

GERMAN INFRASTRUCTURE BULLETIN

Briefing Note – Issue III

28 October 2020

1. SCOPE

A succinct and discriminating selection of developments in the *transportation, telecommunications, energy, and social infrastructure* sectors (and sub-sectors) from the preceding calendar quarter of potential interest to investors and asset managers. Falling within scope are political initiatives, changes to subsidy regimes, significant legal and regulatory changes, tender pipelines, and noteworthy deals. Previous bulletin issues may be viewed [here](#).

2. SUMMARY

This issue includes content on rail, road, telecoms, and renewable energy – key developments include:

- The draft Telecommunications Modernisation Act ([Telekommunikationsmodernisierungsgesetz](#) – TKModG) bill will most likely implement into German law the promotion of the “wholesale only” business model:
 - ↘ could underpin an accelerated broadband / 5G rollout. Depending on how market dynamics develop, vertically integrated network operators could come to view “wholesale only” providers positively and/or even be induced to unbundle their own businesses.
- The Renewable Energy Act 2021 Reform Bill ([Erneuerbare Energien Gesetz](#) – EEG Novelle) was [approved by the German Cabinet](#) on 23 September 2020 and has been submitted to the federal parliament ([Deutscher Bundestag](#)):
 - ↘ supportive of a new solar PV boom and, in conjunction with the Investment Acceleration Act (see below), could reinvigorate the onshore wind market.
- Germany has in September issued its first 10-year green bond [raising € 6.5bn](#). In the broader context of [Germany’s Climate Package](#), the [EU’s Green New Deal](#) including the [forthcoming EU green finance rules](#), and the [ECB strategy](#) review, this is part of a package of intertwined fiscal, monetary, and regulatory policy changes that:
 - ↘ will lead to an increase in the volume and the lower relative cost of capital, both debt and equity, available to ‘green’ projects.

3. REPORT

3.1 Rail

3.1.1 Political Initiatives

- European Parliament and EU Council have reached a [provisional agreement](#) for changes to EU rail passenger rights legislation (1 October 2020). The [European Passengers’ Federation](#) is [‘very disappointed’](#) with the proposals which would introduce a force majeure exception (bringing rail in line with other modes of transport) – it had hoped the new rules would establish the principle that ‘one total journey = one contract of carriage’.
 - The Network of European Rail Operators ([Netzwerk Europäischer Eisenbahnen](#)), have challenged the financial aid earmarked for Deutsche Bahn in the form of a [€5bn Covid-19 related equity increase](#) claiming this [constitutes unfair state aid under EU law](#).
 - ↘ the EU Commission is assessing the intended capital increase and may attach funding conditions to prevent any unnecessary distortion to competition in the rail sector.
 - “Rail Freight Corridors: The Future of Rail Freight in Europe” declaration (the [‘Berlin Declaration’](#)) has been signed by Europe’s transport ministers, this sets out clear commitments to support and facilitate international rail freight and recognises its environmental advantage in light of the [European Green Deal](#).
 - The Federal Ministry of Transport and Digital Infrastructure ([Bundesministerium für Verkehr und digitale Infrastruktur](#) – BMVI) has presented its new strategy for a cross-border, high-speed “TransEuropExpress (TEE) 2.0” including a [new high speed TEE-network](#).
- ##### 3.1.2 Subsidy Regime
- The EU Commission is planning to put forward a proposal for a [European Partnership on Rail Research and Innovation](#), building on the success of the current Shift2Rail Joint Undertaking:
 - ↘ may prove to be a reliable funding source for pilot projects and projects with a high innovation content.
 - The [BMVI has announced](#) (14 August 2020) that work would start ‘immediately’ on a 167 train station refurbishment programme (in partnership with Deutsche Bahn) including a BMVI funding contribution of €40m.

→ Under the Connecting Europe Facility (CEF), the [EU's grant scheme supporting transport infrastructure](#), the following German rail related projects will receive funds:

- ↳ upgrade of around 73 kilometers of track along the link between German-Dutch border and western Ruhr region (€22.3m);
- ↳ constructions of sections along the Paris-Strasbourg-Stuttgart-Vienna-Bratislava railway axis (€64.5m); and
- ↳ construction and operation of a medium-scale multimodal LNG terminal in the seaport of Rostock (€19.3m).

3.1.3 Legal Regulatory Framework

The federal parliament (*Deutscher Bundestag*) is currently considering legislation that, if passed, will positively impact funds and administrative processes for rail and other infrastructure projects:

- the [government's budget proposal](#) foresees significant increases in spending for infrastructure; the proposal is now being discussed and will at the end of 2020 be voted on in the federal parliament (*Deutscher Bundestag*) and the Federal Council (*Bundesrat*); and
- the draft Investment Acceleration Act ([Investitionsbeschleunigungsgesetzes](#)) envisages: the acceleration of permitting, shortening of legal proceedings, the speeding up of planning law, and the cutting of red-tape generally
 - ↳ underpins other efforts to remove logjams and speed up the rollout of infrastructure projects.

