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Decision No 75/2016

2016-2021 charging scheme for the Minimum Access Package on the national railway infrastructure. Compliance with the regulatory model approved by Decision No 96/2015 and later amendments thereof

In its meeting on 30 June and 1 July 2016, the Authority

Having regard to Article 37 of Decree Law No 201 of 6 December 2011 (converted into Law No. 214 of 22 December 2011, as later amended, establishing the Transport Regulation Authority (hereinafter: the Authority);

Having regard to Legislative Decree No 112 of 15 July 2015 on “Implementation of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast)” and, in particular, articles 16, 17, 18 and 37;

Having regard to the rules on the conduct of proceedings for the Authority’s decision-making process and the stakeholders’ participation, approved by Decision No 5/2014 of 16 January 2014;

Having regard to Decision No 96/2015 of 13 November 2015 on “*Criteria for determination of charges for access and use of the railway infrastructure*”;

Having regard to the regulatory measures referred to in Annex 1 to the a.m. Decision No 96/2015 and, in particular, Measure 4 (“*Procedure for verification of compliance of charges with the principles and criteria set by the Authority*”) and Measure 58 (“*Provisions for the entry into force of the new charging scheme*”), which define terms and procedures for preparation, verification and entry into force of the new charging scheme, with particular regard to the first regulatory period (2016-2021);

Having regard to Decision No 28/2016 of 8 March 2016 on “*Implementation of Decision No 96/2015 - Postponement of deadlines and other measures*”;

Having regard to Decision No 31/2016 of 23 March 2016 on “*Implementation of Decision No 96/2015 – Clarifications*”;

Having regard to Decision No 62/2016 of 30 May 2016 on “*Postponement of the deadlines for implementation of Measures 41 and 58 of Annex 1 to Decision No 96/2015*”;

Having regard to the notes placed on the Authority’s files with ref. nos. from 2940 to 2947 of 26 April 2016, whereby the Infrastructure Manager, *Rete Ferroviaria Italiana SpA (RFI)* submitted to the Authority the new 2016-2021 charging scheme;

Having regard to the Authority's notes with ref. nos. 3406/2016, 3407/2016, 3408/2016, 3873/2016, 3959/2016, 4217/2016 whereby, with regard to the assessment of SNCF Voyages Srl Italia Srl, Trenitalia Spa, Nuovo Trasporto Viaggiatori Spa, DB Italia Srl, Fercargo , OBB Ag, brought to the Authority's attention, a request for technical and economic information was submitted for the purpose of carrying out preliminary inquiries for the verification of compliance;

Having regard to the minutes of the hearings of the parties referred to above, which took place on 7, 8, 10 June 2016, aiming at improving the content of their answers to the Authority's requests for information and of the critical issues highlighted by the parties;

Whereas the verification of compliance carried out by the Authority during the proceedings for defining the principles and criteria referred to in Decision No 96/2015 was supplemented following the technical and economic information acquired by railway undertakings according to the procedures described above;

Having regard to the note with ref. no. 3926/2016 of 27 May 2016, whereby a hearing with the Infrastructure Manager was convened on a set of issues arising from the preliminary inquiries carried out for verification of compliance under Measure 58, with respect to the Minimum Access Package, which deserved further inquiries and/or additional documentation;

Having regard to the report of the Infrastructure Manager hearing dated 9 June 2016, in which the content of the specific questions and comments sent by the Authority in the annex to the above-mentioned note of 27 May was discussed and with respect to which RFI provided initial clarifications and information;

Whereas, during the same hearing RFI agreed to provide, in a later hearing, further guidance on the application procedures for the definition of both the charging scheme, in order to better meet the principles of competitiveness, sustainability and compliance of the productivity increases for railway undertakings, and of the economic equilibrium of the Infrastructure Manager as provided for in article 16 of Legislative Decree No 112/2015;

Having regard to the report of the hearing of 22 June 2016, in which the Infrastructure Manager provided evidence of the aforementioned application procedures and of their effects and highlighted other operational and interpretation issues;

Having regard to Decision No 72/2016 of 27 June 2016 on *"Implementation of Decision No 96/2015 – application procedures and postponement of deadlines"*;

Having regard to the note with annexes, placed on the Authority's files with ref. nos. 4791/2016 and 4792/2016 of 1 July 2016, whereby the Infrastructure Manager submitted to the Authority a new proposal for the 2016-2021 charging scheme of the Minimum Access Package, following the guidelines on the application procedures of the measures set out by the Authority with the above-mentioned Decision No 72/2016;

Whereas the verification activities carried out by the Authority's offices found that:

