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## **The transnationalization of railway in the Czech Republic: An institutional travel from formal to informal monopoly?**

**Abstract.** This paper focuses on the unobviousness of railway liberalization in the Czech Republic. In its obvious form, the liberalization process, once set into motion, would assume a path-dependent trajectory and result in a liberalized railway market. The liberalization of Czech railway has however resulted in what this paper calls a compensatory monopoly. Compensatory monopoly depicts an informal practice which has allowed the Czech state to compensate the České dráhy (Czech Railways) with a *de facto* monopoly, while depriving the public rail operator of a *de iure* monopoly. As the paper claims, the railway liberalization has been a product of the transnationalization of Czech state through its absorption into the global economy and European Union above all. As an accession candidate and later member state of the European Union, the Czech state was obliged to internalize the railway *acquis communautaire* produced by the European Commission which has consequently transnationalized the Czech national railway. Due to its transnationalizing and simultaneously marketizing character, the railway *acquis* has also completely restructured the formal institutional setting of the Czech railway, including the social purpose of České dráhy which is no longer to serve the public interest, but rather abide by the market-based logic of business interest. Nonetheless, the *acquis* internalization has not remained uncontested. On the contrary, the old institutional setting has been further represented by the informal network of České dráhy-state nexus which attempted to reshape the liberalization in a way that would provide České dráhy with a patient capital and enough time to prepare for the competition on the liberalized railway market. The effect of informal practices embodied in the compensatory monopoly has thus proven the railway liberalization in the Czech Republic to be an institutional change with uneven, open-ended and seemingly contradictory outcomes.

**Key words:** railways, liberalization, europeanization, marketization, Czech Republic, institutional change

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## 1. Introduction

The Czech railway, and the rail operator České dráhy (Czech Railways), has faced a liberalization process immediately since the state-owned company replaced its Czechoslovak predecessor in 1993. České dráhy was established without a proclaimed *de iure* monopoly<sup>2</sup>. Yet, the rail legislation provided the company with a legal position which could hardly endanger its dominance on the Czech railway. The liberalization process has gradually transformed the České dráhy monopoly, but has not replaced it with a completely liberalized railway. This paper depicts the liberalization of Czech railway as an unobvious process. In its obvious form, the railway liberalization, once set into motion, would assume a path-dependent trajectory and result in a liberalized railway market. The liberalization of Czech railway has however resulted unobviously in what this paper calls a compensatory monopoly. České dráhy lost its *de iure* monopolistic position, while it has been simultaneously compensated by the Czech state with a *de facto* monopoly. Although the newly introduced market-based principles disrupted the original extra-economic České dráhy-state nexus, the nexus has persisted in a restructured form. In effect, České dráhy utilized an overwhelming 98,6 % of the rail network capacity for the passenger transport in 2011 despite almost twenty years of legal liberalization<sup>3</sup>.

While this paper puts forward several theses, it will be based on two core assumptions. First, the liberalization of Czech railway has not played out in a national vacuum. Liberalization was an intrinsic part of transnationalizing processes in the context of a wider reconstitution of the global economy since the 1980s. The process followed closely the neoliberal rationale of macroeconomic stabilization, market liberalization, and overall privatization. As such, the transnational proliferation of neoliberal policies has not only functionally redefined the mission of nation states, but generally reconfigured the institutional complementarity of market regulations embedded in different socio-economic contexts<sup>4</sup>. The institutional change underlined by transnationalization is however not to be understood as a linear, path-dependent ideal. The change has been open-ended, uneven and seemingly contradictory, resulting in hybridized rather

<sup>2</sup> Act No. 218/1993 Coll. (Collection of Laws of the Czech Republic, No. 53, 13 August 1993).

<sup>3</sup> This paper will research the change in the passenger rail transport. It will exclude the freight rail transport; Measured in train-kilometres (train-km). See: "Správa dopravní a železniční služeb", in: *Výroční zpráva 2011*, Praha 2012, p. 25.

<sup>4</sup> For the changing mission of states, see: S. Strange, *The Retreat of the State. The diffusion of power in the world economy*, Cambridge University Press, Cambridge 1996, pp. 86-87; P. Cerny, *Rethinking World Politics: A Theory of Transnational Neopluralism*, Oxford University Press, Oxford 2010, pp. 22-23.

than clear-cut outcomes<sup>5</sup>. Second, the change has not been driven by automatic processes, but induced and steered by particular social forces. These social forces were increasingly capable to coordinate transnationally, construct legitimizing consensual knowledge, and finally impose policy transfers on various scales of the transnational governance space<sup>6</sup>. Thus, this study strives to analyze the liberalization of Czech railway from a transnational perspective, while trying to confirm the theses sketched out below.

## 2. Theses: states, markets, railways

Railways have been at the centre of public policies ever since the Industrial Revolution. In the 19<sup>th</sup> century, their construction and operation constituted the main engine of economic development. Railways made the transport of people and goods cheaper and faster not only nationally, but also transnationally<sup>7</sup>. As a network, their unifying effect allowed states to become fully national. Rail operators developed soon into the prime companies of their age<sup>8</sup>. In consequence, railways had become crucially interwoven with the economic, social and political functions of nation states. Thus, railways and rail infrastructure had become gradually recognized as a matter of *raison d'état* – state reasoning. As natural monopolies, railways were deemed to best fulfil their social purpose when managed by a monopolistic, even loss-making, public operators<sup>9</sup>. Public ownership was therefore chosen as the best regulation mechanism for railways<sup>10</sup>. Nonetheless, the prominence of railways as effective transport and communication networks has steadily declined since the 1960s due to technological revolutions in the fields of transportation and communication. The railway monopolies together with their public ownership as a regulation mechanism have become gradually questioned. Similarly, the idea of market-based public or private rail operators that redefines the social purpose of

<sup>5</sup> D. Bohle, B. Greskovits, “Varieties of capitalism and capitalism tout court”, *European Journal of Sociology* 2009, No. 3, pp. 368-372; J. Peck, N. Theodore, “Variegated capitalism”, *Progress in Human Geography* 2007, No. 6, pp. 731-772.

<sup>6</sup> D. Stone, “Transfer agents and global networks in the transnationalization of policy”, *Journal of European Public Policy* 2004, No. 3, pp. 545-566.

<sup>7</sup> E. Hobsbawm, *The Age of Revolution 1789-1848*, Abacus, London 1962/1996, pp. 43-46.

<sup>8</sup> E. Hobsbawm, *The Age of Empire 1875-1914*, Vintage Books, New York 1989, pp. 13-14, 27, 123.

<sup>9</sup> R. Millward, *Private and Public Enterprise in Europe: Energy, Telecommunications and Transport 1830-1990*, Cambridge University Press, Cambridge 2005, pp. 59-72, 146-165.

<sup>10</sup> G. Majone, “From the positive to the regulatory state: Causes and consequences of changes in the mode of governance”, *Journal of Public Policy* 1997, No. 2, p. 144.

national railways towards the purely profit-oriented industry has prevailed since the 1980s<sup>11</sup>.

