Rail Transport

Contributing editor
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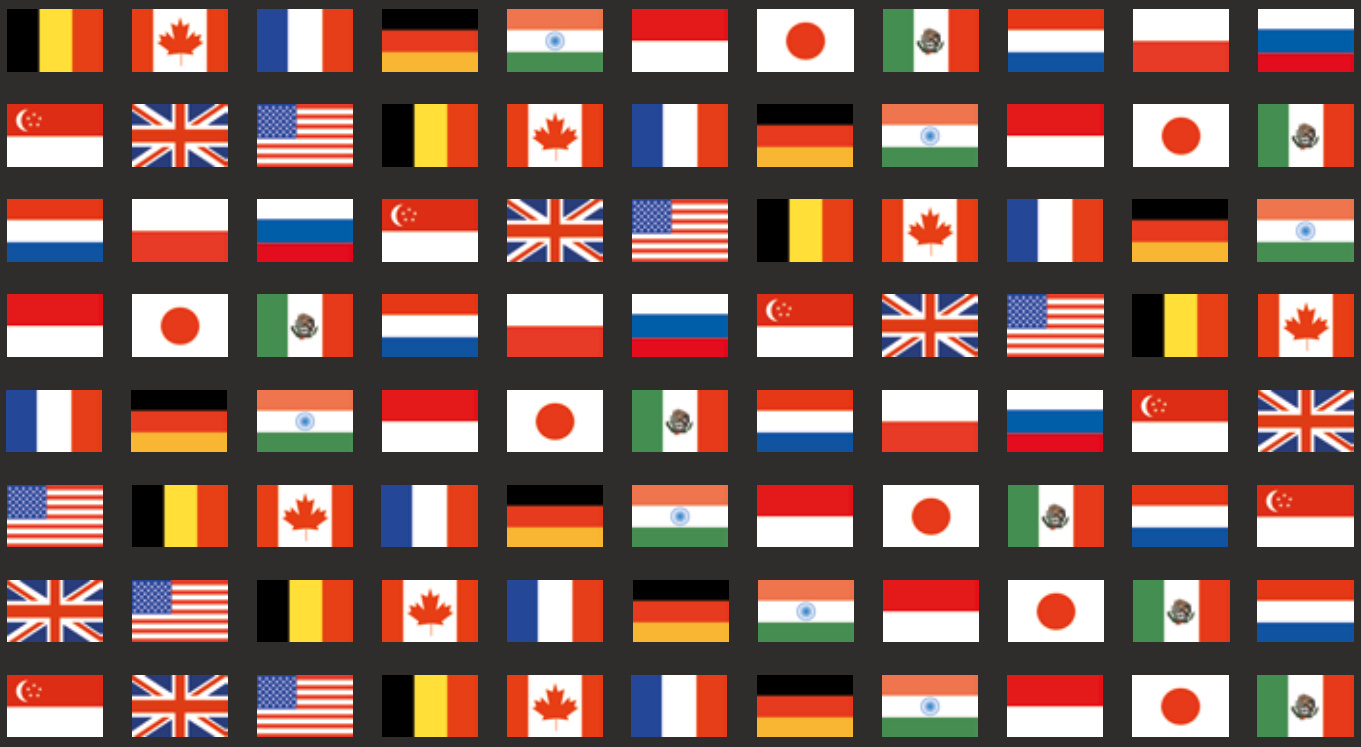

2019

GETTING THE DEAL THROUGH

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Rail Transport 2019

Contributing editor
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Sidley Austin LLP

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Preface

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First edition

Getting the Deal Through is delighted to publish the first edition of *Rail Transport*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Matthew J Warren of Sidley Austin LLP, the contributing editor, for his assistance in devising and editing this volume.

GETTING THE DEAL THROUGH

London
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Global overview

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Sidley Austin LLP

From the very outset, railways have been a global phenomenon. 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 iron road 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 starkly different rules for licensing and economic regulation than systems where infrastructure management and rail operations are conducted by different entities (such as those 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.

In general, 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 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 Amtrak in the US and VIA Rail in Canada.)

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 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 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. 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 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.

Canada's regulatory system also underwent 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: they feature large privately owned freight railways that each control their own infrastructure (supplemented by a number of short-line carriers); they generally give railways the freedom to price their services as they deem appropriate, but provide a mechanism for shippers to challenge rates that they believe to be unreasonable (through final offer arbitration in Canada and Surface Transportation Board rate complaints in the United States); they provide mechanisms for shippers to challenge the quality of service they receive; and they have 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. Further, the regulatory system has rejected 'open access' regimes requiring railways to grant network access to other operators in all circumstances. This may, in part, be because of arguments that open access could drive railway rates below a level that would allow them to adequately support infrastructure without public subsidy.

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.

As described in the European country chapters, to some degree these separated models have been implemented to comply with European Union rail laws. A series of EU railway packages have 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 focus is 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 both the rail system and 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. India, by contrast, continues to have a nationalised system through Indian Railways, but it is exploring opportunities for private sector participation. 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 eventually will expire.

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 European Union's progress in developing unified interoperability standards is a key trend to watch.

Even where rail lines do not cross borders, rail technologies increasingly do. For example, proposals are under way in multiple countries to use Japanese Shinkansen technology to develop high-speed train routes. China's Belt and Road Initiative is developing major rail infrastructure projects in a number of countries. Indeed, the markets for locomotives, rolling stock, and the increasingly sophisticated signalling and communications technologies that underlie rail operations are all increasingly global. Consequently, it will be particularly important for manufacturers to keep abreast of developing equipment and safety standards in different jurisdictions.

One final trend that may soon have to be addressed by all jurisdictions is the promise of autonomous train operations. While autonomous vehicle technology may be more prominent in the news and may ultimately have a greater impact on transport worldwide, autonomous train technology is also on the horizon. In fact, trains operating on fixed rails in relatively controlled environments are likely to face fewer technological barriers than vehicles operating on public roads. Indeed, a mining company in Australia recently debuted what appears to be the world's first autonomous heavy freight rail operation. Perhaps this could be a harbinger of the future, just as the Liverpool and Manchester Railway was in 1830.

Despite significant jurisdictional differences, international understanding and cooperation is 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. It is our hope that this guide will both assist legal practitioners in the industry and provide a starting point for businesses thinking about ways of 'getting the deal through' in the field of rail transport.

Belgium

Michael Jürgen Werner
Norton Rose Fulbright LLP

General

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, through Directive 2012/34/EU establishing a single European rail area 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. Unlike some other EU member states, Belgium has not yet liberalised the market for the domestic transport of passengers, which remains the exclusive competence of 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. Three rail undertakings operate in the international passenger transport segment. 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.

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 2023. In addition, the state also owns Infrabel. Finally the state controls HR Rail, which handles recruitment of Infrabel's and SNCB's employees.

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

Freight and passenger operations are typically controlled by separate companies. There are currently three 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 formerly disinvested the business following a large-scale restructuring effort. In 2011, SNCB's freight division was sold to a private company and rebranded as Lineas, with the SNCB only operating in the passenger transport market.

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 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) 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 (TSI), which are then adopted by 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 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 Infabel's network statement with the legislation, levied 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 (DRSI).

Market entry

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 FPSMT. The procedure for issuance of the licence is laid down by Chapter II, Title 3 of the Rail Code and articles 3 and 4 of the Royal Decree dated 16 January 2007 on the railway undertaking licence.
- Safety certificate: in order to have access to the infrastructure, the railway undertaking must be in possession of a safety certificate issued by the DRSI. The certificate has two parts: Part A (certification confirming the acceptance of the railway undertaking's safety management system in the country of origin and a safety certificate) and Part B (certification confirming the acceptance of the arrangements made by the railway undertaking with a view to

satisfying the specific requirements necessary for the safe operation of the network concerned in Belgium). The safety certificate is issued under the conditions laid down by the Royal Decree dated 16 January 2007 on the safety licence, the safety certificate and the annual safety report.

- Cover of liabilities: applicants for a railway undertaking licence are required to have civil liability cover (article 13, section 1). The 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 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 traffic admission certificate, confirming the conformity of said rolling stock with the applicable legislation, and is issued by the DRSI in accordance with the Royal Decree of 1 July 2014 adopting the requirements applicable to rolling stock for the use of train paths.

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 (BCA) or the European Commission if merger thresholds are met.

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

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 SNCB, a state-owned company, it is legally impossible to acquire control over it.

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.

Market exit

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.

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 traffic admission certificate, or where the rolling stock does not correspond to that described in the aforementioned certificate. 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 does 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.

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 new general rules of Book XX on insolvency of undertakings of the Code of Economic Law (CEL), which entered into force on 1 May 2018, applies. In 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, then 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 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.

Competition law

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 the CEL, introduced by the Competition Act of 2013, the Royal Decree of 30 August 2013 on the notification of concentrations, and the Royal Decree on the notification of concentration of undertakings referred to in article IV.10. The CEL covers typical competition areas, such as mergers, cartels (article IV.1, section 1, the national equivalent to article 101 TFEU) and abuse of dominance (article IV.2, the national equivalent to article 102 TFEU).

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 BCA.

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.

Price regulation

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

The Rail 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 Rail Code provides that rail undertakings are free to control the provision and commercialisation of their services, including pricing.

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

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

In terms of passenger transport, a distinction must be made between state- and privately owned rail undertakings. For private companies, the provisions of article 9 of the Rail 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 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 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 whom 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.

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 in order to express its opinion on price increases. However, the Committee's ex ante opinion is non-binding.

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 in consumer protection, competition law and possibly constitutional law. The following national legislation governs equal treatment and the right to non-discrimination: the Anti-Racism Law of 30 July 1981, the Law of 10 May 2007 promoting equal treatment between women and men, and the Anti-Discrimination Law of 10 May 2007, among others.

