

European Commission
DG For Mobility and Transport

- PER E-MAIL: MOVE-PSO-REGULATION@ec.europa.eu -

Brno, 04.04.2022

Feedback of the company RegioJet a.s. as a rail carrier on the draft of the Revised interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road

Dear Sir or Madam,

We hereby would like to approach to you on behalf of our company RegioJet a.s. with its registered office at Brno, náměstí Svobody 86/17, Postal Code 602 00, Czech Republic, ID No.: 283 33 187, registered in the Commercial Register maintained by the Regional Court in Brno, File B, Entry 5816 (hereinafter also referred to as the “**RegioJet**”), as the rail passenger carrier, with the feedback of the company RegioJet on the draft of the Revised interpretative guidelines concerning the Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (hereinafter also referred to as the “**Regulation (EC) No 1370/2007**”).

In accordance to the above-mentioned please find **below** input of the company RegioJet on the Revised interpretative guidelines concerning Regulation (EC) 1370/2007, as a rail passenger carrier operating its services mainly in the Czech Republic, Slovakia, Austria and other member states of the European Union.

1. Needs for tenders

In the RegioJet's point of view even in the case of direct award of the PSC contracts should meet the fundamental principles of non-discrimination and transparency. Especially in the event that a larger number of the candidates (competitors), pursuant to the previously notified award of the PSC, will express their interest under the notified conditions, then the PSC should be concluded without further delay or discussion.

In order to strengthen the principle of the transparency and non-discrimination of the whole procedure, it would be appropriate for the competent authorities in case of contracting new PSC contracts to set in advance a schedule for the competitive tendering procedure of an entire railway network.

However, to prevent unlawful state aids (i.e. overcompensations), it is necessary to provide in advance all concerned entities with the information regarding the amount of current compensation for all lines which should be a subject of the tender (competition). Publication of such information can lead to the reduction of the payment from the large PSC contract.

2. Market testing of the competent authorities

In accordance to the above-mentioned, the company RegioJet considers that free competition between carriers operating their services in the mode of open access should be preferred solution for the provision of the rail passenger services in every member state of the European Union instead of the currently preferred model of the PSC contracts which also applies even where carriers are ready to operate services at their own risk. From the practice in the Czech Republic and Slovakia it is known that competent authorities in fact do not perform any market testing. Simultaneously, it is clearly legitimate for the relevant state authority to call all open access carriers on the affected railway lines to respect its justified requirements regarding to the quality, price, frequency, capacity as well as the required station and connection policy. In case of the absence of the consistency between the transport policies of the Member state and the interests of the open access carriers in the market of the rail passenger services, a subsequent transparent and non-discriminatory competitive tendering procedure for the PSC contracts that meets all of the relevant authority's justified interests is also legitimate.

With reference to the change of the approach of the relevant authorities to the competition of the PSC contracts in which a larger group of carriers will be able to take part, the carriers should be provided with at least two or three years for the purpose of acquisition of new train sets (i.e. for the production of new train sets). In the RegioJet's point of view, this rule has to be complied in the event that it is not verified that there is a sufficient quantity of the used train sets on the secondary market or if the currently available train sets are not otherwise usable by competing operators. The situation of unusability may also arise, for example, with regards to the diesel trains sets that may be used on lines on which a modernization (electrification) is planned in the near future.

3. Scoping of the public service contracts

The company RegioJet further states that each competitive tendering procedure, but also direct award, should meet a principle of the non-discrimination and transparency, mainly in connection to the scope of the competing PSC contracts.

The set of respective lines should be exactly specified so it is clear that the set of lines is not unreasonably small (e.g. in the range of up to 1 million train kilometres, in the case that it is not a completely isolated set of specific services) and mainly unreasonably large (e.g. up to maximum 5 million train kilometres). Such a determination of the scope of the competing set can lead to a situation where the market of rail passenger services will not be closed for smaller carriers.

In accordance to the previous development of the railway transport market it is certain that a well-prepared tenders for the new PSC contracts can ensure the submission of applications by a larger number of carriers.

The company RegioJet further stipulates that the relevant state authorities in their transport policies may on the basis of the non-discriminatory principles identify railway lines that should be provided to passenger in the form public interest and ensure for such lines a preferential use of a capacity of the railway route

In conclusion, the company RegioJet hereby states that the PSC contracts have to be in any case transparent and data should be available. Therefore, the PSC contracts cannot be extended with lines that have a character of new connections under the concluded PSC contracts. However, it can be considered that a 5 % increase p.a. in such connections could be find as a legitimate for a relevant line – as long as the character of the service is the same. In the past, new products were launched within the 5 % increase, without any formal awarding procedure. In case such a requirement will be higher than 5 %, it is necessary to re-tender the relevant railway line in the form of a transparent and non-discriminatory competitive tendering procedure.

In accordance to above-mentioned, hereby we would like to kindly ask you to take into account all of the inputs of the company RegioJet as the carrier providing rail passenger services mainly in the mode of the open access in the process of the revision of the interpretative guidelines concerning Regulation (EC) No 1370/2007, whereas if you should require any additional explanation or further information, we are fully at your disposal.

Thank you for your attention to this matter and all your assistance so far.

Best regards



