

**PUBLIC GOVERNANCE DIRECTORATE
REGULATORY POLICY COMMITTEE**

Summary Record

2nd NER webinar on “Sector Regulation during the COVID-19 crisis”

29 April 2020, 14:30-16:00 CET

This summary record is provided to NER delegates for information.

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1. The OECD Network of Economic Regulators (NER) organised the 2nd NER webinar entitled “Regulating transportation during and after COVID-19” on 29 April 2020, in collaboration with the Canadian Transportation Agency (CTA). The webinar forms part of the wider OECD effort to support countries as they tackle the health crisis and its economic and social ramifications of the pandemic¹. The webinar aimed to provide a platform for in-depth discussion of the challenges and current initiatives in transport sectors worldwide in response to the COVID-19 pandemic, as well as long-term considerations for the sector and the governance of the regulator. The level of participation in the webinar was high from beginning to end: 68 delegates from 16 OECD and 4 non-OECD countries joined the webinar, and 11 transport regulators took the floor to share their experiences, challenges and long-term considerations (see agenda in annex).

Challenges

2. Transport regulators face many challenges as a consequence of the current pandemic. These challenges include both immediate effects as well as long-term considerations.

Immediate effects

3. Regulators highlighted the significant effect from the current pandemic on the levels of traffic. An estimate from the ITF shows that activity at transport hubs in [ITF countries](#) has decreased by 64% compared to usual levels. This decrease has a negative effect on the efficiency with which operators can run their networks, although the exact impact differs per country and also between different modes of transport.

4. The lower levels of traffic have a direct impact on the financial situation of market competitors. Companies face a cut in their revenues, and in some cases are also expected to provide refunds to travellers for cancelled trips. This can bring financial risk to companies and may threaten the competitiveness of the sector.

5. As in usual times, regulators have to balance different interests when responding to the effects of the crisis, in order to ensure business continuity as well as protection and access for consumers. In most situations, practice differs significantly from the assumptions made in regulatory models (such as expected

¹ See the OECD webpage Tackling the Coronavirus (COVID-19) : Contributing to a global effort : <https://www.oecd.org/coronavirus/en/>

demand, capital costs, WACC, etc.) and regulators have to adjust. This requires monitoring of the sector, a certain level of trust in market parties and effective communication with the different stakeholders involved.

Long-term considerations

6. Looking forward, regulators face uncertainty as they endeavour to plan their exit strategy from the COVID-19 crisis and the resumption of normal operations. Regulators and operators need to prepare themselves for potentially fundamental changes to the market structure. If ways of working shift in a permanent way, with more remote working and a higher digitalisation of economic activity, demand for transport services will be affected in the long term. The way the market will recover from the crisis also depends on the response from and state of the industry.

7. Reduced demand may lead to the elimination of the least viable competitors, inevitably affecting the level market competition. With a more concentrated market, participation in public tenders may drop, and parties may have to revise their infrastructure investment plans; the current prioritisation of efforts towards maintenance of networks at the expense of renewal projects may also undermine long-term viability of infrastructure networks if not quickly reversed.

8. The nature of government interventions in the sector, as well as the way transport operators respond, will define the new future. Emergency support measures will require in-built time-bound mechanisms in order to ensure competition in the sector. Considerations regarding market structure and ownership inevitably also raise questions with regard to the role and position of the independent transport regulator, and the regulator may be required to recalibrate its position to achieve its mandate and objectives.

Regulators' responses

Responsive Measures

9. In light of the significant impact of the COVID-19 crisis on travel and transportation activities – particularly in passenger transport – regulators have been required to closely monitor market conditions and the needs of carriers and customers, and respond swiftly in order to ensure that transportation networks can continue to operate as efficiently as possible.

10. Many regulators have eased certain regulatory requirements for operators, to enable market parties to adjust to the exceptional circumstances. For instance, in Brazil, where internal transportation relies heavily on roads, the National Land Transportation Agency (Agência Nacional de Transportes Terrestres – ANTT) has developed multilateral agreements with neighbouring countries to extend truck drivers' licences for cross-border freight transportation. Regulators also delayed certain regulatory deadlines, temporarily suspended information requests and postponed the coming-into-force of new regulatory requirements.