Network access

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 provision of transport of freight or international carriage of passengers, provided they fulfil the legal requirements to do so.

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) No. 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 9 December 2004 on the allocation of the capacity of the railway infrastructure and the railway infrastructure utilisation fee; the Ministerial Decree of 9 December 2004 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 on the annual fee for holding a railway undertaking licence. These are reflected in Infrabel's network statement, which has a breakdown of how charges are calculated and for which services.

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.

Service standards

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 his or her luggage, such as drugs or weapons, the consumption of drugs or other antisocial behaviour.

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.

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 (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations stipulates certain rules in favour of rail passengers. This Regulation has applied in full in Belgium since 3 December 2014. In order to comply with its EU obligations, Belgium has implemented national legislation on complaint handling, enforcement and sanctions through the Law of 30 December 2009 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 FPSMT as the National Enforcement Body (NEB). Passengers can submit a complaint to the NEB if they feel that their rights have not been respected.

Update and trends

On the proposition of the Minister for Mobility, the Council of Ministers has approved a draft law modifying the Rail Code in order to transpose Directive 2016/2370/EU – the Market Pillar Directive. This will allow other providers (not just the 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 will strengthen the independence of the infrastructure manager. The draft law has been sent to the Council of State, the supreme administrative court of Belgium, for commentary.

The expected date for the liberalisation of the domestic market is 2023. In preparation, it is expected that more legislative changes will be enacted to prepare the SNCB commercially for competition in the rail transport market.

Safety regulation

25 How is rail safety regulated?

The general safety rules are those set out by Directive 2004/49/EC on safety on the Community's railways, which was implemented in Belgium through the Law of 30 of August 2013 concerning the Railway Code. A national plan for railway safety does not exist; instead, safety measures are implemented through public service contracts entered into by the 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 DRSI's 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.

26 What body has responsibility for regulating rail safety?

The role of National Safety Agency pursuant to article 3 of Directive 2004/49/EC 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 Ministry responsible for the Middle Class, Self-employed, SMEs, Agriculture and Social Integration.

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

Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community lays forth that each part and subpart of the European rail system must comply with certain TSI. These TSI must also be taken into account by manufacturers in order to establish the EC declaration of conformity or suitability for use of an interoperability constituent.

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.

29 What specific rules regulate the maintenance of rail equipment?

Commission Regulation (EU) No. 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons, amending Regulation (EC) No. 653/2007, establishes a system of certification of entities in charge of maintenance for freight wagons. In Belgium, the certification of entities in charge of maintenance (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.

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 (the IB) within the Federal Public Service Mobility and Transport. The IB investigates serious operational accidents that result in the following: 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 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 in order 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.

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

Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations establishes special rules for the liability of the rail undertaking in article 26. The payment of damages in case of death is provided for in articles 27 and 28. In other cases of bodily harm, national law shall determine whether and to what extent the rail undertaking must pay damages.

Financial 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 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 antiterrorist safety measures. In total, the rail sector receives the majority of state aid in Belgium, which amounts to roughly €3 billion per year.

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 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) has been encroached may only seize the national courts.

In addition, there are financial schemes open to rail undertakings that allow them to benefit from state funding, including the following:

- combined transport aid: commenced in 2005, this measure provides aid for operators that contract to transport intermodal transport units (UTI) by rail; and
- single wagon market aid: commenced in 2013, this measure provides aid to rail undertakings providing rail transport by single wagon in Belgium.

To benefit from this aid, eligible candidates must submit their application form to the FPSMT at the latest one month after the end of the trimester that gives right to the subsidy, pursuant to the Royal Decree of 15 July 2009 regarding the promotion of combined rail transport of intermodal transport units as amended. Article 1 of the Law of 5 May 2017 regarding aid for combined transport and for single wagonload traffic 2017–2020 defines 'trimester' as the period that runs from 1 January until 31 March, 1 April until 30 June, 1 July until 30 September or 1 October until 30 December.

Labour regulation

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 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 (3 July 1978). 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 DRSI, and the applicant must undergo medical and psychological examinations.

Environmental regulation

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 are regulated nationally by each region's environmental regulatory authority.

Special rules in 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.

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General

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

The Canadian rail system is operated by over 60 rail companies.

There are two major Class 1 freight railways (with revenues exceeding C$250 million in the past two years): Canadian National Railway Company (CN) and Canadian Pacific Railway (CPR). Together, CN and CPR represent the vast majority of Canada's annual rail tonne-kilometres and overall tonnage carried by the rail sector, collectively owning and operating more than 80 per cent of the industry's tracks. Given this industry dynamic, this chapter focuses primarily on the federally regulated Class 1 freight railways, unless otherwise noted.

Some large US-based carriers have freight rail operations in Canada as well, including Burlington Northern Santa Fe Railway Company and CSX Transportation Inc.

Canada is also serviced by more than 50 short-line railways, some of which are federally regulated while others are provincially regulated. Short lines typically connect shippers to Class 1 railways, to other short lines or to ports to move products across longer distances.

VIA Rail, a Crown corporation established in 1977, operates Canada's national passenger rail service on behalf of the government.

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?

As noted in question 1, VIA Rail is a Crown corporation operating a national passenger rail service.

In addition, the grain transportation system utilises a fleet of hopper cars. Hopper cars are owned by a number of entities, including the federal and provincial governments. As of 2015, the federal government owned over 8,000 hopper cars, while the provincial governments of Alberta and Saskatchewan each owned approximately 900 cars. These cars have been apportioned between CN and CPR for their use. Many of these publicly supplied hopper cars have been retired or will be retired in the future.

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

Yes. See question 1.

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

Most aspects of rail transport are regulated by the Canadian Transportation Agency (the Agency) under the Canada Transportation Act (CTA) and its associated regulations. The Agency is an independent administrative body. It performs two key functions within the federal transportation system. First, as a quasi-judicial tribunal, the Agency adjudicates a range of transportation-related disputes. Second, as an economic regulator, the Agency provides approvals, issues licences, permits and certificates of fitness, and makes regulations on a wide range of matters involving federally regulated modes of transportation.

Rail safety is regulated by Transport Canada (a federal Crown department) under the Railway Safety Act (RSA) and its associated regulations. Transport Canada develops regulations, rules and standards regarding the safety of federally regulated railways, monitors compliance with those rules, regulations and standards, and takes enforcement action as required.

Market entry

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

Any person who proposes to operate or construct a passenger or freight railway must first apply under the CTA for a certificate of fitness. The application is made to the Agency and must include a completed certificate of insurance form, and must indicate the termini and route of each operation.

The Agency will issue a certificate of fitness if it is satisfied that there will be adequate liability insurance cover for the proposed operation or construction. The liability insurance must cover the specified risks set out in the CTA, which include third-party bodily injury and death, third-party property damage, risks associated with a leak, pollution or contamination, and certain costs associated with a railway accident involving designated goods.

The minimum liability insurance cover necessary differs for passenger and freight rail service. For passenger rail service, the adequacy of the liability insurance cover is determined in accordance with the Railway Third Party Liability Insurance Coverage Regulations. For freight rail service, minimum liability insurance cover is set out in a schedule to the CTA and depends primarily on the volume of dangerous goods being carried on the railway.

In addition to obtaining a certificate of fitness, prior to commencing operations a railway company must apply under the RSA for a railway operating certificate. The application is made to Transport Canada and must include a description of the operations of the company and copies of the safety rules established by the company.

Transport Canada will issue a railway operating certificate if the company meets the baseline safety requirements applicable to its operations. Transport Canada may place terms and conditions on the certificate to limit or restrict operations where deemed necessary for safe railway operations.

Each province has its own legislative requirements for approval of a new short-line railway.

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

Certain mergers and acquisitions will be subject to regulatory approval under competition laws. See questions 12 to 14 for a discussion of applicable competition laws.

In addition to any competition-related requirements, the new operator of the railway would need to follow the usual procedure for obtaining a certificate of fitness and a railway operating certificate.

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

No.

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

A railway company cannot construct a railway line (including main lines, branch lines, yard tracks, sidings or spurs) without the approval of the Agency. Approval is obtained by filing an application with the Agency. The application must contain full project details (including the right of way, names of property owners and proposed crossings), maps, plans, the purpose of the project and any other pertinent information. Notice of the application must be provided to all parties that may be affected by or have an interest in the proposed line. This may require both direct notices and public notices in local newspapers.

The Agency may grant approval it if considers that the location of the railway line is reasonable, taking into consideration the requirements for railway operations and services, and the interests of the localities that will be affected by the line.

Agency approval is not required to construct a railway line within the right of way of an existing line, or within 100 metres of the centre line of an existing line for a distance of no more than 3 kilometres.

In addition to Agency approval, a railway company must ensure that any environmental assessment that may be required of its proposed railway line construction project is undertaken.

Market exit

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

The CTA prescribes a detailed process that a railway company must follow if it wishes to discontinue operations over a railway line.

All railway companies must prepare and keep up to date a plan indicating, for each of its railway lines, whether it intends to continue to operate the line or whether it intends to take steps to discontinue operating the line within the next three years. This plan must be accessible to the public and the company must notify the Agency and federal, provincial and municipal governments of any changes to the plan.

If a railway company wishes to discontinue operating a railway line, it must first publicly advertise the availability of the line for sale, lease or other transfer for continued railway operations. This advertisement must include the company's intention to discontinue operating the line if it is not transferred, and the company must accept statements of interest for a period of at least 60 days. A railway company cannot advertise the line until it has indicated its intention to discontinue the line in its three-year plan for a period of at least 12 months.

