

PANORAMIC

RAIL TRANSPORT 2025

Contributing Editor

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LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into industry structure and regulatory bodies: market entry; market exit; competition law; price regulation; network access; service standards; safety regulation; financial support; labour regulation; environmental regulation; and recent trends.

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Global overview

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Railways have been a global phenomenon since their invention nearly two centuries ago. When the Liverpool and Manchester Railway, the world's first intercity rail service, premiered in 1830, construction had already started across the Atlantic on the United States' first railway, the Baltimore and Ohio Railroad. As detailed by railway historian Christian Wolmar in *Blood, Iron and Gold*, within a decade of the Liverpool and Manchester Railway's successful debut, railways were spreading across Europe to nations such as France, Belgium and Italy. By the 1840s, the new technology was being introduced in Asia and South America and was well on its way to revolutionising transport around the globe.

This rapid expansion is not surprising. While for centuries (and indeed millennia), waterways provided the only avenues for low-cost, high-volume transport, the advent of the railway opened up new opportunities for transporting people and goods across virtually any terrain. But as this unique new technology was adopted around the world, the burgeoning rail industries in different nations often took divergent paths. Geography, political circumstances and economic needs have led to significantly different approaches in the structure of the industry and the laws that govern it. Many of these distinctions endure to the present day.

Nearly two centuries after railways were established internationally, they remain a key part of the global transport network. The chapters in this volume illustrate the significant jurisdictional differences in the laws regulating the rail transport industry. But all jurisdictions face some of the same issues related to technology and economics, which permits some observations about the legal frameworks governing the industry and what the future may hold.

The first observation that the reader will note is that the basic structure of the rail industry and the regulations governing it varies significantly from jurisdiction to jurisdiction. Systems dominated by privately run, vertically integrated railways (such as in the United States and Canada) have significantly different rules for licensing and economic regulation than systems where infrastructure management and rail operations are conducted by different entities (as is typically the case in Europe). And both types of systems are themselves quite different from those where a single state entity has responsibility for conducting rail operations and managing infrastructure.

While one should be cautious about oversimplifying the diverse array of regulatory regimes in different jurisdictions, most rail legal systems fall into one of the following basic models: vertically integrated railways; separated infrastructure and operating railways; and centralised state operations. Each of these models has distinct approaches to licensing and to economic regulation, but there are significant commonalities in how most jurisdictions approach safety regulation.

Vertically integrated railways

The rail systems of Canada and the United States feature vertically integrated railways, in which the same entity owns the rail infrastructure and operates over that infrastructure. In general, US and Canadian railways are privately owned and focus on freight operations. (Passenger rail receives public support in both Canada and the United States, through VIA Rail in Canada and Amtrak in the United States.) Canada and the United States do not currently provide substantial government financial support to freight railways; instead, railways are expected to recover the funds necessary to fully fund their operations through the rates they charge to freight rail customers. This is no small matter: railways have intensive infrastructure needs, flowing from the need to construct and maintain track over every mile of the transport route. This distinguishes rail transport from other modes, such as motor carriers (which can take advantage of publicly available roads) and air and water transport (which can traverse the seas and the skies between ports and terminals). The high infrastructure costs inherent in rail transport thus require a revenue stream that both covers the incremental operating costs of running individual trains and provides sufficient additional funds to support that infrastructure.

Railways' need for adequate revenue to support both operations and infrastructure has often been at odds with political pressure for railways to charge lower rates or to maintain unprofitable routes deemed in the public interest. Both the United States and Canada have undergone significant changes to their legal regimes in an effort to strike the right balance. In the United States, the most significant reforms were made in the late 1970s and early 1980s in response to serious financial difficulties in the railway industry, including multiple bankruptcies. In a series of pieces of legislation culminating in the Staggers Rail Act of 1980, railways were given general freedom to price their services without government approval, the ability to more easily abandon unprofitable lines and the option to transfer unprofitable passenger service to the government-supported passenger provider Amtrak. Shippers retained the ability to challenge the quality of a railway's services or the level of rates in certain circumstances, but it was generally recognised that railways had the right to set rates at a level sufficient to support their infrastructure costs. The result of these successful reforms was the financial recovery of the US freight rail system, which continues to flourish today. The US regulatory landscape continues to be contested territory, with some freight shipper interests arguing for more aggressive regulation of freight service and rates and some passenger interests arguing that freight railroads should be more accommodating of Amtrak and commuter service. Rail safety regulation is a particular area of focus in the United States, in the wake of the February 2023 derailment of a freight train in East Palestine, Ohio that resulted in the release of certain hazardous materials. Multiple pieces of legislation and regulatory actions are being considered by the US Congress, federal regulatory agencies and state governments, some of which could have significant effects on US rail regulation if they were adopted.

Canada's regulatory system has also undergone significant changes in recent decades, reflected in legislation such as the National Transportation Act of 1987 and the Canada Transportation Act of 1996 and in the 1995 privatisation of the Canadian National Railway. While Canadian and US practitioners can identify myriad differences in the details of the two regulatory systems, from a wider perspective there are many parallels: each system features large privately owned freight railways that each control their own infrastructure (supplemented by a number of short-line carriers); each country generally gives railways the freedom to price their services as they deem appropriate, but provides a mechanism for shippers to challenge rates that they believe to be unreasonable in certain circumstances

(through final offer arbitration in Canada and Surface Transportation Board rate complaints in the United States); each system provides mechanisms for shippers to challenge the quality of service they receive; and each country has separate state-supported national passenger railways. In both nations, freight railways are expected to operate largely without public support and are permitted to charge rates allowing them to recover the costs of infrastructure. Indeed, both major Canadian railways, Canadian National Railway and Canadian Pacific Kansas City, have extensive operations in the United States and operate successfully in both countries.

Separated infrastructure and operating companies

A second type of rail regulatory regime (the 'separated model') is more common in Europe. In this model, an entity is charged with maintaining infrastructure and providing access to that infrastructure to rail operators. Operators are given licences to operate over the tracks maintained by the central infrastructure entity. In some jurisdictions, the infrastructure entity is entirely separate from operating entities. Examples of this arrangement include Network Rail in the United Kingdom and ProRail in the Netherlands. Other jurisdictions have hybrid models, where the infrastructure entity is part of a holding company that also controls operating entities. For example, in Germany, separate subsidiaries of Deutsche Bahn AG manage infrastructure and operations. Distinctions also arise among jurisdictions that have different mixes of operating entities. In some countries, the market continues to be dominated by a single operating entity (often the historic state-owned incumbent), while in others, market shares are more evenly distributed among several operating competitors.

To some degree, these separated models have been implemented to comply with European Union (EU) rail laws. A series of EU railway packages has been enacted over the past two decades to support the ultimate goal of a single European railway area. In the interest of creating a level marketplace for operators to compete across borders, successive EU railway packages have required members to separate infrastructure and operating entities, to permit open access to rail operators and to eliminate state aid that could distort rail competition. Some level of government support of the rail industry remains common, particularly support of the infrastructure entity.

As discussed above, in vertically integrated systems the focus of economic regulation is on the rates charged by integrated railways to rail customers. In separated regimes, by contrast, the primary focus has been on the terms of network access and the charges payable by passenger and freight operators to infrastructure managers for network access. There is relatively little direct regulation limiting the rates charged by rail operators to freight shippers, although some jurisdictions limit fare increases for passengers.

Nationalised control

The third model, which has been tried historically in many jurisdictions and persists in some today, is nationalised control of rail infrastructure and some or all rail operations. The general trend has been towards privatisation of nationalised railways, although different countries are at different stages of that process. Japan, for example, has privatised all but three of its railway companies and it has plans to privatise the remaining companies in the future.. Mexico is a good example of a country that has made substantial progress towards privatising its system; however, the government continues to maintain control over

rail infrastructure and private rail entities conduct their operations pursuant to concessions that will eventually expire unless renewed by the government.

Future trends

As the twenty-first century unfolds, the railway industry will face new challenges and opportunities and the legal frameworks governing the industry will have to adjust to meet these new realities. One critical issue in the coming years will be how best to structure regulation to allow for smoother cross-border operations. Eliminating technical and legal obstacles to operating trains across national borders is essential to maximise the efficiencies of rail transport. One of the key successes of the US system was the centralisation of rail regulation in the national government so that railways could comply with national standards for rail equipment and safety rules rather than facing different regimes from state to state. Agreeing on equipment and safety standards across national borders is certainly more challenging than it was for the United States to do so internally, but efforts to streamline international rail transport are critical to enhancing its usefulness and sustainability. In particular, the EU's progress in developing unified interoperability standards is a key trend to watch.

Another trend to watch is the extent to which rail systems on both sides of the Atlantic may be seeking lessons from the other. In the United States, many are pushing for the freight-centred United States rail network to become more of a passenger-based network, citing the European passenger rail network as an inspiration. Amtrak has announced plans for a significant expansion of its passenger routes through the Amtrak Connects US programme and the US government has made available significant new infrastructure funding to support passenger rail. Privately funded passenger rail projects in the United States are also progressing, such as the Brightline service, which began operating between Orlando and Miami, Florida in 2024 and has begun construction on a route between Las Vegas, Nevada and the Los Angeles, California metropolitan area. Conversely, in Europe, the EU and several European nations have announced a focus on increasing freight rail's modal share of transportation and diverting truck traffic to rail, which would serve the twin goals of reducing CO2 emissions and mitigating traffic congestion.

Despite significant jurisdictional differences, international understanding and cooperation are key for the rail transport industry: from the physical movement of freight or passengers across country lines, to the marketing of rail technology equipment and the capital funding for cross-border investments. As the bicentennial of the Liverpool and Manchester Railway's intercity rail service approaches, rail transport remains both a critical part of the global supply chain network for freight and a continued vital avenue for the transport of people in our increasingly interconnected world.



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GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

As a European Union member state, Belgium has implemented the EU legislative package liberalising the rail market sector, establishing a single European rail area through [Directive 2012/34/EU](#) and the other EU directives and regulations. In this regard, one of the key legislative acts transposing EU legislation is the [Law of 30 August 2013 on the Railway Code](#) (the Railway Code). In accordance with the EU rules, the rail transport market has been fully liberalised for domestic and international freight transport by rail, as well as for the international transport of passengers by rail. Although the market for the domestic transport of passengers has been liberalised in Belgium, it continues to operate pursuant to a single operating model in which the public service is provided exclusively by the National Railway Company of Belgium (SNCB). The market for freight has seen new market entrants over the years and currently has 12 operators in this segment.

Two rail undertakings operate in the international passenger transport segment, following the merger between Thalys and Eurostar. Nevertheless, the market continues to be dominated by the SNCB, which provides 86 per cent of all train kilometres circulated on the entire Belgian rail infrastructure (including passenger and freight).

The role of infrastructure manager is provided by Infrabel, which is a separate legal entity from the SNCB. Both Infrabel and the SNCB are established as public autonomous companies; however, they remain controlled by the Belgian state. In addition, despite being separate entities, some aspects of vertical integration are stipulated by law. For instance, both companies must conclude a transport convention with each other, establishing the conditions and means of operational collaboration for the discharge of their public service obligations on, among others, the punctuality and circulation of trains, the reception and information of passengers, the management of incidents (including emergency interventions) and the coordination of the implementation of investments by Infrabel and the SNCB.

Law stated - 4 July 2024

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

The state directly owns several important rail stakeholders, including the SNCB, which continues to be the main market actor in the Belgian rail sector, enjoying a legal monopoly to provide domestic transport at least until 2032. In addition, the state also owns Infrabel and controls HR Rail, which handles recruitment of Infrabel's and SNCB's employees.

Law stated - 4 July 2024

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3 | Are freight and passenger operations typically controlled by separate companies?

Freight and passenger operations are typically controlled by separate companies. There are currently two international passenger rail undertakings and 12 freight operators, with no overlap between the two types of operators.

The SNCB used to provide freight services through its sister company SNCB Logistics, though it has disinvested the business following a large-scale restructuring effort. In 2015, SNCB's freight division was sold to a private company and in 2017 was rebranded as Lineas, with the SNCB only operating in the passenger transport market.

Law stated - 4 July 2024

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

Rail transport is mainly regulated by:

- the European Commission;
- the Council of the EU;
- the European Parliament;
- the European Union Agency for Railways (ERA);
- the Belgian parliament; and
- the Federal Public Service Mobility and Transport (FPSMT) Directorate General Sustainable Mobility and Rail Policy.

The European Union has adopted a series of legislative packages that have gradually liberalised the internal rail market with the aim of creating a single European railway area. This process was completed with the fourth EU railway package of 2016.

Following the entry into force of [Regulation \(EU\) 2016/796](#) on the European Union Agency for Railways (part of the technical pillar of the fourth EU railway package) on 15 June 2016, the ERA replaced and succeeded the European Railway Agency. The ERA is mandated to issue single safety certificates and vehicle (type) authorisations valid in multiple European countries and to ensure an interoperable European Rail Traffic Management System (ERTMS), in the development and implementation of the Single European Railway Area. Its tasks are to:

- promote a harmonised approach to railway safety;
- devise the technical and legal framework in order to enable removing technical barriers and acting as the system authority for ERTMS and telematics applications;
- improve accessibility and use of railway system information; and
- act as the European Authority under the fourth Railway Package issuing the aforementioned authorisations and certificates, while improving the competitive position of the railway sector.

The Belgian parliament has adopted numerous laws governing the rail sector, notably the Law of 30 August 2013 on the Railway Code, as implemented by royal and ministerial decrees.

The FPSMT is a public administrative body whose main objective is preparing and implementing Belgium's transport policy. The sector regulator is the Regulatory Service for Railway Transport and for Brussels Airport Operations (the Regulator), which has the following objectives:

- undertake sector investigations;
- monitor compliance of Infrabel's network statement with the legislation;
- levy user charges and competition on the market for railway transport services; and
- determine the genuinely international character of international passenger transport.

The National Safety Agency is the Department for Railway Safety and Interoperability.

Law stated - 4 July 2024

MARKET ENTRY

Regulatory approval

- 5 | Is regulatory approval necessary to enter the market as a rail transport provider?
What is the procedure for obtaining approval?

Yes. For a rail undertaking to provide transport services in the already-liberalised market segments, it must hold several types of authorisations.

- Rail operator licence: a Belgian licence may be used or any licence issued by an EU member state's competent authority. Any company established in Belgium may request a licence from the Federal Public Service Mobility and Transport. The procedure for issuance of the licence is laid down by Chapter II, Title 3 of the Law of 30 August 2013 (the Railway Code) and articles 3 and 4 of the Royal Decree dated 16 January 2007 on the railway undertaking licence.
- Safety certificate: to have access to the infrastructure, the railway undertaking must be in possession of a safety certificate. From 1 November 2020, the single safety certificate regime as set out in [Directive 2016/798](#) and transposed into Belgian law, and in Commission Implementing [Regulation \(EU\) 2018/763](#), applies. Access to the EU railway infrastructure is granted only to companies holding a single safety certificate issued either by the European Union Agency for Railways (ERA) or by the Department for Railway Safety and Interoperability. The purpose of the certificate is to provide evidence that the company concerned has established its safety management system and that it is able to operate safely in its intended area of operation.
- Cover of liabilities: applicants for a railway undertaking licence are required to have civil liability cover (article 13 of the Railway Code). Royal Decree of 8 December

2013 concerning the setting of the minimum amount for the cover of civil liability for travel on the railway infrastructure stipulates that the minimum amount is set at €50 million. An amount is also set at €70 million for the provision of rail transport services for passengers.

In relation to domestic passenger transport services, a rail undertaking's right of access to railway infrastructure and to pick up and set down passengers may be limited if an exclusive public contract has been awarded, when the regulatory body must carry out in certain cases an analysis of the impact on the economic equilibrium in accordance with the following four-step procedure:

- notification of the intention to start a new rail service for passengers;
- request for an economic equilibrium test;
- assessment of the economic equilibrium; and
- decision.

In addition, the rail operator will have to conclude a utilisation contract with Infrabel covering, among other things, the means of implementation of safety rules. Finally, the admission of rolling stock on the tracks is subject to a vehicle authorisation, confirming the conformity of said rolling stock with the applicable legislation, and is issued by the ERA or the Department for Railway Safety and Interoperability in accordance with the Royal Decree of 6 December 2020 adopting the requirements applicable to rolling stock for the use of train paths.

Law stated - 4 July 2024

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

If the acquisition of an existing rail transport provider amounts to a concentration then prior merger clearance might be required from the Belgian Competition Authority or the European Commission if merger thresholds are met.

There are no additional sector-specific rules relating to the acquisition of control of a rail transport provider. However, in effect, a new rail operator licence is required as the licence is non-transferable.

Law stated - 4 July 2024

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

No special approval is required for acquiring control over a rail freight transport undertaking or over an undertaking providing international rail carriage of passengers. However, as national rail carriage of passengers is attributed exclusively to the National Railway Company of Belgium, a state-owned company, it is legally impossible to acquire control over it.

Law stated - 4 July 2024

- 8** | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

Infrabel builds and develops the Belgian rail network. Private companies can also build private tracks and then ask for their connection to the rail network. In all cases, an urbanism permit is required before any works may commence. The issuance of an urbanism permit is governed by legislation in the regions (Flemish, Walloon and Brussels-Capital) and the procedure usually involves a public investigation.

Law stated - 4 July 2024

MARKET EXIT

Discontinuing a service

- 9** | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

Infrabel's yearly network statement reminds a rail operator that it must respect the traffic schedule that has been communicated by Infrabel. Should the rail undertaking use, on average, less than 80 per cent of the scheduled weekly planned trips during the preceding weekly timetable, this constitutes an automatic termination cause of the utilisation contract concluded by the rail undertaking with Infrabel.

A rail undertaking may nonetheless choose to relinquish the utilisation of part or all of its allocated capacities.

Finally, a rail undertaking cannot remove rail infrastructure since the utilisation contract states that a rail operator is prohibited from unilaterally modifying, damaging or using the rail infrastructure for purposes other than those for which it was conceived, prepared or provided.

Law stated - 4 July 2024

- 10** | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

The standard utilisation contract concluded between Infrabel and the rail operator provides that Infrabel may discontinue service in the following circumstances.

- If the rolling stock has not obtained a vehicle authorisation or where the rolling stock does not correspond to that described in the aforementioned authorisation. If the rail operator does not remove the rolling stock of its own accord, this may be done

by Infrabel, or tasked to another rail operator by Infrabel. All costs associated with removal of rolling stock from the tracks lie solely with the infringing rail operator; and

- If it considers that the operator's safety personnel do not comply with the applicable safety norms and rules. If this is the case, the rail operator must remove such personnel and, if necessary, remove the rolling stock as well. If this cannot be achieved, Infrabel may request the personnel of another rail operator to evacuate the tracks. All associated costs remain with the rail operator, including infrastructure fees, regardless of actual usage of the infrastructure.

Law stated - 4 July 2024

Insolvency

- 11** | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

There are no sector-specific insolvency rules. Instead, the general rules of Book XX on insolvency of undertakings of the Law of 28 February 2013 on the [Code of Economic Law](#), which entered into force on 1 May 2018, apply. In the case of judicial reorganisation, in principle, the debtor may continue to operate its business during the moratorium period until the end of the insolvency process. Exceptionally, if the debtor's actions amount to a serious mismanagement and threaten the continuation of the business, the court will appoint an administrator to continue business operations on behalf of the debtor. As such, all ongoing contracts will continue to be performed. However, within 14 days of the commencement of proceedings, the debtor may decide to cease to perform its contractual operations if necessary for the successful reorganisation of the business.

Infrabel's standard contract on usage of the rail infrastructure, which must be concluded by any rail undertaking, states that a contract may be automatically terminated in the case of bankruptcy or judicial reorganisation of the rail undertaking. Moreover, should the reorganisation of the operator fail and the proceedings conclude with a court judgment declaring bankruptcy, this will result in the automatic revocation of the rail operator licence.

Law stated - 4 July 2024

COMPETITION LAW

Competition rules

- 12** | Do general and sector-specific competition rules apply to rail transport?

There are no sector-specific competition rules governing the rail sector. General Belgian competition law mirrors EU competition legislation and is contained in Book IV of insolvency of undertakings of the Code of Economic Law (CEL), introduced by the Competition Act of 2013 and amended in 2019, the Royal Decrees of 30 August 2013 on the procedures for the protection of competition and on the notification of concentration of undertakings

referred to in article IV.10 respectively. The CEL covers typical competition areas, such as mergers, cartels (article IV.1, section 1, the national equivalent to article 101 Treaty on the Functioning of the European Union (TFEU)), abuse of dominance (article IV.2, the national equivalent to article 102 TFEU) and abuse of economic dependence (article IV.2/1). The Belgian competition authority has now adopted a new simplified merger notification.

Law stated - 4 July 2024

Regulator competition responsibilities

- 13** | Does the sector-specific regulator have any responsibility for enforcing competition law?

The Regulator is entrusted with the supervision of competition on the market for provision of rail services, though this is limited to issuing non-binding opinions. The enforcement of competition rules remains with the Belgian Competition Authority (BCA).

Law stated - 4 July 2024

Competition assessments

- 14** | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

The substantive test for transactions covered by the CEL is similar to the test used under the [EU Merger Regulation](#). The BCA will clear a transaction provided it does not 'significantly impede effective competition in the Belgian market or in a substantial part of it' – the significant impediment to effective competition test. The BCA will assess the actual or potential overlap between the parties (horizontal effects), as well as vertical links and conglomerate effects of the concentration to assess the risk of market foreclosure. Various factors will be taken into account, such as the market shares of the parties and their competitors, the effectiveness of actual or potential competition, actual or potential barriers to entry or expansion, the bargaining power of customers and suppliers, market structure, the maturity of the market, the economic and technical level of the market and alternative sources of supply. The BCA will clear concentrations if the parties' market share on the relevant market is less than 25 per cent.

Law stated - 4 July 2024

PRICE REGULATION

Types of regulation

- 15** | Are the prices charged by rail carriers for freight transport regulated? How?

The Law of 30 August 2013 (the Railway Code) establishes that prices charged by rail undertakings whether they are privately owned or state owned are undertaken in accordance with commercial practices. In particular, article 9 of the Railway Code provides that rail undertakings are free to control the provision and commercialisation of their services, including pricing.

The Railway Code makes no distinction between passenger transport and freight transport.

Law stated - 4 July 2024

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

In terms of passenger transport, a distinction must be made between privately and state-owned rail undertakings. For private companies, the provisions of article 9 of the Railway Code remain applicable, which means that they are free to set the prices for their services.

On the other hand, state-owned companies such as the National Railway Company of Belgium (SNCB) are subject to price control in accordance with the [Law of 21 March 1991](#) reforming certain economic public companies. Thus, public autonomous companies, such as the SNCB, will establish tariffs and tariff structures when discharging their public service obligations within the limits of the specific management contract concluded by the public company and the state. For pricing elements not provided for by the contract, such as the maximum tariff or the price calculation formula, these elements will require prior approval by the ministry to which the public autonomous company is subordinated. However, for the provision of services other than public service obligations, the SNCB is free to determine such tariffs and tariff structures.

Law stated - 4 July 2024

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

Before the adoption of new transport fares by the SNCB, the Advisory Committee for Railway Travellers (the Committee) must issue an advisory opinion on the fares. The Committee was created by the Law of 21 March 1991 and is an independent advisory body whose main objective is to deliver opinions on the services granted to travellers by rail undertakings that are charged with public service obligations (such as the SNCB and Infrabel). In exercising its objective, the Committee is entitled, in accordance with article 35 of the SNCB's management contract, to request information from the latter to express its opinion on price increases. However, the Committee's ex-ante opinion is non-binding.

Law stated - 4 July 2024

18 | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

Sector-specific rules do not address this topic, though generally charging different prices for similar services can be seen as a form of price discrimination, which conflicts with EU and national legislation on consumer protection, competition law and possibly constitutional law. The following national legislation governs equal treatment: the [Law of 10 May 2007 promoting equal treatment between women and men](#) and the [Anti-Discrimination Law of 10 May 2007](#), among others.

Law stated - 4 July 2024

NETWORK ACCESS

Sharing access with other companies

- 19 | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Infrabel must grant access to the Belgian rail network in a fair, transparent and non-discriminatory manner to any railway undertaking established in an EU member state for the provision of transport of freight or international carriage of passengers, provided they fulfil the legal requirements to do so.

Law stated - 4 July 2024

Access pricing

- 20 | Are the prices for granting of network access regulated? How?

The prices for granting network access are regulated at EU level through the Commission Implementing [Regulation \(EU\) 2015/909](#) of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service. In addition, national legislation governs network access pricing such as: the Royal Decree of 19 July 2019 on the allocation of the capacity of the railway infrastructure and the railway infrastructure utilisation fee, the Ministry Decree of 9 December 2004 as amended adjusting the calculation rules, the value of the coefficients and the unit prices involved in the calculation of the railway infrastructure charge, the Royal Decree of 16 January 2007 on the rail undertaking licence, and the Royal Decree of 16 January 2007 on the annual fee for holding a railway undertaking licence as amended. These are reflected in Infrabel's network statement, which has a breakdown of how charges are calculated and for which services.

Law stated - 4 July 2024

Competitor access

- 21 | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

There is no declared policy in this respect.

Law stated - 4 July 2024

SERVICE STANDARDS

Service delivery

- 22** | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

While rail transport undertakings must serve all customers who request service in a fair and non-discriminatory manner, certain exceptions exist. For instance, a rail undertaking may refuse service to, or escort off the train, passengers who are a danger to the safety of other passengers or to the rail undertaking's personnel. This can be as a result of various factors, such as the passenger's violent conduct, the existence of prohibited dangerous goods in their luggage, such as drugs or weapons, the consumption of drugs or other antisocial behaviour.

Law stated - 4 July 2024

- 23** | Are there legal or regulatory service standards that rail transport companies are required to meet?

Yes. A rail undertaking must use at least 80 per cent of the network capacity allocated to it during a given weekly time schedule. Otherwise, this can lead to termination of its utilisation contract with Infrabel and loss of network access.

Law stated - 4 July 2024

Challenging service

- 24** | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

[Regulation \(EU\) 2021/782](#) of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations stipulates certain rules in favour of rail passengers. This Regulation has applied in full in Belgium since 7 June 2023. To comply with its EU obligations, Belgium has also implemented national legislation on complaint handling, enforcement and sanctions through the Anti-Discrimination law of 10 May 2007 as amended and the [Law of 15 May 2014 on the rights and obligations of rail passengers](#). These set out the general framework relating to administrative sanctions, the rights of the defendants and the right to undertake inspections. Belgium designated the Federal Public Service Mobility and Transport as the National Enforcement Body (NEB). Passengers can submit a complaint to the NEB if they feel that their rights have not been respected.

