



Position Paper

Brussels, 1 February 2023

Multimodal Digital Mobility Services Initiative

1. Key Messages

- **Passengers prioritize time, quality and price when choosing their transportation options** – The main focus of all entrepreneurial and political activities should always be on guaranteeing and expanding high-quality rail services in Europe. Central building blocks for such an offer are sufficient infrastructure capacity and the improvement of interoperability. This must be the background for reflection of all other European initiatives, including MDMS.
- **Sector solutions are the fastest** – The CER Ticketing Roadmap presents the sector vision and commitments to respond to customer's needs in international ticketing. It is the fastest, comprehensive and most efficient way to reach a seamless experience for the passenger. The sector is fully committed to implementing this roadmap and to bringing true improvements in the passenger experience. The MDMS legal framework should foster that transport operators can innovate and have ownership of the proprietary solutions.
- **No obligation to sell competitors' tickets** – Railway undertakings need the entrepreneurial freedom while developing their businesses. This includes the freedom to engage in commercial agreements with ticket vendors and other transport operators to develop and improve their services. The main purpose of such agreements is to outline the various legal obligations and to protect the passenger when there is a disruption and to ensure appropriate after-sales service.
- **Well-defined FRAND principles** – CER supports FRAND conditions in commercial agreements. However, it is solely up to the individual contract parties (i.e. RUs and TVs) to agree on specific terms. Such FRAND principles should be based on existing best practices in the railway sector and strike a balance between the interests of the distributors and of the railway operators. Their interpretation for contracts should be clearly defined, avoiding uncertainty and costs of potential litigation.
- **No additional cost for passengers' tickets** – The economics of transport operators and ticket vendors needs to be properly considered to avoid undermining the economic viability of transport services or substantially increasing ticket prices. Transport operators run services with very small profit margins, but bearing full operational cost, while ticket vendors focus only on a single sales channel with high margins and limited costs for their services. The MDMS Regulation should not have the effect of increasing ticket prices, thus threatening the modal shift objective.
- **Avoid dominance of digital platforms** – For the sake of an open market structure and effective competition, the emergence of only one or two online MDMS platforms, owned by well-funded tech giants outside Europe, which would automatically become gatekeepers. The Commission should keep in mind the importance of encouraging the development of existing and future EU actors, in line with the EU industrial strategy and the concept of Open Strategic Autonomy.
- **Protect non-digital ticket sales** – Physical service still accounts for a meaningful share of distribution. Ticket booths are an important public service offered by railway undertakings and constitute a vital facility for some vulnerable customers. This kind of service cannot be addressed by online MDMS platforms.
- **Data reciprocity matters** – The MDMS initiative must ensure that transport companies and authorities have full access at all times to any data on inquiries and usage received by the sales platforms. The mobility market is developing highly dynamically, thus, RUs need to constantly innovate their products to best serve the customers' needs and expectations.

2. Introduction

The aim of the European Commission with the announced Multimodal Digital Mobility Services initiative (MDMS) is to integrate public transport and rail services to achieve seamless multimodal passenger transport. CER members share the ambition of improving international ticketing, as shown by the CER Ticketing Roadmap, putting the passenger in focus. The key precondition for achieving this goal is an open and balanced market. Against this background, we believe that some policy options put forward in the MDMS initiative overly favour digital platforms, with detrimental effects. CER advocates for a truly sustainable and balanced approach to multimodal ticketing. In particular, the discussed obligation for RUs (or multimodal service providers) to sell all their tickets through or on behalf of other railway undertakings is counterproductive. This would amount to restricting the freedom to choose sales partners to cooperate with or not and also restricting which tickets to offer via which sales channel. This would constitute from our point of view a severe curtailment of economic freedom.

This document sets out CER's position as regards the upcoming legislative proposal from the European Commission on Multimodal Digital Mobility Services. First the vision of the railway companies for improving the travel experience for rail passengers is sketched out. Then, we describe the way the sector's Ticketing Roadmap initiative contributes to achieving the goals of MDMS. The key principles that should guide the sharing of data by railway companies are laid out in part 5 of the document. We conclude by a discussion on data exchange, including the question of the costs associated with sharing data in the context of Public Service Obligations (PSO).