The railway company has six months from the advertised deadline to reach an agreement with an interested party. Both the railway company and any interested party must negotiate in good faith. Should the Agency determine, upon receiving a complaint, that the railway company is not negotiating in good faith and that the sale, lease or transfer of the railway line would be commercially fair and reasonable, it may order the railway company to enter into an agreement with the interested party.

If an agreement is not reached within six months, the railway company may decide to continue operating the railway line, in which case it shall amend its three-year plan to reflect its decision. Alternatively, the railway company shall offer to transfer all of its interest in the railway line to the applicable federal, provincial and municipal governments and urban transit authorities for not more than the net salvage value of the line.

If a railway company has complied with the foregoing process, but no agreement for the sale, lease or other transfer of the railway line is made through that process, the railway company may discontinue operating the line on providing notice of that discontinuance to the Agency. After providing the notice, the railway company has no further obligations under the CTA with respect to the operation of the railway line.

This same process applies, with some modification, to grain-dependent branch lines.

Yard trackage, sidings and spurs are excluded from the transfer and discontinuance process.

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 Agency may cancel or suspend a certificate of fitness if it determines that a railway company is not maintaining adequate liability insurance cover. A decision of the Agency may be appealed to the Federal Court of Appeal on a question of law of jurisdiction, within one month of the date of the decision. Alternatively, a decision of the Agency may be appealed to the Governor in Council on any grounds and at any time.

Transport Canada may cancel or suspend a railway operating certificate if it determines that a railway company is not meeting the requirements of the certificate if the company contravenes the RSA. Generally speaking, Transport Canada will cancel or suspend a railway operating certificate only in cases of chronic non-compliance or where the operations pose a serious risk to safety. If a railway company's railway operating certificate is cancelled (as opposed to suspended), the company will never be allowed to operate a railway in Canada. A decision of Transport Canada may be appealed by requesting a review by the Transportation Appeal Tribunal of Canada within 30 days of the decision.

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?

As of 23 May 2018, with the adoption of amendments to the CTA, railway companies are now subject to the general bankruptcy and insolvency regimes of the federal Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA). Formerly, a bankruptcy and insolvency regime specific to railway companies was contained in sections 106 to 110 of the CTA, which allowed proceedings to take place in the Federal Court rather than in provincial superior courts that have jurisdiction under the BIA and the CCAA. There is no requirement under the CTA, the BIA or the CCAA for a rail transport provider to continue providing service during insolvency, although if a railway chooses to do this it must maintain its service and other obligations under the CTA.

Competition law

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

Under the federal Competition Act, the Commissioner of Competition may review any merger (including acquisitions, amalgamations and other business combinations) to assess its competitive impact. Generally, and unless one of the narrow exemptions under the legislation applies, if the merger exceeds certain prescribed 'size-of-party' and 'size-of-transaction' thresholds, the merger parties must notify the Commissioner. The level of detail included in a notification varies, depending on how much competitive overlap exists between the parties. The transaction parties must not close their transaction before expiry of a statutory waiting period unless the Commissioner has terminated or waived the waiting period as permitted under the Competition Act.

The CTA has application to the rail transport industry (as well as to certain other transport industries) in the context of a merger. If a proposed rail transport merger is notifiable under the Competition Act, the transaction parties must also notify the Minister of Transport (the Minister) prior to closing their transaction. The Minister may decide that a public interest review is necessary, though this step has rarely been taken in the past.

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

A review under the CTA of a proposed rail transport merger will only occur if the Minister determines that the transaction raises issues of public interest. The review process under the CTA requires the Competition Bureau, which is headed by the Commissioner, to review the proposed merger and for the Commissioner to report to the Minister regarding potential prevention or lessening of competition that may occur as a result of the merger.

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

Under the Competition Act, the Commissioner assesses a transaction to determine if it will result in substantial prevention or lessening of competition. The Competition Bureau has published Merger Enforcement Guidelines that explain the factors the Commissioner considers when assessing a transaction. Examples of such factors include the level of effective competition that would exist post-merger, whether substitutes for the applicable products or services are available in the relevant market, and whether prospective competitors face barriers to entry.

If the Minister initiates a public interest review of a transaction, he or she may take a multitude of factors into account, including economic, environmental, safety, security and social factors.

Price regulation

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

Generally speaking, federally regulated railways have the ability to set their own prices by issuing and publishing a tariff of rates under section 117 of the CTA.

However, prices may also be set between a railway and a specific shipper by way of a number of other statutory mechanisms under the CTA. These include a negotiated confidential contract (section 113(4)) or an arbitrated resolution imposed upon the parties under the final offer arbitration regime (section 159).

Aside from the above, freight rates for the movement of western Canadian grain are also subject to a form of indirect regulation. Rate controls in relation to this industry have existed since 1897 in various forms. Under the current regime, CN and CPR are entitled to set their own rates subject to a maximum revenue entitlement, as defined by legislative formulas. A legislative penalty is incurred in the event a railway exceeds this sum. The maximum revenue entitlement therefore acts as a de facto control on the rates associated with the carriage of this commodity.

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

As with freight traffic, federally regulated passenger railways have the ability to set their own prices by issuing and publishing a tariff of rates pursuant to section 117 of the CTA. The tariffs must comply with the Railway Traffic and Passenger Tariffs Regulations. The Regulations set out the specific information to be included in the tariffs, such as a statement of rates, point of origin and destination, description of route, and terms and conditions of the tariff, including terms and conditions of carriage of persons with disabilities.

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

See question 15. If a shipper is dissatisfied with the published tariff of rates in relation to its traffic it may attempt to negotiate a confidential contract with a railway. Alternatively, shippers can submit terms of service, including rates, to arbitration by way of final offer arbitration.

During final offer arbitration, the shipper and railway designate an arbitrator or arbitrators. If they fail to agree, the Agency may appoint arbitrators from a predetermined and publicly available roster. The proceedings are governed by template rules authored by the Agency and published online, unless the parties agree to their own procedure. The shipper and the railway exchange offers in relation to rates and conditions of service. The arbitrator (or panel, as the case may be) must select either the shipper's offer or the railway's. The decision is imposed for the period of time agreed to by the parties or, if no agreement is reached, then for a period not exceeding two years. No reasons are issued for the offer selection unless both parties agree.

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

No. Significant amounts of freight move under confidential contract – the terms of which are not publicly available but presumably vary by shipper based on myriad factors.

Network access

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

A railway company is not required to grant network access to another railway company unless ordered to do so by the Agency or the Governor in Council.

A railway company may apply to the Agency for the following rights:

- take possession of, use or occupy any land belonging to any other railway company;
- use the whole or any portion of the right of way, tracks, terminals, stations or station grounds of any other railway company; and
- run and operate its trains over and on any portion of the railway 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.

In addition, the Governor in Council may (on application or on its own initiative) request two or more railway companies to consider the joint or common use of a right of way if the Governor in Council is of the opinion that its joint or common use may improve the efficiency and effectiveness of rail transport, and would not unduly impair the commercial interests of the companies. Alternatively, the Governor in Council may order the joint or common use of the right of way if it is satisfied that significant efficiencies and costs savings would result.

In practice, these regulatory measures are rarely used and any running rights or joint-track usage are instead negotiated by the companies.

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

A railway company that obtains running rights over the line of another railway company by order of the Agency must pay compensation for that right. If the companies cannot agree on the compensation, the Agency may, by order, fix the amount to be paid.

Similarly, if the companies cannot agree on the compensation to be paid in respect of the joint or common use of the right of way, the Governor in Council may, by order, fix the amount to be paid.

There are no regulatory or legislative criteria governing these compensation rates.

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

The CTA articulates a National Transportation Policy that provides 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. In theory, regulation and intervention are used only in cases of market failure, or when competition and market forces cannot achieve the desired economic or social outcomes.

The CTA also contains a number of competitive access provisions that are intended to increase competition within the rail sector and thereby improve price and service options for shippers. These provisions include running rights, interswitching and long-haul interswitching.

Proposals to increase competition by increasing network access have generally been rejected.

Service standards

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

Section 113 of the CTA imposes a requirement known as the 'level of service' obligation. It requires that a federally regulated railway provide 'adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway'. As discussed in question 24, this obligation may be enforced by a shipper complaint to the Agency and can result in a variety of remedial orders. The Agency adjudicates such complaints in accordance with rules published by regulation – currently, the Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings).

The level of service regime is a codification of the common carrier obligation, with roots in both English and American law. The obligation

is triggered by the presentation of traffic, and there are few exceptions or restrictions in this respect. A railway cannot refuse service to any shipper, including those transporting dangerous goods.

However, it is also well established that rail service providers are not required to meet all demands at all times. A railway's level of service obligation has been stated to be 'permeated with reasonableness'. Thus, a railway may fail to provide service in specific instances if that failure is reasonable in the circumstances. A significant body of administrative and judicial case law has been generated on this subject as a result. The analysis is inherently contextual and evidentiary in nature. The CTA was amended on 23 May 2018 to expressly state the considerations that the Agency will review during level of service investigations.

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

Yes; see question 22. In the absence of a confidential contract or arbitrated terms, federally regulated railways are required to meet the service standard embodied by section 113 of the CTA.

Provincially regulated railways (eg, short lines) may be subject to similar service requirements. See, for example, the Railway Act, SS 1989-90, Chapter R-1.2 section 39; Railway (Alberta) Act, RSA 2000, Chapter R-4 section 24.

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?

Yes; see question 22. In addition to level of service complaints, which are retrospective in nature, a shipper can request service level arbitration under section 169.31 of the CTA to prospectively determine the terms of service applicable to its traffic.