The decline of railway monopolies has paralleled the demise of National Industrial State. As in the case of railway monopolies, the nation state has faced increasing transnationalizing pressures caused by the same technological progress in transport and communication technologies. The time-space compression underpinning such a progress has consequently shifted the accelerating exchange of goods, information and mainly capital beyond the control of states<sup>12</sup>. In consequence, “where states were once the masters of markets, now it is the markets which, on many crucial issues, are the masters over the governments of states” in the newly constituted global economy<sup>13</sup>. The National Industrial State had thus to give way to the newly emergent Competition State. Based on the *raison d'état*, the National Industrial State used to insulate its national industries and citizens from market competition or failure through extraeconomic and decommodifying policies. Yet, the transnationalization of the state has made these policies obsolete and replaced them with market-based solutions and marketizing policies<sup>14</sup>. As such, the Competition State has substituted the rationale of *raison d'état* for the *raison du monde* – global reasoning<sup>15</sup>. The *raison du monde* has bound the Competition State to engage “in procompetitive, promarket regulation” and simultaneously oriented “that competitive imperative to the transnational and global levels”<sup>16</sup>. National industries and citizens are to be exposed to global market competition in order to preserve their competitive position *vis-à-vis* other nations. Public ownership and national monopolies as regulation mechanism are abandoned. Liberalization and privatization nourish the market as a new regulation mechanism. Yet, the state regulatory powers do not retreat, but paradoxically receive even more relevance. State regulation as such only changes its social purpose in a promarket fashion<sup>17</sup>.

The European Union (EU) has internalized the *raison du monde*, because the global reasoning has legitimized its own striving for the European Single Market since the mid-1980s. Global reasoning then penetrated the underlying principle of *acquis communautaire* (*acquis*). Indeed, the *acquis* as the accumulated EU

<sup>11</sup> R. Millward, *Private and Public Enterprise...*, op. cit., pp. 231-241, 260-261, 287-298.

<sup>12</sup> B. Jessop, “Time and space in the globalization of capital and their implications for state power”, *Rethinking Marxism: A Journal of Economics, Culture & Society* 2002, No. 1, pp. 97-117.

<sup>13</sup> S. Strange, *The Retreat of the State...*, op. cit., p. 4.

<sup>14</sup> P. Cerny, “Structuring the political arena: public goods, states and governance in a globalized world”, in: *Global political economy: Contemporary Theories*, ed. P. Ronen, Routledge, London 2000, pp. 21-35.

<sup>15</sup> *Raison du monde* was coined by Philip Cerny exactly in the contradiction to *raison d'état*.

<sup>16</sup> P. Cerny, *Rethinking World Politics...*, op. cit., pp. 158-159.

<sup>17</sup> P. Cerny, “Paradoxes of the competition state: The dynamics of political globalization”, *Government and Opposition* 1997, No. 2, pp. 251-274.

legislation has served as the most effective channel of policy transfers among EU member states. Accordingly, the European Commission (EC) as the main source of *acquis* has emerged as the crucial platform for the unification of the European governance space. While unifying the governing space, it has embedded not only itself, but also the member states and their bureaucratic expert apparatus into the formally and informally networked structure in which “transnational is local and local is also transnational” as well as “the external is always also internal”<sup>18</sup>. In such a structure, the particular transnational social forces could exchange, legitimize and finally socially routinize (regularize, normalize, institutionalize) their particular policy transfers. Since the mid-1980s, these transfers have been progressively impregnated with neoliberal policies. The prevailing neoliberalization of the *acquis* has only reflected the emerging hegemony of neoliberal forces over the European governance space, rationalizing pro-market and pro-competitive restructuring which has been further reembedded in the socio-economic context of Europe<sup>19</sup>. The *acquis* has consequently encompassed the main policy discourse of what this paper calls the *raison d’Europe* – European reasoning<sup>20</sup>. The *raison d’Europe* has not only reflected, but also reshaped the *raison du monde*. Indeed, the social forces dedicated to the *raison d’Europe* have constituted one of the dominant fractions of the transnational neoliberal forces, be they defined either ideationally as a *business civilization* or socially as a *transnational capitalist class*<sup>21</sup>. European reasoning based on the neoliberal discourse of competitiveness

<sup>18</sup> J. Drahokoupil, B. van Apeldoorn, L. Horn, “Introduction: Towards a critical political economy of European governance”, in: *Contradictions and Limits of Neoliberal European Governance: From Lisbon to Lisbon*, eds. J. Drahokoupil, B. van Apeldoorn and L. Horn, Palgrave Macmillan, London 2007, 11-13; B. Eberlein, E. Grande, “Beyond delegation: Transnational regulatory regimes and the EU regulatory state”, *Journal of European Public Policy* 2005, No. 1, pp. 89-112.

<sup>19</sup> A. Bieler, “Class struggle over the EU model of capitalism: Neo-Gramscian perspectives and the analysis of European integration”, *Critical Review of International Social and Political Philosophy* 2005, No. 4, pp. 513-526; S. Gill, “Constitutionalising capital: EMU and disciplinary neo-liberalism”, in: *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, eds. A. Bieler, A.D. Morton, Palgrave Macmillan, London 2001, pp. 47-70; B. van Apeldoorn, *Transnational capitalism and the struggle over European integration*, Routledge, London 2002, pp. 159-190.

<sup>20</sup> This paper coins the *raison d’Europe* in order to regionally differentiate the European structure and discourse in relation to the *raison du monde*. *Raison d’Europe* shall also be viewed as a relational platform for the case of EU institutions *vis-à-vis* EU member states (*Raison d’état*) and EU institutions *vis-à-vis* accession candidates (*Raison d’état*). Its ideational content and its social representation is identical with the Bastiaan van Apeldoorn’s embedded neoliberalism.

<sup>21</sup> For the transnational capitalist class, see: L. Sklair, “The transnational capitalist class and global politics: Deconstructing the corporate-state connection”, *International Political Science Review*, No. 2, 2002, pp. 159-174; For business civilization, see: S. Strange, “The name of the game”, in: *Sea-Changes: American Foreign Policy in a World Transformed*, ed. N. Rizopoulos, Council on Foreign Relations Press, New York 1990, pp. 260-274.

has soon developed into an intersubjective tool firstly to materialize the concept of a single European economic space and later to express the affiliation to the concept itself<sup>22</sup>.

However, the neoliberal institutional change within the European governance space remained naturally open-ended, uneven and seemingly contradictory. Indeed, neoliberalism itself does not stand for any “singular, monolithic, and unified” conception, but rather a “prevailing pattern of regulatory restructuring, driven by a family of open-ended social processes and associated with polymorphic forms and outcomes” that only “impinge on particular social spaces, regulatory networks, sectoral fields, local formations”<sup>23</sup>. While the neoliberal rationale has become hegemonic in the shaping of EU legislation, the reality of *acquis* application on the level of member states preserved for such a rationale only an ecological dominance which should “not involve an automatic, one sided relation of domination in which the prevailing form and dynamic of the economy always and everywhere unilaterally imposes its logic on other systems. [...] Instead it should be regarded as always differential, relational, contingent and reversible”<sup>24</sup>. The *acquis* has therefore generally reconfigured the institutional complementarity of member states, but remained simultaneously re-embedded in the socioeconomic context of the particular member states, thus supporting the notion of the ever incomplete single market<sup>25</sup>. Hence, the transnationalization steered by neoliberal forces could break the institutional inertia within member states. Yet, the transnationalization remained contested by social forces such as fractions of the national political-bureaucratic elite, national capital or labour unions who identified themselves with the old institutional setting. The member states have consequently internalized the *acquis* in accordance with the institutional compromise among contesting social forces and the institutional settings which these forces represented<sup>26</sup>.