11. In certain cases, regulators have implemented measures designed to give transport operators the flexibility to resolve issues resulting from the pandemic, in particular with regard to the administrative requirements for the sector. In Germany, the drop in demand for passenger transport caused problems in storing redundant trains. The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur – BNetzA) enabled operators to co-operate to resolve the issue and store the trains elsewhere. By suspending performance schemes for regulated entities and giving them greater flexibility to modify their terms and conditions of service, regulatory obligations were temporarily waived. In the United Kingdom, the Office of Road and Rail also indicated it would be more flexible in its enforcement of certain regulatory requirements.

12. In implementing these measures, regulators have strived to achieve a balance between granting transport operators sufficient flexibility to continue operating, and ensuring that business customers and passengers, particularly vulnerable passengers (e.g. persons with disabilities), are adequately protected. Regulators have also sought to make these measures time-bound, decreasing the need to make assumptions in a context of long-term uncertainty and favouring evidence-based decision-making.

13. At the same time, transport operators have also had to reprioritise their actions, to focus on those operations that are most urgent, and in first instance to protect passenger and worker safety. For instance, in France, the rail manager suspended all renewal projects and focused its efforts on the maintenance of the infrastructure in place.

14. The increased role of the government in implementing COVID-19- related measures has taken different shapes. In certain countries, the government has implemented emergency measures related to health and safety, while in others there is a bigger role for the regulator in both the design and implementation of measures. Governments may also intervene in sectors by providing direct state aid or financial aid to market parties, thereby influencing the competition in the sector.

Adjusting regulatory approaches and practices

15. While the needs of the transport sector undergo dramatic change, so do the regulator's ways of working. A collaborative relationship with stakeholders has been important in responding successfully to the pandemic in order to understand stakeholder concerns, adjust practices and policies, and co-ordinate efficiently.

16. In many countries, regulators are co-ordinating their activities more closely with governments during the crisis period, and with shorter processes than usual. In most cases, there appears to have been effective co-operation with government departments and ministries, and regulators have been able to ensure their independence while contributing to decision-making and implementing their measures.

17. Moreover, transport regulators have had to adjust to the modalities of remote working, with only essential staff staying on office premises, switching their engagement with stakeholders to alternative modes of communication, such as digital platforms and video calls.

18. In certain instances, regulators such as the CTA in Canada have also paused specific procedures, such as dispute resolution programs, or prioritised their own operations on the most urgent matters. In these dispute resolution processes, regulators have found it more difficult to gather evidence from parties during a time where communication and engagement are limited to certain modes of communication.

19. Regulators make sure to reach out to stakeholders and other government bodies and partners quickly, to ensure they can provide the government, companies and consumers with accurate information. In some cases, this requires working with local authorities, such as in the case of the AMT in Portugal which worked closely with municipalities to gain essential information on the situation of small companies in the sector. In other cases, this involves co-ordinating with partners on the regional and international level, to share experiences or to tackle issues.

Annex – Agenda

- 14:30-14:35** Introduction
- Anne Yvrande-Billon, Vice President, Autorité de régulation des transports and Chair, Network of Economic Regulators
 - Scott Streiner, Chair and CEO, Canadian Transportation Agency
- 14:35-14:40** ITF Remarks
- Jagoda Egeland, Advisor to the Secretary-General, International Transport Forum
- 14:40-15:30** Roundtable Session
- Guiding Questions**
1. What are the biggest challenges your organisation has faced?
 2. What special measures has your organisation adopted?
 3. How has COVID-19 affected the governance and internal procedures of your organisation?
 4. What have been your experiences with – and approaches to – engaging with the public and stakeholders?
 5. What are key considerations as your organisation begins to plan for resuming normal operations?
 6. What long-term impacts, both on your organisation and on the sectors you regulate, do you see resulting from COVID-19?
- 15:30-15:55** Open Forum Discussion
- 15:55-16:00** Closing
- Anna Pietikainen, Senior Policy Advisor, Organisation for Economic Co-operation and Development