During service level arbitration, the Agency designates an arbitrator from a predetermined and publicly available roster. The railway and the shipper must submit term proposals. The arbitrator is required to consider specific factors and to reach a determination as to commercially reasonable terms of service that will apply for one year. Reasons are issued for the decision. The proceedings are governed by rules published by regulation – currently, the Rules of Procedure for Rail Level of Service Arbitration.

Safety regulation

25 How is rail safety regulated?

The main statute regulating rail safety in Canada is the RSA. Transport Canada also develops regulations, rules and standards that apply to the regulation of rail safety. Railways are monitored and audited to ensure compliance with the safety regime and, when necessary, investigation and enforcement action may be undertaken by the Transportation Safety Board of Canada (TSB).

26 What body has responsibility for regulating rail safety?

Rail safety in Canada is regulated by Transport Canada. Transport Canada is responsible for proposing and updating policies, laws and regulations respecting rail safety, as well as conducting inspections and enforcement activities related to the rail industry's equipment, operations and facilities. Independently, the TSB is responsible for investigating railway safety incidents and may make recommendations for the amendment of railway safety legislation.

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

The Railway Safety Appliance Standards Regulations impose detailed and strenuous requirements upon all rolling stock constructed or reconstructed and used on railways subject to the jurisdiction of the Agency. The Regulations prescribe the number, dimensions, location and manner of application for various parts of the rolling stock manufactured, including brakes, running boards, ladders and handholds.

Additionally, pursuant to the Locomotive Safety Rules and Freight Car Safety Rules, every new freight locomotive, passenger locomotive and freight car must be designed and constructed in accordance with the Association of American Railroads Manual of Standards and Recommended Practices.

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

Operation and maintenance of rail infrastructure is governed generally by Part II of the RSA, which imposes a requirement on railways to hold a valid railway operating certificate to maintain or operate railway infrastructure or equipment in Canada.

Additionally, the Track Safety Rules (TSR), prescribed pursuant to section 7 of the RSA, set out minimum safety requirements for federally regulated standard gauge railway tracks. The TSR set operating speed limits, prescribe minimum safety requirements for the physical condition of rails and certain track appliances, and set standards for the frequency and manner of track inspections used to detect deviations from the TSR. Furthermore, the TSR set out the certification requirements for a track supervisor and track inspector, who must be employed by railways to carry out the prescribed track inspections. Records of these inspections must be maintained.

29 What specific rules regulate the maintenance of rail equipment?

As with rail infrastructure, Part II of the RSA generally governs the maintenance of rail equipment. A railway operating certificate is required to maintain or operate railway equipment on tracks in Canada.

Furthermore, the Locomotive Safety Rules and the Freight Car Safety Rules prescribe the minimum safety standards for locomotives and freight cars operated by federally regulated railway companies in Canada. Both sets of Rules require the railway to ensure that all locomotives and freight cars placed or continued in service are regularly inspected by a certified inspector to identify any defects. The Rules list safety defects that, when identified as present, will prohibit the railway from placing or continuing that locomotive or freight car in service. The Freight Car Safety Rules also impose additional safety requirements on freight cars containing dangerous goods.

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

Rail accidents are investigated by the TSB. The TSB was created pursuant to the Canadian Transportation Accident Investigation Safety Board Act, and any investigations carried out by it are governed by the provisions of that Act.

When the TSB is notified of a rail accident and it is determined that an investigation is warranted, a three-phase investigation process is undertaken. The field phase involves the appointment of an investigator-in-charge and an investigation team. During this phase, the accident site is secured and examined and interviews of witnesses and involved personnel are conducted. The examination and analysis phase involves a detailed examination and testing of the accident wreckage, review of any related records, and the creation of simulations to determine and reconstruct the sequence of events. Finally, the report phase involves the drafting and multi-level review of a publicly available accident report that identifies the findings of the investigation and any safety deficiencies, including the causes and contributing factors of the accident.

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 will apply to railway companies.

Pursuant to the Safe and Accountable Rail Act, amendments were made to the CTA in 2016 respecting railway liability. Federally regulated railway companies have since been required to carry a minimum level of insurance based on the type and volume of dangerous goods they carry, ranging from C$25 million to C$1 billion. A railway company whose train is involved in an accident will be liable for all losses and expenses in relation to the accident, up to the amount of the minimum liability insurance cover.

Additionally, the Safe and Accountable Rail Act introduced amendments to the CTA that create a fund financed by crude oil shippers to be used in the event of a railway accident involving crude oil. The Fund for Railway Accidents Involving Designated Goods is used to provide compensation above the required insurance level maintained by the railways.

Financial 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 typically invests in industry as a matter of policy in the form of direct financial subsidies. The current government has implemented several programmes and initiatives aimed at funding certain rail transport projects. For example, the Trade and Transportation Corridors Initiative led by Transport Canada will invest C$2 billion over 11 years for the National Trade Corridors Fund, a merit-based programme to make Canada's trade corridors more efficient and reliable. Additionally, Transport Canada's Rail Safety Improvement Program provides federal funding to projects that address rail line safety issues or reduce the number of injuries and deaths from accidents along rail lines and on rail property.

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 railway transport companies and there is no formal process to request such support or challenge any grant of financial support.

Labour regulation

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?

Rail transport falls under federal jurisdiction. The employment of railway employees is regulated by the Canada Labour Code (the Code).

The Code applies to railway employees the same as it does to any other employee of a federally regulated industry, except in regard to working hours and days of rest. Under the Railway Running-Trades Employees Hours of Work Regulations, railway employees are exempt from the provisions of the Code establishing a standard work week. There is case law to suggest that railway employees may also be exempt from overtime provisions of the Code as a result of being exempt from the standard work week.

The terms and conditions of employment may also be subject to any applicable collective agreement.

The RSA and regulations also include additional railway specific safety requirements (such as scheduling of hours) for some railway employees.

Environmental regulation

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

Canadian rail transport companies are subject to standard environmental laws, as set out in the Canadian Environmental Protection Act 1999 and the various other federal and provincial environmental legislation. Furthermore, Division VI.2 of the CTA creates a scheme for the liability of and compensation payable by railway companies in the case of accidents involving designated goods. The strict liability regime is based on the 'polluter pays' principle, and applies to carriers of crude oil, petrol, fuel oils, etc. The specifics of the scheme are addressed in question 31.

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Dentons Europe

General

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

The French rail transport industry is dominated by the SNCF Group, which comprises the following:

- SNCF Réseau is the infrastructure manager and the owner of the National Rail Network, and is in charge of the construction and maintenance of the network. It also grants track access rights to operators.
- SNCF Mobilités operates passenger transport and freight services.
- SNCF is the mother company of both SNCF Réseau and SNCF Mobilités.

Pursuant to article L. 2141-1 of the Transport Code, SNCF Mobilités enjoys a monopoly on passenger transport services on the National Rail Network. Exceptions to this monopoly include cabotage services provided on an international route freely organised by a railway undertaking (article L.2121-12 of the Transport Code) and some operators that are joint ventures with SNCF: Alleo (SNC and DB), Elipsos (SNCF and RENFE), Eurostar, Thalys and Luria. The SNCF also subcontracts some services: Veolia operates two services in Brittany and Keolis, a subsidiary of SNCF, operates the Blanc-Argent line in the Centre region. Other services are marginal and operate outside the National Rail Network, such as Chemins de Fer de la Corse or the Nice-Digne line, operated by Veolia.

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 three SNCF entities were transformed into state-owned joint-stock companies by Law No. 2018-515 of 27 June 2018.

Regarding national services, there is a strategic framework agreement entered into between the state, SNCF Mobilités and SNCF Réseau. This agreement sets out the main objectives, including financial objectives, assigned to SNCF. The framework agreement has a duration of 10 years and is updated every three years.

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

Yes. Freight and international passenger services have also been opened to competition. There are 18 companies operating on the market with a market share close to 25 per cent. The rest are still operated by subsidiaries of SNCF Mobilités. Freight operators are granted track access rights by SNCF Réseau.

SNCF Mobilités is a unique example of a company operating both passenger and freight services.

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

Rail transport is regulated by the Regulatory Authority for Rail and Road Activities (ARAFER), which is an independent public authority created in 2009. ARAFER guarantees all rail transport companies fair and non-discriminatory access to the National Rail Network and in particular:

- issues opinions on access conditions to the rail network and service facilities (opinions on charges are legally binding);
- verifies the accounting separation rules of rail transport operators to guarantee that there is no discrimination, cross-subsidisation or distortion of competition;
- settles any disputes between operators, transport authorities and infrastructure managers; and
- may impose sanctions for non-compliance with the rules governing access to or use of the network or the service facilities.

With regard to the organisation and creation of public passenger transport services, the French system, as regulated by the Transport Code, is based on transport organisation authorities (AOTs). AOTs are in charge of implementing and organising scheduled public passenger transport within the limits of their constituency. They may operate the service in-house or entrust it to a private operator under a public service contract abiding by Regulation (EU) No. 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road. The following are AOTs:

- The French state, which is in charge of transport of national interest.
- Regions, which are responsible for organising passenger transport of regional interest. Pursuant to article L. 2121-4 of the Transport Code, regional passenger services are operated on the basis of an agreement between each region (as the regulatory authority) and SNCF Mobilités. These services are called regional express trains (TERs). Regions award five-year franchises and buy the rolling stock. Today, the unique franchisee is SNCF Mobilités, as the network is the National Rail Network. As of December 2019, it will still be possible to directly award franchises without competitive tendering, provided that the contract does not exceed 10 years (article 2121-17, Code and Regulation No. 1370/2007 of 23 October 2007). As of 2023, the use of competitive procedures will be mandatory.
- Municipalities, which are responsible for urban rail transport, such as metro transport, and would either operate the service in-house or entrust it to operators under public service contracts.
- In the Greater Paris Region, the Île-de-France Transport Organisation, a public body under the supervision of the Île-de-France region and other communities, is the regulatory body for passenger services. This organisation appoints operators and grants franchise contracts.