The transnationalization of the Central and Eastern European (CEE) states in the Visegrad Group has gained a thorough character, largely due to their dual political-economic dependency and the specificities of their transformation

<sup>22</sup> B. Rosamond, “Imagining the European economy: Competitiveness’ and the social construction of ‘Europe’ as an economic space”, *New Political Economy* 2002, No. 2, pp. 157-177.

<sup>23</sup> J. Peck, N. Theodore, N. Brenner, “Postneoliberalism and its Malcontents”, *Antipode* 2010, No. 1, p. 101.

<sup>24</sup> B. Jessop, “Continuing Ecological Dominance of Neoliberalism in Crisis”, in: *Economic Transitions to Neoliberalism in Middle-income Countries*, eds. A. Saad-Filho, G.L. Yalman, Routledge, London 2010, p. 28.

<sup>25</sup> D. Howarth, T. Sadeh, “The ever incomplete single market: differentiation and the evolving frontier of integration”, *Journal of European Public Policy* 2010, No. 7, pp. 922-935.

<sup>26</sup> G. Menz, “Re-regulating the single market: national varieties of capitalism and their responses to europeanization”, *Journal of European Public Policy* 2003, No. 4, pp. 532-555; V.A. Schmidt, “Europeanization and the mechanics of economic policy adjustment”, *Journal of European Public Policy* 2002, No. 6, pp. 894-912.

from socialism to capitalism. First, the Visegrad states had to deal with the challenge of post-socialist transformation as an institutional change from non-capitalism to capitalism. The post-socialist states had to virtually build up the institutional setting and fundamental conditions for capitalism as such<sup>27</sup>. Although the states could initially privilege national capitalism, the leading personae of the transformation had already turned to neoliberalism long before the onset of the transformation, thus implementing neoliberalism as a national project despite its transnational roots<sup>28</sup>. Second, the failure of the initial national projects and the growing dependence on foreign direct investment allowed the national forces in favour of global reasoning to come to the forefront and reconfigure the institutional setting of CEE capitalisms in conformity with the needs of transnational capital<sup>29</sup>. Third, the EU accession procedures gave the CEE states no other chance than “mainly downloading policy”<sup>30</sup>. Predictably, this policy downloading consisted in the internalization of the *acquis* and was thus concomitant with transnationalization<sup>31</sup>. Since the post-socialist societies desired to finally ‘leave the East’ and ‘return to Europe’, they have naturally embraced both the *raison d’Europe* and *raison du monde*<sup>32</sup>. However, both the global and European reasonings have not prevailed completely even in the CEE region. The enormous complexity of the transformation task has left a manoeuvring space for the CEE states like the Czech Republic to embed neoliberalism in a way which took into account the decommodifying legacy of their *raison d’état*, especially in domains where transnational capital and the EC were rather unconcerned<sup>33</sup>.

<sup>27</sup> J. Drahokoupil, “Analysing the capitalist state in postsocialism: Towards the porterian workfare postnational regime”, *International Journal of Urban and Regional Research* 2007, No. 2, pp. 406-407.

<sup>28</sup> Ibidem, pp. 409-415; J. Bockman, G. Eyal, “Eastern Europe as a laboratory for economic knowledge: The transnational roots of neoliberalism”, *American Journal of Sociology* 2002, No. 2, pp. 310-352; S. Shields, “The charge of the right brigade: Transnational Social Forces and the Neoliberal Configuration of Poland’s Transition”, *New Political Economy* 2003, No. 2, pp. 225-244.

<sup>29</sup> J. Drahokoupil, “The Rise of the Comprador Service Sector: The Politics of State Transformation in Central and Eastern Europe”, *Polish Sociological Review* 2008, No. 2, pp. 175-189; A. Nölke, A. Vliegthart, “Enlarging the varieties of capitalism: The emergence of dependent market economies in East Central Europe”, *World Politics* 2009, No. 4, pp. 670-702.

<sup>30</sup> H. Grabbe, *The EU’s Transformative Power. Europeanization Through Conditionality in Central and Eastern Europe*, Palgrave Macmillan, London 2006, p. 4.

<sup>31</sup> O. Holman, “The enlargement of the European Union towards Central and Eastern Europe: The role of supranational and transnational”, in: *Social Forces in the Making of the New Europe: The Restructuring of European Social Relations in the Global Political Economy*, eds. A. Bieler, A.D. Morton, Palgrave Macmillan, London 2001.

<sup>32</sup> D. Bohle, B. Greskovits, *Capitalist Diversity on Europe’s Periphery* (Kindle Edition), Cornell University Press, Ithaca 2012, loc. 1516.

<sup>33</sup> Ibidem, loc. 769-892, 1466-2019.

The post-socialist transformation and transnationalization of the Czech state have made the České dráhy monopoly obsolete. Similarly to global trends, the prominence of the Czech railway as an effective transport and communication network has declined. Once the institutional change to capitalism was set into motion, the monopolistic position of České dráhy has become constantly questioned and the České dráhy-state nexus viewed as the main culprit for the alleged technological and economic paralysis of the Czech railway. On the other hand, liberalization, or even privatization, offered a proper solution to this problem. But only when the Czech state was absorbed into the European governance space, the policy transfers have broken the nexus in its *de iure* form. Yet, legal liberalization has been constantly reshaped by *de facto* preservation of the same nexus, thus leading to the compensatory monopoly of České dráhy. Reflecting on the abovementioned, the rest of this paper deals with several theses. First, it claims that the liberalization of Czech railway is an inevitable product of the implementation of the *acquis* and must be understood as such. Second, it claims that the liberalization of European railways initiated by the EU must be understood in the context of the neoliberal restructuring project. Third, it claims that the railway liberalization assumed an unobvious character, because it was contested within the Czech state and led to the compensatory monopoly. Fourth, it claims that the railway liberalization process is not spontaneous, but produced by particular social forces equipped with material capabilities which allow these forces to induce an institutional change. The act of production is ideational. It consists of the production of ideas (reasoning) which give a momentum to an institutional change. This institutional change then reciprocally legitimizes the produced ideas and the social forces which have produced these ideas. It is a self-empowering triangle between institutions, social forces and ideas; a triangle which has become increasingly internationalized<sup>34</sup>.

### 3. *Raison du monde*, European union, European railways

The European Commission has firstly announced its intention to liberalize European railways in 1991. Since then, several individual directives and four railway packages have been issued in order to transform the national railways into a sustainable part of the internal transport market<sup>35</sup>. The railway *acquis* has been

<sup>34</sup> Indeed, Cox puts stronger emphasis on the distinctiveness, but still natural interrelatedness of social forces, forms of states and world orders. See: R.W. Cox, "Social forces, states and world orders: Beyond international relations theory", *Millennium – Journal of International Studies* 1981, No. 2, pp. 135-141.

