Channel Tunnel Intergovernmental Commission (IGC)

Report of stakeholder workshop 2013

Friday 22 March 2013, Lille

Summary
IGC asked its joint economic committee (JEC) to arrange a workshop for all Channel Tunnel stakeholders to explore the market for access to the Tunnel, focussing on economic regulatory issues.

The workshop was supervised by the Chair and Head of French Delegation to IGC. The co-chairs of the JEC gave presentations of their work during 2012 and provided brief introductions to the discussions. At IGC's invitation, representatives of Eurotunnel also provided a presentation and made a significant contribution to the debates.

Approximately 20 stakeholders were represented. These included current and prospective passenger and freight users of the Tunnel, neighbouring infrastructure managers, representative bodies, national rail regulators, the European Commission (DG Move), and other interested experts.

A full list of the participants is annexed, as are the presentations given at the event.

Presentation by the joint economic committee of its reports
Following an introduction from the Chairman of IGC, the JEC gave presentations outlining the legal background to IGC's regulatory role; their methods and approach to date; and a summary of the findings of their published and emerging reports.

In particular, stakeholders' attention was drawn to:
- IGC's establishment as regulatory body in accordance with European Directives, particularly 2001/14, through the bi-national regulation of 2009;
- As part of this, IGC's role in scrutinising and monitoring Eurotunnel's published Network Statement and in dealing with any appeals from aggrieved railway undertakings;
- Perhaps more significantly, the proactive work JEC had been asked to undertake by IGC in accordance with European law and expectations to examine the access charging arrangement for the Tunnel and their level of compliance with the law;
- The importance of JEC working bi-nationally and openly, through an agreed programme of work and regular meetings with Eurotunnel and other parties;
- The publication of the outcomes via the reports on IGC's website at http://www.channeltunneligc.co.uk/Joint-Economic-Committee.html?lang=en (English

version) and http://www.cigtunnelmanche.fr/Organisme-de-controle.html?lang=fr (French version).

In terms of the conclusions of this work to date, JEC noted that:
- Some of its emerging conclusions, particularly around the structure and level of charges were subject to commercial confidentiality at the request of Eurotunnel;
- It had looked closely at the structure of the Eurotunnel group and its accounting separation and believed that the group had achieved a degree of separation between its infrastructure management (Concessionaire) and railway undertaking (Europorte) functions that complied with the requirements of European law – noting that Eurotunnel's Shuttle business is exempt from the requirement to be separate from the infrastructure management business;
- It viewed the Rail Usage Contract as a framework agreement in the context of Directive 2001/14 and had concluded that the characteristics of the Channel Tunnel project were consistent with the exceptions permitted in Article 17 of that Directive for such agreements to be longer than normally envisaged;
- It had concluded that the charges described in the Usage Contract were set at a broadly equivalent level and on a broadly equivalent basis to those in the published Network Statement;
- It was continuing to examine whether that structure and level of Eurotunnel's high charges was consistent with the principles of Articles 7 and 8 of Directive 2001/14, particularly the extent to which bearable mark-ups were levied and long-term costs recovered;
- Importantly, it believed that it was essential for Eurotunnel to deliver far greater transparency of the charging arrangements set out in the Usage Contract and their relationship to Directive principles and the published Network Statement.

Stakeholders made the following key points were made during discussion of JEC's work to date:
- Eurotunnel's charges per kilometre are very high in relation to other European railways and that this threatened rail's competitiveness with other modes.
- The Tunnel infrastructure has a number of unique characteristics, such as its undersea nature, the intensiveness of its use and the need to recover its 100% private funding, which justify differences in its charges.
- It is important to understand the effects of the charges on specific markets. For example, a research study undertaken on behalf of the rail freight sector had concluded that reducing charges would have a significant positive impact on traffic.
- There was a need to continue evolving the safety and technical regime to reduce barriers and costs and enhance – in everyone's interests - the growth of traffic and competition.
- Both IGC and Eurotunnel acknowledged the need for greater transparency, delivered via continued improvements to the Network Statement and enforced by the regulator, to provide operators and their customers with the confidence the market was fairly run.

Channel Tunnel legal framework and structure of charges

The JEC then explained legal background to the charging arrangements established in the Tunnel, noting in particular:

- IGC's supervisory role in accordance with the Treaty of Canterbury and the Channel Tunnel Concession Agreement;
- The requirements in those documents for Eurotunnel to have freedom of commercial policy while respecting legal requirements and principles of competition and non-discrimination between users;
- The European requirements introduced by the First Railway Package have been applied to Eurotunnel with IGC as regulatory body, most importantly the charging principles and the requirements relating to framework agreements and the Network Statement.