Law stated - 4 July 2024

SAFETY REGULATION

Types of regulation

25 | How is rail safety regulated?

The general safety rules are those set out by Directive (EU) 2016/798 on safety on the Community's railways, which was implemented in Belgium through the Law of 30 August 2013 (the Railway Code). The national safety regulatory framework includes:

- the national safety rules relating to the principles applicable to the safe operation of railway infrastructure, relating to the requirements applicable to safety staff and staff of entities in charge of maintenance, relating to the requirements applicable to rolling stock and relating to the requirements applicable to railway infrastructure;
- the technical specifications for the use of the network and the operational procedures relating to the safe operation of the railway infrastructure;
- the organisational provisions relating to the safe operation of the railway infrastructure;
- the rules relating to the investigation of accidents and incidents;
- the requirements relating to the circulation of heritage vehicles;
- internal safety rules; and
- rules relating to the transport of dangerous goods by rail.

The government determines:

- the following national security rules:
 - the principles applicable to the safe operation of the railway infrastructure;
 - the requirements applicable to safety staff and staff of entities in charge of maintenance;
 - the requirements applicable to rolling stock; and
 - requirements applicable to railway infrastructure;
- rules for the investigation of accidents and incidents; and
- requirements relating to the circulation of heritage vehicles on the network.

In the absence of interoperability technical specifications (TSIs) or as a complement to the TSIs, the infrastructure manager should identify and adopt the technical specifications for the use of the network and the operational procedures relating to the operational safety of its railway infrastructure, with regard to the operational interface between itself and the railway undertakings or tourist associations. Railway undertakings and tourist associations shall comply with these specifications and procedures in their relations with the infrastructure manager and should integrate these specifications and procedures into their internal safety rules and apply them to the staff concerned. These specifications and

procedures, and their modifications, should be submitted for the assent of Belgium's safety authority, in accordance with a procedure determined in law.

Safety measures are also implemented through public service contracts entered into by the National Railway Company of Belgium (SNCB) and Infrabel, which also include safety-related investments. In the context of those contracts, SNCB and Infrabel are developing a master plan for the improvement of safety on the railway network in Belgium. This plan foresees the quick installation of the TBL1+ system. Infrabel has also worked on a programme to implement the European Train Control System (ETCS) and aims to equip all lines of the entire network with some type of ETCS by 2022. From 2025 onwards, the ETCS should be the only protection system in operation.

According to the Department for Railway Safety and Interoperability's (DRSI) annual report, as of 2015, railway undertakings have been subject to inspections and monitoring on-site by the DRSI. In addition, 2016 saw the introduction of the auditing system aimed at determining the maturity level of the various elements constituting the safety management system.

Law stated - 4 July 2024

Competent body

26 | What body has responsibility for regulating rail safety?

The role of the National Safety Agency pursuant to article 3 of Directive (EU) 2016/798 is entrusted to the DRSI. The authority was established following the transposition of the second EU rail legislative package into Belgian law. The DRSI is independent from any rail undertaking or from the infrastructure manager. Its independence is safeguarded by its organisation, legal structure and the manner by which it takes decisions and the fact that it is under the direct authority of the minister responsible for the Middle Class, Self-employed, Small- and Medium-Sized Enterprises, Agriculture and Social Integration.

Law stated - 4 July 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

[Directive \(EU\) 2016/797](#) of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union lays forth that each part and subpart of the European rail system must comply with certain TSIs. These TSIs must also be taken into account by manufacturers to establish the European Union declaration of conformity or suitability for use of an interoperability constituent.

Law stated - 4 July 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

The maintenance of the rail infrastructure is entrusted to the infrastructure manager pursuant to article 199(1) of the Law of 21 March 1991 reforming certain economic public companies. In practice, Infrabel maintains several infrastructure logistics centres throughout Belgium, which serve as a basis for carrying out maintenance work on rail infrastructure.

Law stated - 4 July 2024

29 | What specific rules regulate the maintenance of rail equipment?

Commission [Regulation \(EU\) 2019/779](#) of 16 May 2019 laying down detailed provisions on a system of certification of entities in charge of maintenance (ECMs) of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No. 445/2011 establishes a system of certification of entities in charge of maintenance for freight wagons. In Belgium, the certification of ECMs is entrusted to accredited bodies (by Belac) for product certification (according to the standard EN ISO/CEI 17065). To date, Belgorail is the only Belgian body authorised to certify ECMs and has certified four rail undertakings.

Furthermore, the SNCB is the owner and provider of rolling stock maintenance throughout the maintenance workshops network under its property. The SNCB will grant access to its maintenance services to other rail undertakings in accordance with article 9 of the Railway Code, transposing the requirements of Directive 2012/34/EU. The pricing principles and the amount owed for these services are established in accordance with articles 49 and 51 of the Railway Code.

Law stated - 4 July 2024

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

The organisation competent within this area is the Investigation Body for Railway Accidents and Incidents (IB) within the Federal Public Service Mobility and Transport. The IB investigates serious operational accidents, particularly train collisions and derailments, that result in:

- the death of at least one person;
- serious injury to five or more persons; or
- extensive damage to the rolling stock, the infrastructure or the environment (ie, more than €2 million), occurring on the Belgian rail network.

It may also investigate accidents and incidents with consequences for railway safety. The safety investigations carried out aim to determine the circumstances and causes of the event and are not intended to apportion blame.

The investigation procedure is initiated with a notification to the IB of the accident. The IB then communicates the opening of the investigation to the European Union Agency for Railways (ERA), the DRSI, the railway undertaking and the infrastructure manager concerned. The first stage of the investigation commences with factual data collection by investigators on the site of the accident or incident. All the information, proof and declarations available are assessed to evaluate the most probable cause of the accident. The IB will prepare a preliminary report, which is sent to the parties to the accident to allow them to make comments. At the conclusion of the investigation, the IB will make recommendations. After one year, the parties to whom the recommendations were addressed must follow up on the actions undertaken in this regard.

The IB may request assistance from its counterparts in other member states or ERA in certain circumstances (ie, by providing their expertise or by carrying out inspections, analyses or technical assessments).

Law stated - 4 July 2024

Accident liability

- 31** | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

Regulation (EU) 2021/782 on rail passengers' rights and obligations establishes special rules for the liability of railway undertakings for passengers in article 13 and Title IV, Title VI and Title VII of Annex I. The payment of damages in the case of death is provided for in articles 27 and 28 of Annex I of Regulation 2021/782. In other cases of bodily harm, national law shall determine whether and to what extent the rail undertaking must pay damages in accordance with article 29 of Regulation 2021/782.

Law stated - 4 July 2024

FINANCIAL SUPPORT

Government support

- 32** | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

The National Railway Company of Belgium (SNCB) receives an endowment from the federal government for the realisation of investments and for the operation of the service. Furthermore, the SNCB also receives state subsidies for the implementation of anti-terrorist safety measures. In total, the rail sector receives the majority of state aid in Belgium, which amounts to roughly €3 billion per year.

Law stated - 4 July 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

EU state aid rules that prohibit the granting of unlawful aid in accordance with article 107 of the Treaty on the Functioning of the European Union (TFEU) are applicable to the rail sector. In addition, the European Commission adopted interpretative guidelines on state aid for railway undertakings in 2008, which explain the EU rules on state aid for the public funding of railway undertakings and provide guidance on the compatibility of state aid for railway companies with the EU treaties. As there is no body in Belgium that can hear claims contesting the grant of state aid, competitors and interested parties that feel that the obligation to notify state aid pursuant to article 108(3) TFEU has been encroached may only seize the national courts.

In addition, there is the following financial scheme open to rail undertakings that allow them to benefit from state funding in relation to rail freight transport: in order to contribute to the modal shift in favour of rail, in line with the Belgian federal government's objective of doubling the share of volume transported by rail by 2030, a mechanism for reducing the fee for the use of the Belgian rail infrastructure has been set up for freight transport. A budget of €13.245 million per year has been earmarked for this aid mechanism for the period from 1 January 2022 to 31 December 2025.

In addition, three projects by Infrabel and one project by the SNCB have been selected by the European Commission (following calls for tenders) to receive EU funds under the Connecting Europe Facility totalling €85 million. These projects contribute to the development and improvement of the trans-European transport network.

Law stated - 4 July 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

Infrabel, the National Railway Company of Belgium (SNCB) and HR Rail (the state-owned companies) have two distinct labour regimes for their employees. One labour regime is covered by the [Law of 23 July 1926 concerning the SNCB and the staff of the Belgian railways](#) and the [Royal Decree of 11 December 2013 concerning the staff of the Belgian railways](#). Employees under this regime have a special status akin to that of civil servants. In effect, they cannot be laid off for economic reasons, but only for disciplinary reasons. Furthermore,

these employees also get additional benefits. About 85 per cent of SNCB's workforce is covered by this regime.

The other labour regime is covered by the [Employment Contracts Act](#) (of 3 July 1978, as amended). Employees under this regime work on the basis of an employment contract (temporary or permanent) similar to the private sector.

Other rules govern access to certain rail professions. For instance, becoming a train conductor requires a European or national licence issued by the Department for Railway Safety and Interoperability and the applicant must undergo medical and psychological examinations.

Law stated - 4 July 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

Following the Belgian state reform of the 1980s, the Flemish, Walloon and Brussels-Capital regions are competent to regulate on most environmental matters. However, the federal government maintains limited environmental competence, such as in the area of product standards, protection against radiation or asbestos and permits for offshore activities. Belgian environmental legislation is based on EU treaties and their corresponding regulations and directives, and is regulated nationally by each region's environmental regulatory authority.

Special rules in the case of damage or imminent threat of damage to the environment apply as stipulated by the [Royal Decree of 8 November 2007 on the prevention and reparation of environmental damage caused by transport by road, rail, waterway or air](#).

Law stated - 4 July 2024

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

On 11 January 2019, Belgium adopted a law modifying the Railway Code to transpose [Directive 2016/2370/EU](#) – the Market Pillar Directive. This law allows other providers, not just the National Railway Company of Belgium (SNCB), to access the domestic rail transport market and allows for the possibility to bid for public contracts on access to routes already served by rail undertakings. Furthermore, it strengthens the independence of the infrastructure manager. The expected date for the liberalisation of the domestic market was 2023. However, Belgium has awarded a 10-year public service obligation contract to SNCB

without a call for tenders for the period 2023–2032, renewing the previous direct award of 2008.

On 25 May 2023, the Belgian Parliament adopted a law to support night trains with departures from, or arrivals in, Belgium. The law provides that Infrabel will pay the railway infrastructure fee and the traction energy costs for operators of such night trains. In return for this financial support to night train operators, Infrabel receives financial compensation from the federal state.

On 24 August 2023, the Regulator received a notification from Leo Express for a new transport passenger service for the Oostende/Bratislava and Bratislava/Oostende routes. This notification relates to access to the Belgian railway network and is part of the information obligation provided for in both Belgian and EU regulations. Prior to the publication of the guidelines, on 4 July 2022, another notification was received by the Regulator from the European Sleeper Cooperative for a new transport passenger service for the Amsterdam/Barcelona and Barcelona/Amsterdam routes. The European Sleeper cooperative is running a new transport passenger service for the Brussels/Berlin route and is planning to introduce the Brussels/Barcelona route in 2025 or 2026.

The new EU Regulation for rail passenger rights, which replaces the current Regulation 1371/2007, has applied since 7 June 2023. It strengthens passengers' protection in the case of disruptions, includes a strengthened complaint-handling mechanism and reinforces the obligation for the national enforcement bodies to cooperate. Under this new Regulation, passengers with reduced mobility have more flexibility when making travel arrangements, as they are only obliged to notify the operator of their travel plans 24 hours in advance instead of the 48-hour notice period under Regulation 1371/2007, and any required accompanying person travels free of charge. Passengers with reduced mobility using an assistance dog are also given assurances that the animal can travel with them.

Law stated - 4 July 2024



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UPDATE AND TRENDS

Key developments of the past year

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

Canadian National Railway (CN) and Canadian Pacific Kansas City Railway (CPKC), both of which operate across Canada, dominate the freight rail industry in Canada. They control the most important segments of rail trackage in Canada and move the vast majority of Canadian rail freight. Many shortline freight railways also operate in Canada, often to connect branch lines to the networks of CN and CPKC. Railway companies typically, but not always, own the track over which they operate.

VIA Rail is a publicly owned national rail carrier that provides passenger rail service, as do various regional commuter railways in major metropolitan areas. In some areas of the country, shortline railways provide rail tours.

Some American rail service providers such as BNSF Railway and CSX Transportation operate to a limited extent in Canada.

In general, federal jurisdiction extends to all railways that cross provincial or international boundaries, while railways that operate wholly within a province are subject to provincial jurisdiction. As CN and CPKC handle the majority of rail traffic in Canada, this section will primarily focus on federal statutes, regulations and rules.

Law stated - 4 July 2024

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

National passenger carrier VIA Rail is a Crown corporation wholly owned by the federal government. Regional commuter railways in the Montreal, Toronto and Vancouver areas are also owned by their respective provincial governments. Most passenger operations occur over track owned by Canada's two major freight railways.

The Canadian federal government is not directly involved in providing freight rail service.

Law stated - 4 July 2024

3 | Are freight and passenger operations typically controlled by separate companies?

Freight and passenger operations are typically controlled by separate companies, with a few limited exceptions serving remote areas.

Law stated - 4 July 2024

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

The Canadian Transportation Agency is the primary economic regulator of federal railway companies under the [Canada Transportation Act](#). The provinces regulate provincial railways to varying extents.

The Minister of Transport and his department, Transport Canada, regulate the safety of federal railway companies under the [Railway Safety Act](#) and regulations, rules and standards thereunder.

Law stated - 4 July 2024

MARKET ENTRY

Regulatory approval

5 | Is regulatory approval necessary to enter the market as a rail transport provider? What is the procedure for obtaining approval?

A person wishing to operate a federal railway in Canada must obtain both a certificate of fitness and a railway operating certificate before beginning operations.

Any person may apply to the Canadian Transportation Agency (the Agency) for a certificate of fitness. The application must include a completed certificate of insurance form along with a list of the termini and route of each operation. The Agency must be satisfied that there will be adequate third-party liability insurance coverage for passenger rail services, or the applicable minimum liability insurance coverage for freight railway companies, as defined in the Canada Transportation Act and its regulations.

Railway companies must also apply to the Minister of Transport for a railway operating certificate before commencing operations. The application must include a description of the proposed operations of the company, as well as all relevant safety rules and requirements applicable to those operations. The Minister may issue railway operating certificates subject to terms and conditions.

Individual provinces each have their own approval processes for railways under their jurisdiction that require similar information about operations, insurance and safety rules.

Law stated - 4 July 2024

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

A proposed merger or acquisition that meets certain prescribed financial thresholds requires pre-merger notification filings under the Competition Act. Where a proposed notifiable transaction involves a 'transportation undertaking', the proposed acquirer must

also notify the Minister of Transport, who may determine that the proposed transaction requires review to determine whether the transaction is in the public interest.

Law stated - 4 July 2024

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

The Investment Canada Act applies to non-Canadians who seek to obtain control of any Canadian business, including railway companies. If a transaction meets certain prescribed financial thresholds, pre-closing approval is required. Any investment by a non-Canadian may be subject to national security review if the investment could be 'injurious to national security'. No special foreign investment approval is required for acquisitions of railway companies.

Law stated - 4 July 2024

8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

Railway companies must obtain the approval of the Canadian Transportation Agency before constructing new rail lines other than a rail line within the right of way of an existing rail line or within 100 metres of the centre line of an existing rail line for a distance of no more than three kilometres. Approval is generally granted if the Agency considers the location of the new rail line to be reasonable, taking into consideration requirements for rail operations and services and the interests of affected localities.

An application for approval must contain a detailed description of the proposed rail line construction and operations, as well as information about the location of the proposed rail line and any alternative locations that were considered. The company must also provide notice and information regarding the proposed construction to any relevant local or other government bodies, including any potentially affected Indigenous groups, and conduct engagement activities with impacted stakeholders. The company may also be required to conduct an environmental assessment with respect to the proposed project area.

Additionally, under certain circumstances, the railway company may be required to obtain approval for the construction of the rail line from other federal authorities such as Transport Canada, Fisheries and Oceans Canada or territorial authorities.

Law stated - 4 July 2024

MARKET EXIT

Discontinuing a service

9 | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

Regulatory approval is not required to sell, lease or otherwise transfer a rail line, or an operating interest in a rail line, for continued operation.

However, if a railway company wishes to discontinue service on a rail line, it must comply with a series of prescribed steps.

First, the railway company must publish its intent to discontinue the line in a three-year plan. The company must notify the Canadian Transportation Agency, the federal Minister of Transport (Minister), and any provincial or local governments or urban transit authorities through whose territory the rail line passes, of any changes made to the plan. A railway company may not take steps to discontinue operating a rail line before the company's intention to discontinue operating the line has been indicated in its plan for at least 12 months.

Thereafter, if the company intends to proceed with discontinuance, it must advertise the availability of the line for transfer for continued operations and engage in good faith negotiations with any party expressing an interest in acquiring the line. This part of the process can take anywhere from 60 days (the time during which the company must remain open to receiving expressions of interest) to eight months (the time for expressions of interest plus a prescribed six-month period to reach an agreement with an interested party). Either party to such a negotiation can seek a determination by the Agency of the net salvage value (NSV) of the line.

If no transfer results from this process, the company may decide to continue operating the line, in which case it must amend its three-year plan accordingly. If the company still intends to proceed with discontinuance, it must offer to transfer the line at NSV to the governments and urban transit authorities through whose territory the line passes.

If no transfer results from the foregoing process, the railway may file a notice of discontinuance with the Agency and stop providing service on the railway line.

The discontinuance process does not apply to yard trackage, sidings or spurs. Before dismantling a siding or spur in a metropolitan area, however, a railway company may, depending on the location of the track be required to provide advance public notice and to offer to transfer it to specified public entities.

A modified discontinuance process applies to certain grain-dependant lines identified in the Canada Transportation Act.

Law stated - 4 July 2024

- 10** | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

The Minister of Transport may suspend or cancel a company's railway operating certificate if the company no longer meets the requirements for obtaining the certificate, or if the company breaches any provision of the Railway Safety Act (RSA) or any regulations, rules, standards, orders or emergency directives made under the RSA. Other enforcement measures short of suspension or cancellation of a railway operating certificate are possible.

Any decision to suspend or cancel a railway operating certificate may be appealed to the Transportation Appeal Tribunal of Canada.

The Agency must suspend or cancel a certificate of fitness if it determines that the holder does not maintain the liability insurance coverage required by the Canada Transportation Act.

Law stated - 4 July 2024

Insolvency

- 11** | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

General bankruptcy and insolvency statutes, regulations and rules apply to federal railway companies. The Canada Transportation Act does not relieve a railway company from its service obligations during bankruptcy or insolvency.

Law stated - 4 July 2024

COMPETITION LAW

Competition rules

- 12** | Do general and sector-specific competition rules apply to rail transport?

Under the Competition Act, the Commissioner of Competition (Commissioner) may review any merger (which is defined broadly to include direct and indirect leases of shares or assets, amalgamations, combinations or other transactions that result in control over, or significant interest in, the whole or a part of a business of a competitor, supplier, customer or other person) to assess its competitive impact.

Generally, and subject to narrow exemptions under the Competition Act, if a merger exceeds certain prescribed 'size-of-party' and 'size-of-transaction' thresholds, each of the parties to the merger must prepare and file a pre-merger notification (PMN) with the Commissioner that includes prescribed information. The parties also typically file a narrative description of the transaction that analyses any competitive overlap between the parties, the extent of which can vary significantly depending on the circumstances.

Following both parties' PMN filings, the parties are subject to a statutory obligation not to complete the transaction for 30 days, during which period the Commissioner may determine whether further information is required to assess the transaction. If further information is required, the Competition Bureau (Bureau) may issue a supplementary information request (SIR), whereby the parties must submit further information if they still wish to proceed, which triggers a further waiting period. Once the parties have submitted their SIR responses and certified their completeness, the Commissioner has a further 30 days within which to apply to the Competition Tribunal for a remedial order, during which time the parties are subject to a statutory obligation not to close the transaction.

The Canada Transportation Act applies to the rail industry in the context of a merger. If a proposed merger is notifiable under the Competition Act (ie, requires the parties to prepare and file PMNs) and involves a 'transportation undertaking', such as a federal railway line, the parties must also notify the Minister of Transport (Minister) at the same time as the Commissioner. Following notification, the Minister may decide that a public interest review is necessary, in which case the Minister likely would consider the factors outlined in its [Guidelines for Mergers and Acquisitions Involving Transportation Undertakings](#), including economic, environmental, safety, security and social factors. If the transaction raises public interest issues related to national transportation, it cannot proceed without the approval of the Governor in Council, which may be granted subject to any terms and conditions that the Governor in Council considers appropriate.

Law stated - 4 July 2024

Regulator competition responsibilities

- 13** | Does the sector-specific regulator have any responsibility for enforcing competition law?

The Commissioner of Competition and the Competition Bureau, and not the transportation regulators (Minister of Transport and the Canadian Transportation Agency), are responsible for enforcing competition law, except in the context of the Minister's review of the public interest in a notifiable merger involving a transportation undertaking, as explained above.

Law stated - 4 July 2024

Competition assessments

- 14** | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

Under the Competition Act, the Commissioner of Competition assesses mergers involving railways in the same manner as for other mergers; that is, to assess whether the merger prevents or lessens, or is likely to prevent or lessen, competition substantially.

The Competition Bureau has published [Merger Enforcement Guidelines](#) that outline the factors the Commissioner considers when assessing the competitive effects of a transaction. The Bureau will analyse the relevant product and geographic markets, including both downstream and upstream markets. Typical analysis includes the combined post-merger market share of the merged entity (unilateral conduct), the post-merger four-firm concentration ratio (combined market shares of the largest four firms), the extent to which effective competition remains in the relevant product and geographic markets, the extent to which barriers to entry exist, the extent to which substitutes for the applicable products or services are available in the relevant markets and other factors.

Law stated - 4 July 2024

PRICE REGULATION

Types of regulation

15 | Are the prices charged by rail carriers for freight transport regulated? How?

Federal railway companies can establish prices for the transportation of freight from origin to destination (rates) and related services (ancillary charges) either unilaterally by issuing and publishing tariffs of rates and charges or by entering a confidential contract with a shipper.

The rates a federal railway company may charge for transferring or 'interswitching' freight traffic between a point of origin or destination on its network and the connection with another federal railway company within a prescribed radius are determined annually by the Canadian Transportation Agency. Rates differ based on distance 'zones' and size of shipment, with shipments in larger blocks of railcars attracting lower rates.

The transportation of grain grown in Western Canada is subject to revenue cap regulation. While railways are entitled to set their own grain rates, this regime constrains pricing by imposing a maximum revenue entitlement (MRE) on each of Canada's two major railways, Canadian National Railway and Canadian Pacific Kansas City Railway. The Agency determines each railway company's MRE annually using a formula that reflects changes in grain volumes transported, length of haul and railway input prices. Excess revenue and a penalty are payable if a railway exceeds its MRE.

The Canada Transportation Act also provides for several types of complaint-driven proceedings, in which rates or ancillary charges are determined on a case-by-case basis.

Law stated - 4 July 2024

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

Federally regulated passenger railways are generally free to set their own prices but must publish them in tariffs that contain the information prescribed by regulation. In relation to the carriage of persons with disabilities, the [Accessible Transportation for Persons with Disabilities Regulations](#) prohibit a passenger railway from imposing any fare or other charge for certain services that the railway is required by the Regulations to provide to passengers with disabilities.

Law stated - 4 July 2024

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

A freight shipper who is dissatisfied with the freight rates charged or proposed to be charged by a federal railway company can submit the rates for the movement of goods and any conditions associated with that movement to the Canadian Transportation Agency for final offer arbitration (FOA). At the request of either party, FOA proceedings are confidential.

The Canada Transportation Act (CTA) mandates the steps in the FOA process and associated timelines. Subject to agreement between the parties, these may be supplemented by procedural rules established by the Agency ([Procedures for the conduct of final offer arbitration pursuant to part IV of the CTA](#)). The Agency acts as a clearing house for the exchange of the parties' final offers, appoints the arbitrator and adjudicates any preliminary railway objections to a referral to an arbitrator. It can also provide administrative, technical or legal assistance if requested by the arbitrator.

The arbitrator must select one of the two final offers in its entirety, having regard to whether there is available to the shipper an 'alternative, effective, adequate and competitive means of transporting the goods' to which the FOA relates. Unless the parties agree to an extension, the arbitrator must render a decision within 60 days of the shipper's initial submission. The decision is retroactive to the date of that submission and remains in effect for a period of up to two years, as agreed by the parties or, failing agreement, as requested by the shipper in its initial submission.

With respect to prices for incidental services, excluding freight rates, a shipper may apply to the Agency to challenge the reasonableness of charges for the movement of traffic and associated conditions contained in a tariff that applies to multiple shippers. In making its determination, the Agency must consider the objective of the charge or conditions, industry practice and the existence of an effective, adequate and competitive alternative to the provision of the incidental service. If the Agency finds the challenged tariff provisions unreasonable, it may establish new charges or associated conditions to remain in effect for up to one year. The process is governed by procedural rules established by regulation ([Canadian Transportation Agency Rules \(Dispute Proceedings and Certain Rules Applicable to All Proceedings\)](#)).

While the CTA contains a number of other remedies related to freight rates, these have either never been used or fallen out of use.

There is no procedure under Canadian federal law for challenging prices charged for the transportation of passengers by rail generally. In relation to the transportation of persons with disabilities, Part V of the CTA allows the Agency, on application, to determine that specific fees or charges constitute an undue barrier to mobility and to require the carrier to take appropriate corrective action.

Law stated - 4 July 2024

- 18** | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

There is no such requirement under federal law.

Law stated - 4 July 2024

NETWORK ACCESS

Sharing access with other companies

19 | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Railway companies are generally not required to grant network access to other parties, subject to the narrow, and generally unused, exceptions in the Canada Transportation Act (CTA).

Section 138 of the CTA allows a railway company, defined as a person who already holds a certificate of fitness, but not a shipper or other interested party, to apply to the Agency for the right to operate its trains over and on any portion of the network of any other railway company.

The Agency may grant the right and impose any conditions as appear just or desirable to the Agency, having regard to the public interest. No contested running rights application under section 138 has ever succeeded and few cases have been decided under predecessor statutes.