<sup>35</sup> The Fourth Railway Package has not been approved by the European Parliament in the time of writing yet.

propelled by the twofold principle of market-creation and transnationalization. The principle was considered necessary, since the EC asserted that “Europe needs a new kind of the railway”<sup>36</sup>. Public ownership and national monopolies were viewed as outdated regulation mechanisms, since they “insulated [railways – D.Š.] from market forces”<sup>37</sup>. Indeed, the railway *acquis* has included the growing preference of new regulation mechanism imposed by the EC’s logic. According to such a logic, the *dirigiste* powers of member states were to give way to their growing regulatory powers. Market solutions were to dominate over direct state solutions. Yet, the solutions were to be strictly regulated through the technically sophisticated and politically independent competition-enhancing state regulation. This new regulation mechanism was about to be framed by the EU institutions, implemented and performed in the member states, while again supervised, benchmarked or reshaped through formal and informal networks of the European governance space<sup>38</sup>. In consequence, the new regulatory logic was consciously introduced to completely change the social purpose of not only public, but also corporate governance in the European companies, be they public or private, in a marketizing direction<sup>39</sup>. Thus, the cornerstone of the railway *acquis* was to guarantee that rail operators will above all be “behaving in a commercial manner and adapting to market needs”, thus fulfilling their transport role for a business activity rather than for a public service<sup>40</sup>.

The twofold principle of market-creation and transnationalization was to establish a “European railway area without frontiers”<sup>41</sup>. Marketcreation aimed at the deconstruction of public rail operator-state nexuses and construction of new national railway markets. The market-transnationalization was seen as an automatic process, because the railway *acquis* served as a transnationalizing tool per se. Both principles created the foundations for the three-pillared liberalization. The first pillar has established a standardized licensing system in order to provide the public and private rail operators with the equal requirements to enter the national markets. The rail operators were explicitly encouraged to form a transnational cooperation. Once licensed in any member state, they also gained access to the

<sup>36</sup> European Commission, *White Paper: A Strategy for Revitalising the Community’s Railways*, COM(96)421 final, Brussels 1996, p. 5.

<sup>37</sup> *Ibidem*.

<sup>38</sup> G. Majone, *From the Positive to the Regulatory State...*, op. cit., pp. 139-167.

<sup>39</sup> B. van Apeldoorn, L. Horn, “The transformation of corporate governance regulation in the EU: From harmonization to marketization”, in: *The Transnational Politics of Corporate Governance Regulation*, eds. H. Overbeek, B. van Apeldoorn, A. Nölke, Routledge, London 2007, pp. 77-97.

<sup>40</sup> Directive 91/440/EEC of 29 July 1991.

<sup>41</sup> Regulation (EC) No. 881/2004/EC of 29 April 2004.

rail networks in the rest of EU<sup>42</sup>. The second pillar has complemented the first pillar in the development and harmonization of the fully interoperable trans-European railways, regarding both the technical rules and licences for the rail infrastructure, rail operators, machines and personnel. Both pillars were to be supervised by the national regulatory bodies increasingly under stricter coordination by the European Railway Agency since 2004<sup>43</sup>. The third pillar has been the most crucial in the changing social purpose of the railway governance. The pillar has broken the public rail operator-state nexuses by reserving for the state a position of mere stakeholder in the market-based and profit-oriented corporate governance of public rail operators. Furthermore, the public rail operators had to split into three companies. The first company was to be a fully independent rail infrastructure manager. The two other companies had to split their business between passenger and freight transport, at least in the accounting system, in order to abolish their mutual interfinancing. At last, the public authorities have lost the right to directly award the public rail operator with subsidies for transport services in the public interest, since the subsidies had to become a subject of competitive tenders<sup>44</sup>.

The neoliberal discourse of competitiveness has represented the main tool serving to legitimize and institutionalize the European railway area without frontiers. Thus, rather than being nationally insulated and protected, the railways, together with the related railway industries, were to be exposed to the market discipline, because “in order to enhance their competitiveness at world level those industries require an open, competitive, European market”<sup>45</sup>. Thus, the European railway market was depicted since the early beginning by its very essence as a “competitive market”<sup>46</sup> which would be led by the principles of a “fair and nondiscriminatory competition” and providing “competing transport infrastructure”<sup>47</sup> facilitating “increasing competitiveness of the rail transport”<sup>48</sup>. In such a context,

<sup>42</sup> Standardization of licensing processes and the safety rules were dealt mainly with: Directive 95/18/EC of 19 June 1995; Directive 2001/13/EC of 26 February 2001; Directive 2001/14/EC of 26 February 2001; Directive 2004/49/EC of 29 April 2004; Directive 2007/59/EC of 23 October 2007.

<sup>43</sup> Infrastructural and interoperability issues were solved mainly by: Directive 95/19/EC of 19 June 1995; Directive 96/48/EC of 23 July 1996; Directive 2001/16/EC of 19 March 2001; Regulation (EC) No. 881/2004/EC of 29 April 2004.

<sup>44</sup> Opening of the railway market and deconstruction of railway monopolies was mainly a matter of the following: Directive 91/440/EEC of 29 July 1991; Directive 2001/12/EC of 26 February 2001; Directive 2004/51/EC of 29 April 2004; Directive 2007/58 of 23 October 2007; Regulation (EC) No. 1370/2007 of 23 October 2007.

<sup>45</sup> Directive 96/48/EC of 23 July 1996.

<sup>46</sup> Directive 91/440/EEC of 29 July 1991.

<sup>47</sup> Directive 2001/14/EC of 26 February 2001.

<sup>48</sup> Directive 2001/16/EC of 19 March 2001.

the public funding regarding the railway sector had to be executed through “competitive tendering”<sup>49</sup>. The state could intervene in the market only through its regulatory powers in order to enhance “regulated competition”<sup>50</sup> by preventing anti-market or anticompetitive behaviour. Indeed, the EC had already initially put emphasis on the prevention of “the distortions of competition”<sup>51</sup> regarding both technical or market issues as the corner-stone of the liberalization process. In sum, the more the idea of a single European railway was translated into the concrete concept, the more the neoliberal discourse of competition, marketization and regulation resonated in the *acquis* and EC policy proposals. Thus, the plans to establish the Single European Railway Area have recently included new appeals to open the national markets, eliminate legal barriers, and harmonize technical standards. At the same time, these appeals were conditioned by the transfers of regulatory powers from the national authorities to the newly established European Railway Agency and transferring the decision-making on railway subsidies from the state to the market<sup>52</sup>.

The twenty-year long period of implementing the railway *acquis* within the European governance space has produced a thorough legal restructuring of national railways in the member states. The restructuring has followed the *raison du monde*, giving the neoliberal rationale a hegemonic position in the articulation of the railway market-creation and transnationalization. Hence, the materialization of the single European railway was imagined only in repeated competitive discourses which offered no other alternative to market-based solutions, while providing the member states merely with the competency of procompetitive regulation of such solutions (through the implementation and supervision of the railway *acquis*). The institutional change of railways in the member states was thorough in its *de iure* dimension, because it intended not only to create national railway markets within the single European railway, but also to reshape the social purpose of railways as such. This includes the relationship between the state and its public rail operators, but also the corporate governance of the public rail operators themselves. Indeed, the institutional change was an inherent part of the wider neoliberal restructuring, visible predominantly in the accession talks with

<sup>49</sup> Regulation (EC) No. 1370/2007 of 23 October 2007.

<sup>50</sup> Ibidem; European Commission, *White Paper: European Transport Policy for 2010: Time to Decide*, COM(2001)370 final, Brussels 2001, pp. 21-22.