Market entry

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

Thus far, competition has been opened up to international rail passenger transport and national and international rail freight transport only.

As mentioned in question 1, SNCF Mobilités currently has a monopoly on national passenger transport. Nevertheless, the sector will be liberalised by 2020–2021 according to the Law of 27 June 2018, which implements a legal framework for an 'open access' system. Any railway undertaking complying with certification requirements (including security) may offer services. Companies will be granted access to tracks by SNCF Réseau but must use their own equipment and hire the employees necessary for the service.

Regional transport services are awarded under a public service contract regime. Regional transport will be open to competition as of 2019.

In order to be authorised to provide rail services, a railway undertaking must hold:

- a railway undertaking licence issued in France by the Ministry of Transport or a European licence granted under the requirements of European Union directives, in particular Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (recast). This licence certifies that the applicant satisfies requirements as to good repute, financial and professional capacity as well as insurance cover for civil liability; and
- a safety certificate issued by French Railway Safety Authority (EPSF).

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

A change of control may impact the professional capacity of a railway undertaking. In this case, the licence may be repealed after prior notice of the Ministry of Transport and a new licence application must be filed (article 12 of Decree No 2003-194 (7 March 2003)).

Moreover, the certificate of security may be repealed if the service provider does not hold its licence any more (issuance of the certificate of security is subject to the issuance of the licence).

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

Foreign direct investment in certain sectors is subject to the approval of the Minister of Economy, pursuant to regulations set out in the Monetary and Financial Code (article R.153-1).

Foreign investment threatening the integrity, security and business continuity of transport networks and services are subject to prior authorisation from the Minister of Economy.

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

No sector-specific law applies in this case; however, constructing a new rail line is subject to the application of several existing laws.

First, it should be referred to expropriation legislation under which the project will be declared of public utility. This procedure involves several prior consultations (public inquiry).

A railway infrastructure project should start with preliminary studies to assess its usefulness and timeliness.

In a second phase, a public debate lasting four months will be organised under the aegis of the National Commission for Public Debate. Once the debate is over, the Commission would issue an assessment of the project.

In a third phase, the project owner would commission preliminary design studies to determine the technical, economic and environmental characteristics of the project as well as its cost.

Finally, the public inquiry would be opened, during which the design studies are presented to local residents. Once the public inquiry is completed, the competent authority (the Prime Minister by decree in Council of State for projects of national scope) may or may not declare the project of public interest.

Furthermore, such a project may impact the environment and should abide by regulations set out in the Environment Code.

Market exit

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

Services

With respect to public passenger transport, the principle of continuation of public services, a general principle under French public law, would prevent an operator from voluntarily discontinuing the service.

More generally, service conditions are set out in public service contracts and any change would mean amending the contract. Moreover, a failure to meet the contractual indicators would result in a sanction being imposed by the AOT or the contract being terminated for failure of the operator.

Network

The procedure by which SNCF Réseau is allowed to close a line is set out in article 22 of Decree No. 97-444 of 5 May 1997:

- Before proposing the closure of a line, SNCF Réseau prepares a file on the history and operating conditions of the line section concerned (territorial context, socio-economic efficiency, etc).
- SNCF Réseau submits the project to the region concerned – the region has three months to make its opinion known.
- SNCF Réseau publishes a notice of closure in a professional publication – railway undertakings and infrastructure managers of connected networks have three months to provide comments.
- SNCF Réseau informs the Ministry of Transport of its project and ensures that the closure does not raise any issues concerning national defence.

SNCF Réseau may then issue a proposal for closure, stating the reasons why the decision would be justified. The final decision lies with the Minister of Transport.

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 Ministry of Transport may withdraw a licence to operate in case of serious or repeated failures to comply with requirements as to professional capacity, financial capacity and civil liability under which the licence has been previously issued.

The licence holder must submit a new licence application in the following cases:

- if there is a change affecting the legal situation of the licence holder, such as a merger or change of control;
- if the licence holder has not commenced licensed activities within six months of the licence being issued, or if the holder ceases to carry on its licensed activities for at least one year; or
- if the licence holder intends to provide other transport services than the licensed activities.

As with any decision of a public authority, the termination of the licence can be challenged in an administrative court. The challenge must be brought within two months of the decision to terminate the licence.

In addition, an operator's safety certificate may be withdrawn if it does not satisfy guarantees that led to its issuance.

Track access contracts also contain default provisions that can lead to suspension or early termination of the contract for failure of the contractor.

Finally, an interested third party may always challenge a public service contract.

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?

When SNCF entities were public bodies, they were not subject to private sector insolvency law. However, as private companies, they are subject to private sector restructuring and insolvency law (as stated in the Commercial Code).

Under insolvency proceedings, an administrator (creditor's representative) is appointed for an observation period. The administrator's role is to supervise the managers of the company. He or she may select the contracts to be continued and may demand that existing contracts be continued or decide to terminate any contract that is not necessary or has a negative effect on the company.

Competition law

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

There are no sector-specific competition rules for rail transport.

The French Competition Authority (FCA) applies general competition rules to rail transport, including abuse of dominant position and merger control.

In its opinions, the FCA refers to articles 101 and 102 of the Treaty on the Functioning of the European Union and Book IV of the French Commercial Code.

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

There is no sector-specific regulator enforcing competition law in the railway sector. However, the FCA has already issued opinions regarding passenger transport and freight services.

In 2013, the FCA issued an opinion (No. 13-A-14) on the railway reform bill and its consequences, especially concerning the creation of a unified infrastructure manager.

In sectors already open to competition, the regulator ensures that new entrants can compete on equal terms with the incumbent operator. For instance, on 7 November 2012, the FCA published a decision (12-DCC-154) regarding the merger of Sea France and Eurotunnel Group.

Besides the FCA's power, the Transport Code gives ARAFER powers to ensure compliance with competition rules. As mentioned in question 4, ARAFER guarantees free and non-discriminatory access to the National Rail Network and it may be consulted by all players in the rail sector (railway undertakings, combined transport operators, etc). For this purpose, ARAFER has broad investigative powers and the power to issue administrative sanctions (Commercial Code, article L. 1264-7).

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

The FCA pays particular attention to SNCF's monopoly. Indeed, it issued several opinions relating to the use of resources resulting from the rail monopoly to give an advantage on competitive markets.

In decision 13-D-16, the FCA had to ensure that the SNCF Group did not abuse this situation to distort competition on the local passenger rail market, in which SNCF is active through subsidiaries. The FCA acknowledged the abuse of a dominant position by Keolis, a subsidiary of SNCF, in relation to its competitor Transdev, with regard to its capacity to mobilise resources that its competitors cannot duplicate (in particular concerning intermodality solutions with heavy rail).

Regarding the freight market, the FCA issued decision 12-D-25 whereby the SNCF was imposed a €60.9 million fine for abusing its dominant position. The FCA's investigation highlighted the use of confidential strategic information by SNCF's freight subsidiaries. The investigation also showed that SNCF had implemented a policy of overbooking train paths, notably affecting the prices charged by competitors. At the same time, the investigation revealed that SNCF had applied prices below its costs to certain customers and on certain paths, with the aim of preventing its competitors from entering the market.

Price regulation

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

Rail freight operators are free to determine the price they charge. Prices for customers include access fees charged by SNCF Réseau.

The price charged by SNCF Réseau for freight transport is made up of a traffic charge and a reservation charge that is modulated according to the portion of the network used, the timetable as well as the quality of the path allocated measured by the average speed of the train.

Currently, the level of freight tolls in France is lower than in other countries and is also lower than the real cost of infrastructure. The objective is to catch up with real cost in the next 10 years.

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

Prices charged by SNCF Mobilités are strictly regulated (Decree of 16 December 2011). Every year, the Minister of Transport approves approximately 500 'special basic tariffs' (corresponding to all available rail connections).

Moreover, to ensure that tickets remain affordable to customers, tariffs are subject to a price cap. SNCF may freely set its fares as long as they are below the cap.

The average price of a train ticket is €7.80 per 100 kilometres in France, which is low compared to €29.70 in Denmark, €28.60 in Switzerland and €24 in Austria. In contrast, the UK tariffs are lower (but the United Kingdom is not equipped with high-speed trains).

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

Regarding network charges, the Network Reference Document specifies all the practical, technical, administrative and pricing information relating to the use of the National Rail Network. Each year, ARAFER issues a legally binding opinion on prices charged by SNCF Réseau. Prices are then approved by the Ministry of Transport and published. The decision approving prices can be challenged before the French Administrative Supreme Court.

Regarding transport services, any interested third party may challenge regulated prices in court.

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

Rail transport is governed by the principles of equal treatment and non-discrimination. This does not prevent persons in objectively different situations from being treated differently and, in particular, from being offered different tariffs.

To this extent, SNCF may freely set prices as long as they remain under the cap referred to in question 16. SNCF has therefore introduced reduced fare tickets and special services. These multiple tariffs enable SNCF to apply a pricing policy close to the yield management methods used by airline companies.

SNCF also implements social tariffs, generally provided by legislation or regulatory acts, in favour of disabled people, larger families, people under 25 years old or on annual leave, etc. The cost of these discounts has been assessed by SNCF to be €50 million per year.