3. Vision

The railway system is a fundamental pillar to reach the European emission reduction goals of the 'European Green Deal'. Therefore, European railways will actively contribute to its successful implementation. To achieve the necessary modal shift, we will need to improve and expand on different areas of operation.

CER members already today offer a wide array of international tickets. However, there is room for improvement. Therefore, the railway undertakings are committed to improve international ticketing for rail as expressed in their CER Ticketing Roadmap. Our vision of ticketing is that the passengers will have a simple, seamless user experience when searching, selecting and buying their railway services. European railways have a plan to achieve many elements of the vision already by 2025 at the latest, which we believe is both an ambitious and realistic plan and CER members are now devoting considerable resources in implementing it.

We share the vision with EU's institutions aiming at a seamless passenger experience when taking the train. In order to achieve seamless ticketing, sector-based solutions should be supported and considered as the starting point for improving multimodal ticketing. Rail is already working with other stakeholders, like ticket vendors, to ensure transparency and better service to our clients. We expect the Commission proposal to provide a legal framework to maximize efficiency and transparency of these solutions.

As the forthcoming proposal on multimodal digital mobility services is seen as a potential first step towards greater use of multimodal travel instruments and providing the passenger with a better overview of connections and fares, the framework should look at how to maximize the value for passengers. However, this shouldn't be at the expense of the transport operators. Railway undertakings are a business of small margins with high fixed costs, so any regulatory intervention that will decrease those margins will potentially result in diminishing services and an impact on passengers. Platforms, on the other hand,

can make easy profit but the operators are the ones that are ensuring the physical service (and therefore the passenger's experience) and are taking on the costs/responsibilities/liabilities related to it.

In the CER Ticketing Roadmap CER members committed to providing more and better information to the passenger (before and during their journey) through their own distribution channels and third parties. We share the ambition for European passengers to have a comprehensive overview of the information that influences their choice of mobility solutions, namely the price of the ticket and time needed to reach a destination and the environmental impact of the journey. However, we do advocate that obliging companies to sell tickets through or on behalf of other railway undertakings is encroaching on the right of business initiatives and against a genuine market competition. Additionally this would lead to massive cost increases for operators to connect to the various distribution systems especially if they don't agree on common sector standards. Railway undertakings should have a free right to shape their USP¹ and product portfolio, and to this aim, to create their own commercial agreements with third parties.

4. CER Ticketing Roadmap and MDMS

The CER Ticketing Roadmap presents the sector vision and commitments to fundamentally enhance international ticketing. CER Members are investing a lot of resources to put in place the technological advances that would make international rail ticketing more scalable and cost effective, not to mention more fit for purpose, serving European passengers. Sector solutions like the Open Sales and Distribution Model (OSDM) and the Electronic Ticket Control Database (eTCD) enable scalability of railway ticket offers, decreasing costs and overcoming issues of harmonization and interoperability between different distribution systems of railway undertakings.

Ticketing is not only about finding the right mobility solution and purchasing it, but it is also about precise, comprehensive and timely information before and during the journey, access to the railway network, customer care and passenger rights/journey continuation. The CER Ticketing Roadmap covers all parts of the passenger experience. So far in the process, it seems regulation and particularly MDMS as an initiative might not unfold the full potential in supporting rail ticketing in a comprehensive and systematic way. It should be in the scope of all EU initiatives to support railways and to strive for sector solutions that improve ticketing. Going beyond the MDMS initiative, the CER Ticketing Roadmap is set to address the issues that hinder rail ticketing and make it more competitive with other modes of transport and easily combinable with other modes of transport. By 2030 rail ticketing would be fully interoperable with other modes of transports (UIC-IATA work on air-rail and OSDM – NeTEx compatibility). Already today CIT's Agreement on Journey Continuation ensures that passengers reach destinations and its expansion can also be a starting point for journey continuation in a multimodal context.