Stakeholders made the following key points during the discussion of the legal framework and structure of charges:

- It is vital to ensure that costs are fairly allocated between Eurotunnel Shuttle operations and international railway operations.
- This should be supported by full transparency of cost data and accounting separation to generate confidence that the charging arrangements were being properly applied.

Channel Tunnel access charges

Eurotunnel provided an introduction and explanation of the current access charges, noting that:

- The "road" and "rail" links provided by the Tunnel serve completely different markets in their view;
- Twenty million passengers and twenty million tonnes of freight across the Channel by a combination of road and rail through the Tunnel represented a great success story.
- As well as receiving no direct subsidy for construction or operation, Eurotunnel does not benefit from any indirect subsidy through franchising of train operators via public service contracts.
- While charges per kilometre are high in absolute terms, they are competitive – or even cheap – in comparison to neighbouring networks if considered in relative terms to the cost of the Tunnel project and the need to recover the entirety of those costs through commercial revenues.
- Equally, freight charges compare favourably with the cost per container of cross-Channel road prices (HGV shuttle or ferry).
- Eurotunnel is contractually obliged to apply an RPI-x formula to its charges, in contrast with many networks that either apply RPI+x indexation or offer no such long-term certainty over charging levels.
- Eurotunnel's open access policy had doubled rail freight traffic since 2007.

- A number of other factors beyond Eurotunnel’s control have a more significant negative impact on traffic development, notably the non-authorisation of suitable rolling stock by the safety authorities, security requirements imposed by the Governments, and variable infrastructure quality across Europe.

Stakeholders made the following key points in a discussion of Eurotunnel’s presentation:
- Unaccompanied freight is a more legitimate, and much less favourable, price comparator than HGV shuttles or ferries.
- The absolute level of charges must be addressed or the price of rail plus shipping will invariably be lower than the best offer of cross-Channel rail.
- The very low share of rail in the cross-Channel freight market, and the serious decline from its peak of 28 trains per day to the current five per day, cannot be entirely explained by factors external to Eurotunnel.
- Transparency that the costs on which charges are based are at least fair, supported by detailed explanation of the justification for them should be provided in the Network Statement.

Performance regime

The JEC explained the legal requirements for performance schemes as set out in the Directives and sought stakeholder views on the measures established by Eurotunnel to minimise disruption and improve performance. JEC also noted that no performance scheme existed in the Network Statement prior to the establishment of JEC and that the recast Directive 2012/34 would lead to significantly more detailed requirements on Eurotunnel.

Stakeholders had the following views:
- Any system of penalties for disruption must not have a prohibitive impact on small railway undertakings, especially freight.
- In developing further the regime for the Tunnel, it would be important for Eurotunnel and IGC to take on board good practice from other networks and attempt to achieve consistency of approach, at least across Eurotunnel, HS1 and RFF.
- Greater detail about performance and transparency about the regime was required to give operators confidence the rules were being applied.

Capacity allocation / dispute resolution

The JEC noted that the requirements for capacity allocation and the resolution of conflicts were similarly derived from Directive 2001/14. The JEC sought stakeholder views on Eurotunnel’s arrangements for meeting the requirements to deliver an independent, fair and non-discriminatory in accordance with Annex III of that Directive, supported by adequate dispute resolution arrangements and co-operation with other networks.

Stakeholders noted that:
- Path availability was not generally a difficulty in the Tunnel itself due to the lack of demand.
- For similar reasons of underuse, the conflict resolution arrangements had not been tested in anger though their appeared satisfactory.
- The procedures described in the Network Statement must align with that in the Usage Contract.
- The availability of Dollands Moor and Fréthun is vital for international services.
- Further development of the arrangements should be based on good practice and there could be a role for IRG-Rail in facilitating a joined-up approach for international paths, supported by operators' traffic forecasts.

Improving access to the Channel Tunnel

During a summary, open discussion on improving access to the Tunnel:
- Eurotunnel gave a presentation of their proposed ETICA scheme for subsidising new freight flows, which was widely welcomed by freight stakeholders.
- IGC and Eurotunnel were encouraged to review the list of prohibited goods for rail freight via the Tunnel, as this had the potential to open some latent markets.
- IGC and Eurotunnel were encouraged to do more in the safety and technical arena to create the conditions for competition, as the appearance of monopoly structures was discouraging to both new entrants and new customers.

Conclusions and next steps

The IGC and JEC agreed to:
- Arrange further events of this nature, at least on an annual basis, following this very successful exchange of views between the regulator and its stakeholders;
- Continue to focus on understanding the commercial context, widening transparency of the access arrangements, and resolving specific issues of concern (such as the security and safety requirements);
- Ensure that Eurotunnel met the commitments of its representatives to improve the Network Statement.

Martin Jones
UK Secretariat
16 April 2013