Network access

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

SNCF Réseau is responsible for granting network access. Under article L.2111-9 of the Transport Code, SNCF Réseau has the task of 'ensuring, in line with the principles of public service (. . .)':

> *1° Access to the railway infrastructure of the national rail network, including capacity allocation and pricing of this infrastructure (. . .)*
>
> *SNCF Réseau is the manager of the national rail network. Its management aims to ensure optimum use of the national rail network, focusing on safety, service quality and cost control and under conditions designed to guarantee the independence of the functions listed in 1°.*

Moreover, a right to network access is granted under article L2122-9 of the Transport Code. Pursuant to this article, all railway undertakings have a right to access National Rail Network under fair and non-discriminatory conditions. ARAFER ensures fair and transparent access to the National Railway Network.

SNCF Réseau must therefore grant network access to other rail transport companies provided that they meet the requirements described in the Transport Code. Pursuant to article L 2133-1 of the Code, ARAFER may limit or restrict third-party access for new services if the economic balance of one or more public service contracts covering the same track is likely to be compromised by the said right of access. An appeal may be lodged by any person authorised to apply for railway infrastructure capacity or any infrastructure manager before ARAFER in accordance with the provisions of article L.2134-2 of the Code.

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

Pursuant to the Transport Code, SNCF Réseau is entitled to determine the access charges for use of the National Rail Network. These charges and their method of calculation and collection have been established pursuant to Decree No. 2003-194 of 7 March 2003 on the use of the rail network. The charges are proposed by SNCF Réseau subject to ARAFER's approval. ARAFER ensures that the pricing policy complies with national and European rules (ie, access charges must reflect the

Update and trends

Law No. 2018-515 of 27 June 2018 for a new rail pact redesigns the French legal landscape. The main provisions include the following.

- The three SNCF entities, formerly corporate bodies under public law, will be transformed into state-owned joint stock companies.
- SNCF employees are subject to a collective bargaining agreement and no new employee can be hired under the 'special status' after the end of 2019.
- In line with Directive 2012/34/EU, as amended by Directive 2016/2370 of 21 November 2012 establishing a single European railway area, the law sets out the main rules to implement opening national rail passenger services to competition by 2020. As of 2020, every railway undertaking will have a right of access to the National Railway Network. In order to ensure the transposition of the aforementioned EU legislation, the government is authorised to take, through ordinances, any measure to implement the principle of open access to the National Railway Network. The law also aims to reform the governance of the infrastructure manager in order to provide guarantees of independence to ensure new entrants fair and equal access to the network.

direct cost of using the network, ensuring the necessary conditions to allow various railway undertakings equitable and non-discriminatory access). The charges enter into force upon ARAFER's approval.

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

In line with the fourth EU railway package, the French government recently adopted a reform introducing open access competition from 2020 and competitive tendering of TERs from 2023. This reform aims to put an end to SNCF's monopoly on domestic passenger transport services.

Service standards

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

Rail transport providers must serve all customers in accordance with the principles of equal treatment and non-discrimination.

Pursuant to article L.2100-2 of the Transport Code:

> *The State shall ensure the coherence and proper functioning of the national rail transport system. It does set national and international strategic priorities. In accordance with the principles of equality and non-discrimination, it ensures: 1° The coherence of the offer proposed to coordination of the rail transport organizing authorities and quality optimization service provided to users of the national rail transport system (. . .).*

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

Service standards are generally defined by Law No. 2009-1503 of 8 December 2009, which details the procedures for implementing Regulation (EC) No. 1371/2007. The corresponding provisions have been included in articles L. 2151-1 and L. 2151-2 of the Transport Code. Regarding TERs, the public service contracts entered into with the regions include key performance indicators and levels of service.

Contracts entered into between rail transport companies and users abide by ordinary contract law. Under the Civil Code, total or partial non-performance of the said contract may give rise to the carrier's contractual liability (article 1147, Civil Code). Among the obligations incumbent on the carrier are the obligation of safety of result and the obligation of punctuality. The carrier is also subject to compliance with article L. 113-3 of the Consumer Code, which sets out an obligation to provide information on the conditions of the journey.

The Transport Code also devotes approximately 20 articles to SNCF (articles L. 2141-1 to L. 2141-19). SNCF has statutory obligations to rail passengers, approved by Decree No. 83-817 of 13 September 1983, as well as SNCF's commercial conditions of sale.

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?

Under ordinary law, the competent courts are those of the defendant's place of residence or, in contractual matters, those of the place of performance of the service (articles 42 and 46, Code of Civil Procedure).

Rail litigation has become rare and this trend is fostered by SNCF's general conditions of sale (in particular article 5.1), which stipulate that in the event of 'complaints or disputes, the parties will endeavour to find an amicable solution'. Railway undertakings are obliged to establish a complaints mechanism concerning the rights and obligations set out in Regulation (EC) No. 1371/2007.

Therefore, after contacting the company's commercial service, the Order of 20 August 2015 transposing European Parliament Directive 2013/11/EU into national law provides for an appeal to an ombudsman in a dispute between a user and a transport operator. This would result in an extrajudicial settlement.

Safety regulation

25 How is rail safety regulated?

Rail safety is regulated through a national safety management system (SMS), a structured and organised set of means, procedures and processes designed to improve safety. The SMS involves a large range of players.

The state sets the safety objectives and the way to achieve them. It is responsible for regulation and enforcement.

The EPSF issues authorisations, carries out audits and inspections, participates in the development of safety rules and contributes to the harmonisation of European rules.

SNCF Réseau designs and maintains installations, manages traffic and intervenes in the event of incidents or accidents on the network. It also draws up the operating documentation applicable by the railway undertakings.

Railway operators (primarily SNCF Mobilités) acquire the rolling stock, define their operational procedures in compliance with applicable regulations and control the way safety procedures are implemented.

The Ground Transportation Accident Investigation Board (BEA-TT) investigates rail accidents. It has a distinct but complementary role to the EPSF. The EPSF's decisions may be challenged before ARAFER.

26 What body has responsibility for regulating rail safety?

In 2004, Directive 2004/49/EC (the Safety Directive) established the European Railway Agency (since 2016, the European Union Agency for Railways), national safety authorities (NSAs) such as the EPSF, and post-accident investigation bodies such as the BEA-TT.

The structure of the French NSA is based on the provisions of Law No. 2006-10 of 5 January 2006 on transport safety and development, and Decree 2006-369 of 28 March 2006 on the missions and statutes of the EPSF.

The EPSF has two main roles in the field of security control:

- issuing authorisations for rolling stock and railway infrastructure during their design and construction. It also supervises the development of the safety management system established by railway operators; and
- ensuring compliance with existing safety regulations for the operation of licensed rolling stock and infrastructure, and compliance with the conditions under which authorisations were issued (planned audits, unannounced inspections and operational controls in the field, etc).

Failure to comply with security provisions may lead the EPSF to restrict or suspend an authorisation.

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

Decree No. 2006-1279 of 19 October 2006 on rail traffic safety and interoperability of the rail system, and the order of 23 July 2012 on authorisations for the construction and commercial operation of new or substantially modified rail transport systems or other subsystems, set out safety regulations that are applicable to the manufacture of rail equipment.

Authorisations delivered by the EPSF cover the commissioning of rolling stock as well as technical subsystems such as new or substantially modified lines.

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

The main rules regarding the maintenance of the National Railway Network derive from an order of 19 March 2012.

To be admitted to operation, any new infrastructure must obtain a commercial operating licence issued by the EPSF. This authorisation certifies that the infrastructure meets the requirements of the safety and interoperability regulations in force (European and national regulations) and that it will be able to support all the traffic while ensuring the safety of users and third parties, as well as respecting the environment.

Once authorised, the infrastructure must be entrusted to an infrastructure manager who will be in charge of its operation (operational traffic management), maintenance and development. For this purpose, the infrastructure manager holds a safety authorisation issued by the EPSF.

Infrastructure managers must hold a safety authorisation issued by the EPSF that certifies its ability to meet the regulatory safety requirements and to control the risks associated with the management and operation of infrastructure open to public traffic.

29 What specific rules regulate the maintenance of rail equipment?

The main rules and general objectives applicable to the maintenance of rail equipment are defined by an order of 19 March 2012.

Moreover, an order of 5 June 2000 sets out the technical maintenance rules applicable to rolling stock on the National Rail Network.

SNCF Réseau will eventually issue specific safety and maintenance rules applicable to any railway undertaking using the National Railway Network.

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

The Law of 3 January 2002 provides the legal basis for all technical investigations. It provides for such investigations to be carried out by permanent specialised bodies and for these bodies to have the right of access to all elements useful to an investigation, even those covered by non-disclosure of pretrial information, and medical or professional confidentiality.

The Decree of 26 January 2004 established the BEA-TT, which is in charge of all technical investigations for land transport incidents.

Articles R. 1621-1 to R. 1621-26 of the Transport Code provide for the investigation procedure.

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

In principle, the passenger carrier has a performance obligation arising from the contract of carriage that it must uphold from the moment the passenger boards the train until he or she disembarks. Thus, the carrier is liable under a strict liability regime in the event of bodily injury caused to a passenger with a valid ticket for the entire duration of the journey.

By contrast, outside the transport period, or if the passenger has no ticket, the carrier will be held liable in tort.

Financial 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 2016, the French rail system accounted for €10.5 billion of public spending, half of it being paid to compensate special tariffs such as social tariffs, €3 billion accounting for investment subsidies (infrastructure and rolling stock) and €2 billion accounting for network access fees. Another €3.2 billion was spent on subsidies to balance the special pension scheme for SNCF railway workers and employees. In spite of this high level of public financing, a recent report noted that the system remained in deficit, at around €3 billion each year. This deficit has increased in recent years. Between 2010 and 2016, subsidies other than those going to the pension system increased by 10 per cent and operating allocations alone increased by 15 per cent.