5. FRAND

In the International Rail Platform (IRP) Sector Stakeholder Statement, CER committed itself to the FRAND principle when sharing data. CER supports these principles but advocates that commercial agreements that are the result of commercial negotiations must be preserved. These agreements guarantee the respect of price and after-sales service conditions, the preservation of commercially sensitive information and the implementation of passengers' rights. Conditions in those contracts are then subjected to

¹ Unique Selling Proposition

FRAND principles on both parties. Since FRAND in distribution and data exchange is not yet clearly defined in law, we advocate for the following understanding of the principles:

- **FAIR:** Third parties such as ticket vendors, journey planning platforms, tour operators and similar digital platforms should be able to offer the same digital services as railway undertakings, and data exchange should be based on reciprocity. In addition, it is clear for us that the transfer or exchange of data must not be linked to unrelated obligations.
- **REASONABLE:** Each railway undertaking is free to create its own commercial agreements with aforementioned third parties and other RUs, i.e. RUs are free to determine their own business models. Each party to the agreement should be adequately compensated for contributing its data. The legal framework should enable transport operators and ticket vendors to be able to innovate and have ownership of the proprietary solutions and commercial fees should also take into account physical distribution (Ticket booths).
- **NON-DISCRIMINATORY:** If RUs decide to open their content to third parties they should offer the same conditions to comparable categories to the aforementioned third parties (and vice-versa). A level playing field should be maintained with competitors, and we respect that (potential) new entrants should be free to enter the market on the same basis.
- The concept of FRAND is already known from Article 6.12 of the Digital Market Act. As the Digital Market Act sets limits on digital gatekeepers, FRAND principles in the context of an MDMS initiative cannot in any way go beyond this concept.

5.1. Financial compensation of third parties

There is always a cost of intermediates between transport operators and passengers. And it either has to be paid by the operators, by passengers or both.

Transport operators, being actors on an open market, are not against investing into a higher commission fee where the intermediates bring value, while they are less inclined where sales channels are already established and no added commercial value can be expected. A sweeping obligation to sell tickets through third parties would require that the commission fees reflect the value third parties bring and it should be acceptable that the fee covers only the marginal cost of the transaction or not even that. Concretely speaking, reciprocal commercial relationships between RUs who are also ticket vendors should be treated in a separate way from the ones between RUs and pure ticket vendors. In the first case the focus is on the responsibility for international mobility chains and the common growth of passenger revenues, more than in the second case, where the focus is mainly seeking a pure economic result for ticket vendors.

Regulation should not lead to new monopolies or oligopolies amongst distributors, as e.g. seen in the United Kingdom. Regulating the commercial conditions, such as distribution commissions, for railway operations can increase the risk that well-funded tech giants will be able to secure guaranteed profits at the expense of the economic viability of the railway undertakings.

Finally, profits of ticket vendors and other third parties should be comparable to the distribution of transport operators, provided they assume the same risk. If risks taken by ticket vendors are lower, profits shall also be expected to be lower than profits of transport operators. Especially, the compensation paid to ticket vendors for distribution should not be their only funding source: it is their responsibility to develop a business model and to offer differentiated services. With high imposed compensation fees, platforms will not be

incentivized to provide innovative services to complement their revenues, and operators will have to mitigate this high distribution cost by increasing the ticket prices: both at the expense of the consumer. Railways are already one of the most regulated modes of transport and any unbundling of services brings transaction costs that need to be compared to the benefits.

5.2. Integrating offers of Railway Undertakings

Integrating ticketing systems of all railways undertakings is a massive task bearing an enormous complexity and would require an appropriate investment of resources, therefore this should be done on the basis of sector solutions. Because of the amount of offers, this would bring also yet unforeseen technical issues, not to mention challenges of displaying information. These issues can be overcome but would make train tickets more expensive and therefore less competitive versus other modes. On the other hand, obliging railway undertakings to sell tickets through or on behalf of other railway undertakings is encroaching on the rights of already well running business initiatives and it is not known in other (transport) sectors. Railway undertakings should have a free / commercial based decision on how to cooperate with other ticket vendors or railway undertakings.