- in the calculation of operating costs, the overall figure reported for the base year amounts to 1,829.99 M€, while the audited accounts show a figure of 1,830.41 M€;
- in the modulation of charges relating to the Open Access Premium market segment, an average unit price differential between "MI & RM" and "MI or RM" sub-categories is reported, which may be estimated above 40%;
- the differentiation criterion, within the Open Access Premium "MI or RM" sub-segment of the Base and Light sub-categories, was set by the Infrastructure Manager on the basis of a 30% threshold of the use of the high-service level network;

Whereas, pursuant to the combined provisions of Measures 8, 9, 21 and 22 of Decision No 96/2015, for the purpose of establishing the annual charges, the traffic volume forecasts (or Traffic Units) for each year of the regulatory period provided for by Decision No 96/2015 shall be taken into consideration;

Having noted that the charging proposal is based on the volume forecasts for the whole regulatory period, as stated by the railway undertakings;

Whereas, with respect to the criteria for determining the B component of the charge, as defined in Measure 22 of Annex 1 to Decision No 96/2015, in order to ensure consistency of the charging scheme, the Authority establishes the criteria for the determination of this component by the IM, by taking as a reference the general provisions of article 32, paragraph 1 of Directive 2012/34/EU, or by adopting the "mark-up" approach outlined therein (correlated with the "pairs" referred to in Annex VI, paragraph 1 of the Directive) and by:

- having regard to the sustainability for the market;
- applying efficient, transparent and non-discriminatory principles;
- ensuring at the same time optimal competitiveness of rail market segments;
- providing that the charging scheme complies with the productivity increases achieved by railway undertakings.

Whereas the Infrastructure Manager, as provided for under Measure 24 of Annex 1 to Decision No 96/2015, considered it appropriate to expand the basic structure of rail services by adding additional pairs, also for the Open Access Premium segment, whose (J) coefficients of modulation were identified individually;

Whereas these coefficients of modulation, beside reflecting the characteristics of the services, based on principles of fairness, non-discrimination and market sustainability, as required by Measure 29 of Annex 1 to Decision No 96/2015, shall in any case:

- ensure compliance with the general principles referred to in the a.m. Measure 22;
- not affect competition in the railway market;

Whereas the Authority as a regulatory body is required to ensure that charges for access to the infrastructure set by the Manager comply with the model approved by Decision No 96/2015, with Legislative Decree No 112/2015 and are not discriminatory;

Having regard to the outcome of the inquiries conducted by the offices;

Upon proposal of the Secretary General

HAS ADOPTED THIS DECISION

1. The new 2016-2021 charging scheme for the Minimum Access Package for the national railway infrastructure, submitted by *Rete Ferroviaria Italiana Spa (RFI)* on 30 June 2016 and placed on the Authority's files with ref. nos. 4791/2016 and 4792/2016 of 1 July 2016, complies with the criteria for the determination of charges for access and use of the railway infrastructure, as adopted by Decision No 96/2015 of 13 November 2015 and later amendments thereof, with the following requirements:

- a. in the calculation of the operating costs in the base year, the Infrastructure Manager shall comply with the amounts resulting from the audited accounts submitted to the Authority;
- b. J_{\min} coefficient relating to the "Open Access Premium MI or RM" / "Open Access Premium MI & RM" pair shall not be lower than the limit value of 0.85, in order to ensure competition in the relevant market segment and avoid undesirable developments;
- c. the criterion of differentiation of Base and Light sub-categories within Open Access Premium "MI or RM" sub-segment, set by the Manager on the basis of a 30% threshold of the use of the high-service level network, is considered to be compliant up to the maximum limit of 3 million tr*km per year for actual traffic volumes relating to the Light sub-category. If these volumes are higher than the above limit, the Manager is responsible for submitting to the Authority a proposal for revision of that criterion of differentiation, in order to avoid any distortions of the relevant market segment;
- d. the Infrastructure Manager is required to report to the Authority, as of the month of April 2018, on account of the data relating to actual traffic volumes, as well as of the updated traffic forecasts resulting from requests for capacity allocation for the following year, any deviations from the traffic volume forecasts assumed as a reference for the 2016-2021 charging scheme concerning the Minimum Access Package for national railway infrastructure, in order to enable the regulatory body to adopt any remedial measures, in order to maintain the compliance of the above charging scheme with Legislative Decree No 112/2015.

This decision may be appealed, within the legal deadlines, before the competent regional administrative court or may be the subject of an extraordinary petition to the President of the Italian Republic.

Turin, 1 July 2016

The President
Andrea Camanzi