Section 139 of the CTA allows the Governor in Council to order that two or more railway companies allow joint or common use of a right-of-way. To our knowledge, no public decision has ever been issued under the current section 139 of the CTA.

Law stated - 4 July 2024

Access pricing

20 | Are the prices for granting of network access regulated? How?

If a railway company agrees to grant access to its network to another carrier, the pricing for such access is not subject to regulatory oversight.

In theory, if a railway company were to succeed in obtaining running rights over the line of another railway company under section 138, the Canada Transportation Act (CTA) would require the Agency to fix the amount of the access charge. Similarly, if the Governor in Council orders that two or more railway companies allow joint or common use of a right-of-way, the Governor in Council may, by order, fix the amount to be paid. Given the failure of contested running rights applications and the lack of public orders for joint or common use under section 139 of the CTA, the potential access prices are unaddressed under Canadian law.

The CTA allows urban transit authorities and other specified public passenger service providers to apply to the Agency for a determination of any matter, including access prices, raised in the context of the negotiation of any agreement concerning the use of the railway company's railway, land, equipment, facilities or services by the public passenger service provider. Other passenger rail service providers may use the final offer arbitration remedy in respect of rates or conditions associated with the provision of services by a railway company.

Law stated - 4 July 2024

Competitor access

- 21** | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

Canada does not have a declared policy on allowing access to existing rail networks. However, the national transportation policy set out in the Canada Transportation Act states that competition and market forces, both within and among the various modes of transport, are the prime agents in providing viable and effective transport services.

Law stated - 4 July 2024

SERVICE STANDARDS

Service delivery

- 22** | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

Sections 113 to 116 of the Canada Transportation Act (CTA) require federally regulated railway companies to provide 'adequate and suitable accommodation' for receiving all freight traffic offered for carriage on their railway. The service obligations extend to providing adequate facilities for connecting private sidings to the rail network and for transferring freight between rail carriers.

While a federal railway company accordingly cannot refuse to carry traffic, the service obligations are not absolute but have been described as requiring the railway company to provide the highest level of service that is reasonable in the circumstances. Jurisprudence going back more than 100 years has recognised exceptions in various circumstances beyond the railway's control and that it could not reasonably have anticipated and managed or avoided. The availability of such justification is driven by the facts of each case.

Federal legislation does not address passenger service obligations generally. The [Accessible Transportation for Persons with Disabilities Regulations](#) prohibit federal passenger railways from refusing certain services to passengers with disabilities, provided the services are requested within prescribed timelines. In the absence of advance notice, a carrier must make 'every reasonable effort' to provide those services.

Law stated - 4 July 2024

- 23** | Are there legal or regulatory service standards that rail transport companies are required to meet?

Federally regulated freight railway companies must meet the standards enshrined in sections 113 to 115 of the Canada Transportation Act. A considerable body of jurisprudence addresses these standards in the context of specific disputes over railcar supply, frequency of service, embargoes and the rail infrastructure needed to accommodate traffic. Where these standards are particularised or modified by confidential contract, the terms of that

contract are binding in any proceeding about service inadequacy, but the mere existence of a confidential contract does not set aside the statutory service standards.

Apart from the standards set out in the [Accessible Transportation for Persons with Disabilities Regulations](#), there are no federal legal or regulatory service standards for passenger transportation by rail.

Law stated - 4 July 2024

Challenging service

24 | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

The statutory service obligations in respect of freight transportation and any service-related terms in a confidential contract are enforceable on complaint to the Canadian Transportation Agency (Agency). Complaints may be brought by a shipper or another party in the rail logistics chain, such as a transloader. The process is governed by the [Canadian Transportation Agency Rules \(Dispute Proceedings and Certain Rules Applicable to All Proceedings\)](#). The Agency's remedial powers include the ability to direct the allocation of equipment, the acquisition of property and generally the manner in which service must be provided, in addition to the power to award compensation for out-of-pocket expenses incurred due to a service failure. An Agency finding that a rail carrier has breached its service obligations also provides the basis for a court action for damages.

Since 2018, the Agency also has the ability to initiate a service investigation on its own motion.

While a complaint under section 116 is necessarily based on past or ongoing service shortfalls, a shipper may also require its rail carrier to offer to enter a forward-looking confidential contract dealing with service obligations. Where no agreement is reached, the shipper may initiate an arbitration before an arbitrator appointed by the Agency. The steps in this arbitration process and the relevant timelines are mandated by statute, supplemented by the [Rules of Procedure for Rail Level of Service Arbitration](#). The arbitrator's decision sets operational terms governing service for one year from the date of the decision (unless the parties agree otherwise) and is deemed to be a confidential contract. There have been few of these arbitration proceedings in recent years.

Service obligations related to the transportation of persons with disabilities are enforceable by application to the Agency. The procedural rules are the same as for complaints in respect of freight. If the Agency finds an undue barrier to the mobility of persons with disabilities, it may order corrective measures as well as financial compensation.

Law stated - 4 July 2024

SAFETY REGULATION

Types of regulation

25 How is rail safety regulated?

The Railway Safety Act (RSA) governs safety of federal railway companies. It provides for the development of safety rules by the rail industry, subject to approval by the Minister of Transport (Minister), and requires federal railway companies to establish safety management systems. The Minister is responsible for railway safety regulation within federal jurisdiction.

Provincial governments are responsible for regulating the safety of railways under their jurisdiction. Provincial legislation often incorporates some or all of the requirements contained in federal statutes, regulations, rules and standards.

The Minister may enter into agreements with provincial ministers responsible for provincial railways regarding the administration of any law respecting railway safety and security.

Law stated - 4 July 2024

Competent body

26 | What body has responsibility for regulating rail safety?

The Minister is responsible for railway safety regulation within federal jurisdiction. Provinces are generally responsible for railway safety regulation within the legislative authority of the province.

Law stated - 4 July 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

The Railway Safety Appliance Standards Regulations apply to the manufacture of rail equipment. The Railway Locomotive Inspection and Safety Rules require new freight and passenger locomotives to be designed and constructed as a minimum in accordance with the latest revision of the 'Association of American Railroads Manual of Standards and Recommended Practices' or an equivalent standard. The Railway Freight Car Inspection and Safety Rules contain similar requirements for new freight cars.

Law stated - 4 July 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

Part II of the Railway Safety Act regulates the maintenance of railway lines as well as road and utility crossings.

The Rules Respecting Track Safety prescribe minimum safety requirements for federally regulated standard gauge railway track, although a railway may adopt more stringent requirements. Railway companies must conduct track inspections in compliance with the Rules. Track inspectors, track supervisors and track maintenance persons must have certain qualifications.

Law stated - 4 July 2024

29 | What specific rules regulate the maintenance of rail equipment?

Rules regulating the maintenance of railway equipment and established under the Railway Safety Act include the Railway Freight Car Inspection and Safety Rules, the Railway Locomotive Inspection and Safety Rules and the Railway Passenger Car Inspection and Safety Rules.

Law stated - 4 July 2024

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

The Canadian Transportation Accident Investigation and Safety Board Act (CTAISBA) establishes the Canadian Transportation Accident Investigation and Safety Board (Board) and governs the investigation of rail accidents.

The Board may investigate any transportation occurrence (including in relation to rail) on its own initiative or at the request of a government department, the lieutenant governor in council of a province or the Commissioner of NWT, Nunavut or Yukon, and must do so if requested by the Governor in Council.

The Board may enter into an agreement with a province relating to investigations into transportation accidents.

Regulations under the CTAISBA govern investigations of transportation accidents, including in respect of the preservation of information and the rights and privileges of observers attending an investigation.

Reporting of certain types of accidents to the Board is mandatory.

Law stated - 4 July 2024

Accident liability

31 | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

The ordinary liability regime generally applies, except as follows:

Division VI.2 of the Canada Transportation Act relates to liability for accidents involving crude oil and other designated goods. In such circumstances, the railway company is liable regardless of fault or negligence. Damages and costs are limited to the amount of the minimum liability insurance coverage the company is required to carry, unless the accident resulted from an act or omission that was committed either with intent to cause the accident or recklessly and with knowledge the accident would probably result.

The Railway Traffic Liability Regulations apply to the loss of, or damage to, goods or delay in their transportation.

Law stated - 4 July 2024

FINANCIAL SUPPORT

Government support

- 32** | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

The Canadian government provides both direct and indirect financial support to the industry. Railway companies are eligible for and have received funding through various initiatives and programmes, including the Canada Infrastructure Bank, which uses equity loans and other products to invest in infrastructure generally, as well as direct grants under programmes that are more narrowly focused on trade and transportation, including the National Trade Corridors Fund (NTCF). In 2016 the federal government announced the allocation of C\$2 billion over 11 years to the NTCF, with an additional C\$5 billion to be invested in trade and transportation projects through the Canada Infrastructure Bank.

Law stated - 4 July 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

Rules governing various government funding initiatives apply generally.

Law stated - 4 July 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

The Canada Labour Code (the Code) governs labour relations and employment standards for federally regulated industries, including railway companies. The Code allows for regulations or orders to apply to specific classes of employees or industrial development. Sector-specific regulations include regulations governing the safety of employees on moving trains and exempting railway running-trades employees from general hours of work standards.

Law stated - 4 July 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

Railway companies in Canada are subject to both federal and provincial environmental laws and specialised regulations, tailored to address the impacts associated with rail operations. The [Canadian Environmental Protection Act 1999](#) serves as a foundational law, ensuring the regulation of pollutants released into the environment and setting out penalties for non-compliance. This Act applies broadly to various sectors, including rail transport. The [Transportation of Dangerous Goods Act 1992](#), also plays an important role in governing the safe transportation of dangerous goods across all transport modes.

In addition, railway companies must adhere to specific rules and regulations designed for their sector. For instance, the [Locomotive Emissions Regulations](#) under the Railway Safety Act (RSA) directly address the rail transport sector by regulating emissions from locomotives. Additionally, the [Railway Safety Administrative Monetary Penalties Regulations](#) allow for monetary penalties for contraventions of certain provisions of the RSA or its regulations, including those related to environmental protection.

Provincial environmental laws and regulations apply to railways within their legislative authority. Municipal and local laws and bylaws may also apply.

Law stated - 4 July 2024

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

The Canada Transportation Act was amended in 2023 to provide for a temporary expansion of regulated interswitching. Under regulated interswitching, a railway company serving a point of origin or destination that is located within a prescribed radius of a connection with another railway must transfer freight traffic to or from the connecting railway at rates set annually by the Canadian Transportation Agency. The 2023 amendments expanded the prescribed radius in three Canadian provinces from 30 kilometres to 160 kilometres and



are currently set to expire in March 2025. They include a range of reporting requirements intended to assist the government in assessing the impacts of expanded interswitching limits.

Law stated - 4 July 2024



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UPDATE AND TRENDS

Key developments of the past year

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

The state controls and manages rail infrastructure. Access to rail infrastructure for cargo and passenger transport is free.

The state-owned company that manages and controls rail infrastructure for public use of international, national and local importance is HŽ Infrastruktura (HŽI). Rail infrastructure is public domain. The Railway Act provides that infrastructure management and control is for public use. HŽI manages 2,617km of a total of 2,988km of railways in public use.

The remaining railways are privately owned by companies for their internal non-public use and by local authorities for commuter use.

HŽI is in charge of organising, maintaining, upgrading, constructing and regulating the use of the railways. Approximately 55 per cent of the rail infrastructure is in the international rail transport network. It functions as a crossway, connecting the rail networks of all European and Middle Eastern countries. The rail infrastructure for international connections is integrated into the Trans-European Transport Network (TEN-T).

Since Croatia became a member of the European Union (EU) in 2013, the national railway infrastructure has gained significant importance in EU rail transportation projects as an integral part of three pan-European corridors. EU membership provides access to various financing funds available to a new member state for investment in the modernisation and development of EU railway infrastructure. At present, more than 20 modernisation and construction projects involving rail infrastructure, worth more than €2 billion, are under way, in various stages of progress.

HŽI must ensure free access to rail infrastructure for private cargo and passenger operators. To ensure that all private cargo operators receive equal treatment, general terms and conditions for access to rail infrastructure are in force and are binding for all individual contracts that HŽI concludes with rail operators. There are 15 operators who have entered into individual contracts with HŽI, comprising 13 private operators and two state-owned operators: Hrvatske Željeznice Cargo, Zagreb (HŽC) and Hrvatske Željeznice Putni ki Promet, Zagreb (HŽPP).

In the freight transport sector, private rail operators compete with the state-owned HŽC.

Despite the fact that passenger rail operations have been available to private operators since 2019, at the time of writing, no private passenger carrier has applied for approval with the Ministry of Maritime Affairs, Transport and Infrastructure.

Passenger rail transportation is organised by the state-owned company HŽPP, which is the national passenger rail carrier.

Law stated - 3 July 2024

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

The rail network infrastructure is owned by the government. It was inherited from the previous political system when the rail infrastructure was under public 'social ownership'. The rail infrastructure was built by the state and made available to rail operators under social ownership. The ownership transformation that took place at the end of the twentieth century followed the previous structure and organisation of rail activity. The rail infrastructure – including freight and passenger transport – has not been privatised, but rather opened to private rail operators.

The government also has ownership interests in both rail operations (freight and passenger transportation services) as the service provider via HŽC and HŽPP. These two rail operators were formerly rail operators under social ownership and were transformed into state-owned entities.

Freight and passenger operations are open to the private sector.

In cargo rail services, the state-owned HŽC competes with more successful private operators. HŽC has suffered losses for a number of years.

With regard to passenger transport, in 2018 the Ministry of Maritime Affairs, Transport and Infrastructure entered into a 10-year Public Services Agreement with HŽPP, enabling HŽPP to cover losses in passenger operations by means of state subsidies. Subsidies also enable HŽPP to invest in passenger rail transport vehicles, equipment and passenger transport in general. The grounds for the Public Service Agreement can be found in the Treaty of Accession of Croatia from 2011. The Public Service Agreement ensures that passenger transport is upheld as an activity of national interest.

Law stated - 3 July 2024

3 | Are freight and passenger operations typically controlled by separate companies?

The regulations applicable to freight and passenger transport differ and from a regulatory point of view, it is more convenient for the shareholders to divide freight and passenger operations into separate companies.

However, in practice, there are no shareholders apart from the government, which established two separate companies for both operations.

Only the government has established separate companies: HŽC for freight and HŽPP for passenger operations. The others are freight operations companies only.

Law stated - 3 July 2024

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

There are three regulatory bodies: the Ministry of Maritime Affairs, Transport and Infrastructure; the Croatian Regulatory Authority for Network Industries (HACOM); and the Croatian Railway Safety Agency (CRSF).

The Ministry of Maritime Affairs, Transport and Infrastructure regulates rail carrier requirements and grants licences for cargo and passenger rail carriers. A rail carrier licence is a basic approval that a rail operator must obtain to operate in Croatia and the EU. All data on rail carriers' licences is shared within the EU members' respective regulatory bodies; they enable rail operators to operate within the EU.

HACOM is the national regulatory body that regulates the rail services market for the benefit of rail operators and the development of the European rail market. Further, HACOM ensures a free market and fair competition for rail service providers and provides protection for rail passengers.

The CRSF is the state regulatory body that regulates the safety of rail infrastructure, transport vehicles and equipment.

Licensing rail operators, free market access and safety are the purposes of the three rail regulatory authorities divided between three different government bodies.

The Railway Act, Rail Services Act, Rail Services Market Regulations and Passengers Protection Act, and Rail Safety and Interoperability Act are the basic laws that provide the regulatory structure and authorities of the Ministry of Maritime Affairs, Transport and Infrastructure, HACOM and the CRSF.

Apart from these basic laws, there are a number of other national laws and regulations that affect the regulatory bodies and apply to rail transport organisations and standards, rail service providers, freight and passengers as rail service customers, market access, pricing and security. Rail activity and related operations are well regulated, not only on a national level but also within the EU.

The EU rail rules and regulations are an integral part of the national legislation and are incorporated directly or through harmonisation processes as the *acquis communautaire*. All national basic laws are harmonised with the EC *acquis communautaire*.

Law stated - 3 July 2024

MARKET ENTRY

Regulatory approval

- 5 | Is regulatory approval necessary to enter the market as a rail transport provider?
What is the procedure for obtaining approval?

Regulatory approval is required to enter the market as a rail transport provider.

The Ministry of Maritime Affairs, Transport and Infrastructure grants rail carriers approval for rail service providers. To obtain approval, a rail carrier must meet certain requirements, which may include good standing, financial and rail expertise requirements and mandatory and voluntary insurance cover requirements.

Approval granted by the Ministry of Maritime Affairs, Transport and Infrastructure to a rail carrier is effective within all EU countries and vice versa, and the approval obtained by a rail carrier in other EU countries is recognised in Croatia as well.

The procedure is an administrative proceeding regulated by the Railway Act and Rail Services Act as *lex specialis* substantive law legislation. The Administrative Proceedings Act and Administrative Trial Act are procedural laws *lex generalis*.

Law stated - 3 July 2024

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

Regulatory approval is not required to acquire control of an existing rail transport provider unless it affects an existing granted carrier's licence.

A licensed rail carrier must notify the Ministry of Maritime Affairs, Transport and Infrastructure of any change of control within 30 days from the date of change in control.

The Ministry of Maritime Affairs, Transport and Infrastructure must consider whether such a change in control affects the existing granted licence. It decides whether the licence should be upheld, amended or set aside because of the change of control.

Certain Croatian Regulatory Authority for Network Industries (HACOM) approvals might also be required if the acquired control affects free market and competition issues supervised and regulated by HACOM.

Further, general market competition protection regulations are applicable in the case of the acquisition or merging of rail operators.

Law stated - 3 July 2024

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

There is no approval requirement for rail transport companies to be owned by foreign entities. It should be noted that EU state entities are not considered foreign entities and they have free access on the same terms and conditions as any other domestic entity.

Law stated - 3 July 2024

8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

HŽ Infrastruktura (HŽI) is the only entity that can construct a new railway line for public use. The decision on the construction of a new railway line must be passed by the government and it must be proposed to the government by the Ministry of Maritime Affairs, Transport and Infrastructure.

The Croatian Railway Safety Agency grants approval on the technical and safety aspects of the construction of a new railway line.

In addition, HŽI should satisfy general approval requirements for infrastructure construction projects.

Croatia has a well-developed national and regional rail network for public use, and there is no need for the construction of new railway lines. However, the existing rail network has not been maintained properly; it has not been upgraded or modernised. The government's rail development policy is to modernise the existing network according to EU standards rather than constructing and investing in new railway lines. Some new railway lines have been or will be constructed to replace the old ones that were not possible to modernise or worth modernising.

Law stated - 3 July 2024

MARKET EXIT

Discontinuing a service

9 | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

Only HŽ Infrastruktura (HŽI) can, by virtue of a government decision and a previous proposal by the Ministry of Maritime Affairs, Transport and Infrastructure, remove rail infrastructure over a particular route. It is not explicitly regulated by the Railway Act, but it arises from the provision on the closure of rail from public use. The closure of a railway excludes it from public use, but it does not necessarily mean the removal of the infrastructure on the respective route.

In freight and passenger transport, a licensed rail carrier may not freely or voluntarily discontinue services if it will significantly affect its existing carrier's licence. Whether the discontinuation is significant depends on the elements based on which the carrier's licence was granted. To ascertain the significance, the Ministry of Maritime Affairs, Transport and Infrastructure considers how the discontinuation of services would affect a previously granted licence. If the carrier's licence would be significantly affected by the discontinuation of the service, the Ministry of Maritime Affairs, Transport and Infrastructure will not allow the discontinuation.

The Railway Act governs the discontinuation of services, closure of rail routes and removal of rail infrastructure.

A passenger rail carrier that is recognised as the national passenger rail carrier and bound by the Public Services Agreement, as is the case with Hrvatske Željeznice Putni ki Promet, Zagreb (HŽPP), cannot voluntarily discontinue passenger services. Continuous and uninterrupted passenger transport is in the national interest and no voluntary actions that would jeopardise this are allowed by law. The purpose of the Public Services Agreement is to prevent unilateral voluntary actions of the rail operator in the passenger transport sector that might jeopardise regular passenger transport.

Law stated - 3 July 2024

10 | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

When the Ministry of Maritime Affairs, Transport and Infrastructure is allowed to suspend a rail carrier's licence, the rail operator is forced to discontinue services on a particular route. The ground for this lies in changes to the rail carrier's licence requirements and when the existing carrier's licence is significantly affected by new circumstances that were not present at the time of approval of the carrier's licence.

The procedure is administrative. No second instance administrative proceedings on appeal are provided. The carrier's licence holder may file the administrative writ with the administrative court for the court's review of the administrative act passed by the Ministry of Maritime Affairs, Transport and Infrastructure and run the administrative trial versus the Ministry of Maritime Affairs, Transport and Infrastructure.

Law stated - 3 July 2024

Insolvency

- 11** | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

The general regulations on insolvency for companies in difficulties and bankruptcy apply to rail transport operators.

However, sector-specific financial and good-standing requirements are provided for obtaining and upholding the rail carrier's licence. In the case that these sector-specific financial and good-standing requirements are no longer satisfied, a rail carrier approval might be temporarily or permanently suspended.

If a rail carrier holds approval, it must provide services even if insolvent.

In the case of bankruptcy, a rail operator must prove that financial restructuring will enable the continuation of services; otherwise, the carrier's approval will be suspended. The latter may be considered a sector-specific rule. A general bankruptcy regulation is that the company in bankruptcy ceases its business activities, and only the completion of contractual duties performance started before the bankruptcy is allowed.

Law stated - 3 July 2024

COMPETITION LAW

Competition rules

- 12** | Do general and sector-specific competition rules apply to rail transport?

Both general and sector-specific competition rules apply to rail transport. Both are harmonised with the EU competition regulations.

The Croatian Competition Agency is the regulatory body for general free market competition protection.

The Croatian Regulatory Authority for Network Industries (HACOM) is the sector-specific free market rail transport competition regulatory body.

The exception is Hrvatske Željeznice Putni ki Promet, Zagreb, which has a Public Services Agreement with the government for passenger transport.

Law stated - 3 July 2024

Regulator competition responsibilities

- 13** | Does the sector-specific regulator have any responsibility for enforcing competition law?

HACOM must ensure, on a non-discriminatory basis, free and fair market competition and equal market access to rail infrastructure to all rail operators. HACOM also supervises tariffs and considers complaints of rail operators on violation of free and fair market access and competition.

HACOM has no responsibility for enforcing sector-specific competition law. However, HACOM's rulings are administrative acts that may be reviewed in administrative trials by administrative courts in two instances, and even further by the Constitutional Court, as free market and free entrepreneurship are constitutional rights and values protected by the Constitution.

Law stated - 3 July 2024

Competition assessments

- 14** | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

HŽ Infrastruktura's General Terms and Conditions, individual contracts with rail operators and operators' tariffs supervised by HACOM create standards for free and fair market access and for assessing competitive effects to all rail carriers.

Rail operators who think they are faced with unfair competition can file a complaint and apply for remedies with HACOM. HACOM must follow and apply the same non-discriminatory standards in all matters, whether at the request of an interested party or ex officio when provided by the rules of law.

Law stated - 3 July 2024

PRICE REGULATION

Types of regulation

15 | Are the prices charged by rail carriers for freight transport regulated? How?

As a general rule, prices in freight transport are not regulated.

However, tariffs are supervised by the Croatian Regulatory Authority for Network Industries (HACOM) and prices should fall within the standards of free and fair market competition, following the *acquis communautaire*. The majority of freight rail carriers are engaged in the international rail transport of containers and bulk cargo within neighbouring countries and the EU.

HACOM also has an inspection and advisory role with regard to pricing. In these roles, HACOM must submit annual reports, which also include price status and which create and affect pricing standards.

Law stated - 3 July 2024

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

As a general rule, the prices charged for passenger transport are not regulated. However, the prices and tariffs must meet standards for passenger transport and follow the *acquis communautaire*.

Since Hrvatske Željeznice Putni ki Promet, Zagreb receives subsidies for interrupted passenger transport and is, for the time being, the sole passenger carrier, passenger prices are indirectly regulated by provisions of the Public Services Agreement.

In addition, the government has passed regulations on privileged discounted rates for passenger categories on the basis of social welfare, including students, retired people and disabled people.

Law stated - 3 July 2024

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

Price levels cannot be challenged, but HACOM has a duty to supervise that a certain standard established in practice is maintained in tariffs. No procedure is provided for the adjustment of price levels.

On an individual basis, a passenger who is harmed by an operator may file a complaint with HACOM. HACOM should decide on the complaint within 30 days through an administrative proceeding.

HACOM also has inspection authorities for the protection of passengers. Fines in misdemeanour proceedings may be charged in case of the violation of passengers' rights.

The Rules of Rail Services Market Regulations and the Passengers Protection Act apply to passengers' protection as substantive law and the Administrative Proceedings Act and Administrative Trial Act as procedural law.

Law stated - 3 July 2024

- 18** | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

No; as a matter of law, they must charge similar prices to all shippers and passengers who are requesting similar services.

If the service is the same, charging different prices might constitute discriminatory action and violation of access to a free and fair market – as such, unfair competition rules may apply.

In practice, certain standards are established by HACOM's supervision and inspection authorisations. To be competitive, rail carriers have similar prices and service terms that may vary slightly, mostly because of particularities of transport (for instance, modern and functional wagons as a more advanced service).

Law stated - 3 July 2024

NETWORK ACCESS

Sharing access with other companies

- 19** | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Yes – as the rail infrastructure manager, HŽ Infrastruktura (HŽI) must grant network access to all licensed rail carriers. The Railway Act and HŽI's General Terms and Conditions provide legal, administrative, technical and financial aspects of access to the rail infrastructure.

Individual contracts on access to rail infrastructure are signed by HŽI with a rail carrier granting access to the infrastructure on a non-discriminatory basis.

There are no exemptions or restrictions on a discriminatory basis.

The Croatian Regulatory Authority for Network Industries' (HACOM) regulatory and supervisory duty is to ensure equal access to infrastructure to all licensed rail carriers.

Further, HACOM must resolve complaints submitted by an individual injured party concerning discriminatory actions or other actions that violate the party's right to free and equal access to rail infrastructure.

Law stated - 3 July 2024

Access pricing

- 20** | Are the prices for granting of network access regulated? How?

HŽI's General Terms and Conditions set out the pricing principles that are followed in individual contracts with each rail carrier and its tariffs.

HACOM supervises the General Terms and Conditions; individual contracts of rail carriers; and their tariffs, which all must be within the main standards established not only on a national level but also at the EU level as the *acquis communautaire*.