<sup>51</sup> European Commission, *White Paper: A Strategy for Revitalising...*, op. cit., p. 18; Directive 2001/14/EC of 26 February 2001; Regulation (EC) No. 1370/2007 of 23 October 2007.

<sup>52</sup> European Commission, *Communication from the Commission: Concerning the Development of a Single European Railway Area*, COM(2010) 474 final, Brussels, pp. 1-11; European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Fourth Railway Package – Completing The Single European Railway Area to Foster European Competitiveness*, COM(2013) 25 final, Brussels 2013, pp. 1-11.

the new member states like the Czech Republic<sup>53</sup>. Although possibly perceived as coercive, the railway *acquis* was understood as a voluntary policy transfer in line with the *raison d'Europe* and made possible by the absorption of the Czech state into the formal and informal networks of the European governance space<sup>54</sup>.

#### 4. *Raison d'Europe*, Czech state, Czech railway

The Czech Republic was already a part of the EC's plans to establish the single European railway in 1996<sup>55</sup>. At the same time when the EC was contemplating the railway *acquis*, the České Dráhy monopoly was already being questioned by the neoliberal forces who led the post-socialist transformation towards national capitalism. As one of the biggest state-owned companies, České dráhy represented a considerable burden for the state budget and was therefore naturally included in the broader transformation of the Czech economy. Nonetheless, the institutional change of the Czech railway occurred only as a product of the Czech Republic's growing dependence on transnational capital and crucially of the policy transfers in the consequence of its accession to the EU. Yet, the introduction was not a mere manifestation of the passive politics of EU conditionality. The EC has actively absorbed the Czech state into the formal and informal networks of the European governance space through the socialization of national politicians, bureaucrats and experts with the *consensual knowledge* of EU policy transfers<sup>56</sup>. Indeed, only the transnationalization of the Czech state has provided the railway liberalization with the concrete framework for its new institutional setting and social purpose.

The establishment of České dráhy was perceived as a chance to break the public rail-operator state nexus and to create a company which would “perform its activity independently from the state, being market-oriented, and have interest in better economic results”, while preparing itself for the awaited privatization<sup>57</sup>. Neither privatization, nor any radical liberalization were however been implemented during

<sup>53</sup> European Commission, *Comprehensive Monitoring Report on the Czech Republic's Preparations for Membership*, COM(2003) 675 final, Brussels 2003, pp. 5-53.

<sup>54</sup> D. Dolowitz, D. Marsh, “Learning from abroad: The role of policy transfer in contemporary policy-making”, *Governance: An International Journal of Policy and Administration* 2000, No. 1, pp. 5-23.

<sup>55</sup> European Commission, *White Paper: A Strategy for Revitalising...*, op. cit., p. 6.

<sup>56</sup> A. Vliegthart, L. Horn, “The role of the EU in the (trans)formation of corporate governance regulation in Central Eastern Europe – The case of the Czech Republic”, *Competition & Change* 2007, No. 2, 137-154.

<sup>57</sup> Czech National Council, *Vládní návrh zákona ČNR o Českých dráhách*, tisk č. 234, Česká národní rada, Praha, 13 December 1992.

the 1990s. The liberalization was impeded by the polemics which challenged the simple market-based transformation of the Czech railway and put it into the contradiction with the principle of public interest<sup>58</sup>. Thus, if the liberalization policies entered the legislature, they hardly endangered the České dráhy monopoly, because they were rather incomplete and later counterbalanced by the legislation which prioritized the public rail operator as an executor of strategic interests of the Czech state<sup>59</sup>. Moreover, a great opposition to any liberalization and privatization plans was expressed regularly by the railway unions which represented an influential interest group, as České dráhy was the biggest employer in the Czech Republic with between 90,000 and 116,000 employees during the 1990s<sup>60</sup>. Thus, when the government attempted to propose a privatization plan in February 1997, it was immediately contested by a five-day railway strike that paralyzed the whole country. Hence, the failure of railway liberalization as an inward-looking strategy based on national capitalism. This strategy was ill-conceived, because its only reasoning was liberalization for the purpose of liberalization.

The strategy of inward-looking liberalization disappeared with the collapse of national capitalism at the end of 1990s. It has been however replaced by a liberalization legitimized with the *raison d'Europe* and further structurally encouraged by the reconfiguration of Czech capitalism along the needs of transnational capital. The railway *acquis* allowed the social forces supporting such a liberalization to present the ideal of a European railway as a pattern for the Czech railway. Thus, the liberalization of the Czech railway ceased to be in contradiction with the principle of public interest, because the EU membership of the Czech republic became the public interest per se. Railway *acquis* provided a discursive tool which allowed to express the affiliation to Europe as such. The liberalization was no longer done only for the purpose of liberalization, but for the purpose of Europe, as Miroslav Kapoun, a socialdemocratic member of parliament, implied: “dear colleagues, I would like to say that we were talking last week a lot about Europe and I think that this law is about Europe and about our aim to make the Czech railway an European one, and not any another one completely distinct from the European railways”<sup>61</sup>.

<sup>58</sup> Parliament of the Czech Republic, 25<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Parlament ČR, Prague, 14 December 1994.

<sup>59</sup> For the incompleteness, see: Act No. 266/1994 Coll. (Collection of Laws of the Czech Republic, No. 79, 30 December 1994); for the strategic interests, see: Act No. 77/1997 Coll. (Collection of Laws of the Czech Republic, No. 25, 11 April 1997)

<sup>60</sup> České dráhy, *Vývoj počtu zaměstnanců ČD, a.s. (ČSD) od roku 1989*, Praha 2013, <http://www.ceskedrahy.cz/assets/skupina-cd/personalistika/personalistika-v-cislech/pocty-zamestnancu.pdf> [20.07.2013].

<sup>61</sup> Parliament of the Czech Republic, 43<sup>rd</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Parlament ČR, Prague, 11 December 2001.

The European reasoning was then utilized by the three legitimizing claims for the harmonization of Czech railway legislature with the railway *acquis*. These claims were predominantly accepted either due to the EU conditionality in the case of social forces who would rather oppose neoliberal policies or for their neoliberal rationale in the case of social forces who were normally sceptical about the EU policy transfers. First, there was a necessity to internalize the railway *acquis* in order to guarantee that the Czech railway would converge on the EU technical or procedural standards and be properly incorporated into the European railway network<sup>62</sup>. Second, the *acquis* was necessary to be implemented, because it provided an opportunity to break the České dráhy-state nexus which was deemed overly indebted, non-transparent, and uncontrollable. At the same time, the *acquis* was to expose České dráhy to the disciplining force of market competition from private rail operators, turning the whole railway into a more fiscally viable and coherent sector of the Czech economy<sup>63</sup>. Third, it was necessary to implement the *acquis*, as it prepared České dráhy to endure the international competition on the single European railway<sup>64</sup>. The European reasoning has thus basically allowed to rationalize the liberalization and its aims to a higher purpose, thus basically overcoming the institutional inertia which had stalled the liberalization until then.

