is not that bad. [...] Whenever contracts in the regional transport are tendered, competition wins every second award. But of course we go for a more intense competition.” (Interview with M. Kurth, Die Welt, 5 January 2008)
- “The Federal Network Agency will update its propositions for changes of the AEG [...], introducing its experience – in particular with the development of competition and with the promotion of entry by new competitors.” (Bundesnetzagentur, 2009, p. 230)

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- Competition is effective if it works as a discipline device:

I. Infrastructure

- Intermodal competition constrains infrastructure managers' ability to realize profits: In the years 2000-2006 Deutsche Bahn AG took over losses of DB Netz AG amounting to 2.5 billion Euro. Only since 2007 DB Netz AG achieved a positive return on the capital employed, amounting to 3 percent in 2009. => **No monopoly profits in the infrastructure**
- High share of fixed costs in the infrastructure implies that even **small reductions of demand for tracks have a large impact** on the return.

II. Passenger transport

- **Intramodal market** share of competitors in **regional transport** is 20.3 percent in 2009; competitors win more than 2/3 of the contracts awarded so far in 2010.
- ESMT study (2008) concludes that intense intramodal competition is not likely in **international rail passenger transport**, since **intermodal competition** restricts the ability of railway companies to earn profits.
- Shortly after the beginning of operation of **new high-speed lines**, flight connections are reduced or even stopped => evidence for effectiveness of **intermodal competition**.

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III. Freight transport

- WIK has conducted a study on dominance of DB AG (2006). The authors found **no evidence for a dominant market position of DB companies** in the segments under examination, employing state-of-the-art methods of economic analysis.
- Since railway reform, **competitors increased their intramodal market shares** year-on-year. 2009 it amounts to 24.6 percent.
- **Broad evidence on the effectiveness of intermodal competition** in the segments of single wagon load (lorries) and mass transport (barges).

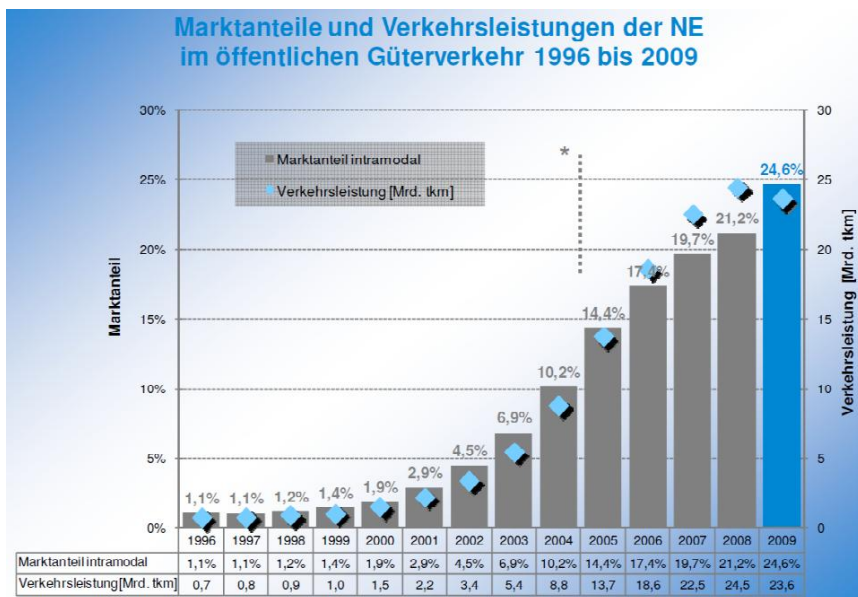
■ Conclusions

- Up to now, **neither the regulator nor the monopolies commission have given any explicit guidance regarding the notion of “effective competition”**. Implicitly, it is often referred to competitors' market shares.
- Our experience is that **competition is effective in the German railways sector**, taking the form of intermodal/ intramodal competition, competition in the market/ competition for the market; actual/ potential competition.
- **A lack of market opening** in most of our competitors' domestic markets and **unfair intermodal competition** have an impact on competition between railways in Germany.
- Further development of the regulatory practice and competition policy should take into account the concept of effective competition. **The analysis of competition in the railways sector requires a comprehensive approach**, however.