HACOM also has an inspection and advisory role with regard to infrastructure access and pricing. In the scope of these roles, HACOM must submit annual reports, which create and affect pricing standards for infrastructure access and also include the status of prices.

Law stated - 3 July 2024

Competitor access

21 | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

No, there is no declared policy on allowing new market entrants network access or increasing competition in rail transport. As a matter of national law and the EU *acquis communautaire*, all market entrants should have equal free and fair market access to the rail infrastructure network under the same competition terms.

However, technical and safety requirements on some network routes may limit new entrants or increase competition demands in access to network routes.

Law stated - 3 July 2024

SERVICE STANDARDS

Service delivery

22 | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

Rail transport providers must serve all customers who request service.

The basic principle of the EU *acquis communautaire*, which binds Croatia either directly or via harmonisation of national legislation, provides universal European rail network and free market access on a non-discriminatory basis. There are no exemptions or restrictions in this regard.

Law stated - 3 July 2024

23 | Are there legal or regulatory service standards that rail transport companies are required to meet?

Yes, legal and regulatory service standards that rail transport companies are required to meet are provided in the EU *acquis communautaire* and these standards should be met directly or via implementation in national legislation.

These standards are established and maintained by the Croatian Regulatory Authority for Network Industries' (HACOM) inspection and advisory role. HACOM must submit annual reports, which deal with all aspects of HACOM's authorities, including tariffs, prices and infrastructure access.

Law stated - 3 July 2024

Challenging service

24 | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

Shippers and passengers can complain about the quality of services they receive from carriers or HŽ Infrastruktura to HACOM. In administrative proceedings, HACOM is obliged to decide on complaints.

Service receivers are entitled to initiate an administrative trial against HACOM's decision with the administrative court. The rules of the Administrative Litigation Proceedings Act apply in the administrative trial.

Law stated - 3 July 2024

SAFETY REGULATION

Types of regulation

25 | How is rail safety regulated?

The Rail Safety and Interoperability Act provides that Croatian Railway Safety Agency (CRSF) is the regulatory body responsible for rail safety.

In addition, the Railway Act, with safety principles and a number of rules and regulations on technical safety requirements regulates safety aspects that should be implemented by rail transport participants, from HŽ Infrastruktura (HŽI) and rail carriers to contractors of construction works and service providers on the stations.

National safety regulation is fully harmonised with the *acquis communautaire* through the implementation of the Common Safety Methods of the European Railway Agency.

Law stated - 3 July 2024

Competent body

26 | What body has responsibility for regulating rail safety?

The CRSF is the body responsible for regulating rail safety.

The CRSF has four departments, which deal with:

- the rail infrastructure;
- rail carriers;
- rail vehicles; and
- the rail inspection of safety aspects.

Each of these departments is responsible for the regulation, implementation and supervision of the safety of aspects of the rail network.

Law stated - 3 July 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

The EU *acquis communautaire* known as the Common Safety Methods – Risks Evaluation and Assessments (the CSM-REA) is the basic guidance for national regulations on the manufacture of rail equipment.

The CRSF regulates, provides implementation and supervises on an operative basis whether manufactured products and equipment meet regulatory requirements. Certification of manufactured products and equipment according to regulatory requirements is the activity of the CRSF's departments for rail vehicles and rail equipment.

Law stated - 3 July 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

The CSM-REA is the basic guidance for national regulations on the manufacture of rail equipment.

The CRSF regulates, provides implementation and supervises on an operative basis whether manufactured products and equipment meet regulatory requirements. Certification of manufactured products and equipment according to regulatory requirements is the activity of CRSF's Departments for rail vehicles and rail equipment.

Law stated - 3 July 2024

29 | What specific rules regulate the maintenance of rail equipment?

The CSM-REA is the basic guidance for national regulations on the maintenance of rail equipment.

The CRSF regulates, provides implementation and supervises rail equipment maintenance on an operative basis. Upholding of certification of manufactured products and equipment according to the regulatory requirements is the activity of CRSF's Department for Rail Equipment.

Law stated - 3 July 2024

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

The Air, Maritime and Railway Traffic Accidents Investigation Agency (AIN) is a state agency, established according to the EU *acquis communautaire*, that investigates rail accidents. Their investigations are public; they explain the circumstances of an accident, its causes and deficiencies in the rail organisation and system. AIN recommends measures to prevent similar accidents. Their findings and report are published on their [website](#) and are publicly available.

HŽI must perform internal investigations, which are primarily focused on the rail infrastructure conditions and HŽI's omissions as rail infrastructure managers. An HŽI investigation should also establish the required measures and improvements for the prevention of similar accidents.

The public prosecutor is also obliged to perform investigations and press criminal charges in all cases involving severe accidents. Severe accidents are those where the material damage exceeds a value of approximately €100,000 or those that caused severe personal injuries or fatal consequences.

Law stated - 3 July 2024

Accident liability

31 | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

The ordinary liability regime applies to rail transport companies and is generally applicable to other cargo and passenger transports.

National legislation requires mandatory liability insurance for damages caused to passengers in the passenger transport sector and to third persons in the case of tort liability. Further, additional voluntary insurance is required to obtain the rail carriers' licence.

Law stated - 3 July 2024

FINANCIAL SUPPORT

Government support

- 32** | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

HŽ Infrastruktura (HŽI) and Hrvatske Željeznice Putni ki Promet, Zagreb (HŽPP) receive direct and indirect support for investment in rail infrastructure and passenger transport.

In general, according to EU free market and competition policies, direct subsidies for covering the losses of companies in financial difficulties are not allowed.

However, funding, grants and even subsidised tenders of the EU via the Croatian government for a number of investment projects in the national economy open various opportunities for governmental support of rail companies and rail-related facilities. In addition, Croatia is still utilising EU access funding.

Law stated - 3 July 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

HŽI and HŽPP receive direct and indirect support for investment in rail infrastructure and for passenger transport.

In general, according to EU free market and competition policies, direct subsidies for covering the losses of companies in financial difficulties are not allowed.

However, funding, grants and even subsidised tenders of the EU via the Croatian government for a number of investment projects in the national economy open various opportunities for governmental support of rail companies and rail-related facilities. In addition, Croatia is still utilising EU access funding.

Law stated - 3 July 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

The Labour Act applies as the basic employment legislation for all employees in Croatia.

In addition, the Labour Act provides that collective agreements should establish employees' benefits in greater detail based on the rights and principles set out in the Labour Act.

HŽ Infrastruktura, Hrvatske Željeznice Putni ki Promet, Zagreb and Hrvatske Željeznice Cargo, Zagreb traditionally have very strong union organisations that represent, negotiate and organise employees of these state-owned rail companies. Since the terms of collective agreements generally have limited effectiveness, negotiations for new collective agreement terms between rail companies' management and unions are very often connected with strikes and other legally permitted pressure tools to achieve better terms of employment for rail staff.

Law stated - 3 July 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

- 35** | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

There are no rail sector-specific laws; standard environmental laws apply. However, rail companies run environment-friendly policies and implement specific environmental protection measures in their respective businesses.

Law stated - 3 July 2024

UPDATE AND TRENDS

Key developments of the past year

- 36** | Are there any emerging trends or hot topics in your jurisdiction?

Following a focus on the highway, airports and ports on the Adriatic coast, modernisation of the rail infrastructure has taken priority on the government's recent agenda. According to modernisation plans that will be supported by EU funding, modernisation of the railway infrastructure will be the main infrastructure investment project in the coming decade.

Tourism, sea and land transportation and transportation-related services create and hold an important share of the national economy.

Modern highways, airports and Adriatic Sea ports enable a huge number of tourists and cargo, the latter especially in containers, to arrive in the country and flow via these transportation facilities. However, a sub-standard rail network became and was finally recognised as a bottleneck for tourism, transportation and transportation-related services to be able to operate at full capacity.

Considering the EU's integrated Trans-European Transport Network; covid-19 pandemic consequences; energy crises; environment-friendly regulations; and green business requests and regulations, the modernisation of the Croatian railways is a strategic interest that will remain in focus for a longer period of time.

Law stated - 3 July 2024



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UPDATE AND TRENDS

Key developments of the past year

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

Four types of railway undertakings exist: federally owned railway undertakings, privately held railway undertakings, railway undertakings owned by Germany's federal states or local authorities and incumbent railway companies from other EU member states, either directly or through subsidiaries.

Deutsche Bahn AG (DB AG) is the historic, incumbent rail transport company. Its subsidiaries govern, administer and maintain the German railway network and infrastructure and are also responsible for the maintenance and exploitation of the passenger railway stations and provision of related services.

Law stated - 4 July 2024

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

DB AG is a public company – 100 per cent of its shares belong to the German state. Direct subsidiaries of DB AG include DB Fernverkehr AG and DB Regio AG (passenger transport), DB Cargo AG (freight transport) and DB InfraGO AG (infrastructure). The latter was created on 27 December 2023 by the merger between DB Station&Service AG with the former DB Netz AG. In June 2024, DB AG completed the sale of its international subsidiary DB Arriva to I Squared Capital. DB Schenker, the DB AG subsidiary focusing on logistics, is currently in the process of being sold by means of a bidding procedure.

Law stated - 4 July 2024

3 | Are freight and passenger operations typically controlled by separate companies?

Yes. In the DB Group, separate subsidiaries control freight (DB Cargo) and passenger operations (DB Fernverkehr, DB Regio). In both the freight and passenger rail transport markets, apart from the companies that belong to the DB group, privately held railway undertakings, railway undertakings owned by Germany's federal states or local authorities and incumbent railway companies from other member states, either directly or through subsidiaries, are all active.

Law stated - 4 July 2024

Regulatory bodies

|

4 | Which bodies regulate rail transport in your country, and under what basic laws?

Rail transport is mainly regulated by the European Commission, Council and Parliament, the European Union Agency for Railways (ERA), the Federal Railway Authority (EBA), the Eisenbahn-CERT (EBC) and the Federal Network Agency for Electricity, Gas, Telecommunication, Post and Railway (BNetzA).

The European Union adopted a series of legislative packages that gradually liberalised the internal rail market with the aim of creating a single European railway area. This process was completed with the [fourth EU railway package of 2016](#).

Following the entry into force of [Regulation \(EU\) No. 2016/796](#) on the European Union Agency for Railways (part of the technical pillar of the fourth EU railway package) on 15 June 2016, the ERA replaced and succeeded the European Railway Agency. The ERA's main objectives are interoperability of the Trans-European Rail system through the draft of mandatory technical specifications for interoperability, which are then adopted by a European Council decision. The ERA also provides recommendations to the European Commission on common safety indicators, methods and targets and on the system of certifications of bodies in charge of safety.

The EBA is the supervisory and licensing authority in Germany and was established by the [Act on the Federal Administration of Railway Traffic of 27 December 1993](#), last amended on 9 June 2021. It operates under the authority of the Federal Ministry for Digital and Transport (BMDV). The EBA's tasks include issuing licences and safety certificates (valid for both rail freight and passenger transport) and the authorisation of rolling stock, verification of subsystems, declarations of conformity of constituents, authorisations for placing on the market, including the corresponding registration numbers, safety certificates, safety authorisations, notifying national safety rules, publication of annual reports, maintaining a register of infrastructure and a rolling stock register, safety reporting and monitoring interoperability.

The EBC carries out the tasks of the notified body according to [Directive \(EU\) No. 2016/797](#). It is an autonomous organisation under public law and acts as a financially and legally independent department of the EBA. The main tasks of the EBC are to assess the conformity or suitability for use of the interoperability constituents and to carry out the European Community (EC) verification of the subsystems, as mandated by this Directive.

The BNetzA is an independent, cross-sector authority and has been responsible for regulation of the railway sector since 2006. It is tasked with monitoring rail competition and is responsible for ensuring non-discriminatory access to railway infrastructure. It monitors compliance with the rules governing access to the infrastructure, especially in relation to the preparation of the timetable, decisions on the allocation of railway paths, access to service facilities, usage conditions and charging.

Pursuant to [Directive \(EU\) No. 2016/798](#), the role of national investigation body in Germany is assigned to the Investigation Office for Rail Accidents of the Ministry of Transport. According to article 21 of this Directive, its tasks focus on the different elements of accident investigation.

Law stated - 4 July 2024

MARKET ENTRY

Regulatory approval

- 5 | Is regulatory approval necessary to enter the market as a rail transport provider?
What is the procedure for obtaining approval?

A licence is necessary to enter the market as a rail transport provider. Article 6-6e of the [General Railway Law of 27 December 1993](#), last amended on 22 December 2023 (AEG), sets out the relevant requirements. Article 6(3) of the AEG provides that the applicant must have its seat in Germany or a registered office in Germany. The company must have a management structure as well as reliability, financial standing and professional aptitude (article 6a ff. AEG). Reliability means that the company should not have been subject to fines of more than €100,000 for violations of labour law, customs law or traffic law and no person in charge of management should have received sentences of at least one year for violations of labour law or social obligations, customs law or traffic law. Proof of professional expertise can be provided with an assignment of a certified rail operations manager – in other words, a person who is trained as an engineer, has three years of experience as an engineer in the rail sector and has passed a special exam (article 6d (2) AEG).

The licence as a rail transport provider alone does not entitle a company to take part in public railway operations in cross-border services. A valid single safety certificate according to article 7a (1) of the AEG will be required. A single safety certificate is valid for a given area of operation (ie, a network or networks within one or more member states where the railway undertaking intends to operate). Article 1(2) of the Ordinance on Railway Safety of 17 June 2020 excludes railway undertakings exclusively operating on local networks from the obligation to obtain a safety certificate. Articles 14-14d of the AEG require the applicant to have liability insurance.

Law stated - 4 July 2024

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

Article 6g (5) of the AEG provides that in the case of a change affecting the legal status of a company, in particular in cases of mergers or takeovers, it should inform the licensing authority accordingly. The licensing authority has to check whether the company still fulfils the requirements of sections 6a–6e of the AEG. The company concerned may continue operations unless the licensing authority determines by order that safety is at risk. In such a case, the company in question has to cease operations immediately.

Article 6g (6) of the AEG provides that if an enterprise intends to significantly change or expand its business, it should inform the licensing authority accordingly and it must fulfil the requirements of sections 6a–6e of the AEG. Further general authorisations may need to be obtained from the Federal Cartel Office or the European Commission subject to the merger control rules.

Law stated - 4 July 2024

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

The only restrictions for foreign ownership or control of railway undertakings result from the German rules on foreign investment.

On the basis of article 55 of the Foreign Trade and Payments Ordinance of 2 August 2013, last amended on 27 February 2024 (AWV), the Federal Ministry for Economic Affairs and Climate Action (the Ministry) may review the acquisition of domestic companies by foreign buyers in individual cases. Any acquisition of at least 25 per cent of the voting rights of a company resident in Germany by investors located outside the European Union or the European Free Trade Association region can be investigated. In principle, the rules on foreign investment apply to any industry sector. To obtain legal certainty undertakings can submit a voluntary notification. The Ministry can prohibit the transaction or impose conditions if it considers that public order or security in Germany is threatened.

The provisions list certain industry sectors constituting critical infrastructure, which are subject to special scrutiny. In these cases a notification of the transaction to the Ministry is mandatory. Article 2(10) section 1 of the Act on the Federal Office for Information Security (in connection with the Ordinance on the definition of critical infrastructure) determines that passenger and freight transport by rail are part of the critical infrastructure. Acquisitions in this area can, therefore, already be investigated if at least 10 per cent of the voting rights of a domestic company are acquired. According to article 55a (2), No. 6 of the AWV this can also comprise undertakings developing software for the operation of facilities or systems for the transport of passengers and freight by rail. A threshold of 20 per cent applies to an additional second category of sectors relevant to security. A decision issued by the Ministry can be challenged before an administrative court.

Law stated - 4 July 2024

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8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

The operation of railway tracks, train command and control systems and of train platforms requires authorisation according to article 6(1) No. 3 of the AEG. In addition, the construction and alteration of railway systems in Germany requires a project planning procedure. For the federal railways, the Eisenbahn-CERT is the responsible authority for conducting this procedure, which entails an examination of the technical and legal aspects of the project. The procedure is governed by article 18 of the AEG and the German Federal Administrative Procedures Act. The Federal Railway Authority (EBA) will examine whether the project is technically feasible, whether it fulfils safety requirements, whether an environmental impact assessment is necessary, whether it affects the interests of the public or third parties and how these can be taken account of. A project planning procedure is initiated upon submission of the application, which generally takes from one to three years. On 6 December 2020, the EBA took over the responsibility for the consultations to be conducted in the context of a planning procedure from the previously competent regional authorities. At the end of the procedure, the EBA grants formal planning permission for the project to which it can add auxiliary conditions to address any problems the project might cause in relation to its surroundings and the environment.

Law stated - 4 July 2024

MARKET EXIT

Discontinuing a service

9 | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

The procedure for releasing and closing down rail infrastructure is detailed in article 11 of the AEG. Before infrastructure may be closed down, it must be checked whether any other infrastructure manager might be interested in taking it over. Responsibility for this lies with the Eisenbahn-CERT for federally owned railways and with the railway supervisory authorities of the states for non-federally owned railways. Lines that have not been closed down must be operated as normal.

Law stated - 4 July 2024

10 | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

Article 6g (1) sentence 1 of the AEG provides that if there is reasonable doubt that a company to which it has granted a business licence meets the requirements of articles 6a-6e of the AEG, the licensing authority may at any time verify that it actually complies with these requirements. The approval authority (ie, the Federal Railway Authority at the

federal level and the authority designated by the government in each state at regional level) should revoke the business licence if it determines that the company does not meet these requirements (article 6g (1) sentence 2).

Notwithstanding the second sentence of paragraph 1, the approval authority may refrain from withdrawing the undertaking's authorisation for non-compliance with the financial capacity requirements and set a reasonable deadline for the re-establishment of financial capacity if safety is not compromised (article 6g (3) sentence 1). This provision also applies in the case of a restoration of reliability or professional suitability. The period under sentence 1, also in conjunction with sentence 2, must not exceed six months. If a set period has elapsed without the restoration being successful, the approval must be revoked (article 6g (3) of the AEG).

If a company has ceased operations for six months or has not commenced operations within six months of obtaining a business licence, the approval authority must verify that the company still meets the requirements of articles 6a-6e AEG. In the case of a start-up, the company may request that the period of sentence 1 be extended taking into account the specific nature of the services to be provided (article 6g (4) of the AEG).

Article 6g (8) of the AEG states that paragraphs 1 to 7 are without prejudice to the administrative procedural rules on the annulment of administrative acts, which remain unaffected.

Following the implementation of the fourth EU railway package the procedural rules on amendment and withdrawal of safety certificates are contained in articles 9 to 11 of the Ordinance on Railway Safety of 17 June 2020.

Law stated - 4 July 2024

Insolvency

- 11** | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

The general insolvency rules apply to rail transport providers. Pursuant to article 6g (7) of the AEG, the approval authority must revoke the business licence of a company against which insolvency proceedings or similar proceedings have been initiated if it is satisfied that a prospective restructuring is not to be expected within a reasonable time.

Law stated - 4 July 2024

COMPETITION LAW

Competition rules

- 12** | Do general and sector-specific competition rules apply to rail transport?

General competition rules apply to rail transport. Article 12(7) of the AEG grants an exemption from competition law for agreements between railway undertakings and with other passenger transport undertakings in so far as they aim to ensure sufficient supply of regional transport capacities, in particular, by way of cooperation and the alignment of tariffs and schedules. Such agreements require notification and approval of the respective authority.

Law stated - 4 July 2024

Regulator competition responsibilities

- 13** | Does the sector-specific regulator have any responsibility for enforcing competition law?

The Federal Railway Authority is not responsible for enforcing competition law.

Law stated - 4 July 2024

Competition assessments

- 14** | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

A transaction involving rail transport companies may be caught by the German merger control provisions, which are enforced by the Federal Cartel Office (BKartA). The current legislation can be found in Chapter VII of the Act against Restraints of Competition of 1958, version of 26 June 2013, last amended on 12 June 2024 (GWB). The GWB sets out a comprehensive list of events constituting a concentration, which includes not only the acquisition of control and the creation of joint ventures, but also the acquisition of minority shareholdings or of a material competitive influence below the level of control. A merger must be prohibited by the BKartA if it would significantly impede effective competition, in particular, if it leads to the creation or strengthening of a dominant market position.

The competition rules on dominance and anticompetitive agreements may also apply to railway transport companies. Unilateral conduct by undertakings with market power is governed by articles 18, 19, 19a and 20 of the GWB, which prohibit an undertaking's abuse of a (single-firm or collective) dominant position and specific types of abusive behaviour by undertakings of paramount significance or that have relative market power as compared to small or medium-sized enterprises (as trading partners or competitors).

The principal national rules on cartels are found in articles 1 and 2 of the GWB. These rules essentially reproduce articles 101(1) and 101(3) of the Treaty on the Functioning of the European Union (TFEU) at national level. Article 1 of the GWB prohibits all agreements between competing corporations, decisions by associations of corporations and concerted practices that have as their object or effect the prevention, restriction or distortion of competition. Agreements restricting competition are prohibited by article 1 of the GWB only if they have an appreciable effect on competition. Agreements (and concerted practices) that fall within the scope of article 1 of the GWB are exempted from the prohibition contained

therein if they meet the requirements under article 2 of the GWB. Article 2 exempts cartels from article 1 under the same standards as provided by article 101(3) of the TFEU. However, the prohibition provided for in article 101(1) of the TFEU does not apply to certain agreements and certain groups of small and medium-sized businesses, as defined in and according to Regulation (EC) No. 169/2009 applying rules of competition to transport by rail, road and inland waterway.

Law stated - 4 July 2024

PRICE REGULATION

Types of regulation

15 | Are the prices charged by rail carriers for freight transport regulated? How?

The prices charged by rail carriers for freight transport are not regulated. Article 12(1) of the AEG merely defines tariffs as consisting of the prices for carriage and the conditions of carriage. Pursuant to this provision, railway companies are obliged to cooperate in setting the tariffs for freight and passenger transport.

Law stated - 4 July 2024

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

Article 12(1) of the AEG defines tariffs as consisting of the prices for carriage and the conditions of carriage. Pursuant to this provision, railway companies are obliged to cooperate in setting the tariffs for freight and passenger transport. The railway undertakings cooperate within the Tariff Association of Federal and Non-Federal Railways.

In addition, article 12(2) of the AEG obliges public railway undertakings to set tariffs that contain all the information necessary for calculating the prices for passenger transport and to apply them in the same manner for all users. According to article 12(3) of the AEG, railway companies require prior authorisation for their conditions of carriage in rail passenger transport. However, the prices the railway undertakings set for passenger carriage do not require prior authorisation.

Law stated - 4 July 2024

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

The price levels for freight shippers or passengers are not regulated.

Law stated - 4 July 2024

18 | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

Article 12 (2) of the AEG obliges public railway undertakings to set tariffs that contain all the information necessary for calculating the prices for passenger transport and to apply them in the same manner for all users. This excludes the possibility to justify a differential treatment on the basis of objective reasons. According to article 28 (2) of the AEG, an infringement of these obligations can lead to an administrative fine of up to €50,000.

This obligation does not apply to freight transport.

Law stated - 4 July 2024

NETWORK ACCESS

Sharing access with other companies

- 19** | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

According to article 10 of the Railway Regulation Act of 29 August 2016, last amended on 9 June 2021 (ERegG), all railway infrastructure enterprises have to grant access to their railway infrastructure. Article 68 of the ERegG authorises the Federal Network Agency for Electricity, Gas, Telecommunication, Post and Railway (BNetzA) to issue decisions specifically prohibiting railway infrastructure enterprises from impairing the right of 'non-discriminatory use of the railway infrastructure'. These provisions transpose the requirements of article 10 of Directive (EU) No. 2012/34, which states that railway undertakings should be granted, under equitable, non-discriminatory and transparent conditions, the right of access to the railway infrastructure in all member states for the purpose of operating all types of rail freight services or international passenger service. The duty of all the subsidiaries of German railways Deutsche Bahn (DB AG) is to ensure non-discriminatory conditions for all the companies to use railway infrastructure and to establish objective calculation methods of charges and use of infrastructure.

In November 2021, the European Commission opened infringement proceedings against Germany regarding the incorrect transposition of Directive (EU) No. 2016/2370 on the opening of the market for domestic passenger transport services by rail, and the governance of railway infrastructure. It establishes the right for railway undertakings established in one member state to operate all types of passenger service anywhere in the European Union and it strengthens the rules on the impartiality of infrastructure managers.

Law stated - 4 July 2024

Access pricing

- 20** | Are the prices for granting of network access regulated? How?

The prices for granting network access are regulated at EU level through the Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train

service. Charges payable by passenger and freight transport undertakings for access to tracks, stations and other facilities are regulated in the ERegG, which came into force on 2 September 2016. It contains specific requirements based on the principles of non-discrimination. The access charges for train movements on the rail network and associated services are set out in the infrastructure managers' list of track access charges, which also provides details of the charges for any supplementary and ancillary services available in connection with the use of the tracks. The most recent version of the list is contained in the DB Netz AG Network Statement (NBN 2024), which entered into force on 10 December 2023 and, despite the establishment of DB InfraGO, is applicable until 15 December 2024.

Both passenger and freight companies must negotiate with DB subsidiary for infrastructure DB Netz AG to obtain access to DB tracks. In Germany, open access rules apply to all companies that possess infrastructure, pursuant to the symmetric approach to the network access regulation. The full cost of track access is apportioned to the train operating companies. The charges for track access comprise three elements:

- base charges dependent upon the type of track and the company's utilisation;
- charges linked to prioritisation in scheduling; and
- surcharges for particular circumstances such as for heavier weights, special trains, etc.

BNetzA is entitled to verify and permit access charges before they are introduced.

Law stated - 4 July 2024

Competitor access

21 | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

The Monopolies Commission is an independent expert committee, which advises the federal government and has statutory mandates for special reports in the field of network industries, including railway transport pursuant to article 78 of the ERegG. In its eighth special report published in July 2021, the Monopolies Commission focused on the strengthening of competition in the railway sector. It pointed out that a planned equity increase in favour of DB AG by the German government could carry the risk of competitive distortions and recommended a vertical separation of the infrastructure from operations within the DB AG. The Act on the Further Development of Railway Regulation came into force in June 2021 and provides the legal basis for the introduction of the synchronised timetable, the Deutschlandtakt. In this context the Monopolies Commission recommends the introduction of either competitive tendering or a concession model in the long-distance railway transport market to offer all railway operators the opportunity to participate in the Deutschlandtakt. Finally, the Monopolies Commission required that digitalisation opportunities in the railway sector are made use of and that all sales platforms be given non-discriminatory access to real-time data to strengthen the diversity in online sales.