Public subsidies to the rail system amount to €200 per citizen per year, which is among the highest in Europe, after Switzerland and Austria.

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?

Pursuant to article L. 2141-19 of the Transport Code, agreements are entered into between SNCF Mobilités and the state or local public bodies, under which SNCF Mobilités receives state financial support (or local financial support) as part of its public service mission.

Labour regulation

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?

SNCF's employees are subject to special employment status, a strong element of French railway culture, which protects SNCF employees from economic dismissal. It also offers an advantageous retirement scheme and various social benefits.

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However, pursuant to Law No. 2018-515 of 27 June 2018 for a new railway pact, no new employee will be hired under the 'special status' after 2020. Railway workers will be subject to ordinary rules of the Labour Code and to a collective bargaining agreement that is still to be negotiated.

Environmental regulation

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

With the exception of noise reduction objectives and the transport of certain dangerous products, standard environmental laws apply to rail transport companies.

The Environmental Code mentions a number of obligations that apply to the rail sector. Article L. 571-10-1 stipulates that railway undertakings have to contribute to 'noise reduction goals', in particular by adapting the rolling and braking systems of their rolling stock. Article R. 571-35 sets a maximum noise level for railway infrastructure. Compliance with procedures applying to dangerous and harmful products is provided for in article R. 551-8 of this Code.

Law No. 2014-872 of 4 August 2014 on railway reform established several measures to strengthen efforts to protect the environment. Article L. 2100-3 of the Act establishes a Rail Transport System Committee, in particular to deal with environmental issues raised by the rail sector. This committee includes at least one member of the environmental protection associations approved under article L. 141-1 of the Environmental Code. The Law also strengthens the role of ARAFER in the field of environmental protection.

Germany

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General

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.

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. DB Mobility logistics AG is a wholly owned subsidiary of DB AG. A partial or complete privatisation of DB AG and some of its subsidiaries is expected in the future.

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

Yes. 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 in these markets.

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, the Federal Railway Authority (EBA), the Eisenbahn-Cert (EBC), and the Federal Network Agency for Electricity, Gas, Telecommunication, Post and Railway (FNA).

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 railway package) on 15 June 2016, the European Union Agency for Railways (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, and was established by the Act on the Federal Administration of Railway Traffic of 27 December 1993, last amended 27 June 2017. It operates under the authority of the Federal Ministry of Transport and Digital Infrastructure. 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 in service, 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 2008/57/EC. 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 'EC' verification of the subsystems, as mandated by this Directive.

The FNA 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 2004/49/EC, 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.

Market entry

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 20 July 2017 (AEG), sets out the relevant requirements. Article 6(3) of the AEG provides that the applicant has to 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 more than one year for violations of labour law or social obligations, customs law or traffic law. Proof of the 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 6(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 safety certificate according to article 7a(1) of the AEG will be required. To operate in the state where the company is registered (ie, Germany), Part A of the safety certificate is required. In order to obtain permission to provide services in other EU member states, Part B of the

safety certificate needs to be submitted in the respective country. The Statutory Regulation on Railway Security of 5 July 2007 excludes railway undertakings that are exclusively operating on regional networks from the obligation to obtain a safety certificate. Articles 14–14d of the AEG require the applicant to have liability insurance.

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 shall 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 shall 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.

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 13 December 2017 (AWV), the Federal Ministry for Economic Affairs and Energy (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. 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. According to article 55(1), sentence 3, No. 6 of the AWV this can, in particular, comprise undertakings developing software for the operation of facilities or systems for the transport of passengers and freight by rail. A decision issued by the Ministry can be challenged before an administrative court.

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)(3) of the AEG (see question 6). In addition, the construction and alteration of railway systems in Germany requires a project planning procedure. For the federal railways the EBA 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 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 and it generally takes from one to three years. At the end of the procedure the EBA grants a 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.

Market exit

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 EBA 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.

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) 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 EBA at the federal level and the authority designated by the government in each state at regional level) shall revoke the business licence if it determines that the company does not meet these requirements.

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. Sentence 1 also applies in the case of a restoration of reliability or professional suitability. The period under sentence 1, also in conjunction with sentence 2, may not exceed six months. If a set period has elapsed without the restoration being successful, the approval under paragraph 1, sentence 2 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. 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.

Article 7b(2) of the AEG provides that a certificate in accordance with section 7a may be wholly or partially amended or revoked in the event of material changes to safety regulations. Article 7b(3) of the AEG provides that a certificate in accordance with section 7a may be revoked in whole or in part, insofar as the conditions contained in it are not fulfilled or the certificate is not used in the prescribed manner. It may also be revoked in whole or in part if a certificate is not used until one year after its issue. Article 7b(4) of the AEG clarifies that the administrative procedural rules on the annulment of administrative acts remain unaffected.

An authorisation holder has the right to complain to the EBA following the withdrawal of his or her authorisation. If the holder is not satisfied with the outcome of the EBA's investigation, he or she may pursue an action before the administrative courts in accordance with article 6g(8) and 7b(4) of the AEG. Such an action would have suspensory effect.

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.

Competition law

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

Only general competition rules apply to rail transport.

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

The EBA is not responsible for enforcing competition law. See questions 19 and 20 regarding the competencies of the FNA in relation to network access.

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 30 October 2017 (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 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 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. Article 12(7) of the AEG contains an exemption from article 1 of the GWB for certain agreements between railway undertakings, provided that they have been registered with the approval authority. 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.

Price 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.

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

As mentioned in question 15, 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.

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

See question 16. The price levels for freight shippers or passengers are not regulated.

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. An infringement of these obligations can lead to an administrative fine of up to €50,000.

This obligation does not apply to freight transport.

Network access

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 (ERegG), all railway infrastructure enterprises may have to grant access to their railway infrastructure. Article 68 of the ERegG authorises the FNA 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 2012/34/EU, which states that railway undertakings shall 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 an international passenger service. The duty of all the subsidiaries of 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.

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.

Both passenger and freight companies must negotiate with DB Netz 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: (1) base charges dependent upon the type of track and the company's utilisation; (2) charges linked to prioritisation in scheduling; and (3) surcharges for particular circumstances such as for heavier weights, special trains, etc.

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

Update and trends

As part of the fourth EU railway package, Directive 2016/797/EU on the interoperability of the European Union's rail system was adopted. It aims to facilitate, improve and develop rail transport services within the EU and with non-EU countries, thereby contributing to the completion of the single European railway area and to the shift to more efficient types of transport. EU countries must incorporate it into national law by 16 June 2019 but Germany has not taken any measures as of the date of writing.

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 section 78 of the ERegG. In its 2017 special report it concluded that competition in the German railway market is still unsatisfactory and is determined by the outstanding market position of DB AG. Its analysis of the railway sector showed that the Railway Regulation Act should be amended for the benefit of railway customers to include the financing agreement between DB AG and the government, as well as station fees. The Monopolies Commission recommended a cost-benefit analysis of railways and competing modes of transport to ensure that public funds are used where they bring the highest gains. Moreover, it suggested that DB AG should not be allowed to unilaterally refuse cooperation with its competing railway undertakings on tariffs and ticket sales to allow customers to use trains of different providers with one single ticket.

Service standards

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

Pursuant to article 10 of the 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.

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

Article 28 of Regulation (EC) No. 1371/2007 states that railway undertakings shall 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.

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 27(1) of Regulation (EC) No. 1371/2007, 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 27(2) of Regulation 1371/2007, passengers may submit a complaint to any railway undertaking involved. Within one month, the addressee of the complaint shall 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 EBA pursuant to article 30 of Regulation 1371/2007. 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 in order to safeguard the passenger's rights (eg, to pay compensation or reimbursement).

Until 2020 Regulation 1371/2007 is 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.

Safety regulation

25 How is rail safety regulated?

Rail safety is currently regulated by the implementation of Directive 2004/49/EC, which required certain amendments to the AEG and the adoption of statutory regulations, regulations by the EBA, guidelines by the Association of German Transport Companies and DB AG, as well as DIN Standards (ie, the 27200 series of technical standards). These rules apply in Germany for regular public railways, as far 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.

Directive 2016/798/EU on railway safety, which is part of the fourth EU railway package, repeals Directive 2004/449/EC but the transposition period ends on 16 June 2019.

26 What body has responsibility for regulating rail safety?

The EBA is responsible for rail safety (see question 4).

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

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

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 between Germany, represented by the Federal Ministry of Transport and Digital Infrastructure, railway infrastructure companies (ie, DB Network AG, DB Station & Service AG and DB Energy GmbH) and DB AG. Under this five-year agreement (2015–2019), infrastructure companies will receive around €20 billion for repairs in the existing network and also spend €100 million a year of own funds. The railway infrastructure companies also undertake to spend a total of at least €8 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.

29 What specific rules regulate the maintenance of rail equipment?

Commission Regulation (EU) No. 445/2011 of 10 May 2011, amending Regulation (EC) No. 653/2007, establishes a system of certification of entities in charge of maintenance for freight wagons. Pursuant to article 4(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.

The rules that are 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.

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 2016/798/EU on railway safety.

Serious accidents pursuant to article 20(1) and (2) of Directive 2016/789/EU 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.

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) No. 1371/2007 contains a provision that renders rail transport companies liable for the loss or damage resulting from the death of, personal injuries to, 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. It 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.

Financial 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)?

Federal states are responsible for procuring subsidised regional passenger rail services from rail companies, and for financing them within franchise contracts. The franchising system is based on transfer from the federal budget to the federal states at an annual level of approximately €8 billion with an agreed increase of 1.8 per cent per annum. See question 28 regarding the agreement on services and financing. The federal government also gives grants annually for noise abatement measures.