The internalization of the railway *acquis* has squeezed the once complicated relationship between the equal Czech and European rail networks into a simple and hierarchical relationship stating that “the state railway is a part of the European

<sup>62</sup> Parliament of the Czech Republic, 15<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic, [stenographic record], Parlament ČR, Prague, 7 July 1999; Parliament of the Czech Republic, 23<sup>rd</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Parlament ČR, Prague, 26 November 2003; Parliament of the Czech Republic, 48<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Prague, 18 October 2005; Parliament of the Czech Republic, 13<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Prague, 11 February 2011.

<sup>63</sup> Parliament of the Czech Republic, 15<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic, [stenographic record], Parlament ČR, Prague, 7 July 1999; Parliament of the Czech Republic, 43<sup>rd</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Parlament ČR, Prague, 11 December 2001; Parliament of the Czech Republic, 27<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Prague, 31 January 2008; Parliament of the Czech Republic, 75<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Prague, 12 March 2010.

<sup>64</sup> Parliament of the Czech Republic, 15<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic, [stenographic record], Parlament ČR, Prague, 7 July 1999; Parliament of the Czech Republic, 43<sup>rd</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Parlament ČR, Prague, 11 December 2001; Parliament of the Czech Republic, 28<sup>th</sup> Meeting of Chamber of Deputies of the Parliament of the Czech Republic [stenographic record], Parlament ČR, Prague, 24 February 2004.

railway system<sup>65</sup>. The Czech railway has become progressively transnationalized in a legal process which replaced the *national* with *European*. Therefore, the license of the rail operator from any EU member state has become automatically valid in the territory of the Czech Republic<sup>66</sup>. Similarly, rail vehicles licensed in any EU member state do not need a Czech licence any more<sup>67</sup>. The regulation mechanism has also changed. The regulatory authorities Drážní úřad (Railway Office), established in 1994, and Drážní inspekce (Railway Inspection), established in 2003, have gradually received more supervisory and sanctioning powers. At the same time, their reporting and coordinating duty has shifted appropriately towards the European Railway Agency<sup>68</sup>. The logic of the railway *acquis* has also predominated in the transport strategies of the ministry of transport, thus imposing convergence as the best solution not only for the railway, but for the economy as a whole. According to these strategies, the Czech railway was required to harmonize with the technical standards demanded by the railway *acquis* as well as to improve the independence of the regulatory authorities in order to enhance its own competitiveness<sup>69</sup>.

The dramatic change in the social purpose of railway governance was most visibly reflected in the transformation of the České dráhy-state nexus and the marketization of České dráhy's purpose itself. In 1997, České dráhy was still defined as public company with a task to facilitate "the important society-wide strategic or publicly beneficial interests"<sup>70</sup>. In 2003, the public company has been transformed into a joint-stock company with a new mission only to "provide transport services in accordance with its entrepreneurial plan and business interests"<sup>71</sup>. At the same time, Správa železniční dopravní cesty (SŽDC, Railway Infrastructure Administrator) was created as an independent rail infrastructure manager. Finally, the subsidiary ČD Cargo was created in 2007 in order to separate the accounting between the passenger and freight transport. The passenger and freight transport as well as the rail network management were thus legally separated. More importantly, almost any reference to the public interest or public service has disappeared from the railway legislation in relation to České dráhy. The rail network capacity is no longer preferentially allocated to the applicant with the

<sup>65</sup> For the complicated relationship, see: Act No. 266/1994 Coll. (Collection of Laws of the Czech Republic, No. 79, 30 December 1994); for the hierarchical relationship, see: Act No. 194/2010 Coll. (Collection of Laws of the Czech Republic, No. 65, 16 June 2010).

<sup>66</sup> Act No. 181/2006 Coll. (Collection of Laws of the Czech Republic, No. 61, 5 May 2006).

<sup>67</sup> Act No. 103/2004 Coll. (Collection of Laws of the Czech Republic, No. 32, 5 March 2004).

<sup>68</sup> Ibidem; Act No. 181/2006 Coll. (Collection of Laws of the Czech Republic, No. 61, 5 May 2006); Act No. 377/2009 Coll. (Collection of Laws of the Czech Republic, No. 123, 30 October 2009); Act No. 134/2011 Coll. (Collection of Laws of the Czech Republic, No. 51, 25 May 2011).

<sup>69</sup> For example see: *Dopravní politika ČR pro období 2014-2020 s výhledem do roku 2050*, Ministry of Transport of the Czech Republic, Ministerstvo dopravy ČR, Praha 2013, pp. 4-87.

<sup>70</sup> Act No. 77/1997 Coll. (Collection of Laws of the Czech Republic, No. 25, 11 April 1997).

<sup>71</sup> Act No. 77/2002 Coll. (Collection of Laws of the Czech Republic, No. 34, 1 March 2002).

“obligation of the public service”<sup>72</sup>. The state liability to cover the “verifiable economic loss including an appropriate profit” if any rail operator is contracted to carry out “unprofitable transport services in a public interest” has also been abolished<sup>73</sup>. Moreover, the public subsidy responsible for rail transport has become subject to competitive tenders<sup>74</sup>. In sum, the state became a mere stakeholder no longer obliged to financially support the public rail operator. České dráhy has lost the control over the rail infrastructure and the legal entitlement to a preferential allocation of its free capacity. Nonetheless the most dramatic was the change in the social purpose of Czech railway from public to business interest.

The *raison d'Europe* has proven to be the main discursive tool to undertake railway liberalization, aimed at breaking up the České dráhy-state nexus. Indeed, the railway *acquis* has resonated not only throughout the parliamentary discussions preceding its adoption in the Czech railway legislature, but also throughout the expert documents arranged by the ministry of transport. Both suggested that the marketization of Czech railway and the increased independence of regulation and rail network management will make the Czech railway more competitive. At the same time, the internalization of railway *acquis* has represented a part of the practice which the Czech state used in order to express its affiliation to the EU and the single economic space, and here in particular the internal transport market. Such a practice has suppressed or co-opted the voices and interests of social forces which had been contesting the liberalization in the past. Thus, the České dráhy has been transformed without any significant protest of railway unions similar to the one in February 1997. Although České dráhy remained one of the biggest employers in the Czech republic, the company had only 26,000 employees in 2012, a decrease of 60,000 jobs in just one decade<sup>75</sup>. Nonetheless, the institutional change of the Czech railway was not as obvious and linear process as the European reasoning and the legal changes suggest.

### **5. *Raison d'état*, České Dráhy – state nexus, compensatory monopoly**

The České dráhy-state nexus was not broken completely, but had to be redefined as liberalization progressed. While the extra-economic nexus was broken *de iure* by the promarket legislation, it has been preserved *de facto* by a series of informal practices and networks. These practices consisted in attempts to reinterpret and

<sup>72</sup> Act No. 181/2006 Coll. (Collection of Laws of the Czech Republic, No. 61, 5 May 2006).

<sup>73</sup> Act No. 134/2011 Coll. (Collection of Laws of the Czech Republic, No. 51, 25 May 2011).

<sup>74</sup> Act No. 194/2010 Coll. (Collection of Laws of the Czech Republic, No. 65, 16 June 2010).