Law stated - 4 July 2024

SERVICE STANDARDS

Service delivery

- 22** | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

Pursuant to article 10 of the General Railway Law (AEG), public rail passenger transport providers are required to carry passengers and baggage if the conditions of carriage are complied with, transport by regular means is possible and the carriage is not prevented by circumstances that the railway undertaking cannot avert and that it could not remedy.

Law stated - 4 July 2024

- 23** | Are there legal or regulatory service standards that rail transport companies are required to meet?

Article 29 of Regulation (EU) 2021/782 states that railway undertakings should define service quality standards and implement a quality management system to maintain service quality. Annex III of this Regulation lists the following minimum quality service standards:

- information and tickets;
- punctuality of services and general principles to cope with disruptions to services
- cancellations of services;
- cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc);
- customer satisfaction survey;
- complaint handling, refunds and compensation for non-compliance with service quality standards; and
- assistance provided to disabled persons and persons with reduced mobility.

These rules are directly applicable in Germany.

Law stated - 4 July 2024

Challenging service

- 24** | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

On 29 April 2021, Regulation (EU) 2021/782 of the European Parliament and of the Council on rail passengers' rights and obligations was adopted. It applies from 7 June 2023 and replaced Regulation (EC) No. 1371/2007.

Pursuant to article 28(1) of Regulation (EU) 2021/782, railway companies are obliged to set up a complaints-handling mechanism and to make their contact details and working

languages widely known to passengers. In accordance with article 28(2) of Regulation (EU) 2021/782, passengers may submit a complaint to any railway undertaking involved. Within one month, the addressee of the complaint should either give a reasoned reply or, in justified cases, inform the passenger by what date within a period of less than three months from the date of the complaint a reply can be expected.

Passengers who are not satisfied with the response from the railway undertaking may also complain to the Federal Railway Authority (EBA) pursuant to article 33 of Regulation (EU) 2021/782. First, the EBA examines the facts. If the complaint is legitimate, it will conduct an administrative procedure to persuade the company to comply with its obligations to safeguard the passenger's rights (eg, to pay compensation or reimbursement). Germany had notified a national exemption and, therefore, Regulation 1371/2007 was not applicable for certain urban, suburban and regional services and, in particular, for services run mainly on account of their historical significance or for the purposes of tourism. With the application of Regulation (EU) 2021/782 as of 7 June 2023, this national exemption no longer applies.

Law stated - 4 July 2024

SAFETY REGULATION

Types of regulation

25 | How is rail safety regulated?

Directive (EU) No. 2016/798 on railway safety, which is part of the fourth EU railway package, repealed Directive 2004/49/EC. To transpose the Directive, on 16 March 2020, the German legislator adopted the Law on the implementation of the technical pillar of the fourth EU railway package. The relevant national safety rules for the rail system in Germany were first notified to the European Commission in 2006. The current notification of German national safety rules under Directive (EU) No. 2016/798 is still under evaluation by the European Union Agency for Railways (ERA). A list of national safety rules as of October 2022 is available on the EBA website. The European Commission has issued Implementing Regulation (EU) No. 2018/763 of 9 April 2018, establishing practical arrangements for issuing single safety certificates to railway undertakings. The Ordinance on Railway Safety of 17 June 2020 complements this Commission Implementing Regulation. EBA has published a guidance document on the application for single safety certificates last updated on 5 February 2024.

Regulations by the Federal Railway Authority (EBA), guidelines by the Association of German Transport Companies and German railways Deutsche Bahn (DB AG), as well as DIN Standards (ie, the 27200 series of technical standards) regulate technical aspects of rail safety. These rules apply in Germany for regular public railways, as they do not operate networks of regional transport or service facilities or regional railways. The above-mentioned guidelines and DIN Standards qualify as recognised rules pursuant to article 2 of the Railway Construction and Operating Regulations (EBO), thus creating a code of practice.

Law stated - 4 July 2024

Competent body

26 | What body has responsibility for regulating rail safety?

Following the transposition of the fourth EU Railway Package, the ERA is responsible for the issuance of single safety certificates if operations are to take place in more than one member state (one-stop shop). If operations are to be limited to Germany the applicant can choose whether to address ERA or the EBA. The EBA will remain responsible for assessing compliance with national safety rules in the certification procedure and for monitoring ongoing compliance throughout the duration of the validity of the certificate. The EBA has to inform the ERA if the holder of a safety certificate issued by the ERA poses a significant security risk (article 5a (2) of the General Railway Law (AEG)). The EBA also has to inform other national safety authorities in the case of security relevant findings with respect to railway undertakings operating cross-border (article 5a (2a) AEG). Applicants can request the review of a negative decision by a safety certification body pursuant to article 14 of Regulation (EU) No. 2018/763. A procedure can be lodged against decisions by the EBA before German administrative courts. For decisions taken by the ERA, an appeal can be brought before a board of appeal and then before the European Court of Justice pursuant to articles 58 and 63 of Regulation (EU) No. 2016/796.

Law stated - 4 July 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

The following safety regulations apply to the manufacture of rail equipment: the EBO, the Technical Principles for the Approval of Safety Systems published by the EBA, Guidelines 406 for Driving and Building and Guidelines 807 Aerodynamics/Crosswind published by DB AG. The third part of the EBO (paragraphs 18–33) lays down the specifications for vehicles and modules 807.400–807.499 of Guidelines 807 include the technical requirements regarding aerodynamics and crosswind.

Law stated - 4 July 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

The maintenance of track and other rail infrastructure is regulated by a performance and financing agreement (LuFV) between Germany, represented by the BMDV, railway infrastructure companies, (ie previously, DB Network AG, DB Station & Service AG and DB Energy GmbH) and DB AG. On 1 January 2020, the LuFV III entered into force. It has a duration of 10 years (2020–2029). Under this agreement, infrastructure companies will receive around €63.4 billion for repairs in the existing network and also spend €1.3 billion

of own funds. The railway infrastructure companies also undertake to spend a total of at least €22.78 billion on the maintenance of railways during the contract period.

This agreement provides the railway infrastructure companies with funds for the infrastructure to use at their discretion and increases their planning security. In return, they undertake to invest in repairs in the railways at least at the agreed level, to make a minimum maintenance contribution, to contribute to the maintenance and modernisation of the existing network and to maintain the infrastructure in a high-quality condition. The EBA is tasked with monitoring the implementation of the agreement.

Law stated - 4 July 2024

29 | What specific rules regulate the maintenance of rail equipment?

Pursuant to article 4a (1) of the AEG, owners of rolling stock are responsible for the maintenance of their rolling stock and may transfer this task to a third party responsible for maintenance. Commission Implementing Regulation (EU) 2019/779 of 16 May 2019 laying down detailed provisions on a system of certification of entities in charge of maintenance (ECM) of vehicles repealed Commission Regulation (EU) No. 445/2011 and has been applicable since 16 June 2020. It extended the previous system of certification of the entity in charge of maintenance for freight wagons to all rail vehicles. The EBA is responsible for accreditation and recognition of ECM certification bodies under Regulation (EU) 2019/779.

The rules contained in the 27200 series of the DIN standards specify the technical requirements for safety-relevant systems and components of rolling stock with standard gauge. They create a uniform safety framework for the condition of rolling stock in operation for all railway undertakings operating railway traffic on the federal rail network.

Law stated - 4 July 2024

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

The Federal Railway Accident Investigation Board is the national investigation body pursuant to Directive (EU) No. 2016/798 on railway safety.

Serious accidents pursuant to article 20 (1) and (2) of Directive (EU) No. 2016/798 are systematically examined in four steps: initial measures, recording the accident investigation, fact-finding and factual analysis. The result of the investigation will be summarised and published in an investigation report.

Law stated - 4 July 2024

Accident liability

31 | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

Regulation (EU) 2021/782 of 29 April 2021 on rail passengers' rights and obligations in article 26 renders rail transport companies liable for the loss or damage resulting from the death of, personal injuries, or any other physical or mental harm, to a passenger, caused by an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles regardless of the railway infrastructure used. The Regulation also stipulates the circumstances in which it is relieved from liability in this context.

The Liability Act of 4 January 1978, last amended on 17 July 2017, creates special rules for the liability of rail transport companies for rail accidents. It establishes a strict liability regime. Liability is excluded if the event is attributable to force majeure.

Law stated - 4 July 2024

FINANCIAL SUPPORT

Government support

- 32** | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

Cargo transport and long-distance passenger transport are not supported by government subsidies. Federal states are, however, responsible for procuring subsidised regional passenger rail services from rail companies, and for financing them within franchise contracts. The franchising system is, therefore, based on the transfer of financial resources, the Regionalisierungsmittel, from the federal budget to the federal states at an annual level of approximately €8.2 billion with an agreed annual increase of 1.8 per cent. In November 2022 it was decided that the Federal States will receive additional subsidies of €1 billion and that the annual increase amounts to 3 per cent from 2023. This change was implemented through the Eighth Amendment to the Regionalisation Act. The introduction of the 'Deutschlandticket', a low-cost public transport ticket plan for regional transport, led to the need for additional subsidies and, in March 2023, agreement was reached on the payment of €1.5 billion annually from the federal budget to the federal states. The federal government also gives grants annually for noise abatement measures.

Law stated - 4 July 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

Regulation (EU) No. 1370/2007 defines the conditions in which the competent authorities can intervene in the area of public passenger transport (rail and road transport) to guarantee the provision of services of general interest. It applies to regular and

non-discriminatory access and national and international public passenger transport services by, inter alia, rail.

The competent authority, meaning the public authority or authorities with the power to intervene in public passenger transport within a given geographical area, is obliged to conclude a public service contract with the operator to which it grants an exclusive right or compensation in exchange for discharging public service obligations. Obligations that aim to establish maximum tariffs for all or certain categories of passengers may also be subject to general rules.

The competent authority, defined in article 15 of the AEG, grants compensation for the net financial impact occasioned by compliance with the contractually defined public service obligations or pricing obligations established in the general rules. Public service contracts are awarded according to the rules laid down in this Regulation. Subject to certain reservations detailed in article 5 of the Regulation, competent local authorities may provide public transport services themselves or assign them to an internal operator over which they have control comparable to that over their own services. Any competent authority who uses a third party other than an internal operator must award public service contracts by means of transparent and non-discriminatory competitive procedures that may be subject to negotiation. In the exceptional cases set out in article 5 (4) to (6) of Regulation (EU) No. 1370/2007 the obligation to instigate competitive procedures does not apply to rail transport.

Granting financial support by the state to private undertakings falls under EU state aid rules. The Commission has issued guidelines on the application of state aid rules for railway companies. These guidelines apply to railway companies as well as to urban, suburban or regional passenger transport companies with regard to aid for the purchase and renewal of rolling stock. They cover support by means of infrastructure funding; aid for the purchase and renewal of rolling stock; debt cancellation by states with a view to the financial restructuring of railway undertakings; aid for restructuring railway undertakings; aid for coordination of transport; and state guarantees for railway companies. The rules applicable to state aid in the form of guarantees for railway companies are also set out in the Commission notice on the application of articles 87 and 88 of the EC Treaty.

In January 2022, the European Commission opened an in-depth investigation regarding certain aid measures in favour of DB Cargo. The European Commission suspects that an open-ended profit and loss transfer agreement concluded between the Association of German Transport Companies and German railways Deutsche Bahn and DB Cargo might constitute illegal State aid.

Law stated - 4 July 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

Article 25 sentence 1 of the AEG states that public railways alone decide when jobs need to be filled to provide railway services and to maintain and operate the railway infrastructure according to business needs. The co-determination right of the works council pursuant to article 87(1) No. 2 of the Works Constitution Act with regard to the working time regulations for the employment of the employees during the occupation times specified in sentence 1 remains unaffected. If a public authority awards a public contract for passenger transport services by rail article 131(3) GWB foresees that, where there is a change of operator, the selected operator should take on the employees who were employed by the previous operator as if there had been a transfer of business in the sense of article 613a of the German Civil Code. The obligation is limited to those employees who are actually required for provision of the transport services being transferred. This requirement is based on article 4(5) of Regulation (EU) No. 1370/2007 but, in comparison to the EU provision, the German legislator has limited the wider discretion available to the contracting authority under the Regulation in terms of ordering a takeover of employees by making it the rule.

Law stated - 4 July 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

According to article 4(6) of the AEG, the Federal Railway Authority (EBA) is responsible, inter alia, for environmental supervision, in particular with regard to the approval and monitoring of facilities of the federal railways. In this context, the legal framework within which the EBA operates is the Federal Emission Control Act, the Federal Soil Protection Act, the Water Resources Act, the Plant Protection Act and the regulations based on these acts.

Railway rolling stock is required to meet certain noise emission limits. This obligation, applicable only to newly built wagons, was introduced under the Railway Interoperability Directive through Commission Regulation (EU) No. 1304/2014 on the technical specification for interoperability relating to the subsystem 'rolling stock – noise'. On 16 May 2019, Commission Implementing Regulation (EU) 2019/774 was adopted and extended the requirements to existing rolling stock. Freight wagons that do not meet the noise emission limits are not to be operated on quieter routes from 8 December 2024 onwards. A quieter route is defined as a part of the railway infrastructure with a minimum length of 20km on which the average number of daily operated freight trains during the night-time as defined in national legislation transposing Directive 2002/49/EC of the European Parliament and of the Council was higher than 12. In accordance with Appendix D.1, Germany has provided the European Union Agency for Railways with a list of its quieter routes.

Law stated - 4 July 2024

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

The Monopolies Commission presented its ninth Sector Report Railways on 4 July 2023. Netz, the monopolies commission, stressed the need for extensive economic and organisational independence of the new infrastructure subsidiary InfraGO from the other companies of the DB Group. The report also discusses the poor quality of rail infrastructure and states that the railway regulation should provide stronger incentives for the infrastructure operator to invest sustainably in the quality of the infrastructure. Quality control should, in future, be incorporated into the regulatory framework for charges. Finally, the Monopolies Commission pointed to the lack of competition in sales. Independent sales service providers must be able to access infrastructure data from the Association of German Transport Companies and German railways Deutsche Bahn (DB AG).

Last year, an important topic has been the merger of DB AG's infrastructure companies into DB InfraGO AG to modernise and renew German rail infrastructure by 2030. The BMDV presented short papers on the Infraplan and the Sectoral Advisory Council for InfraGO in January 2024. In the Infraplan, the BMDV sets out its proposals for the management of InfraGO. On 1 July 2024, the Monopolies Commission delivered its bi-annual report titled 'Competition 2024' to the Federal Ministry for Economic Affairs and Climate Action. It finds that the launch of InfraGO is inadequate and that the legislator should prioritise public welfare objectives for rail infrastructure and consistently focus on the customer. The Monopolies Commission sees this as a condition for achieving the shift from traffic to rail. It recommends that the Infraplan is adopted as legislation to make it more binding and that it should develop a concrete work programme for InfraGO with a time horizon of five years. The Infraplan, moreover, needs to be harmonised with the existing instruments such as the LuFV.

On 26 June 2023, the Bundeskartellamt (BKartA) decided that DB AG had abused its market power in relation to mobility platforms. It found that DB used its key position on the transport and infrastructure markets to restrict competition from third-party mobility platforms. In addition, mobility platforms do not have continuous and non-discriminatory real-time access to all the traffic data controlled by DB AG. The BKartA has therefore imposed a package of measures on DB AG. It will, for example, no longer be able to enforce restrictions on advertising it had included in contracts with third-party mobility platforms. Further measures concern bans on discounts, compensation for carrying out bookings and payment processes and access to real-time data. On 8 March 2024, the Düsseldorf Higher Regional Court rejected a request by DB AG for an injunction and largely confirmed the enforceability of these measures. The court, however, suspended DB AG's obligation to pay compensation for processing bookings and payments for the duration of the main proceedings. In this regard it pointed out that it needed to make a further in-depth assessment of the correct cost benchmark.

Law stated - 4 July 2024



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UPDATE AND TRENDS

Key developments of the past year

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

The rail transport industry in Mexico is part of both the public and private sectors. In Mexico, the railroad industry is a priority economic area for national development in accordance with the Mexican Constitution and the State is in charge of its regulation and supervision. The general railroad communication routes are part of the federal public domain. The State grants concessions to the private sector or assignments to public entities to build, operate and detonate the railroads and to provide the public with railroad transportation services. Railroads built pursuant to concessions become part of the public domain, even when they are built by the private sector.

Additionally, the State grants permits to the private and public sector to provide auxiliary services for passenger terminals, cargo terminals, transshipment and transfer of liquids, railroad equipment maintenance shops and supply centres for the operation of railroad equipment. Likewise, the State may grant permits to build and operate bridges, accesses, crossings or facilities on or over railroad tracks, or to install advertisements and advertising signs on the same.

The state exercises its powers in railway matters through the Ministry of Infrastructure, Communications and Transportation (SICT), specifically through the Rail Transport Regulatory Agency.

As at December 2022, the National Railway Network had five geographical layers that make up the railway infrastructure with respect to tracks, tunnels, level crossings, bridges, yards, terminals, passenger stations, maritime and border railway ports, as well as kilometre plates. In total, there are 25,216 point elements and 309 vectors representing a total of 21,755km of railways in Mexico.

Law stated - 2 July 2024

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

Yes, the state may grant assignments to public entities for the provision of rail transport services. The State has recently granted assignments to public entities to provide rail transport services. For example, the majority state-owned company Tren Maya, S.A. de C.V. has an assignment granted by the State to provide freight and passenger railroad services on the Tren Maya railroad in the south of Mexico.

Law stated - 2 July 2024

3 | Are freight and passenger operations typically controlled by separate companies?

In Mexico, freight and passenger operations in Mexico are commonly controlled or provided by different companies. However, the State may grant concessions and assignments to the private and public sectors, respectively, for the provision of both railroad service and freight and passenger transportation. For example, the majority state-owned company Tren Maya, S.A. de C.V. has an assignment granted by the State to provide railroad services for the transportation of cargo and passengers.

Regarding rail freight transportation in Mexico, the main companies that provide the services are: Kansas City Southern de Mexico, S.A. de C.V.; Ferrocarril y Terminal del Valle de México, S.A. de C.V.; Ferrocarril Mexicano, S.A. de C.V.; Línea Coahuila-Durango, S.A. de C.V.; and Ferrosur, S.A. de C.V. The main company providing rail passenger transportation services in Mexico is Ferrocarriles Suburbanos, S.A.P.I. de C.V.

Law stated - 2 July 2024

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

The SICT regulates rail transport through the Rail Transport Regulatory Agency.

The primary laws and regulations governing rail transport in Mexico include: Law on the Regulation of Rail Services; Law on General Communication Routes; General Law of National Assets; and the Railway Services Regulations.

Additionally, the SICT has issued several Mexican Official Standards on railroad matters, which are binding and whose purpose is to promote quality in the development of railroad activities by establishing technical specifications applicable both to the provision of railroad services and to the facilities, equipment and goods involved in the exploitation of the rail transport industry.

Law stated - 2 July 2024

MARKET ENTRY

Regulatory approval

5 | Is regulatory approval necessary to enter the market as a rail transport provider? What is the procedure for obtaining approval?

To enter the market as a rail transport provider, it is required to obtain a concession granted by the Ministry of Infrastructure, Communications and Transportation (SICT). The SICT grants concessions through public bidding and issues requests for proposals for interested parties to submit their proposals. The bids are published in the Federal Official Gazette and in the gazettes of the states where the railroads will be built.

Interested parties must submit their bids in accordance with the requests for proposal (RFP). The SICT prepares and publishes the RFP. Interested parties must prove to the

SICT their legal, technical, administrative and financial capacity to provide the rail transport service being tendered and must have a favourable opinion from the Federal Antitrust Commission regarding their participation in the bid. The SICT issues and publishes a ruling based on the proposals received. The concession is granted to the bidder that has submitted the best offer guaranteeing the greatest benefits for the State in terms of quality, price and efficiency. The SICT grants concessions for a term of up to 50 years, which may be extended on one or more occasions. The SICT must publish the concession granted in the Federal Official Gazette and will issue the RFP, which will contain the terms of each of the stages of the bidding process.

The party interested in obtaining a concession may request the SICT to issue an RFP for the concession in which it is interested. To grant a concession, the SICT must carry out the following actions before the Ministry of Finance and Public Credit: obtain its favourable opinion on the economic profitability of the project for the State; register the project in the State's portfolio of investment projects so that federal resources can be allocated for its execution; and present the consideration that the concessionaire must pay to the Federal Government for the detonation of the concession granted. Additionally, the SICT may grant assignments to provide railroad transportation services to states, municipalities and state-owned entities.

Therefore, for private entities to enter the market as a rail service provider in Mexico, it is necessary to win a public bid where the State offers a route of the national railway system. In other words, the government must first offer the route and then the bidders can submit an RFP to be awarded the concession. The interested rail service provider meeting the requirements of the RFP and offering the best in terms of quality, price and efficiency will be awarded the concession.

Law stated - 2 July 2024

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

Concessionaires must give notice to the SICT when they make a change in the participation of their capital stock, if this change is equal to or greater than five per cent of their capital stock in one or more simultaneous or successive operations. The same requirement exists in the event of a merger, transformation or spin-off. This notification must be made within 30 calendar days after the transaction takes place. Additionally, depending on the amount of the transaction, a favourable resolution from the Federal Antitrust Commission may be required.

The SICT shall authorise the total or partial transfer of rights and obligations of any railway concession within a period not exceeding 90 days after the application is submitted. Notice shall be given to the Federal Antitrust Commission before requesting authorisation to the SICT. It is prohibited to transfer in any respect the rights and obligations of a railway concession to a foreign government.

Law stated - 2 July 2024

7 |

Is special approval required for rail transport companies to be owned or controlled by foreign entities?

Railway concessions in Mexico are reserved for Mexican companies. Foreign investment may participate up to 49 percent in the share capital of the concessionary companies. The National Foreign Investment Commission must provide a favourable resolution and the foreign investment would be required to participate at a higher percentage. With respect to the above, the Commission in question will consider whether the investment favours the regional and technological development of the region and if it will safeguard Mexico's sovereignty.

Law stated - 2 July 2024

8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

The SICT must provide a concession to build railways that are general communication routes. Mexican regulations consider a railway to be a general communication route when: it connects two states or Mexico City with another state; part of the route is within the border zone of 100km or 50km in the case of coasts (unless it does not cross the border with another country and does not operate outside the boundaries of towns); or it connects with any other railway considered a general communication route and is used to provide rail freight or passenger transport services to the public.

The SICT grants concessions through a public bidding process to the entity that meets the requirements set out in the request for proposal and submits the bid that represents the best conditions for the State in terms of price, quality and efficiency. Concessionaires may contract with third parties for the construction, conservation and maintenance of the railroad, in which case, the respective third party must obtain a permit for such purposes granted by the SICT. To issue a call for a bid for the granting of a concession for the construction of railways, the SICT must obtain a favourable opinion from the Ministry of Finance and Public Credit regarding the profitability of the relevant project.

Additionally, the SICT may also grant assignments to states, municipalities and state-owned entities for the construction of railways, in which case the bidding process referred to above is not carried out.

Law stated - 2 July 2024

MARKET EXIT

Discontinuing a service

9 | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

According to the Law on the Regulation of Rail Services concessions may terminate upon the resignation of the concessionaire. However, authorisation from the SICT is required

to permanently interrupt the provision of rail transport services. The resignation of the concession and the request to discontinue the provision of transport services must be submitted to the SICT at least three months in advance of the date on which it is intended to discontinue the service. The SICT may authorise the suspension of services at an earlier date. The SICT will resolve the request within 45 days of the submission of the request and, in the respective resolution, will establish the period from which the concessionaire may discontinue the service. The concessionaire may not remove infrastructure from the concessioned railway route as it is part of the public domain of the Nation (even if constructed by a private party), therefore any modification of the rail route and its infrastructure requires the authorisation of the SICT.

Law stated - 2 July 2024

- 10** | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

In the case of natural disaster, war, serious disturbance of public order or when an imminent danger to national security, internal peace of Mexico or to the national economy is foreseen, the State may requisition railroad tracks and railway equipment and dispose of it as it deems appropriate as long as the conditions that motivated the requisition subsist. Except in the case of international war, the State shall compensate the concessionaires for the damage caused at their real value.

Also, according to the Law on the Regulation of Rail Services, the SICT may revoke railway concessions:

- for failure to exercise the rights contained in the concession within 180 calendar days;
- for transferring the concession in contravention of the law (eg, to a foreign government);
- if the concessionaire changes its nationality;
- if service is interrupted without justification;
- for hindering or limiting the railway system;
- for preventing other concessionaires from carrying out their operations;
- for failing to pay compensation payments;
- for applying rates different from those registered with the Rail Transport Regulatory Agency; and
- for any other significant violation of the relevant laws.

The revocation will be carried out through an administrative procedure in which the concessionaire will have the possibility to file allegations and evidence to demonstrate that it did not incur in any of the aforementioned scenarios. The SICT will issue a resolution based on the above.

The concessionaires may file an appeal against a decision of the SICT to revoke a rail transport concession. The respective rail transport concessionaire may opt for an appeal for review before the SICT itself or it may opt to file a nullity suit before the Federal Court of Administrative Justice (FCAJ). If the concessionaire opted to file an appeal for review and does not obtain a favourable resolution, it may file a nullity suit before the FCAJ. Finally, if the concessionaire does not obtain a favourable resolution from the FCAJ, it could appeal the resolution of the FCAJ through a constitutional challenge before the Judicial Power.

Law stated - 2 July 2024

Insolvency

- 11** | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

There are no sector-specific rules that govern the insolvency of rail transport providers in Mexico; general insolvency rules apply. The concession is terminated by liquidation or bankruptcy of the concessionaire, in which case the concessionaire must terminate its railway service activities. The SICT must issue a resolution on the termination of the concession, indicating the date on which the concessionaire must suspend the service.

Law stated - 2 July 2024

COMPETITION LAW

Competition rules

- 12** | Do general and sector-specific competition rules apply to rail transport?

The general competition rules apply to rail transport and the governing laws are the Federal Economic Competition Law and the Regulatory Provisions of the Federal Economic Competition Law. The Law on the Regulation of Rail Services and the Railway Services Regulations also contain some specific provisions on economic competition applicable to rail transport.

There are precedents in which the Federal Antitrust Commission (COFEC) has carried out enforcement with respect to rail transport companies, including the following.