On this basis, RUs can offer their customers differentiated mobility products, shape their USP and product portfolio – instead of a “more of the same” scenario. Ultimately, RUs should maintain the sovereignty to choose their distribution channels, and not be obliged to offer their products in a sales environment that does not fit their marketing strategy and image (e.g. aggressive marketing or discount marketing of TVs).

In addition, it is important that any new legislation ensures that the quality of travel services is adequately considered in the booking systems. From a customer's perspective, quality (e.g. in terms of comfort on board, services, infotainment) is an important factor in the purchasing decision, but compared to more concrete criteria such as price and duration of a journey, quality is difficult to convey in a digital booking system. If the new legislation fails to ensure that the customer can opt for quality, this risks leading to a situation where passengers are offered the minimum level of quality and innovation will come to a standstill.

6. Data Exchange

In the current discussion on data, the prevalent term is data sharing, with mostly mobility providers sharing their data (timetables, available fares, real time data...). The obligation to share data only goes one way, meaning mobility providers need to share, while digital platforms are under no such obligations. For a strong data economy, the discussion needs to focus on data reciprocity instead of unilateral data flows so that railway undertakings can access the data they contributed to generating.

The forced provision to share business/commercial/passenger real time data could hamper the competitiveness of European businesses by increasing the power of a few large companies at the expense of smaller players. Currently, railway undertakings already have many data-sharing obligations, while nothing similar exists for users of these data.

6.1. Passenger data and disruption management

For example, as mandated by the Rail Passengers' Rights Regulation, railway undertakings need to be able to directly contact their passengers to inform them properly of their rights

and re-routing options in case of disruption. They cannot do this if the digital platform provides insufficient contact information (e.g. generic email of the ticket vendor).

6.2. Data on travel patterns and product innovation

A situation where travel demand data is held by tech gatekeepers would be detrimental for the innovation of mobility products and services by the operators, and thus should be avoided. To better plan and assess running and upcoming services, the transport operators need to analyse the travel patterns, and need data such as trips searched, booked and completed, travelling routes and travelling patterns (to optimize mobility) and travelling context or traveling preferences (to understand customer needs and optimize customer satisfaction). Of course data are expected to be aggregated and anonymised in full compliance with the General Data Protection Regulation (GDPR). The Commission's MDMS initiative must ensure that transport companies and authorities have full access at all times to the above-mentioned data on inquiries and usage received by the sales platform. If the initiative fails to do so, this will diminish the operator's capacity to plan and improve their services, meaning less passengers and suboptimal rail services.

6.3. The cost of data sharing

The topic of PSO and data sharing is often being put forward as an example where railway undertakings should share data for free for everyone who asks for them. However, data are assets generated, governed, and owned by the RUs. Sharing them comes with additional cost. CER members thus oppose general interpretation of PSO contracts and consider the contracts themselves as an adequate framework for specifying the transport authorities' requirements on data exchange, as transport authorities and operators should be able to define the conditions. Where such a contractual basis has been established, it goes without saying that RUs will fulfil their contractual obligations. At present, the cost of data generated by transport companies are not primarily covered by the public sector since public subsidies are limited. Costs are also covered by revenues earned through fares, own funds and compensation for students and social tickets. Against this background, we oppose the interpretation that the general public – e.g. in open access long distance rail (which is usually not financially compensated) - owns all the data collected in transport companies, especially in a PSO context.

About CER

The Community of European Railway and Infrastructure Companies (CER) brings together railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 73% of the rail network length, 76% of the rail freight business and about 92% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policy makers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit www.cer.be or follow us on Twitter [@CER_railways](https://twitter.com/CER_railways) or [LinkedIn](https://www.linkedin.com/company/cer).

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