3.1.4 Tender/ PPP Pipeline

→ Verkehrsgesellschaft Mecklenburg-Vorpommern GmbH:

- ↳ has [launched a tender process](#) for the operation of regional rail service on the subnetwork "Ostseeküste II" with approx. 1.8 million rail km/year for a duration of up to 13 years;
 - deadline for offers: 30 October 2020.
- ↳ intends to [shortly launch a tender process](#) for operation of regional rail service on the subnetwork "Warnow II" with approx. 3.4 million rail km/year for a duration of up to 15 years. The subnetwork covers in part a hybrid network that shall be operated with battery powered electric rolling stock, which is also to be procured;
 - tender expected to be published shortly.

→ Verkehrsverbund Berlin-Brandenburg has [launched a tender process](#) for the remaining two portions of the 331 route-km Berlin S-Bahn

network, covering the north-south and east-west Stadtbahn service groups.

- ↳ The tender covers the procurement and maintenance of new rolling stock (Lot A of the tender) and the operation of the north-south and east-west service groups (Lot B of the tender);
 - deadline for expression of interest: 8 December 2020.

→ Rhein-Main-Verkehrsverbund GmbH has launched tender processes for the operation:

- ↳ of [four regional rail lines](#) (RMV-lines RB37, RB40, RB41, RB49), covering up to 4.3 million rail km/year for the duration of up to 15 years;
 - deadline for offers: 10 December 2020.
- ↳ of the [regional RMV-rail lines](#) RE44 (Limburg-Gießen), RB45 (Limburg-Fulda) and RB52 (Fulda-Gersfeld), covering up to 3.16 million rail km/year for the duration of up to 15 years;
 - deadline for offers: 15 February 2021.
- ↳ of the [regional RMV-rail line](#) RB 10 (Frankfurt-Neuwied), covering up to 3.2 million rail km/year for the duration of up to 15 years;
 - deadline for offers: 15 March 2021.

→ The Ministry for Infrastructure and Agriculture of the federal state Thuringia has [announced](#) that it will tender the operation of a hydrogen powered regional passenger train on the KBS 562 Schwarzatalbahn (Rottenbach-Katzhütte) covering around 275,000 km/year for the duration of 9 years;

- ↳ deadline for the expression of interest: 9 November 2020.

3.1.5 Deal Watch

DB Regio AG has been [awarded the 12 year concession](#) for the Donau-Isar rolling stock scheme (October 2020).

3.2 Roads

3.2.1 Tender/ PPP Pipeline

The upcoming tenders for the [A1 Motorway](#) (six-lane expansion between AS Münster-Nord and AK Lotte/Osnabrück) and the [A61 Motorway](#) (six-lane expansion between the Rhineland-Palatinate/Baden-Württemberg state border and the Frankenthal motorway junction) have been delayed. According to sources familiar with the preparatory tender processes, the tenders are not expected to launch before 2021.

→ the A61 tender may be further delayed due to a [recently published tender](#) for (preparatory)

engineering planning services. The services are to be provided during the next approx. 20 months and it remains unclear whether the public authorities are prepared to launch the PPP tender prior to the conclusion of the tendered engineering services.

3.2.2 Deal Watch

Strabag and Meridiam consortium have reached [final close](#) of Germany's A49 motorway PPP (August 2020).

3.3 Telecommunications

3.3.1 Political Initiatives

The Federal Court of Auditors (*Bundesrechnungshof*) has criticised the [establishment of the Mobile Communications Infrastructure Company](#) (*Mobilfunkinfrastrukturgesellschaft* – MIG) as a subsidiary of the recently nationalised truck toll operator “Toll Collect”;

→ the [MIG was supposed to manage the allocation of the €5bn](#) earmarked to patch the remaining ‘white areas’ (gaps in the mobile network coverage where the existing network operators Deutsche Telekom, Vodafone and Telefónica do not expand themselves).

3.3.2 Subsidy Regime

The EU Commission has commenced a [consultation process](#) to evaluate State Aid rules for broadband infrastructure deployment to determine whether, in light of recent technological and market developments and the new EU digital policy goals, these need to be updated. A potential future modification to State Aid rules could lead to:

- increased funding for the subsidised broadband rollout sector; and/or
- alternative approaches to the current lengthy and bureaucratic methodology for allocating funds,

stakeholders are encouraged to participate in the consultation process.