- In January 2024, the COFEC announced the initiation of an investigation into possible barriers to competition in the market for public rail freight transport services (barriers to competition are any fact, act or regulation that prevents access to a market or limits the ability to compete in a market).

- COFECE published a study on competition in public rail freight transport in August 2021. The study concluded that there is little competition in the Mexican rail system (SFM or Sistema) and that the rail network operates in a disjointed manner, resulting in conditions that cause low service efficiency to the detriment of the country's competitiveness.
- Finally, in February 2020, COFECE determined that there is a lack of effective competition conditions on 20 routes of the public rail freight service in the southern region of the State of Veracruz, all of which are operated by Kansas City Southern de México or by Grupo México through Ferrosur and Ferromex. Based on the above, the Rail Transport Regulatory Agency regulated the rates of service or establish rights of way on these lines for the transportation of chemical and petrochemical products.

Law stated - 2 July 2024

Regulator competition responsibilities

- 13** | Does the sector-specific regulator have any responsibility for enforcing competition law?

The sector regulator has certain responsibilities regarding the enforcement of competition law. As mentioned in the Law on the Regulation of Rail Services:

- with respect to concessions, the sectoral regulator shall require that interested parties, prior to submitting a proposal in a public bid for the granting of a railway concession, must obtain a favourable opinion from the COFECE on their participation in such bid; the same applies for the assignment of rights and obligations under the railway concession and permit;
- likewise, the Law on the Regulation of Rail Services mentions that with respect to maximum tariffs and charges, the sector regulator may request that COFECE issue an opinion on them; and
- finally, COFECE may initiate a special procedure to resolve issues of effective competition in markets related to rail service.

Law stated - 2 July 2024

Competition assessments

- 14** | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

When there are one or more economic agents in a market whose participation gives them sufficient power to fix prices or restrict supply, without competitors being able to counteract, conditions of effective competition may not exist. The Federal Antitrust Law empowers the

COFECE to investigate and, if necessary, determine the existence (or not) of conditions of effective competition or significant market power in any market.

This process can be initiated ex officio at the request of the sectoral regulator or at the request of the party concerned. In all three cases, a law or sectoral regulation expressly provides for COFECE's opinion on the matter. It may also be initiated by agreement or by decree of the Federal Executive.

The purpose is, if necessary, for the competent authority or sectoral regulator to carry out the actions provided for in its regulation to establish effective competitive conditions and thus promote the efficient functioning of the market in question.

For example, some actions could be: the imposition of maximum prices for goods necessary for the national economy or for public consumption; the regulation of tariffs for services; or establishing rules for access to a market.

Law stated - 2 July 2024

PRICE REGULATION

Types of regulation

15 | Are the prices charged by rail carriers for freight transport regulated? How?

Rail carriers for freight transport are free to set rates according to terms that allow for the provision of services under satisfactory conditions of quality, efficiency, competitiveness, safety and permanence. However, rail carriers must register its maximum rates before the Rail Transport Regulatory Agency, which may issue recommendations and, if it deems it necessary, may request opinion to the Federal Antitrust Commission (COFECE). Rates are maximums and based on these rates carriers can structure promotions and grant discounts.

The Federal Economic Competition Commission has the power to determine that there is no effective competition in rail freight transport, in which case the Rail Transport Regulatory Agency shall, on its own or at the request of an affected party, regulate rates.

Law stated - 2 July 2024

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

Rail carriers for passenger transport are free to set rates on terms that allow for the provision of services under satisfactory conditions of quality, efficiency, competitiveness, safety and permanence. However, rail carriers must register its maximum rates before the Rail Transport Regulatory Agency, which may issue recommendations and, if it deems it necessary, resort to the Federal Antitrust Commission. Rates are maximums and, based on these rates, carriers can structure promotions and grant discounts.

The Federal Economic Competition Commission has the power to determine that there is no effective competition in rail passenger transport, in which case the Rail Transport Regulatory Agency shall, on its own or at the request of an affected party, regulate rates.

In the case of isolated communities that have no other means of public transport, rates will be set by the Ministry of Infrastructure, Communications and Transportation (SICT). Likewise, the Federal Government may grant subsidies to concessionaires to provide passenger transport services to these communities.

Law stated - 2 July 2024

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

If a user does not agree with the prices of rail transport service, they may submit a request to the SICT to determine if it is necessary to establish tariff regulation bases. To that end, the following steps will be followed.

- Within three days of receipt of the request, the SICT will send the request to the COFECE to determine whether or not effective competition conditions exist in the market.
- If COFECE determines that conditions of effective competition do not exist, within five days, the SICT shall notify the user that submitted the request and the transport company of the initiation of the procedure to determine the basis for tariff regulation of the respective service.
- The user and the transport company will have 10 days to present arguments and evidence in their favour to the SICT. The SICT will summon both the user and the transport company to a hearing to be held within five calendar days.
- Within 30 days, the SICT will decide on the basis of the tariff regulation applicable to the transport service for which it was determined that conditions of effective competition do not exist.

Additionally, in the event that a transport company does not adhere to the maximum rates for its services registered with the SICT, users can file a complaint with the SICT. Once the relevant procedure has been carried out, the transport company may present a defence, and the SICT may impose a sanction on the transport company if it is verified that it did apply higher rates than those registered with the SICT.

Law stated - 2 July 2024

18 | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

Transportation companies must apply the same rates to users on equal terms for comparable services. The SICT has the power to determine which services are considered comparable. The rates applied must be in accordance with the maximum rates that the transport company has registered with the SICT. On the basis of these maximum rates, transport companies may grant promotions and discounts, provided that they are granted in a fair and non-discriminatory manner to all users on an equal basis.

Law stated - 2 July 2024

NETWORK ACCESS

Sharing access with other companies

- 19 | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Rail transport service concessionaires are compelled to grant each other the interconnection of their rail tracks in exchange for an agreed consideration. The copy of the corresponding agreement must be delivered to the Ministry of Infrastructure, Communications and Transportation (SICT), so that it can verify that the continuity, safety and efficiency in the provision of rail service is not affected by the agreement.

There are no exceptions for the granting of interconnection between rail transport companies. However, if the concessionaires of the transport service do not reach an agreement on interconnection within 60 days from the beginning of the negotiations, they must inform the SICT, which, after following the relevant procedure in which it will hear the arguments of the parties involved, will set the conditions and considerations under which the interconnection must be agreed.

One of the conditions of the concession for the provision of rail transport services is to grant interconnection to other rail transport companies. The SICT may revoke the respective concession if it determines, through a procedure in which the transport company will have the opportunity to present a defence, that the transport company performed or failed to perform acts that resulted in unjustifiably preventing or limiting interconnection to its rail tracks.

Law stated - 2 July 2024

Access pricing

- 20 | Are the prices for granting of network access regulated? How?

Prices for granting network interconnection are not regulated, but must be agreed between the concessionaires by mutual consent. If the concessionaires do not reach an agreement within 60 calendar days from the date on which the negotiations were initiated, the SICT should hear the parties to establish the conditions and considerations upon which network interconnection shall be granted within a maximum period of 30 days of being notified of the situation. In the same vein, the SICT may rely on the opinion of the Federal Antitrust Commission (COFECE) in determining considerations.

Law stated - 2 July 2024

Competitor access

- 21 |



Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

Articles 35 and 36 of the Law on the Regulation of Rail Services establish the right of concessionaires to interconnect the national railroad system and provide mechanisms to allow it.

Law stated - 2 July 2024

SERVICE STANDARDS

Service delivery

22 | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

As a general rule, transport providers must provide services to all customers who request them. However, in the case of passenger transport, transport providers may refuse to transport:

- unaccompanied children;
- pregnant women from seven months of pregnancy onwards;
- persons that, by the nature of their illness, present risks to the other passengers, or that by their state of health their transportation can imply a risk for their life;
- persons who are intoxicated or under the influence of narcotics or psychotropic drugs, unless they have a medical prescription in the latter case; or
- persons carrying weapons (without the required permit), explosives, dangerous substances or, in general, any other element that constitutes a risk for users.

Likewise, in the case of freight transportation, transport providers may refuse to provide the service when:

- the dimensions of the load exceed the gauges or clearances of the route by which it is intended to be transported;
- the gross weight of the load exceeds the limits established for the capacity of the car or the route and its division is not feasible;
- the transport provider finds that the cargo does not correspond to the characteristics and specifications declared in the consignment note and this could endanger the safety of the operation of the service; or
- the cargo is not properly packed or the nature of the cargo prevents it from being stowed in accordance with the minimum safety requirements.

In addition, transport providers must refuse to provide freight transport service when illegal or prohibited goods are involved.

Law stated - 2 July 2024

23 | Are there legal or regulatory service standards that rail transport companies are required to meet?

Rail transport companies must comply with the following legal and regulatory standards.

- The Law on the Regulation of Rail Services establishes general bases for the operation and provision of rail transport services. For example, it states that services must be provided to all requesting users on a permanent, uniform and equitable basis in terms of timeliness, quality and prices.
- The Railway Services Regulations complements the law referred to above by providing specific provisions for the provision of rail transport services, including technical, safety and service quality aspects.

- Additionally, there are Mexican Official Standards issued by the Rail Transport Regulatory Agency that establish technical and safety standards that rail equipment and infrastructure must comply with for the provision of rail transport services. Some of the most relevant Mexican Official Standards are: NOM-002-ARTF-2019, Railway System-Safety-Tractional Equipment Inspection; and NOM-005-ARTF-2023, Railway System - Operation - Testing of air brakes for freight trains - Safety Provisions.

The Rail Transport Regulatory Agency has the power to verify compliance with the standards referred to above. The Agency also issues the National System of Railway Indicators, which contains provisions on rail transport performance.

Law stated - 2 July 2024

Challenging service

- 24** | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

There is no specific procedure for rail transport service users to file complaints about the quality of the services they receive. However, if a user considers that the rail service provider is not complying with the applicable legal provisions, they may file a complaint with the Rail Transport Regulatory Agency so that the Agency may initiate a procedure to determine whether the rail service provider has indeed failed to comply with the regulation and, if so, impose a penalty. Likewise, users may file a complaint with the Federal Consumer Protection Agency (PROFECO) if they consider that the rail service provider is not complying with the agreed to or purchased service. PROFECO would act as arbitrator between the affected user and the rail service provider and may issue rulings on the service provider's non-compliance and quantify the amount of the claim. Likewise, rail service providers have their own means to receive complaints from users.

Law stated - 2 July 2024

SAFETY REGULATION

Types of regulation

- 25** | How is rail safety regulated?

Railway safety is strictly regulated through Mexican Official Standards (NOMs), which aim to specify the conditions in which rail tracks and other equipment must be built, kept and maintained. These are issued by the Rail Transport Regulatory Agency.

Some of the NOMs include: NOM-EM-003-ARTF-2023, Railway System-Safety-Classification and Track Specifications; and NOM-001-ARTF-2023, Railway System-Infrastructure-Monolithic Bearings-Specifications and Test Methods.

Law stated - 2 July 2024

Competent body

26 | What body has responsibility for regulating rail safety?

The Rail Transport Regulatory Agency is responsible for supervising, sanctioning and verifying all procedures related to railway safety.

Law stated - 2 July 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

Mexican Official Standards regulate the manufacture of railway equipment. One of the main regulations is the NOM-002-ARTF-2019, Railway System-Safety-Inspection of Tractive Equipment.

This NOM outlines specific tests that rolling stock must undergo, such as static and dynamic load tests, braking performance tests and inspections for structural components. Also, it includes guidelines for documentation, record-keeping and reporting to facilitate compliance and traceability. This NOM helps rail transport service providers meet safety requirements during the construction and operation of rail infrastructure.

Law stated - 2 July 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

The Law on the Regulation of Rail Services establishes general standards for the maintenance of the track and other rail infrastructure. The Railway Services Regulations complements the law referred to above. The Mexican Official Standards contain more specific provisions on track and other rail infrastructure maintenance. One of them is the NOM-EM-003-ARTF-2023-1, Railway System-Safety-Classification and Track Specifications.

Law stated - 2 July 2024

29 | What specific rules regulate the maintenance of rail equipment?

The Law on the Regulation of Rail Services establishes general standards for the maintenance of rail equipment. The Railway Services Regulations complements the law referred to above. The Mexican Official Standards contain more specific provisions on rail equipment maintenance. One of them is the NOM-002-ARTF-2019, Railway System-Safety-Inspection of Tractive Equipment.

Law stated - 2 July 2024

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

Rail services providers are required to have a programme to implement in the case of an accident, which shall be provided to the Rail Transport Regulatory Agency before beginning operations. Depending on the extent of the accident, rail service providers shall notify the Agency about the accident and provide evidence to identify the causes that originated the same, as well as a technical report establishing such causes and the assessment of the damage caused. When reviewing the technical report, the Agency may issue recommendations or issue corrective or preventive measures to be implemented by the rail service provider. If the accident causes body damages to third parties, the Agency may form a commission for the purpose of conducting an investigation. The Mexican Official Standard NOM-004-ARTF-2020, Railway System - Safety - Notification of accidents - Methodology provides details on the notifications to be made to the Agency in case of accidents.

Law stated - 2 July 2024

Accident liability

31 | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

The liability of rail transport companies is regulated in the Law on the Regulation of Rail Services and the Railway Services Regulations. These regulations establish the damages for which transport companies are liable in the case of damage to users or their luggage in the provision of the service, and when providing freight transportation services, for the loss of or damage to the goods or products they transport. However, to calculate the amount of damages, the general liability regime foreseen in the civil regulation is applicable.

Law stated - 2 July 2024

FINANCIAL SUPPORT

Government support

32 | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

The Federal Government may grant subsidies to private companies to provide rail transport service to isolated communities that have no other means of transport.

Due to a recent decree issued by the President of Mexico stating that the railways are a priority for national development, specifically for passenger transport, public entities have granted financing for the construction of railways and the provision of rail passenger transport service. For example, in 2021, the Banco Nacional de Obras y Servicios Públicos (Banobras) authorised financing of 700 million pesos for the construction of Section 1 of the Tren Maya (Palenque-Escárcega), one of the priority projects of the current government. This financing was granted through a syndicated loan with Nacional Financiera (Nafin) for a total of 1.4 billion pesos. However, this financing was granted to a majority state-owned company in charge of the implementation of the Tren Maya project.

Law stated - 2 July 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

There are no sector-specific rules on the financing of rail transport companies. Financing and loans depend largely on each government's National Development Plan and its priority projects.

Law stated - 2 July 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

Regarding labour and social security laws in Mexico that are specific to the rail transport industry, the following are key points to consider.

- **Federal Labor Law (LFT):** the LFT is the cornerstone of labour laws in Mexico and applies to all sectors, including rail transport. It outlines the rights and obligations of workers and employers, including those related to working conditions, wages and benefits.
- **Social Security Law:** this law governs the social security benefits available to all employees in Mexico, including those in the rail transport industry. It covers healthcare, pensions and other social security benefits provided by the Mexican Social Security Institute.
- **Regulatory Agency for Rail Transport (ARTF):** while not a labour law, per se, the ARTF oversees the rail transport industry's regulations, which can include labour-related aspects such as safety and technical qualifications.
- **Overhaul in labour and employment industry:** recent amendments aim to harmonise Mexico's labour and employment legal framework with international instruments,

affecting all sectors, including rail transport. These amendments follow principles such as labour justice, freedom to unionise and collective bargaining.

These laws and regulations work in conjunction to ensure that workers in the rail transport industry are provided with fair labour practices and social security benefits. Employers must adhere to these regulations to maintain compliance and protect the rights of their employees.

Law stated - 2 July 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

Standard environmental laws apply to the rail transport sector, both for the construction and the operation of railroads and related infrastructure as well as transport via trains both for passengers and cargo (or mixed). Under the Mexican Constitution, every person has the right to a healthy environment, compelling the Mexican State to guarantee such right. Based on such obligation, environmental legislation has been enacted at the three levels of government (federal, state and municipal) with the main purpose of propagating sustainable development and environmental protection and conservation.

The main environmental legislation applicable to rail transport activities in Mexico includes:

- the General Law of Ecological Balance and Environmental Protection (LGEEPA);
- LGEEPA's Regulations on (1) Environmental Impact Evaluation and (2) Prevention and Control of Atmospheric Emissions;
- the General Law of Forestry Sustainable Development and its Regulations;
- the General Climate Change Law and its Regulations;
- the General Law for the Prevention and Comprehensive Management of Waste and its Regulations; and
- Mexican Official Standards and other technical guidelines operating key aspects of rail transport activities, such as air and noise emissions and health and safety provisions applicable during both construction and operation activities.

Constitutionally, the Mexican government has the authority of imposing required modalities to any productive activity, including rail transport. Based on the above-mentioned legislation, any rail transport-related activities that generate environmental impacts, air emissions, waste (both hazardous and non-hazardous), natural resources exploitation or contribute to climate change may require authorisations, permits, licenses, concessions, registrations and certificates, among others things (the Environmental Permits), from Mexican authorities (attending to the authority established by law). The main Environmental Permits for the sector (excluding those issued by other agencies) include:

- Environmental Impact Authorization (for both rail road construction and operation);

- Change of Forest Land Use Authorization (if forest land is affected by the railroad construction and operation);
- Hazardous Waste Generator Registry; and
- Waste Management Plan Registry, if applicable.

Analog Generator Registries and Management Plans for Special Management Waste (Non-Hazardous) is required by each state in which the railroad operates.

Law stated - 2 July 2024

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

Rail transport has boomed under the current government of President Andrés Manuel López Obrador. His main infrastructure project was the development of the Mayan Train. This train is located in the southeast of Mexico and is approximately 1,525km in length, mainly passing through the states of Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo. The aim of this project was to comprehensively connect the south, promote tourism and create new passenger rail transport routes. Also, the new administration that will arrive into office in October 2024 is allegedly considering whether to include a new cargo route in the Mayan Train.

On 20 November 2023, President Andrés Manuel López Obrador issued a decree declaring public passenger rail transport a priority area for national development. The decree (1) provided that in the general railway communication routes under concession, public passenger transport will have preference and the public rail freight service will be respected in terms of the provisions of the respective concession, (2) invited passenger transport concessionaires to present projects for the implementation of passenger rail service and (3) offered the first seven routes to be concessioned to those who provide passenger service in 2024.

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Uruguay

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UPDATE AND TRENDS

Key developments of the past year

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

Uruguayan rail infrastructure is state-owned. The infrastructure was originally mainly owned by British companies and was nationalised in 1949 as part of an agreement between the United Kingdom and Uruguay. In 1952, property to rail infrastructure was assigned by law to the State Railway Administration (AFE), a state-owned rail company.

Pursuant to a recent law passed in 2022 (law No. 20,075), the responsibility to construct, modify and conserve, and to administer and manage the rail infrastructure and the ancillary works, passed from AFE to the Ministry of Transport and Public Works (Ministry of Transport) through its National Directorate of Rail Transport (DNTR), an operating unit of the Ministry of Transport. The Ministry of Transport is allowed to carry out these activities either directly or through third parties (concessionaires).

Rail transport services operate under a free competition regime, both in respect of passenger and freight transport (open-access system). In this sense, article 247 of law 20,075 provides that private companies have the right to access the rail infrastructure, provided they comply with the technical requirements and pay the correspondent tolls. Legal commentators classify rail transport services as a private activity (as opposed to public services), in which sector the state (through AFE and its subsidiaries) provides services in competition with private companies, where such private companies require an authorisation (as opposed to a concession) to operate.

Law stated - 6 August 2024

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

Yes, the government owns AFE, which is a rail transport company, subject to public law. Pursuant to its organic law (No. 14,396), AFE is entrusted with the provision of passenger and freight rail services.

With regard to passenger rail operations, AFE is currently the only company providing services in the market. Such services are provided by AFE directly (ie, not by subsidiaries or through third parties). With regard to freight rail operations, AFE provides the services through its subsidiary Servicios Logísticos Ferroviarios S.A. (SELF). SELF is a government-owned company subject to private law, which is jointly owned by AFE with a 51 per cent participation and Corporación Nacional para el Desarrollo (CND), a non-state public company with a 49 per cent participation. AFE's participation in SELF was authorised by article 206 of law 17,930 (passed in 2005) and was provided for by the Executive Power's Decree No. 473/011 (passed in 2011). In exchange for its 51 per cent shareholding participation, AFE transferred to SELF its total assets relating to freight rail operations.

In addition, the government is the owner of the total rail network infrastructure, through the Executive Power and the Ministry of Transport, in accordance with article 243 of law 20,075. Prior to such law, which was passed recently in 2022, ownership of the rail infrastructure corresponded to AFE.

Law stated - 6 August 2024

3 | Are freight and passenger operations typically controlled by separate companies?

Currently, there is only one rail company providing passenger services, which is AFE. AFE also provides freight services, through its subsidiary SELF, which is one of the only two current companies providing freight services.

Law stated - 6 August 2024

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

In accordance with law No. 20,075, the body responsible for regulating rail transport is the Executive Power through the DNTF, which is an operating unit within the sphere of the Ministry of Transport. Pursuant to the mentioned law, the DNTF's regulatory scope includes:

- establishing the acceptable rail load and speed standards;
- establishing the requirements to obtain an authorisation to become a rail operator and the issuance of such authorisation;
- establishing the requirements to be met by traction and towed material and authorise them;
- defining the rail route for each operator and establishing priority criteria among the different operators;
- determining the preferences over each section of the infrastructure; and
- establishing the rules that the signalling and communication devices should meet.

With regard to rail transport regulation, it is also worth mentioning the Principles of Rail Regulation, approved by the Executive Power through Decree No. 280/018, which set forth the general guidelines that the DNTF should follow in the development of the regulation for the National Rail System. The general guidelines establish that the following principles (among others) should govern the regulation:

- promoting the Rail System as a driver for the national and logistic development;
- fostering competition in the provision of rail transport services, guaranteeing compliance with objectivity, transparency and non-discriminatory standards;
- guaranteeing the provision of rail services in safety conditions, assigning responsibilities to the different agents of the System; and

- protecting users and consumers' rights, guaranteeing their right to access the rail services according to quality standards and in safety conditions.

In addition to its regulatory role, its organic law entrusts the DNTF with the responsibility of supervising compliance with the regulation and the application of sanctions. The DNTF is also assigned with the role of advising the Executive Power in the design of rail transport policy.

Law stated - 6 August 2024

MARKET ENTRY

Regulatory approval

- 5** | Is regulatory approval necessary to enter the market as a rail transport provider? What is the procedure for obtaining approval?

Yes, to enter the market as a rail transport provider, either for freight or passenger transport, a rail operator licence from the National Directorate of Rail Transport (DNTF) should be obtained (the Rail Operator Licence or Licence) and assignment of capacity to the infrastructure should be requested to the DNTF (Assignment of Capacity).

Chapter III, Section I of the Principles of Rail Regulation sets forth the procedures and requirements to obtain the Licence. The procedure starts with the interested party submitting a 'declaration of activity', which should comprise the type, characteristics and quantity of services that it is interested in providing. In addition, the following requirements should be met or complied with.

- The applicant should be a company incorporated under Uruguayan law, whose principal business purpose under its by-laws should be freight mass transportation or collective passenger transport. The share title certificates of the company should be nominative and its owners should be disclosed.
- It should demonstrate financial capacity to comply with its present and future obligations. The applicant should evidence that within a 12-month period, it should be able to meet its actual and potential obligations. With respect to newly created companies, financial capacity should be evaluated based on its social and paid-in capital and the guarantees granted by the company or its shareholders to backstop the company's obligations.
- Prior to commencing operations, the applicant should have obtained or demonstrated:
 - a safety certificate issued by the DNTF;
 - managerial bodies with necessary knowledge and experience to exercise a reliable and trustworthy supervision and operative control of the activities authorised by the Rail Operator License;
 - personnel responsible for rail transport safety, duly authorised by the DNTF; and
 - operative personnel authorised by the DNTF.

- Liability insurance policies in place at the time of the commencement of operations and throughout its operations to cover civil liability, particularly damages caused to passengers, to the load, to third parties and to the rail infrastructure.
- Evidence of having in place (or being in process of having) a Health and Occupational Safety Management System based on national laws and ISO norms 45001.

The DNTF has a 90-day term from the submission of the complete application to decide whether the Rail Operator Licence should be granted. The fee charged by the DNTF in respect of the Licence procedure is 413,164 Unidades Indexadas (approximately US\$60,000 as of today). The Licence is granted subject to conditions that should be complied with by the licensee. To the extent the licensee complies with these conditions, the should be valid for 20 years from the notification of its issuance.

With regard to the Assignment of Capacity, the procedure for its request is set forth under Chapter IV of the DNTF's Regulatory Rail Principles. Under this procedure, the administrator of the rail traffic (DNTF) assigns time slots to applicants for the purpose of a train, or any rail vehicle, being allowed to circulate between two points during a certain time frame.

Law stated - 6 August 2024

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

Article 10 of the DNTF's Principles of Rail Regulation provides that in the case of a modification to rail transport provider's legal regime, especially, in the case of transformation, merger or any corporate modification, the rail transport provider should notify the DNTF within five days of its occurrence.

In addition to rail regulation, the acquirer should consider general merger control laws.

Law stated - 6 August 2024

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

The regulation does not distinguish between domestic and foreign entities owning or controlling rail transport companies.

Law stated - 6 August 2024

8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

Yes, pursuant to article 12 of the DNTF's Principles of Rail Regulation, rail line construction activity requires a rail circulation permit from the DNTF (the Rail Circulation Permit or Permit).

Pursuant to article 13 of the DNTF's Principles of Rail Regulation, the following is required to obtain the Permit:

- the applicant should be a company incorporated under Uruguayan law;
- the applicant should be registered before the State Supplier's Unique Register;
- prior to commencing activities, the applicant should have:
 - a safety certificate or authorisation issued by DNFT,
 - staff responsible for rail transport safety authorised by DNFT; and
 - operational staff authorised by the DNFT;
- liability insurance policies, where the minimum amount and conditions coverage of which should be established by the DNTF;
- the applicant should be registered before the Public Works National Registry of the Ministry of Transport; and
- evidence of having in place (or being in process of having) a Health and Occupational Safety Management System based on national laws and ISO norms 45001.

The has a 90-day term from the submission of the complete application to decide whether the Rail Circulation Permit should be granted. The fee charged by the DNTF in respect of the Permit procedure is of 41,316 Unidades Indexadas (approximately US\$6,200 as of today). The Permit is granted subject to conditions that should be complied with by its holder. To the extent the Permit holder complies with these conditions, the Permit should be valid for five years as of the notification of its issuance and may be renewed for new subsequent five-year periods.