<sup>75</sup> České dráhy, *Annual Report of České dráhy Group 2012*, Prague 2013, p. 4.

reshape the market-based principles of liberalization in favour of České dráhy which led to a compensatory monopoly. It has thus provided the rail operator with two important benefits in order to adapt to the institutional change of Czech railway; enough time and patient capital. In short, the institutional change was not simply stalled. The change has indeed disembedded the institutional legacy of the Czech railway and reconfigured the railway and its social purpose along the lines of pro-market logic. Yet, the České dráhy-state nexus has functioned as a channel for simultaneous processes of re-embedding the changes in the socio-economic context of Czech capitalism. The compensatory monopoly was thus produced as a compromise between the imperative of liberalization (based on the *raison d'Europe*) and the institutional legacy of the Czech railway (based on the *raison d'état*). Nevertheless, the compensatory monopoly does not signify the end of liberalization. Rather, it represents the most salient indicator of liberalization as an unobvious process, characterized by its openendedness, unevenness and seeming contradictions.

Patient capital has been provided as a compensation for liberalization and followed the particular liberalization milestones. The compensatory monopoly firstly manifested itself in 2003 when České dráhy was transformed into a joint-stock company, while SŽDC was established to assume the role of rail network manager. The law establishing both companies was consciously shaped in favour of České dráhy. All the previous České dráhy debts, amounting to CZK 56,686 billion (EUR 1,793 billion)<sup>76</sup>, were taken over by SŽDC, that is the Czech state in effect. While SŽDC became the owner of the rail network and platforms, České dráhy retained machinery and assets (i.e. the land under the network and access paths with railway stations around the platforms). The constitutional court later questioned the asset redistribution, but the parliament interpreted the court decision in a way that allowed České dráhy to keep the already gained assets<sup>77</sup>. Thus, although SŽDC became the owner of the rail network, České dráhy had remained legally bound and financed by SŽDC to function as rail manager until June 2008<sup>78</sup>. Only then, the operation management was transferred from České dráhy to SŽDC including the exchange of almost 10,000 employees and necessary machinery for CZK 11,852 billion (EUR 497,746 million) benefiting České dráhy. The transfer was finished by a similar exchange of machinery and 9,500 employees for CZK 390 million (EUR 16,150 million) in September 2011<sup>79</sup>. Finally, the transfer of land, access paths and stations for another CZK 6 or 12

<sup>76</sup> The exchange rate between CZK and EUR is adjusted for every case to the specific period based on the data of Czech National Bank.

<sup>77</sup> Act No. 83/2003 Coll. (Collection of Laws of the Czech Republic, No. 33, 25 March 2002); Act No. 179/2003 Coll. (Collection of Laws of the Czech Republic, No. 63, 12 June 2002).

<sup>78</sup> Act No. 179/2008 Coll. (Collection of Laws of the Czech Republic, No. 57, 28 May 2008).

<sup>79</sup> Ibidem.

billion (EUR 231,124 or 462,245 million) is being prepared in anticipation of the Fourth Railway Package<sup>80</sup>. In sum, SŽDC, originally established to secure fair and competitive access to rail network, has been used by the České dráhy-state nexus as a tool to rid the České dráhy of previous debts, while providing it with patient capital to sustain the expected market pressures.

Further patient capital and enough time to adjust to the liberalization process has been provided through the contracts which gave České dráhy an advantage to carry out the unprofitable transport services in public interest. Such services have been legally subsidized by the Czech state, because they were deemed to be a necessary public service. They have included the whole intrastate passenger transport. The services have been awarded by the ministry of transport on the national lines and by fourteen region administrations on the regional lines. České dráhy had been automatically awarded the subsidies until 2009, while it could also legally claim the verifiable economic loss including an appropriate profit until 2011. Thus, the subsidies paid by the ministry of transport recorded a 175% increase only in the period between 2006 and 2009<sup>81</sup>. Moreover, the Czech state attempted to prolong the advantage given to České dráhy as much as possible in order to prevent any private rail operator to enter the Czech railway on the subsidized lines. When the EC Regulation No. 1370/2007, obliging member states to allocate subsidies only as the result of competitive tenders, was about to enter into force on 3 December 2009, the Czech state immediately agreed with České dráhy on 10-year contracts in order to avoid the competitive tendering both on the national and regional lines<sup>82</sup>. The contracts have effectively closed any further tendering for the regional lines until 2019<sup>83</sup>. On the national lines, the 10-year contract included a commitment to the gradual tendering of 75% of contracted lines up to 2019, while the remaining 25% could be tendered only

<sup>80</sup> Ministry of Transport of the Czech Republic, *Pro poradu ekonomických ministrů: Převod nádraží z majetku ČD, a.s. do majetku státu s právem hospodařit pro SŽDC, s.o.*, č.j. 51/2013-410-PRIV/2, Ministerstvo dopravy ČR, Praha 2013.

<sup>81</sup> Supreme Audit Office of the Czech Republic, *Prostředky státního rozpočtu poskytované na úhradu ztráty ze závazku veřejné služby ve veřejné drážní osobní dopravě – kontrolní akce 9/23*, at: Národní kontrolní úřad, *Věstník Nejvyššího kontrolního úřadu 3/2010*, Nejvyšší kontrolní úřad, Praha 2010, p. 246.

<sup>82</sup> *Ibidem*, pp. 239-246.

<sup>83</sup> In the case of regional lines, the region administrations firstly agreed on memorandum with the government. The memorandum required the government to annually provide all regions with stable financial support to partially cover the „verifiable economic loss” resulting from the regional railway transport for the next 10 years. The government guaranteed to provide the financial sum only under the condition that all regions contract the same rail operator to carry out the railway transport in public interest also for the next 10 years. See: *Ibidem*, p. 245; The Government of the Czech Republic, *Usnesení vlády České republiky ze dne 31. srpna 2009 č. 1132 k finanční účasti státu na zajištění obsluhy veřejnou železniční osobní dopravou*, Vláda ČR, Praha, 31 August 2009.

after 2019<sup>84</sup>. Hence, the compensatory monopoly has functioned as a tool used by the České dráhy-state nexus to cushion the effects of railway liberalization through informal practices and personnel networks.

Although the Czech state was supposed to be only a stakeholder in České dráhy as joint-stock company, the state ownership of 100% stocks turned the market-based relationship into a fiction. The Steering Committee of České dráhy has been traditionally occupied by high bureaucrats from several ministries. At the same time, the Supervisory Board of České dráhy has always included members of parliament who were in many cases the same politicians defending the particular way of transformation of České dráhy in parliament or in public. For example, Miroslav Kapoun served as the chairman of Supervisory Board until 2001 and later its member between 2005 and 2007<sup>85</sup>. Vojtěch Kocourek was combining official positions as the deputy to the minister of transport, member of Steering Committee and chairman of Supervisory Board between 2002 and 2009 and later as higher manager in SŽDC until 2012<sup>86</sup>. Meanwhile, the railway union was also coopted. The organizer of the fiveday strike of 1997 and chairman of the railway union, Jaroslav Dušek, served as member of the Supervisory Board between 2003 and 2008<sup>87</sup>. Gustav Slamečka, the minister of transport who arranged the 10 year contracts, is an exemplary case of a former high bureaucrat and member of Board of Trustees of ČD Cargo who after his ministerial performance became the chairman of the Board of Directors in the same company<sup>88</sup>. In sum, the České dráhy-state nexus has bridged the shareholder principle of market-based relationship between the state and the rail operator through the extra-economic network of relations among politicians, state bureaucrats and union leaders. Albeit the nexus was also sustained due to non-transparent transfers of public money, allegedly financing political parties and their cronies, it should not be derided as a mere corruption network. The corruption factor shall be instead included into an understanding of the nexus as a cultural and historical condition of socio-economic coordination in the post-socialist Europe<sup>89</sup>.

