

Note on certain aspects of the continuation of the passenger transport services performed by DSBFirst

1. Introduction and factual background

DSBFirst is a group of companies owned by DSB (70 per cent) and the Scottish private undertaking First Group Ltd (30 per cent).

The National Rail Authority in Denmark (Trafikstyrelsen), following an EU tender, entered into a contract with DSBFirst A/S regarding passenger rail transport on the Danish side of Oresound. Simultaneously, the regional railway authority in Sweden (Skånetrafiken), following a coordinated EU tender, entered into a contract with DSBFirst AB regarding passenger rail transport on the Swedish side of Oresound. The transport on both sides of the Sound is closely correlated and highly integrated due to the fact that DSBFirst uses the same pool of rolling stock to operate both sides of the Sound.

Around 90.000 passengers are transported by DSBFirst every day on the Danish side of the Sound and around 110.000 passengers are transported by DSBFirst per day on the Swedish side.

In particular in 2010, DSBFirst has incurred substantial losses, and it has turned out that DSB has been financing (via a running account) those losses, charging an interest well below normal marketbased interest rates.

Furthermore, it has turned out that some activities were transferred on 31 December 2010 from DSBFirst to (a subsidiary of) DSB at a price that based on the information available at present is well above market price.

It is not yet possible to assess whether the loan in itself (apart from the interest rate) has been given in accordance with the market economy investor-principle.

Obviously, the illegal State Aid including interest should be recovered from DSBFirst.

On the information available it seems highly likely that DSBFirst will not be able to continue its activities once a recovery order is issued unless DSBFirst receives additional fund-

ing. At this point it seems highly unlikely that the shareholders are willing to provide such funding.

Due to the size of the region and number of passengers affected it is, however, paramount that DSBFirst activities can continue until an alternative solution can be implemented.

2. Discussion topics

The Government would like to discuss different scenarios on how to secure the continued operation of DSBFirst in an intermediate period until an alternative solution has been found.

The expected alternative solution is that DSB will be ordered to take over the passenger transport on the Danish side of Oresound as part of a negotiated public service contract with the Ministry of Transport. The intermediate period would probably last up to 3 months in order to secure a proper coordination of transport etc. At the end of the intermediate period it is expected that DSBFirst will be wound up according to the Insolvency Act.

The Government is as of now unaware of how the Swedish Authorities will handle passenger transport on the Swedish side of Oresound.

In the view of the Government there is no doubt that the cheapest and probably also the only realistic way in which the trains can be operated in the intermediate period is for the Government to fund the operations of DSBFirst - either directly or via the running accounts of DSB.

Could this be done with reference to the principles in Article 5, section 5, of Regulation 1370/2007 or the Altmark Trans-principles without formally notifying the measure to the Commission and if so under which conditions?

Obviously, the Government would be willing to notify such measures for the sake of legal certainty.

Or does the Commission find it necessary to proceed along the rescue aid guidelines? As mentioned, rescue aid would in this case only be granted with the objective of keeping DSBFirst afloat until the end of the intermediate period.