Law stated - 6 August 2024

MARKET EXIT

Discontinuing a service

- 9** | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

There are no sector-specific laws governing a rail transport company's ability to voluntarily discontinue services. In doing so, the rail transport company should consider the general laws on the termination of contracts. General consumer protection laws should also be considered, particularly in respect of passenger services.

With regard to the removal of rail infrastructure, Law 20,075, passed in 2022, assigns to the Ministry of Transport, through the National Directorate of Rail Transport (DNTF), competence to remove and replenish rail infrastructure (tracks, sleepers, etc) whenever

it deems it convenient, provided it maintains the trace for the destinations of the affected line. Prior to this law, the body in charge of such role was the State Railway Administration (AFE). In the past, in practice, AFE has decided the discontinuation of passenger services and the removal of rail infrastructure through various Board decisions. By 1990, AFE had discontinued most passenger services and availability of almost half of the national rail line due to losses experienced by the company.

Law stated - 6 August 2024

- 10** | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

Article 9 of the DNTF's Principles of Rail Regulation establishes the following events as causes for the withdrawal by the DNTF of a rail transport provider's authorisation to operate: (a) breaches to the requirements established for obtaining the Licence; (b) having obtained the Licence through false representations; (c) repeated infringements of the rail regulations; and (d) failing to commence authorised services within 24 months after receipt of the Licence. In addition, the regulation sets forth that the Licence may be suspended by the DNTF in the following cases: (a) as a sanction derived from an administrative process or investigation; (b) when the licensee fails to pay rail fees or tariffs that are due and payable; or (c) when the company has interrupted its rail operations during a period exceeding six months.

Pursuant to article 6 of the DNTF's National Rail System Sanctions Regime, approved by the Executive Power through Decree 373/019, the DNTF's investigations and applications of sanctions to rail transport providers should be carried out in accordance with the procedure established under the Executive Power's Decree 500/991. This decree codifies the general administrative procedures relating to the activity of the Executive Power's bodies and has been adopted by other governmental entities. The Decree establishes general procedural principles (eg, impartiality, legal objectivity, material truth, transparency, efficiency, etc.).

In accordance with the Executive Power's Decree 500/991, throughout the investigation procedure, the authorisation holder should be entitled, among others, to have access to the administrative file, submit evidence to defend its position and file its defences. Additionally, if the resolution is adverse, the affected party may submit an appeal for revocation before the DNTF and, subsidiarily, a hierarchic appeal before the Executive Power. If the resolution is upheld, the affected party may submit a final appeal (an action for annulment) before the Tribunal de lo Contencioso Administrativo (an administrative tribunal independent from the Executive Power).

Law stated - 6 August 2024

Insolvency

11 |

Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

There are no sector-specific rules governing the insolvency of rail transport providers. Insolvencies are governed by general rules.

It is worth mentioning that, unlike other jurisdictions, the initiation of insolvency proceedings against the rail operator or its declaration of bankruptcy are not included among the events or causes that trigger the suspension or revocation of its Licence.

Law stated - 6 August 2024

COMPETITION LAW

Competition rules

12 | Do general and sector-specific competition rules apply to rail transport?

General competition rules apply to rail transport. Sector-specific provisions related to competition are only established in the form of principles or objectives that are to be taken into consideration by the National Directorate of Rail Transport (DNTF) in exercising its task (issuance of regulation, authorisations, etc).

In this sense, the DNTF's Principles of Rail Regulation, which set forth the general guidelines that the DNTF should follow in the development of the regulation, enshrines under its article 1, as one of the principles of regulation, the promotion of competition in the provision of rail transport services, guaranteeing compliance with objectivity, transparency and non-discriminatory standards.

Additionally, articles 19 and 25 of the DNTF's Principles of Rail Regulation, which set forth the criteria to be followed by the DNTF in granting Assignment of Capacity to the infrastructure, provides as one of its objectives, the promotion of competition, enabling rail transport to generate chain value and national production, whereby competitiveness should be a factor fostering efficiency and eliminating monopolies.

Law stated - 6 August 2024

Regulator competition responsibilities

13 | Does the sector-specific regulator have any responsibility for enforcing competition law?

No, the DNTF has no responsibility for enforcing competition laws. The body responsible for investigating anticompetitive practices and enforcing competition laws is the Commission for the Promotion and Defence of Competition (Antitrust Commission), in accordance with article 10 of the Defence of Competition Act (law 18,159).

However, with regard to competition, it is worth mentioning that the DNTF's Principles of Rail Regulation, which set forth the general guidelines that the DNTF should follow in the development of the regulation, provide in its article 1, as one of the principles of regulation, the promotion of competition in the provision of rail transport services, guaranteeing compliance with objectivity, transparency and non-discriminatory standards.

Additionally, articles 19 and 25 of the DNTF's Principles of Rail Regulation, which set forth the criteria to be followed by the DNTF in granting Assignment of Capacity to the infrastructure, provides as one of its objectives, the promotion of competition, enabling rail transport to generate chain value and national production, whereby competitiveness should be a factor fostering efficiency and eliminating monopolies.

Law stated - 6 August 2024

Competition assessments

14 | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

Transactions involving rail transport companies fall under the general merger control laws (section 7 of law 18,159, dated 20 July 2007, as amended by laws 19.833 dated 30 September 2019 and 20.212 dated 6 November 2023). In general terms, the regime provides that prior authorisation is required from the Antitrust Commission with respect to any act of economic concentration surpassing an established dual threshold. The dual threshold is triggered when: within any of the last three accounting years, (1) the annual net turnover (excluding taxes) within Uruguayan territory of all the participants of the operation is equal to or greater than the amount of 500 million indexed units (approximately US\$75 million as at May 2024) and (2) the annual net turnover within Uruguayan territory of two or more participants in the transaction, considered individually, is equal to or greater than 30 million indexed units (approximately US\$4.5 million as at May 2024).

Section 8 of the Defence of Competition Act provides certain exceptions to the obligation to obtain prior authorisation from the Antitrust Commission, which include the following: (1) acquisition in which the buyer previously held at least 50 per cent of the company shares; (2) acquisition of a sole company by a foreign company that did not previously had assets or shares in other Uruguayan companies (newcomer exception); and (3) the acquisition of companies declared bankrupt, provided that buyer was the only bidder under the competitive procedure.

Law stated - 6 August 2024

PRICE REGULATION

Types of regulation

15 | Are the prices charged by rail carriers for freight transport regulated? How?

The prices charged by rail carriers for freight transport are not regulated (ie, operators may freely negotiate and agree prices with their clients). Rail carriers should, nevertheless, take into consideration general competition law principles, which, among others, establish the prohibition of certain practices (eg, applying to third parties unequal conditions in respect of equivalent services, positioning such third parties on an important disadvantage regarding competitors).

With regard to the State Railway Administration (AFE), its organic law provides that its prices should be set by its Board of Directors with the approval of the Executive Power (article 5, G, law 14,396). The law further provides that, in exceptional circumstances, it may execute individual contracts by giving an ex-post notice to the Executive Power.

Law stated - 6 August 2024

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

Rail passenger carriers are generally free to set their own prices but must grant users adequate access to such information, ensuring that services are provided in accordance with basic conditions of accessibility and non-discrimination (article 10, g, c, of the National Directorate of Rail Transport's (DNTF) Principles of Rail Regulation). Rail passenger carriers should also take in consideration general consumer protection law principles (eg, consumers' right to equal treatment).

With regard to AFE, its organic law provides that its prices should be set by its board of directors with the approval of the Executive Power (article 5, G, law 14,396). The law provides further that, in exceptional circumstances, it may execute individual contracts by giving an ex-post notice to the Executive Power.

Law stated - 6 August 2024

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

The price levels for freight shippers or passengers are not regulated.

Law stated - 6 August 2024

18 | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

With regard to passenger rail services, article 10, g, c, of the DNTF's Principles of Rail Regulation expressly provides that rail passenger carriers must ensure that services are provided in non-discriminatory conditions (article 10, g, c, of the DNTF's Principles of Rail Regulation). The fact that passenger prices should be published excludes the possibility to justify a differential treatment based on objective reasons. Passengers are also entitled to request the right to equal treatment under consumer protection general laws.

Prices charged by rail carriers to shippers are not regulated (ie, operators may freely negotiate and agree prices with their clients). Rail carriers should, nevertheless, take into consideration general competition law principles, which, among others, establish the prohibition of certain practices (eg, applying to third parties unequal conditions in respect of equivalent services, positioning such third parties on an important disadvantage regarding competitors).

Law stated - 6 August 2024

NETWORK ACCESS

Sharing access with other companies

- 19** | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Yes, article 25 of the National Directorate of Rail Transport's (DNTF) Principles of Rail Regulation, which establishes the criteria that the DNTF should follow to grant Assignment of Capacity to the rail infrastructure, provides that the procedure to grant such capacity should be adjusted to non-discriminatory principles.

Law stated - 6 August 2024

Access pricing

- 20** | Are the prices for granting of network access regulated? How?

Pursuant to article 244 of law 20,075, the price or tolls to have access to the network are proposed by the DNTF to the Executive Power and approved by the Executive Power. In addition, such law provides that the DNTF should propose to the Executive Power the criteria for the calculation of such tolls. As of the date of this report (May 2024), these criteria have not yet been regulated.

Law stated - 6 August 2024

Competitor access

- 21** | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

There is no specific or declared policy on allowing new market entrants network access or increasing competition in rail transport. However, it is worth mentioning that the DNTF's Principles of Rail Transport, approved by the Executive Power through Decree 280/018, as the body in charge of rail transport policy, expressly encourage the DNTF (as regulator) to develop its rail transport regulation by aiming to promote competitiveness, making of the railway a tool that fosters chain values and the national production and whereby competition

should be a factor that generates efficiencies and eliminates monopolies. Pursuant to such regulation, the same criteria should be considered by the DNTF (as administrator of the rail infrastructure) when granting Assignment of Capacity to the infrastructure to rail operators. In addition, article 25 of the DNTF's Rail Transport Principles provides that the procedure to be established by the DNTF to provide Assignment of Capacity to the infrastructure should be based on non-discriminatory criteria.

Law stated - 6 August 2024

SERVICE STANDARDS

Service delivery

- 22** | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

With respect to passenger transport, article 10 of the National Directorate of Rail Transport's (DNTF) Principles of Rail Transport provides that rail transport providers should ensure that services are provided in accordance with basic accessibility and non-discriminatory conditions. The regulation does not contain exceptions or restrictions to such provision.

The regulation does not contain a similar provision in respect of freight rail transport.

Law stated - 6 August 2024

- 23** | Are there legal or regulatory service standards that rail transport companies are required to meet?

Article 10 of the DNTF's Principles of Rail Transport provides that passenger rail transport companies should adopt rules relating to quality of services and implement quality management systems. The systems should contain the following (among others):

- information to users;
- tickets;
- punctuality of services and general principles to cope with disruptions of services;
- cleanliness of rolling stock and air quality in carriages;
- customer satisfaction surveys;
- complaint handling and refunds in case of breaches to rules relating to quality of services; and
- assistance provided to disabled persons and persons with reduced mobility.

In addition, the regulation sets forth that passenger rail operators should control their own results on quality aspects and, on an annual basis, should publish a report on the results obtained in such field. The report should be submitted before the DNTF and should be published on the website of the rail transport companies.

Law stated - 6 August 2024

Challenging service

24 | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

Pursuant to article 6 of the DNTF's National Rail System Sanctions Regime, approved by the Executive Power through Decree 373/019, challenges by users in respect of breaches to their consumers' rights (which includes quality standards) are to be carried out in accordance with the administrative procedure set forth under the Executive Power's Decree 500/991. This is the general procedure governing administrative procedures relating to the activity of the Executive Power's bodies. The Decree includes general procedural principles (eg, impartiality, legal objectivity, material truth, transparency, efficiency, etc).

The DNTF is the body in charge of resolving users' challenges and sanctioning the rail company. Throughout the investigation procedure, the rail transport provider should be entitled, among others, to have access to the administrative file, submit evidence to defend its position and file its defences. Additionally, in case the resolution is adverse, it should be entitled to submit an appeal for revocation before the DNTF and, subsidiarily, a hierarchic appeal before the Executive Power. If the resolution is upheld, the rail company should be entitled to submit a final appeal (an action for annulment) before the Tribunal de lo Contencioso Administrativo (an administrative tribunal that is independent from the Executive Power).

Law stated - 6 August 2024

SAFETY REGULATION

Types of regulation

25 | How is rail safety regulated?

Rail safety is regulated through the rules, resolutions and instructions issued by the National Directorate of Rail Transport (DNTF). The main regulations in this respect include the following:

- the Principles of Rail Regulation, approved by the Executive Power through Decree 280/018, which sets forth:
 - the rules to which the administrator of the rail infrastructure is subject to in the maintenance of the infrastructure to ensure the functioning of operations under safety conditions; and
 - safety rules in respect of rail operators including the authorisations and certificates that rail operators and companies in charge of constructing and maintaining the infrastructure should obtain;
-

DNTF's Technical Specifications for the Approval of Railway Rolling Stock, approved by the Executive Power through Decree 68/020, which sets forth the technical requirements to be met by rail rolling stock;

- DNTF's Safety Rules for Rail Level Crossing, approved by resolution of the Ministry of Transport dated December 15, 2020, which set forth requirements in respect of rail level crossings;
- DNTF's Regulation of Rail Accidents and Incidents Investigating Body, approved by the Executive Power through Decree 67/021, which regulates the procedure to be followed by the Rail Accidents and Incidents Investigating Body in carrying out its investigations; and
- DNTF's National Regulation on Rail Transport of Hazardous Goods, approved by the Executive Power through Decree 201/022, which sets forth rules and procedures in respect of the rail transport of hazardous goods to prevent risks affecting public health, public security and the environment.

Law stated - 6 August 2024

Competent body

26 | What body has responsibility for regulating rail safety?

The body responsible for regulating rail safety is the DNTF, a division within the Ministry of Transport.

Law stated - 6 August 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

The 's Technical Specifications for the Approval of Railway Rolling Stock, approved by the Executive Power through Decree 68/020, sets forth the technical requirements that rail equipment (including engines and rolling stock) should comply with to be allowed to circulate through the National Railroad. Pursuant to the Specifications, all rolling stock circulating through the National Railroad should be approved (homologated) by the DNTF and registered before the DNTF's National Rail Registry. The Decree grants operators a seven-year maximum term to adequate their rail equipment to meet such Specifications.

The Specifications expressly adopt the rules issued by the Association of American Railroads and the Technical Interoperability Specifications of the European Union Agency for Railways in respect of the technical requirements for rail rolling stock.

Law stated - 6 August 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

Maintenance of track and other rail infrastructure is regulated under Chapter V of the DNTF's Principles of Rail Regulation, approved by the Executive Power through Decree 280/018.

Pursuant to said rules, the administrator of the rail infrastructure (DNTF) should plan its maintenance activities jointly with the traffic planners of the Traffic Control Centre. The administrator of the rail infrastructure may carry out the maintenance activities directly or through contractors.

Article 36 of the DNTF's Principles of Rail Regulation provides that the administrator of the rail infrastructure should measure the performance of the maintenance activities in accordance with key and adequate indicators, which should measure performance separating the different types of failures and locations. The administrator of the rail infrastructure should require that third parties contracted to undertake the maintenance activities be subject to the mentioned indicators and be subject to related sanctions and bonifications established by contract.

The administrator of the rail infrastructure should develop and implement a maintenance activities system that should meet the requirements and be in compliance with the international certification systems in respect of safety, quality and environmental standards (article 37 of the DNTF's Principles of Rail Regulation).

Law stated - 6 August 2024

29 | What specific rules regulate the maintenance of rail equipment?

Pursuant to Annex III of the DNTF's Technical Specifications for the Approval of Railway Rolling Stock, maintenance of rail equipment should be carried out by personnel and centres duly authorised (homologated) by the DNTF. Maintenance centres are defined under article 1.2 of Annex III of such Specifications as the entity responsible for the comprehensive maintenance and repair and quality and safety of the rail equipment that is provided to them by third parties.

Article 2 of Annex III of the Specifications provides that the maintenance centres should elaborate work programmes and procedures relating to the maintenance interventions and operations to which they are entrusted by third parties in accordance with maintenance programmes, the elaboration and formalisation of documents relating to the maintenance interventions and operations and keeping the information relating to the maintenance carried out for a period of five years.

Law stated - 6 August 2024

Accident investigations**30 | What systems and procedures are in place for the investigation of rail accidents?**

The body in charge of investigating rail accidents is the Rail Accidents and Incidents Investigating Body (OIAF), established by law 18,834 (paragraph B, article 173). Pursuant to its organic law, the OIAF is a technically autonomous body whose reports are not binding but should be submitted to the Ministry of Transport through the DNTF.

OIAF's investigatory procedure is regulated under the Rules of the Rail Accidents and Incidents Investigating Body, approved by the Executive Power through Decree 67/021. Pursuant to article 1 of the regulation, the purpose of OIAF's investigations is to prevent the repetition of future rail accidents by carrying out technical investigations and analysis of accidents with the purpose of determining the causes, determining responsibilities and recommending corrective measures. Article 2 sets forth that the procedure established thereunder applies to the investigation of material accidents and to use technical analysis of incidents and accidents to prepare reports that are useful to improve rail safety and prevention of accidents.

Law stated - 6 August 2024

Accident liability

- 31** | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

The ordinary liability regime applies to rail transport companies for rail accidents, including general consumer rights laws. There are no special rules in this regard with respect to rail transport.

Law stated - 6 August 2024

FINANCIAL SUPPORT

Government support

- 32** | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

In support of companies that provide services, the Executive Power's Decree 348/014 declared freight rail.

Law stated - 6 August 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

In support of companies that provide services, the Executive Power's Decree 348/014 declared freight rail transport as a promoted activity in accordance with article 11 of the investment promotion law (No. 16,906). Pursuant to this law, companies whose investment is promoted by the Executive Power benefit from the following:

- exemptions of the net worth tax benefits;
- exemption of the Income Tax on Economic Activities for a maximum amount and term that will result from applying a matrix of certain public-policy indicators (creation of jobs, increased exports, use of clean technologies, etc);
- VAT tax credits akin to the exporters' regime for the local acquisition of materials and services for civil works; and
- exemption of fees or taxes on imports, including VAT, on personal property for fixed assets and materials for civil works, which do not have exemptions under the benefits of other regimes, and are declared non-competitive for the national industry.

Additionally, article 6 of the Executive Power's Decree 348/014 provides that freight rail companies should benefit from the following:

- exemption from wealth tax in respect of the following fixed assets:
 - cargo transport units, and
 - electronic data processing equipment, and
- exemption from VAT and from the specific internal tax corresponding to the importation of the before-mentioned goods and reimbursement of VAT included in the local acquisition of such goods. Certain exceptions are provided in respect of such exemptions.

The Decree sets forth that to apply for these exemptions, the companies should submit before the Investment Commission a copy of their authorisation by the Ministry of Transport to provide freight rail services.

Law stated - 6 August 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

Uruguayan legislation contains certain specialised labour regulations relating to workers in the rail transport industry, which are established by Salary Councils, namely, within Group 13 (Transport and Storage), SubGroup 13 (Railway Transportation of People and Load), Chapter 13.1 (Load Railroad Transportation). The Salary Councils, created by law 10,449, are tripartite bodies, which include the business sector, the workers sector and the government, where, through the mechanism of social dialogue, minimum salaries, categories and other benefits are negotiated and determined. Pursuant to Law 18,566, the

regulation adopted by the Salary Councils applies to all employers and employees involved in the sector.

Finally, it should be noted that general labour laws and regulations apply to matters not regulated by Salary Councils.

Law stated - 6 August 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

Standard environmental laws apply to rail transport companies. With regard to the construction and rehabilitation of new rail lines, a Prior Environmental Authorisation should be required from the Ministry of Environment in accordance with Law 16,466 and the Executive Power's Decree No. 349/005. Such authorisation should be preceded by an environmental impact assessment before the Ministry of Environment. Other general environmental regulations, such as those related to land zoning and planning, protected areas or air quality (among others) may also apply, depending on each specific case.

With respect to sector-specific environmental regulation, section III of the National Directorate of Rail Transport's Principles of Rail Regulation sets forth certain environmental policies to be complied with by all participants of the Rail System. Among others, article 63 provides that all participants of the Rail System must have environmental management systems, which should be based on national laws in force and ISO 14001 certificate in force.

Law stated - 6 August 2024

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

The Uruguayan government recently inaugurated the Ferrocarril Central Project in April 2024. The project was implemented through a public-private partnership agreement, executed in 2019, which involved the design, construction, financing, rehabilitation and maintenance (for a 15-year term) of 273 kilometres of rail line between the city of Paso de los Toros and the country's capital city, Montevideo. The project involved an investment of more than US\$1.1 billion, transforming it into the largest infrastructure project in the history of Uruguay. The rail line connects a private pulp plant recently inaugurated, which, according to sources, its construction included an investment exceeding US\$3 billion, with the port of Montevideo.

The Ferrocarril Central Project is expected to revive rail transport in the country (both passenger and freight), which has been marginal in the last decades. In this sense, the Ministry of Transport has recently issued a licence to operate to the private company, which will be providing freight rail services to the mentioned pulp plant, making it the second company currently holding this license in the country. Other relevant local logistic companies have also expressed publicly their intention to commence to provide freight rail services. Moreover, after the increased interest of private companies in this means of transport, authorities from the Ministry of Transport have revealed that the government is evaluating the rehabilitation of other rail lines that have been inactive for some decades (eg, the rail track connecting the cities of Salto and Minas with Montevideo).

In addition, authorities from the national government and from the departments of Montevideo and its neighbouring department Canelones, have also revealed plans to construct a tram-train that would connect the increasingly populated east outskirts of Montevideo with the city's centre. According to sources, relevant local and international construction companies are already carrying out feasibility studies in regard to this project.

Law stated - 6 August 2024



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UPDATE AND TRENDS

Key developments of the past year

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

The freight rail industry in the United States is almost all privately owned. Unlike in some jurisdictions, where separate entities control rail infrastructure and rail operations, in the United States, rail infrastructure and operations over that infrastructure are typically controlled by the same entity. Railways may also enter into agreements with one another to share infrastructure or operations on a line. For example, a railway may have trackage rights to operate its trains over the lines of another railway, switching agreements whereby another railway agrees to provide switching access to a customer facility or haulage rights where one railway will move a second railway's traffic onto the first railway's lines. These arrangements are typically voluntary, but there are limited circumstances in which a railway may be forced to give another railway access to its infrastructure.

Freight railways are categorised as Class I, Class II or Class III based on their annual operating revenues. Railways with over US\$1.054 billion in annual revenues are Class I railways, which are subject to more rigorous regulation and reporting requirements. The six Class I railways are: BNSF Railway Co; CSX Transportation, Inc; Grand Trunk Western Railroad (the US affiliate of Canadian National Railway); and the recently merged Canadian Pacific Kansas City Ltd (which includes Canadian Pacific's US affiliate, the Soo Line Railroad, and what was the Kansas City Southern Railway Co); Norfolk Southern Railway Co; and Union Pacific Railroad Co. In addition, there are over 550 Class II (between US\$47.3 million and US\$1.054 billion in annual revenues) and Class III railways (less than US\$47.3 million in annual revenues) in the United States, which include regional railways, short-line railways and switching and terminal railways.

Passenger rail is largely government-owned or supported. The largest passenger rail system is the National Railroad Passenger Corporation (Amtrak), which is owned by the federal government and provides intercity passenger rail service. Amtrak owns and controls some rail lines and infrastructure, particularly in the Northeast Corridor between Washington, DC and Boston. Outside of the Northeast Corridor, Amtrak trains typically operate over the lines of freight railways. Some other intercity passenger systems are in various stages of development. The privately owned Brightline has operations in Florida between Miami and Orlando and has broken ground on Brightline West, a new high speed rail line between Las Vegas and Rancho Cucamonga (east of Los Angeles). Other private intercity passenger systems have been proposed in various states and construction has begun on a state-supported high-speed rail system in central California.

There are also numerous commuter railways that transport passengers in and around a single metropolitan region. Commuter railways are typically supported by state and local governments and often operate over rail lines owned by other railways.

Law stated - 31 July 2024

Ownership and control

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2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

In general, the US government is a regulator of freight rail services, not a provider. A very small number of short-line freight railways are owned by state and local governments or government entities, such as port authorities, most of whom purchased them from private railways to preserve rail service. In the passenger sphere, the federal government owns Amtrak, California is currently planning and constructing a high-speed rail line through its High-Speed Rail Authority and state and local governments often own or financially subsidise commuter railways.

Law stated - 31 July 2024

3 | Are freight and passenger operations typically controlled by separate companies?

In general, US railways carry either freight or passengers, but not both. There is no regulatory prohibition against a railway transporting both freight and passengers, however, and, historically, this was a common practice. Many rail lines host operations by both freight railways and passenger or commuter railways.

Law stated - 31 July 2024

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

The Surface Transportation Board (STB) regulates most non-safety-related rail transport issues, including rates, service, entry and exit and transactions involving rail carriers. The STB succeeded to the functions of the Interstate Commerce Commission (ICC) in 1996. The [Interstate Commerce Act \(49 USC 10101–16106\)](#) and regulations promulgated by the STB at [49 Code of Federal Regulations \(CFR\) Parts 1000–1333](#) govern these issues. The Interstate Commerce Act dates back to 1887 and has been subject to several significant amendments that substantially changed the scope of rail regulation. The most relevant amendments for railways today are the [Staggers Rail Act of 1980](#) (which partially deregulated the rail industry) and the [ICC Termination Act of 1995](#) (which further deregulated the industry and transferred the ICC's remaining functions to the STB).

The United States Department of Transportation, through several of its component agencies, is the safety regulator of the railway industry. Chief among these agencies is the Federal Railroad Administration (FRA). The primary laws governing rail safety are the Federal Railroad Safety Act and safety regulations promulgated by the FRA at [49 CFR Parts 200–299](#). Other disparate laws affect rail safety, such as the Safety Appliances Act, Hours of Service Act and [Railroad Safety Enhancement Act](#). Commuter railways are outside the jurisdiction of the STB. They are regulated on the safety side by FRA and in other areas by the Federal Transit Administration.

Amtrak was originally established by the [Rail Passenger Service Act of 1970](#). While Amtrak is statutorily exempt from most STB regulation, the STB retains jurisdiction over other intercity passenger railways that operate in more than one state or that otherwise connect to the interstate rail network. The STB has certain authority relating to Amtrak service, including over disputes relating to Amtrak access to freight rail facilities and whether Amtrak trains are receiving appropriate preference over freight rail service.