3.3.3 Legal Regulatory Framework

→ The 21 December 2020 EU deadline for the implementation of the European Electronic Communications Code ([Directive \(EU\) 2018/1972](#)) (the Code) into German Law will not be met. National security concerns raised by the ministries of interior and defense have held up progress of the draft Telecommunications Modernisation Act ([Telekommunikationsmodernisierungsgesetz](#) – TKModG) (the Bill). Our review of the Bill confirms that the pro- motion of “wholesale only” business model envisaged by the Code is intended to be fully implemented:

- ↳ core obligations relating to non-discrimination regarding the provision of

access and proportionate price setting will continue to apply; *However:*

↳ the Federal Network Agency (*Bundesnetzagentur* – BNetzA) will, amongst others, no longer be in a position to require the:

- publishing of technical and accounting access information (transparency obligations);
- publishing of a standard access offer;
- use of standardised billing and payment collection; and
- use of segregated bookkeeping/accounts.

↳ These changes could underpin an accelerated broadband / 5G rollout. Depending on how market dynamics develop, vertically integrated network operators could come to view “wholesale only” providers positively and/or be induced to unbundle their businesses.

↳ The success of a “wholesale only” business model in Germany will depend on the opportunities available to navigate risks associated with:

- market size (no. of connections / density);
- insufficient end user / retail demand (price sensitivity where 500 MB/s products already available / tech driven demand?);
- potential delay by network operators of new Gigabit service offerings to protect their existing non-Gigabit networks; and
- relative total rollout costs (as opposed to a fully vertically integrated roll out).

↳ As is already the case for infrastructure focused investors, the availability of the right kind of municipality and/or network operator partnerships will be key for successful investing in the “wholesale only” market.

→ The draft IT Security Act 2.0 ([IT-Sicherheitsgesetz 2.0](#)) seeks to:

- ↳ introduce a two stage approvals process for telecoms equipment involving: (i) a technical check of individual components; and (ii) a political and security assessment of “trustworthiness”;
- ↳ extend list of critical infrastructure sectors (energy, water, information technology, food, health, finance, and transportation) (*KRITIS*) to also include waste management. Manufacturers of core components of KRITIS infrastructure will be required to submit a

‘declaration of trustworthiness’ covering their entire supply chain;

- ↳ introduce consumer protection as an additional responsibility of the Federal Office for Information Security (*Bundesamt für Sicherheit in der Informationstechnik – BSI*); and
- ↳ extend the BSI's powers to assess products and launch investigations

3.3.4 Deal Watch

Primevest Capital Partners’ telecoms focused infrastructure fund has acquired a FTTC network in Leichlingen from the municipality (August 2020) and will equity fund the rollout of a FTTH network replacing existing copper cables.

3.4 Renewable Energy

3.4.1 Legal Regulatory Framework/ Subsidy Regime

→ The Renewable Energy Act 2021 Reform Bill (*Erneuerbare Energien Gesetz – EEG Novelle*) was approved by the German Cabinet on 23 September 2020, major changes to the existing regime include:

- ↳ 65% energy from renewable sources by 2030 and carbon neutrality targeted for before 2050;
- ↳ total solar PV capacity to increase to 83 GW in 2026 and 100 GW in 2030 (from the current 52 GW)
 - solar PV tender to increase substantially from 1.9 GW and 2.0 GW to be tendered annually from 2021;
- ↳ total onshore wind capacity to increase to 65 GW in 2026 and 71 GW in 2030 (from the current 54 GW)
 - onshore wind tenders to increase substantially from between 2.9 GW and 5.8 GW to be tendered annually from 2021;
- ↳ allocation of new onshore sites incentivised – windfarm operators / developers permitted to allow local communities to participate in profits (up to 0.2 cents / kWh);
- ↳ development area caps (*Netzausbaugebiet*) in northern Germany to be eliminated;
- ↳ increased development in southern Germany to be encouraged through tenders including a ‘south quota’ of 15% between 2021 and 2023 and 20% from 2024 onwards;
- ↳ proximity rules to local communities have been lifted (*Abstandsregelungen*) allowing for the construction of windfarms even closer to residential communities.

→ The draft Wind Sea Act (*WindSeeG*) (envisages a second dynamic bid component for offshore wind tenders under which a payment offer is made in respect of the grid connection:

- ↳ the Federal Council (*Bundesrat*) has raised concerns preferring a CfD model – the result of the debate as to relative benefits between a second bid component and a CfD model could have implications for the relative attractiveness of German offshore wind for international investors.

* * *

The author, Angar Porthun, is an energy and infrastructure lawyer (Rechtsanwalt and Solicitor) at Hargrove Real Assets LLP treating M&A, project finance, and project development as an integrated discipline.



© 2020 Hargrove Real Assets LLP. All rights reserved.

Hargrove Real Assets LLP is a limited liability partnership registered in England and Wales with registered number OC359430. The term partner is used to refer to a member of Hargrove Real Assets LLP or an employee or consultant with equivalent standing and qualifications. A list of the members is open to inspection at its registered office, 37-41 Bedford Row, London WC1R 4JH, United Kingdom.

<https://hargrove.eu>