The compensatory monopoly has not been a constant and stable feature of Czech railway. Its stability has crucially depended on the dynamics of the České dráhy-state nexus. As a compensatory tool, it has not reversed the liberalization of Czech railway as such. It has rather represented a seemingly contradictory

<sup>84</sup> Supreme Audit Office of the Czech Republic, *Majetek státu, se kterým hospodáří státní organizace Správa železniční dopravní cesty – kontrolní akce č. 11/31*, pp. 239-246.

<sup>85</sup> České dráhy, *Annual Report of České dráhy Group 2007*, Prague 2008, p. 120.

<sup>86</sup> České dráhy, *Annual Report of České dráhy Group 2009*, Prague 2010, pp. 14, 61.

<sup>87</sup> České dráhy, *Annual Report of České dráhy Group 2008*, Prague 2009, p. 62.

<sup>88</sup> ČD Cargo, *Annual Report of ČD Cargo 2011*, Prague 2012, pp. 14-17.

<sup>89</sup> A. Ledeneva, "Corruption in Postcommunist Societies in Europe: A Re-examination", *Perspectives on European Politics and Society* 2009, No. 1, pp. 69-86.

process which allowed the liberalization to reconfigure the institutional legacy of the Czech railway along the railway *acquis*, while simultaneously regulating the reconfiguration with the principles of the same institutional legacy. Moreover, the compensatory monopoly has been continuously contested by various social forces which would prefer faster and more thorough liberalization. These forces are represented mainly by the political parties which are a fraction of the Czech state, but have either lost or never had a stake in the České dráhy-state nexus. Predictably, these forces include also all sorts of bureaucrats, economic experts and other technocrats who are part of the European governance space. Above all, these social forces are constituted by the interest groups representing private rail operators like RegioJet and Leo Express. Such forces push for the strict neoliberal interpretation of the railway *acquis* and the Czech railway legislature, because this benefits their own ideological and business interests. Indeed, they use the *de iure* liberalization to break the *de facto* nexus by taking legal actions against the Czech state or České dráhy at the various regulatory or judicial authorities, including the Czech constitutional court, the EC or the European Court of Justice. At the same time, the private rail operators materialize the railway market with their actual presence. RegioJet and Leo Express as the first rail operators compete with České dráhy at the non-subsidized line Prague-Ostrava. RegioJet was directly contracted after a failed competitive tender to carry out transport service at one of the subsidized national lines from 2014. In conclusion, the liberalization has remained open-ended despite the existence of a compensatory monopoly.

## 6. Conclusion

The railway liberalization has proven to be an institutional change with hybridized and unobvious outcomes in the Czech Republic. Although the liberalization was produced, exchanged, legitimized and finally imposed through the formal and informal networks of the European governance space, its regulatory and neoliberal direction has been contested at the various scales of the same space. The change has reconfigured the Czech railway and its social purpose along a neoliberal rationale. This rationale correlated with promarket restructuring of Czech capitalism and its institutional complementarity which was produced by the ideational dependence of the Czech state on the *raison du monde* and *raison d'Europe*. While being accepted in general terms, the change has been nonetheless unevenly reshaped in particular terms of time and space, therefore compromising its impact with the underlining principles of the institutional legacy of the Czech railway.

Thus, the railway lines subsidized by the Czech state shall be opened to competitive tendering according to the railway *acquis* since December 2009. However real competitive tendering will be fully accessible only after 2019. The individual lines of the national rail network will be opened gradually. The lines of the regional rail networks will be entirely closed for competition until 2019. Similarly, the relationship between the Czech state and České dráhy has assumed the principles of a market-based relationship between a profit-oriented stakeholder and a profit-oriented joint-stock company. The relationship has however preserved informally an extra-economic character in the form of the České dráhy-state nexus. The nexus has provided České dráhy with patient capital and enough time, in the form of a compensatory monopoly, in order to cushion the short-term pressures derived from a competitive market which could destabilize the Czech railway as a synergic network. Although the hybridization of the formal market-based ownership and informal extra-economic practice of such an ownership may seem contradictory, it was a product of social regulation mechanism which used the compensatory monopoly to counterbalance the common sense of neoliberal policies, consisting in presumption that technical regulation and profit-orientation provide sufficient legitimacy for the stability of any market. At last, the compensatory monopoly has not been produced to halt the railway liberalization, but rather to shape it in a particular direction which in turn can be again contested and reshaped, therefore maintaining the railway liberalization as an open-ended process.

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## Transnacionalizacja kolei w Republice Czeskiej: instytucjonalny przeskok od monopolu formalnego do nieformalnego?

**Streszczenie.** W niniejszym artykule skoncentrowano się na niejasności liberalizacji w Republice Czeskiej. W swej oczywistej formie proces liberalizacji – kiedy już zostanie uruchomiony – przybierałby trajektorię opartą na ścieżce zależności i prowadziłby do zliberalizowanego rynku przewozów kolejowych. Natomiast liberalizacja kolei czeskich zaowocowała czymś, co w niniejszym opracowaniu nazwano monoplem wyrównawczym. Obejmuje on nieformalne działania, które pozwoliły państwu czeskiemu przekształcić przedsiębiorstwo České dráhy w faktyczny monopol, podczas gdy w rzeczywistości przewoźnik państwowy stracił formę monopolu pod względem prawnym. Jak stwierdzono w artykule, liberalizacja stanowi produkt transnacionalizacji państwa czeskiego poprzez absorpcję w globalną gospodarkę, a przede wszystkim Unię Europejską. Jako państwo kandydujące, a następnie członkowskie, Republika Czeska była zobowiązana do przyjęcia kolejowego *acquis communautaire* wypracowanego w ramach Unii Europejskiej, co spowodowało konsekwentną transnacionalizację czeskich kolei państwowych. Ze względu na swój transnacionalistyczny, a jednocześnie rynkowy charakter uregulowania dotyczące kolei całkowicie zrestrukturyzowały także formalne otoczenie instytucjonalne czeskich kolei, włączając w to społeczny cel przewoźnika České dráhy, który nie ma już służyć interesowi publicznemu, lecz raczej przestrzegać rynkowej logiki interesu przedsiębiorstwa. Niemniej jednak przyjęcie *acquis* nie okazało się bezkonfliktowe. Przeciwnie, dotychczasowe otoczenie instytucjonalne jest

nadal reprezentowane przez związek państwa i przewoźnika České dráhy, który miał być próbą przekształcenia liberalizacji w taki sposób, aby wspomóc České dráhy wystarczającą ilością kapitału oraz czasu, i tym samym przygotować do konkurencji na zliberalizowanym rynku kolejowym. Rezultat tych nieformalnych praktyk, którego ucieleśnieniem stał się monopol wyrównawczy, udowodnił, że liberalizacja kolei czeskiej okazała się zmianą instytucjonalną, której efekty są nierównomierne, nie do końca wiadome, a także na pozór sprzeczne.

**Słowa kluczowe:** kolej, liberalizacja, europeizacja, urynkwienie, Republika Czeska, zmiany instytucjonalne