Law stated - 31 July 2024

MARKET ENTRY

Regulatory approval

- 5 | Is regulatory approval necessary to enter the market as a rail transport provider? What is the procedure for obtaining approval?

In general, regulatory approval from the Surface Transportation Board (STB) is required to enter the market as a rail transport provider, whether by the construction of a new line or by the acquisition or operation of an existing rail line. The STB has the authority to approve an application to the agency, and it also has the power to issue exemptions from the obligation to file a full application. The STB can exempt a person or transaction if it finds that formal regulation is not necessary to carry out US rail transport policy and either the transaction or service is of limited scope or regulation is not needed to protect shippers from an abuse of market power. The STB can grant petitions for exemption in individual cases and has also established class exemptions that allow parties to obtain regulatory approval through an even more expedited process for certain types of transactions. The type of regulatory process that is required to enter the market as a rail transport provider varies based on the type of transaction and the identity of the new entrant.

Under the expedited class exemption process, an entity seeking to acquire or operate a rail line files a verified notice providing specified details about the transaction. The notice must certify whether the proposed transaction involves any 'interchange commitments' that may limit future interchange with connecting carriers and provide specified information about such commitments. If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiror's projected annual revenue, exceeds US\$5 million, the applicant must post a notice of the proposed transaction at least 60 days in advance at the workplace of affected employees. The class exemption will be effective 30 to 45 days after the notice is filed (depending on the size of the new carrier). Potential opponents may seek to revoke the exemption for cause, but a petition to revoke does not automatically stay the exemption.

Law stated - 31 July 2024

- 6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

The process for regulatory approval to control a rail carrier varies depending on whether the acquiror is a carrier or a non-carrier and if the latter, whether the non-carrier acquiror

already controls other rail carriers. The approval process also varies depending on the class of the carriers involved (ie, Class I, II or III). A non-carrier may acquire control of an existing carrier without approval or exemption by the STB, so long as the non-carrier does not control any other rail carrier. Because such a transaction does not require STB approval, it may be subject to pre-merger notification and waiting period requirements under the Hart–Scott–Rodino Antitrust Improvements Act of 1976. This act requires persons contemplating mergers or acquisitions meeting certain jurisdictional thresholds to notify the Federal Trade Commission and the Department of Justice and wait a specific period (usually 30 days) before consummating a proposed acquisition. If the reviewing agency believes that a proposed transaction may violate antitrust laws, it may seek an injunction in federal court to prohibit consummating the transaction.

For control or merger transactions that do require STB approval, the STB classifies transactions as ‘major’, ‘significant’, ‘minor’ or ‘exempt’, depending on the circumstances. Major transactions involve the merger of two or more Class I railways and significant transactions are those that do not involve the merger of two or more Class I railways but are found to be ‘of regional or national transportation significance’. Exempt transactions are those for which the agency has found that regulation is not necessary to carry out US rail transport policy and has thus adopted a class exemption (eg, the acquisition of non-connecting carriers where no Class Is are involved). Transactions that are not major, significant or exempt are minor transactions.

Major, significant and minor transactions all require applications of varying complexity. Applicants in major and significant transactions also must submit a pre-filing notification describing the proposed transaction for publication in the Federal Register. The STB’s rules prescribe the information that will be included in the notice and the application, which differ based on the type of transaction. The STB will also establish a procedural schedule allowing interested parties to comment and request conditions, submit responsive applications or seek other relief. The procedural schedule will allow the evidentiary proceeding to be completed within one year for major transactions, 180 days for significant transactions and 105 days for minor transactions, with a final decision issued within 45 to 90 days thereafter.

The STB is required by statute to approve significant and minor transactions unless it finds both that the transaction is likely to cause a substantial lessening of competition and that the anticompetitive effects of the transaction outweigh the public interest in meeting significant transport needs.

Major transactions, by contrast, may only be approved if the STB finds the transaction is ‘consistent with the public interest’. STB rules adopted in 2001 governing major transactions indicate that the agency does not favour Class I consolidations that reduce transport alternatives ‘unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved’, including ‘improved service, enhanced competition, and greater economic efficiency’. No major transactions have been scrutinised under the STB’s 2001 rules governing major transactions, however. The acquisition of Kansas City Southern (KCS) by Canadian Pacific Railway was recently approved under the STB’s pre-2001 merger rules pursuant to a waiver granted by the STB for major transactions involving KCS.

Under the streamlined class exemption process, which is applicable for the control of non-connecting carriers where no Class Is are involved, parties to transactions that qualify for a class exemption must file a verified notice of the transaction with the STB

at least 30 days before the transaction is consummated. The verified notice should certify whether the proposed transaction involves any interchange commitments that may limit future interchange with connecting carriers and provide specified information about such commitments. Potential opponents may seek to revoke the exemption for cause, but a petition to revoke does not automatically stay the exemption.

The STB has the authority to place conditions on its approval of a transaction. These conditions are typically required to include labour protections for workers affected by the transaction and they also may contain environmental mitigation or measures to preserve competitive options.

Law stated - 31 July 2024

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

The STB's standards for review and approval of acquisitions, ownership and control of rail carriers do not distinguish between domestic and foreign entities. However, applicants for a transaction that would involve transnational operations are required to address certain cross-border issues in their application. The Committee on Foreign Investment in the United States – known as CFIUS – may also review a transaction that would result in a foreign entity controlling a US railway.

Law stated - 31 July 2024

8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

The construction of new rail lines that extend a railway into new territory requires regulatory approval or exemption by the STB, whether the construction is proposed by a new carrier or an existing carrier. However, no STB approval is needed for an existing carrier to construct ancillary tracks to facilitate service on its existing lines. For example, no STB approval is necessary to construct passing sidings or side tracks along existing tracks or to construct additional yard tracks.

The STB must authorise a new rail line construction project unless it finds it to be 'inconsistent with the public convenience and necessity'. The STB may impose modifications or conditions it finds to be 'necessary in the public interest'.

Parties seeking approval for new rail line construction may either apply to the STB, including the information specified by the agency's rules (49 CFR Part 1150) or submit an individual petition for exemption. Under either approach, parties must comply with the STB's environmental regulations (including consulting with the STB at least six months in advance to identify environmental issues). The STB must comply with the National Environmental Policy Act before granting a construction application or petition for exemption, which will typically require an environmental impact statement. There is also a class exemption available for the construction of short connecting track.

Law stated - 31 July 2024

MARKET EXIT

Discontinuing a service

- 9 | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

A rail carrier may not abandon or discontinue operations over any part of its railway lines unless the STB finds that the 'present or future public convenience and necessity require or permit the abandonment or discontinuance'. However, no STB approval is needed for the abandonment or discontinuance of ancillary track.

Railways can submit applications to abandon or discontinue service, which the STB shall grant if it finds that the public convenience and necessity standard is satisfied. Most abandonments and discontinuances occur through a class exemption that is available for any line that has been out of service for two years or more. Abandonment or discontinuance can also be sought through a petition for exemption.

After an abandonment or discontinuance application, petition or notice of class exemption is filed, any person (including a government entity) may submit an 'offer of financial assistance' to subsidise or purchase the rail line at issue. If the STB finds that the offeror is financially responsible, the abandonment or discontinuance shall be postponed until the parties have reached agreement on a transaction for subsidy or sale of the line. If they cannot agree, the conditions and amount of compensation are established by the STB.

Parties also have an opportunity to request that a line proposed for abandonment be set aside for interim trail use or offered for sale to be used for public purposes. Interim trail use is only permitted if the abandoning railway consents and the trail proponent agrees to certain conditions (including that rail service could be reactivated on the corridor). Under STB regulations, interim trail use negotiations may occur for one year, with extensions permitted by the Board if the trail sponsor and railroad agree. A condition that the property be offered for sale for public purposes may be imposed even if the railway objects, but the STB cannot force such a sale and the condition may not be in place for more than 180 days, after which the abandoning railway is free to sell the property to whomever it chooses.

Law stated - 31 July 2024

- 10 | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

The same legal standard (public convenience and necessity) governs applications for abandonment and discontinuation of service filed by third parties seeking to force a railway to abandon a line. (Such third-party abandonment is often called adverse abandonment.) The STB must consider the impact of abandonment on all interested parties, including the railway, shippers who have used the line and the community involved. In general, the STB

will not grant adverse abandonment where the incumbent railway or shippers on the line can demonstrate a need for continued rail service.

A rail carrier opposing adverse abandonment has the right to contest abandonment before the STB and to seek judicial review if necessary.

Law stated - 31 July 2024

Insolvency

- 11** | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

A special subchapter of the Bankruptcy Code (11 US Code Subchapter IV – Railway Reorganization) applies to railway bankruptcies and reorganisations. This subchapter requires the bankruptcy court and the trustee to ‘consider the public interest’ in addition to the interests of the debtor, creditors and equity security holders.

A railway in bankruptcy may be required to continue operations until it is authorised to abandon some or all of its lines or until it is liquidated. But courts have recognised that in some situations, a railway that has insufficient funds to pay its employees and suppliers simply cannot operate and requirements to do so prevent an orderly liquidation.

Law stated - 31 July 2024

COMPETITION LAW

Competition rules

- 12** | Do general and sector-specific competition rules apply to rail transport?

Both general and sector-specific competition rules apply to rail carriers, with some exceptions. A rail carrier engaged in a consolidation, merger or control transaction approved by the STB is exempt from the antitrust laws (and ‘all other law’) as necessary to allow it to carry out the approved transaction. This means, for example, that a rail carrier engaged in a merger approved by the STB cannot be found liable for violating the antitrust laws simply for carrying out that merger. Similarly, rates for rail transport, which are subject to STB rate regulation in some cases, cannot be challenged under antitrust law.

Law stated - 31 July 2024

Regulator competition responsibilities

- 13** | Does the sector-specific regulator have any responsibility for enforcing competition law?

The STB does not enforce federal antitrust laws, although it may consider antitrust principles in assessing whether a particular transaction should be approved or exempted.

Law stated - 31 July 2024

Competition assessments

- 14** | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

The STB's principal concerns in merger or control cases are the preservation of competitive rail service where it exists and, in major mergers, the enhancement of rail competition. The STB is particularly focused on avoiding or remediating any situation where a transaction would reduce the number of competitors from two to one (and, to a lesser extent, from three to two), as well as, in certain instances, where a transaction would reduce forms of indirect competition (eg, competitive pressure from build-out or build-in options due to a competitor operating nearby). The STB usually requires that direct or indirect competitive rail service by at least two rail carriers be maintained wherever it existed before a merger or control transaction.

Law stated - 31 July 2024

PRICE REGULATION

Types of regulation

- 15** | Are the prices charged by rail carriers for freight transport regulated? How?

Some prices for freight transport are regulated by the STB. The STB has no jurisdiction to regulate the following rates: rates that are agreed to in rail transport contracts; rates for transport that are subject to 'effective competition' from another railway or mode of transport (ie, the railway is not market-dominant); and rates with a revenue to variable cost ratio (R/VC) of 180 per cent or less. The R/VC is calculated by dividing the challenged rate by the variable costs for the movement as calculated by an STB costing model called the Uniform Railroad Costing System (URCS). Further, the STB has granted commodity exemptions that preclude rate or other regulation of various commodities and equipment types that have been determined to be subject to effective competition; however, the STB retains the power to revoke these exemptions in whole or for particular traffic movements.

Shippers wishing to challenge rates that do not fall within the above categories have the right to file a rate reasonableness complaint with the STB.

Law stated - 31 July 2024

- 16** | Are the prices charged by rail carriers for passenger transport regulated? How?

The STB has statutory authority to determine the reasonableness of passenger rates for intercity transport within its jurisdiction, but it has never done so and has no rules governing such determinations. Amtrak is exempt from STB jurisdiction on most matters, and the prices it charges are unregulated. There are no generally applicable rules as to the fares charged by commuter rail lines, although state and local laws may apply.

Law stated - 31 July 2024

- 17** | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

For traffic that is subject to rate regulation, shippers may file a complaint with the STB asking it to rule that the rate is unreasonably high. The STB has adopted several methodologies to adjudicate rate complaints, the most commonly used of which is the standalone cost (SAC) test. Other available methodologies that have been used by the STB include a simplified SAC methodology and a three-benchmark methodology designed for use in smaller cases. A new methodology for smaller cases, Final Offer Rate Review, was adopted in December 2022. The methodology has not yet been used and the STB's decision to adopt the methodology has been appealed to a federal circuit court.

A shipper that successfully proves that its rate was unreasonable under its chosen methodology may receive reparations for rates paid above the maximum reasonable level and a prescription requiring the railway to charge a lower rate in future. Rate disputes are also eligible for arbitration under the STB's arbitration programme, though the programme has never been used. In December 2022, the STB adopted rules that would create a new arbitration programme for rate disputes if all Class I railroads agree to participate. Two petitions to reconsider aspects of the arbitration rules are pending before the STB. A federal circuit court appeal has also been filed, although briefing in that appeal is stayed pending resolution of the reconsideration petitions.

Law stated - 31 July 2024

- 18** | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

No, unless the shippers are requesting identical service (eg, the same types of shipments between the same origins and destinations) and the railway cannot identify another sound reason for pricing the identical services differently.

Law stated - 31 July 2024

NETWORK ACCESS

Sharing access with other companies

- 19** | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

In general, entities that control rail infrastructure are not required to grant network access to other rail providers. The STB has authority to impose various forms of network access upon complaint and such relief may be granted if the agency finds an abuse of market power or service failure. The STB also sometimes imposes network access as a condition to a transaction to mitigate a loss of competition that might otherwise result from a merger. In 2024, the STB promulgated new regulations that would allow certain eligible customers to obtain mandated reciprocal switching where the customer can show a rail service failure, as measured by the railway's success in meeting performance standards based on three new service metrics: Original Estimated Time of Arrival; Transit Time; and Industry Spot and Pull. An appeal of the new regulations is pending.

Freight railways are required to grant Amtrak access to their network at Amtrak's request. The terms and conditions of such access are negotiated between the freight railroad and Amtrak; the STB has the authority to set reasonable terms and conditions if an agreement cannot be reached.

While in most instances railways are not required to give other railways network access, railways must cooperate with other railways to allow for the uninterrupted flow of traffic over the national rail network. Railways are required to provide switch connections to the track of other railways, accept traffic from other railways when necessary to complete rail service, provide reasonable facilities for interchanging traffic with other railways, establish reasonable through routes with other railways and allow for crossings over railway property by other railways.

Law stated - 31 July 2024

Access pricing

20 | Are the prices for granting of network access regulated? How?

Prices for network access are negotiated in the first instance by the railways involved, including under the new mandated reciprocal switching rules adopted in 2024. If the railways cannot agree on pricing, the STB has jurisdiction to set a price. The STB has not established a uniform methodology for pricing network access.

Law stated - 31 July 2024

Competitor access

21 | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

There is no declared policy specifically regarding access for new market entrants. The Rail Transportation Policy in the Interstate Commerce Act encourages the STB to allow competition and the demand for services to establish reasonable rates to the maximum extent possible. The STB's policy statement regarding Class I mergers encourages

proposals that would enhance competition, in part to offset other possible harm that could arise from such transactions.

Law stated - 31 July 2024

SERVICE STANDARDS

Service delivery

- 22** | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

Freight railways have a common carrier obligation to provide service to freight customers upon reasonable request. Common carriers generally cannot discriminate in providing service and must respond to reasonable requests for service.

Generally, Amtrak and commuter railways do not have a federal common carrier obligation but may be subject to certain other state or federal legal requirements that limit their ability to refuse service to potential customers.

Law stated - 31 July 2024

- 23** | Are there legal or regulatory service standards that rail transport companies are required to meet?

Freight railways are required to provide service upon reasonable request and to establish reasonable rules and practices for providing service. Railways are also required to maintain a safe and adequate supply of rail cars. The Surface Transportation Board (STB) requires Class I railways to regularly report on various service metrics.

The STB's new mandated reciprocal switching rule establishes service performance standards. If a railway does not meet one of those three established performance standards, eligible customers may seek and obtain mandated reciprocal switching to another railway.

Law stated - 31 July 2024

Challenging service

- 24** | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

Freight shippers can bring complaints to the STB alleging that a railway is engaging in an unreasonable practice or is violating its common carrier or car supply obligations. The STB's rules allow each party to present evidence and arguments, after which the STB will make its decision.

In service emergencies where a railway is not providing adequate service, the STB has the power to issue emergency service orders that temporarily direct the handling of traffic or order another railway to provide service (49 USC section 11123). Such emergency service orders may be in place for a maximum of 270 days. The STB recently adopted changes to its emergency service order regulations that are intended to clarify standards and expedite proceedings, including clarifying that the STB may initiate emergency service orders on its own.

The STB also has rules in place to issue temporary access orders to address serious service issues that do not necessarily rise to the level of an emergency.

Law stated - 31 July 2024

SAFETY REGULATION

Types of regulation

25 | How is rail safety regulated?

Freight, passenger and commuter rail are all subject to federal safety regulation, primarily by the Federal Railroad Administration (FRA). The FRA uses its broad authority granted by the Federal Railroad Safety Act (FRSA) to 'promote safety in every area of railway operations and reduce railway-related accidents and incidents' (49 USC section 20101). The FRA typically promulgates regulations in the Code of Federal Regulations (CFR) under the authority granted by these statutes. These detailed regulations include standards for inspection, types of equipment, hours of work, operations and record-keeping. The FRA enforces these rules and regulations through inspections and by issuing notices and civil penalties for any violations. The FRA can also issue emergency orders under certain circumstances to initiate immediate actions (see 49 USC section 20104). Some relevant statutory provisions and FRA regulations specifically reference and incorporate standards set by the Association of American Railroads (AAR) as a minimum or safe harbour for compliance with the FRA's regulations.

Broadly, if the FRA has issued regulations on a rail safety issue, FRSA pre-empts state or local regulations on that issue. If the FRA has not acted, in some circumstances, states may issue more stringent regulations to address an essentially local safety or security hazard.

Law stated - 31 July 2024

Competent body

26 | What body has responsibility for regulating rail safety?

The FRA has primary responsibility for regulating rail safety. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has some oversight over hazardous materials moved by rail and the Transportation Safety Administration has some oversight where safety and security concerns overlap. The Federal Transit Administration does not have direct safety oversight of railways but does work with commuter railways on some safety

issues, including technical assistance. Finally, the National Transportation Safety Board (NTSB) may issue non-binding recommendations to specific railways, the railway industry or other federal agencies after incident investigations.

Law stated - 31 July 2024

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

Federal statutes (see, eg, 49 USC section 20701 et seq; 49 USC section 20133; 49 USC section 20155) and multiple FRA regulations (see, eg, 49 CFR Parts 215, 221, 223, 224, 229, 231 and 232) apply safety standards for freight cars, passenger cars, locomotives and other rolling stock, many of which require actions by the manufacturer for such equipment to be used by US railways. The PHMSA also has regulatory authority over rail equipment used to move hazardous materials.

There are also AAR standards for equipment that AAR members comply with and that are sometimes incorporated in regulation.

Law stated - 31 July 2024

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

Federal statutes (see, eg, 49 USC section 20142; 49 USC section 20134) and multiple FRA regulations (see, eg, 49 Code of Federal Regulations (CFR) Parts 213, 232, 233 and 237) address the maintenance of track, signal systems and other rail infrastructure.

Law stated - 31 July 2024

29 | What specific rules regulate the maintenance of rail equipment?

Federal statutes and multiple FRA regulations address the maintenance of rail equipment, including required inspections and reporting on such inspections. Some of the most relevant provisions by equipment type are:

- locomotives: 49 USC section 20702 and 49 CFR Part 229;
- freight cars: 49 CFR Part 215;
- passenger cars: 49 USC section 20133 and 49 CFR Part 238; and
- brakes: 49 CFR Part 232.

Law stated - 31 July 2024

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

Railways are required to report all accidents to the FRA. The FRA investigates serious train accidents, including all accidents involving fatalities to railway employees or contractors. However, no part of a report of an FRA accident investigation may be admitted as evidence in a suit for damages for the accident.

The NTSB also investigates major transport accidents, including railroad accidents. Railroads are obligated to report such accidents to the NTSB. Investigations are conducted by NTSB staff, who designate parties to participate in the investigation. The NTSB will issue a factual report, including a determination of probable cause for the accident and any safety recommendations. To ensure that NTSB investigations focus only on improving transport safety, the NTSB's analysis of factual information and its determination of probable cause cannot be entered as evidence in a court of law. Unlike the FRA, the NTSB does not have direct regulatory authority over railways to mandate compliance with any safety recommendations it makes. However, NTSB recommendations typically carry persuasive weight and may be implemented by other regulatory agencies.

Law stated - 31 July 2024

Accident liability

31 | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

There is a statutory limitation on liability for injury, death or damage to property of a passenger arising in connection with the provision of rail passenger transport of US\$200 million (49 USC section 28103). However, later action by Congress requires an inflation adjustment every five years and, by regulation, the cap is now US\$323 million. The liability limit applies to all awards to all passengers from all defendants arising from a single accident or incident. There is no similar limitation on damages arising from freight operations.

Law stated - 31 July 2024

FINANCIAL SUPPORT

Government support

32 | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

Government entities provide little or no direct financial support to freight rail carriers, although carriers sometimes benefit indirectly from broad-based tax policies and

incentives. Freight rail carriers sometimes partner with states and regional authorities on an ad hoc basis to finance major transport infrastructure investments and improvements, including with the support of various federal grant programmes. In addition, the United States Department of Transportation administers the Railroad Rehabilitation and Improvement Financing programme, through which low-interest, long-term loans can be obtained to finance freight or passenger projects. Short-line railroads can also take advantage of the 45G tax credit programme, which supports track maintenance. On the passenger side, Amtrak is subsidised by the federal government and state and local governments often own or financially subsidise commuter railways. Moreover, some short-line railways are owned by state and local governments. The nature of financial support for these commuter railways and short lines varies widely and may include loans, tax benefits and direct financial subsidies. An emerging area of government support for passenger rail is private activity bonds, which are issued by state and local governments to attract financing for a private project by taking advantage of the tax-exempt nature of government bonds. These are being used for the Brightline West high-speed rail project in California and Nevada.

Law stated - 31 July 2024

Requesting support

- 33** | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

There are no sector-specific rules governing financial support to rail carriers. The processes for requesting or challenging such support are ad hoc and case by case. Most passenger and commuter railways receive some form of public subsidy.

Law stated - 31 July 2024

LABOUR REGULATION

Applicable labour and employment laws

- 34** | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

Labour relations between rail carriers and their employees are governed by: the [Railway Labor Act \(RLA\)](#), which sets forth specialised labour laws that are broadly applicable to freight railways; Amtrak; select commuter railways that retain some freight rail functions; and entities that provide services related to rail transport for which there is common ownership or control between the entity and an RLA carrier. The RLA generally does not apply to any wholly intra-state railways, including street, interurban or suburban electric railways. When the RLA applies, it occupies the entire field of rail labour law and preempts state labour laws entirely.

The RLA differs significantly from standard federal labour laws set forth in the National Labor Relations Act (NLRA). Unlike the NLRA, one of the RLA's main purposes is to avoid any interruption to interstate commerce. As such, the RLA prescribes an elaborate scheme of mandatory and time-consuming procedures that must take place before self-help measures are permitted. The RLA imposes a positive duty on both carriers and employees to exert every reasonable effort to make and maintain collective bargaining agreements and to settle all disputes. The RLA creates federal entities, including the National Mediation Board and the National Railway Adjustment Board, for adjudicating disputes under the Act. Actions to enforce the RLA can be litigated in federal court. The US Congress has historically stepped in to settle labour disputes legislatively to avoid or minimise disruptions to interstate commerce.

Law stated - 31 July 2024

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

In general, standard federal environmental laws apply to rail transport companies. The Environmental Protection Agency has specialised rules governing locomotive emissions. Both the Federal Railroad Administration and Surface Transportation Board are subject to the National Environmental Policy Act, which requires agencies to consider the environmental impact of any major federal action. As such, any matter that requires agency action (such as approval of an application or the grant of an exemption) is subject to an environmental review of the impact of the action.

Many state and local regulations, including environmental regulations, are inapplicable to railways because of the pre-emption provisions of the ICC Termination Act. Whether a particular state or local regulation is pre-empted by federal law must be analysed case by case. For example, California recently issued locomotive pollution rules that are being challenged in federal court.

Law stated - 31 July 2024

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

There are two major issues that continue to receive a substantial amount of attention in US rail circles.

First, the derailment of a train carrying hazardous materials in East Palestine, Ohio in early 2023 has brought significant attention to rail safety issues, including proposed and

enacted federal and state legislation. This includes, most notably, a Two-Person Crew rule that became effective in 2024 and requires two crew members on all freight trains subject to certain exceptions and a special approval process to reduce crew size. Regulators have also increased their focus on safety issues, including studying concerns about longer freight trains, proposing and adopting new regulations and issuing safety advisories relating to train length, train makeup and wayside detection, among other actions. Notably, the Federal Railroad Administration adopted a new rule in 2024 mandating the size and location of train crew personnel. That rule has been appealed to federal court.

Second, focus has continued on passenger rail thanks to significant support from the Biden administration, including substantial funding for passenger rail that was included in the Infrastructure Investment and Jobs Act, a five-year infrastructure funding bill. At the same time, the contours of Amtrak's ability to access the freight rail network are being tested in proceedings at the Surface Transportation Board (STB). An Amtrak-initiated STB proceeding to operate a Gulf Coast passenger service on the rail lines of two freight railroads between New Orleans and Mobile was settled after a lengthy STB evidentiary hearing. Although the settlement is confidential, it will support both freight and passenger service on the corridor. Amtrak also initiated a still-pending case against Union Pacific (and other railroads) because of alleged substandard on-time performance of its Sunset Limited service. Amtrak also successfully asserted eminent domain over Washington, D.C.'s historic Union Station, removing a private entity that had been in charge of managing the commercial portions of the station and giving itself direct control over the major rail transportation hub.

As noted above, Brightline West has officially broken ground for a high-speed route between Las Vegas and the Greater Los Angeles area. Brightline West's effort was supported by US\$3 billion from the Federal-State Partnership for Intercity Passenger Rail created in the Infrastructure Investment and Jobs Act and approval for US\$3.5 billion of private activity bonds, among other private investments. High-speed rail in other parts of California also continued to progress with the release of final environmental documentation for the Palmdale to Burbank segment of the California High Speed Rail Authority's much delayed and costly plan to connect San Francisco and Los Angeles via high-speed rail.

Law stated - 31 July 2024



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