



C/2024/2269

22.3.2024

**Summary of Commission Decision  
of 17 January 2024**

**relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union**

**(Case AT.40735 – Online rail ticket distribution in Spain)**

*(notified under document number C(2024) 135 final)*

**(Only the English text is authentic)**

(C/2024/2269)

On 17 January 2024, the Commission adopted a decision relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 <sup>(1)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

**1. INTRODUCTION**

- (1) The Decision makes legally binding the commitments offered by Renfe- Operadora, E.P.E. and Renfe Viajeros, S.M.E., S.A. (hereinafter referred together as 'Renfe') under Article 9 of Council Regulation (EC) No 1/2003 ('Regulation 1/2003') in a proceeding under Article 102 of the Treaty on the Functioning of the European Union ('the Treaty').

**2. PROCEDURE**

- (2) On 28 April 2023 the Commission opened proceedings with a view to taking a decision under Chapter III of Regulation 1/2003 and adopted a Preliminary Assessment which set out the Commission's preliminary competition concerns.
- (3) Renfe did not agree with the Commission's Preliminary Assessment and findings. Nevertheless, on 30 May 2023, Renfe submitted draft commitments ('the Initial Commitments') to the Commission in response to the Preliminary Assessment.
- (4) On 27 June 2023, a notice was published in the *Official Journal of the European Union* pursuant to Article 27(4) of Regulation 1/2003, summarising the case and the Initial Commitments and inviting interested third parties to give their observations on the Initial Commitments until 8 August 2023.
- (5) On 29 September 2023, the Commission informed Renfe of the observations received from interested third parties following the publication of the notice. On 23 November 2023, Renfe submitted an amended proposal for commitments ('the Final Commitments').
- (6) On 20 December 2023 the Advisory Committee on Restrictive Practices and Dominant Positions was consulted and issued a favourable opinion.
- (7) On 21 December 2023 the Hearing Officer issued his final report.

**3. THE COMMISSION'S COMPETITION CONCERNS**

- (8) Renfe is the Spanish state-owned rail incumbent operator.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

- (9) In the Preliminary Assessment, the Commission came to the preliminary conclusion that Renfe is dominant (i) in the upstream market for the provision of passenger rail transport services in Spain, where Renfe operates as a passenger rail carrier, and (ii) in the downstream market for online distribution of passenger rail tickets in Spain, where Renfe operates via Renfe's website, Renfe's apps and Renfe's mobility platform 'dōcō'. In this downstream market, Renfe competes with Third-party Ticketing Platforms <sup>(?)</sup>.
- (10) The Commission expressed its preliminary concerns that Renfe may have abused its dominant position in the upstream market by refusing to supply its full range of tickets, discounts and functionalities ('Content') and its full real-time data ('RTD') displayed on its own online distribution channels to Third-party Ticketing Platforms active in Spain. Such refusal to supply may have impeded Third-party Ticketing Platforms' ability to create their own product, to innovate, and to exercise effective competition on the downstream market for online rail ticketing services in Spain.

#### 4. THE INITIAL COMMITMENTS, THE MARKET TEST AND THE FINAL COMMITMENTS

- (11) The Initial Commitments offered by Renfe can be summarised as follows:

- *Access to full Content and RTD*: Renfe would make available to Third-party Ticketing Platforms, via the VAV API channel <sup>(?)</sup>, all the Content and RTD that is available or that may become available in the future on any of its own online channels, including its mobility platform dōcō. Renfe's commitments would be dynamic and would remain in force indefinitely.
- *Look-to-Book ratio ('L2B')*: The L2B was defined as the ratio between the number of requests related to the sale of tickets ('look') made to Renfe's ticket sales system and the number of actual sales ('book') made during a given period of time. Renfe committed not to require from Third-party Ticketing Platforms a maximum monthly average L2B lower than 140. In certain cases, if a Third-party Ticketing Platform exceeded the L2B ratio, Renfe may have suspended the platform's access to its IT system.
- *Maximum Error Rate ('MER')*: The Error Rate was defined as the ratio between the number of failed reservation requests and the number of total reservation requests made to Renfe's ticket sales system during a given period of time. Renfe offered a MER, on an annual average basis, of 14.23 %.
- *Non-circumvention clause*: Renfe would not in any way circumvent or attempt to circumvent the commitments directly or indirectly by any action or omission.
- *Monitoring Trustee*: Renfe committed to appoint a Monitoring Trustee that would monitor and report to the Commission on the implementation of the Initial Commitments for a period of ten years.