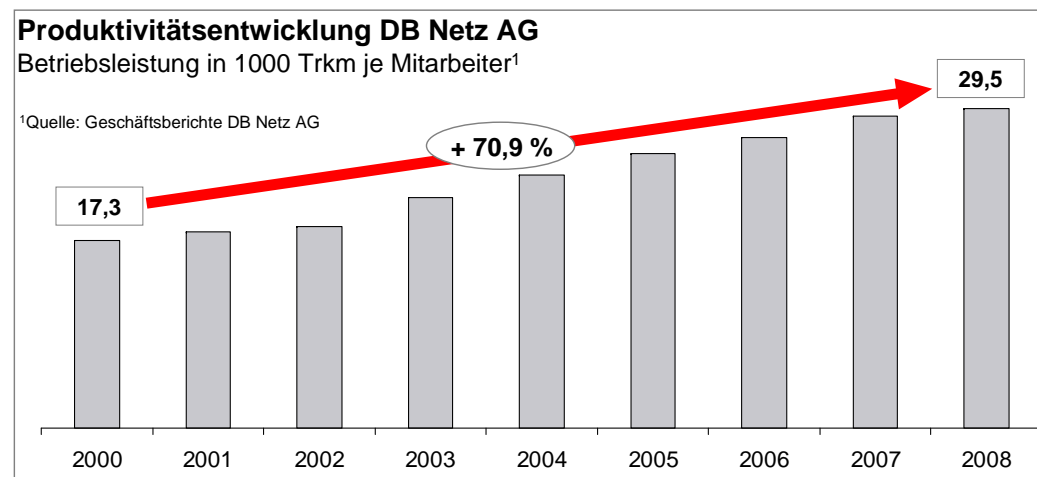
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Backup

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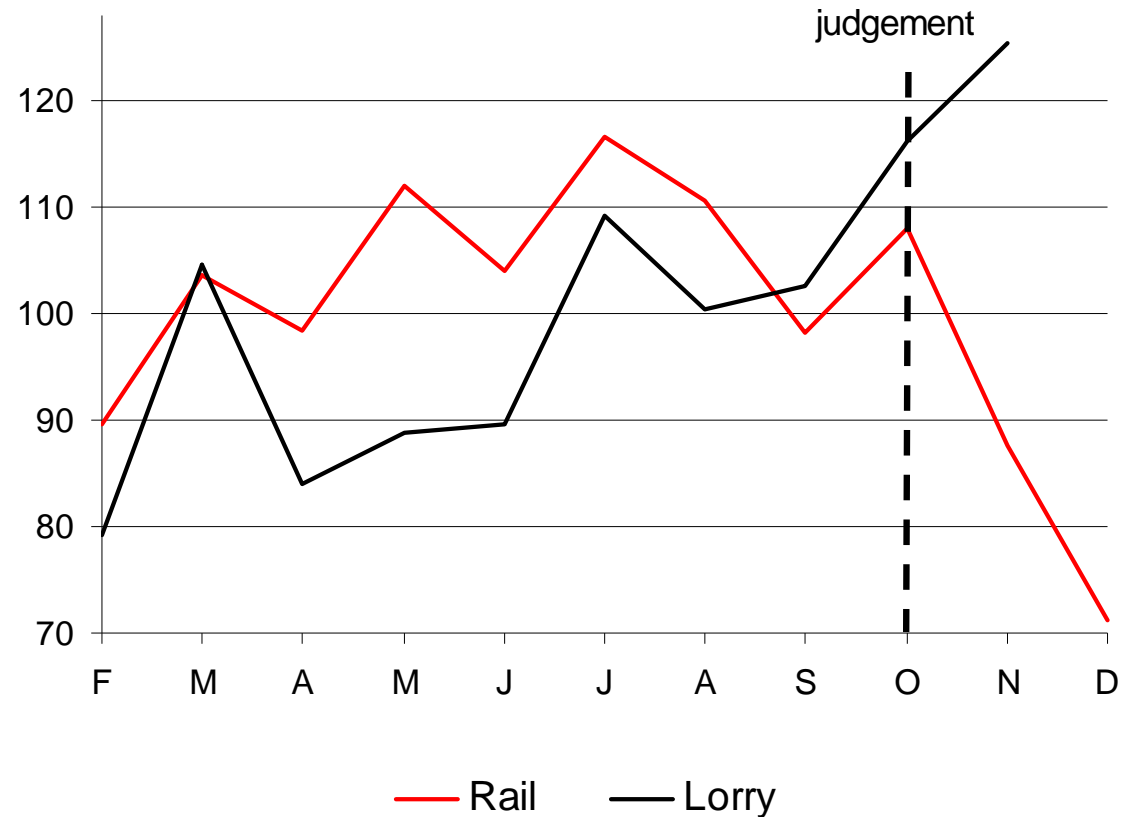


Quelle: VDV 2010



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Intermodal competition in freight transport: The effect of a judgement on the legitimacy of strikes of locomotive drivers in 2007



Year: 2007; Source: Federal Statistical Office, Series 8

Intermodal competition: High-speed lines and flight connections

O&D	HS connection	Begin of operation rail	Airline	Shutdown of operation air
Paris– Brussels	Thalys	Jun 1996	Air France/ KLM	Mar 2001
Hamburg– Berlin	ICE (several reductions of travelling time)	Nov 2000	Lufthansa	Apr 2002
Paris– Basle	TGV Lyria	Jun 2007	Easyjet	Jun 2007
Paris–Cologne/ Stuttgart	ICE 3MF	Jun 2007	German-wings	Jan 2008
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