- (12) Respondents to the market test welcomed the general aim of the Initial Commitments, which would grant parity of access to Renfe Content and RTD between Third-party Ticketing Platforms and Renfe's own digital distribution channels. However, they also identified certain clauses that would need to be modified to meet this aim, mainly relating to the scope of the Commitments, to access and distribution fees, to L2B, and to MER.

- (13) In response to these observations, Renfe submitted the Final Commitments, with the following key improvements:

- *Scope*: The Final Commitments grant parity of access to all Renfe Content and RTD between Renfe's online distribution channels (including dōcō) and Third-party Ticketing Platforms, regardless of the current and future channels used by the platforms to access Renfe's Content and RTD, and with few exemptions. The Final Commitments can in general be immediately and effectively implemented, by 29 February 2024 at the latest. Exceptionally, for Renfe Content and RTD which require the launch of a tender procedure, those will be provided by the end of 2024 at the latest.

<sup>(?)</sup> Ticketing platforms are undertakings that provide ticketing for rail travel to individual and/or corporate customers in the European Union through software application stores (e.g. Apple App Store or Google Play Store) or through a website.

<sup>(?)</sup> VAV is the specific Application Programming Interface (API) developed by Renfe to give access to its Content and RTD to Third-party Ticketing Platforms and to dōcō.

- *Distribution and access fees*: *Distribution fees* do not directly relate to the conditions imposed by Renfe for the access of Third-party Ticketing Platforms to its Content and RTD. Therefore, they fall outside of the scope of the behaviour covered by this decision. *Access fees* directly relate to the conditions imposed by Renfe for the access of Third-party Ticketing Platforms to its Content and RTD, and, therefore, are covered by the non- circumvention clause, which has been amended and specifies that Renfe shall not use any *unfair, not reasonable or discriminatory* measures.
- *L2B*: Platforms will be classified in three categories, depending on the monthly number of availability requests made by them on Renfe's sales system. Each category has a maximum L2B value that may be required by Renfe. These values are reasonable and do not hamper the ability of Third- party Ticketing Platforms to compete and innovate.  
  
Renfe has also amended the clauses pertaining to the suspension by Renfe of the access of a Third-party Ticketing Platform to Renfe's sales system if it exceeds the maximum L2B or if there is an abnormal peak in the platform's L2B. First, the Final Commitments bring clarity and legal certainty as regards the exceptionality of the suspension without prior notice in case of abnormal peak in the L2B. Second, Third-party Ticketing Platforms and Renfe mobility platform(s) will be treated equally in cases of L2B in excess of the maximum L2B value as well as in cases of abnormal peak. Third, the Final Commitments clarify and reinforce the involvement of the Monitoring Trustee in any suspension process.
- *MER*: Renfe has materially reduced the proposed MER value, committing to an annual average MER of 4 % as from 2024. It has also clarified that the Error Rate is calculated on the basis of errors attributable only to Renfe. In addition to the MER, Renfe commits to a maximum monthly Unavailability Rate <sup>(4)</sup> of 1 % as from 2025. This ensures that the quality of the ticketing services provided by Third-party Ticketing Platforms will not be materially hampered by frequent failures in Renfe's sales system.

## 5. CONCLUSION

- (14) The Commission considers that the Final Commitments effectively meet the competition concerns identified in its Preliminary Assessment without being disproportionate. In reaching this conclusion, the Commission has taken into consideration the interests of third parties, including those that have responded to the market test.

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<sup>(4)</sup> The Unavailability Rate is the ratio between the number of minutes between 06:00 and 23:00 during which the sum of Renfe's ticket sales through all channels is zero and the total number of minutes between 06:00 and 23:00.