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. 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.

A €500 million package of state aid from the federal government, which is part of a scheme running from 2018 to 2022 approved by the European Commission, is available to railway companies. It aims to promote the adoption of new energy-efficient technologies in the sector.

Labour regulation

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 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)(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.

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Germany has adopted a series of laws regarding the protection, working hours and salary, training, qualifications, education and career progression of workers in the rail transport industry.

Environmental regulation

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

According to the AEG, the 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'.

India

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General

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

Under the Constitution of India, legislative authority with respect to rail transport vests exclusively in the Parliament. In exercise of this legislative power, Parliament enacted the Railways Act 1989 (the Railways Act), which consolidates the laws relating to the rail transport industry in India, including rail infrastructure and rail operations.

In India railways are categorised as government railways (ie, those owned by the government) and non-government railways. After nationalisation in 1951–1953, all private railway companies ceased to exist and form part of the Indian Railways. Indian Railways is the generic term used to refer to the network of railway infrastructure and services, and is a departmental undertaking of the government.

The executive authority of the Indian Railways is exercised by the Ministry of Railways (MOR) with respect to government and non-government railways. The powers and functions of the MOR under the Railways Act are vested in the Railway Board, which is responsible for all infrastructure and operations of trains, provisioning of rolling stock and its maintenance, and formulation of all related planning and policies, issuance of instructions and guidelines regarding administration, safety, maintenance procedure and schedules, among others.

The Railway Board comprises the chairman and six other board members, namely the Financial Commissioner, Member Engineering, Member Electrical, Member Mechanical, Member Staff and Member Traffic. For administrative convenience, Indian Railways is further divided into different zones. At present there are 16 zonal railways each headed by a general manager who reports to the Railway Board. The general superintendence of a zonal railway rests with its general manager.

Additionally, there are a number of public-sector undertakings under the administrative control of the government that undertake various activities in relation to rail transport (eg, Container Corporation of India Limited (CONCOR) operates rail freight services; Rail Vikas Nigam Limited undertakes development and implementation of projects; Dedicated Freight Corridors Corporation of India Limited procures and operates selected new dedicated freight corridors).

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?

Railway operations have been primarily reserved for the public sector, except for the construction, operation and maintenance of the following:

- suburban corridor projects through public–private partnerships (PPPs);
- high-speed train projects;
- dedicated freight lines;
- rolling stock including train sets, and locomotives or coach manufacturing and maintenance facilities;
- railway electrification;
- signalling systems;
- freight terminals;
- passenger terminals;
- infrastructure in industrial parks pertaining to a railway line or sidings, including electrified railway lines and connectivity to a main railway line; and
- mass rapid transport systems.

As noted in question 1, Indian Railways is responsible for the majority of rail transport development and operations in India. However, the government has established entities under its administrative control that undertake various activities in relation to rail transport.

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

No, freight and passenger operations are not controlled by separate entities. Indian Railways operates both passenger operations and the bulk of freight operations. Even in the case of certain entities incorporated by the government, such as CONCOR, the operations are controlled by Indian Railways.

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

The MOR regulates rail transport and, as mentioned in question 1, the powers and functions of the MOR under the Railways Act are vested in the Railway Board, which issues directions and guidelines for the rail sector in India.

Market entry

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

The market can be entered through domestic or foreign investments in railway projects (eg, PPP projects). According to the Sectoral Guidelines for Domestic/Foreign Direct Investment in Railways issued by the MOR, up to 100 per cent investment has been allowed in construction, operation and maintenance of, inter alia, high-speed train projects, dedicated freight lines and passenger terminals.

In projects where Indian Railways or any other railway entity (see question 2) is selecting entities pursuant to a bidding process, Indian Railways can provide additional conditions for formation of joint ventures. Certain project proposals for investments are required to be submitted to the Railway Board by the investor along with a brief concept note including the objective, scope, benefits, market potential, tentative project cost, probable financing options, pricing and economics, which the Railway Board will consider. If there is 100 per cent foreign direct investment (FDI) in rail infrastructure, it will be cleared through the automatic route (ie, prior approval is not necessary), which means no approval from the Foreign Investment Promotion Board is required. However, proposals involving FDI in sensitive areas (ie, regions where security is an issue) that exceeds 49 per cent would have to be brought by the MOR before the Cabinet Committee on Security for consideration.

In addition to the above-mentioned guidelines, the government also introduced a policy on participative models for rail connectivity and capacity augmentation in 2012 with respect to private participation and non-government railways. For projects developed as joint ventures under the Participative Policy of 2012, 'in-principle approval' will be granted by the Railway Board.

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

See question 5.

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

Rail transport is primarily vested with Indian Railways. However, there are indications that Indian Railways will soon allow private companies to run freight trains from their own private terminals. These freight trains are being considered for sectors such as cement, steel, automotive, logistics, grains, chemicals and fertilisers.

Certain rail sectors in which private participation is permitted are listed below. Up to 100 per cent foreign investment is permitted under the automatic route to undertake construction, operation and maintenance in the sectors listed in question 2.

To increase private-sector participation, Indian Railways introduced the Wagon Investment Scheme (WIS) to encourage PPPs in procurement of wagons to meet the future growth of traffic. Investors were free to procure even general-purpose wagons and there was no restriction on the commodities that could be transported.

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

Any new rail line or rail infrastructure related to transporting passengers or freight will have to be approved by the Railway Board prior to any activity, including construction. Further, even in the areas where private participation has increased in rail transport and operations, private companies will have to comply with section 21 of the Railways Act, which stipulates that no railway shall be opened for the public carriage of passengers until the government has, by order, sanctioned it to be opened for that purpose.

In respect of all new lines and gauge conversion projects worth more than 3 billion rupees, a memorandum for the Expanded Board for Railways (EBR) has to be prepared that details the financial scheduling of the project, pursuant to which the project is planned and vetted by the Railway Board. After this approval, the project report is sent to the Project Appraisal and Management Division (PAMD) of the Ministry of Finance. On approval of the EBR, the memorandum is prepared and must be approved by the Union Cabinet (through the Cabinet Committee on Economic Affairs (CCEA)). After a project is approved by the CCEA, it is included in the Railways Works Programme and a fund is allotted for carrying out preliminary works during the year.

Market exit

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

The Railway Act governs the discontinuation of services for passenger transport.

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 terms of the Railways Act, only the government is empowered to undertake rail transport services and any temporary suspension of traffic, or to close a railway opened for public carriage of passengers if, in the opinion of the Commissioner of Railway Safety, there are safety concerns for passengers in continuing operations of the particular rail line.

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 companies operating non-governmental railways are subject to the general insolvency rules of the Insolvency and Bankruptcy Code 2016.

Competition law

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

There are no sector-specific competition rules applicable to rail transport – the general rules of the Competition Act 2002 apply. Further, India Railways falls under the jurisdiction of the Competition Commission of India (CCI) and, therefore, the CCI is empowered to hear complaints with respect to alleged abuse of dominant position in the rail transport sector (*Union of India v Competition Commission of India*, AIR 2012 Del 66, Delhi High Court).

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

There is no sector-specific regulator for rail transport in India (in contrast to regulators in the petroleum and natural gas, and telecoms sectors), and as such, the competition law aspects of the industry fall under the jurisdiction of the CCI.

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

The main standards for assessing the competitive effect of a transaction are provided under the Competition Act 2002, and are the following: entering into agreements that have an adverse effect on competition in India, and abuse of dominant position leading to unfair or discriminatory practices.

Price regulation

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

Pursuant to section 30 of the Railways Act, the government is empowered to fix rates – for the carriage of passengers and goods – for the whole or any part of the railway. Different rates may be fixed for different classes of goods, and the government may specify the conditions subject to which such rates would be applicable. Further, the government may also fix the rates of any other charges incidental to or connected with such carriage (including demurrage and wharfage).

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

See question 15.

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

Complaints may be made to the Railway Rates Tribunal, which was constituted pursuant to section 33 of the Railways Act, if they relate to a rail transport company:

- making or giving any undue or unreasonable preference or advantage to, or in favour of, any particular person or description of traffic in the carriage of goods;
- charging an unreasonable rate for the carriage of any commodity between two stations; or
- levying any other charge that is unreasonable.

The powers of the Railway Rates Tribunal and the manner in which it adjudicates cases are set out in Chapter VII of the Railways Act.

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

The Railways Act prohibits undue or unreasonable preference or advantage to, or in favour of, any person or any particular description of traffic in the carriage of goods.

The Railways Act further provides that, whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area, lower rates for the same or similar goods, or lower charges for the same or similar services than it charges to other traders in any other local area, the burden of proving that the lower rate or charge does not amount to an undue preference rests upon the railway administration.

Update and trends

Key trends and recent updates concerning rail transport

- Private sector participation is being encouraged and Indian Railways has recently considered inviting bids from foreign companies through a global tender worth 25 billion rupees for the supply of long rails.
- Indian Railways is considering using artificial intelligence to manage track maintenance blocks.
- Indian Railways has recently introduced commercial service to run double-stack dwarf containers on trains to capture lost traffic through a new delivery model for domestic cargo.
- Proposed amendments to the Specific Relief Act 1963 seek to do the following:
  - ensure that courts direct parties to perform their contractual obligations as the norm rather than as an exception (as is currently the case);
  - give the party whose contract has not been performed by the other party the option to arrange for performance of the contract by a third party or by his or her own agency (substituted performance) at the cost of that other party – though once the contract is performed, specific performance cannot be claimed;
  - prevent courts from granting injunctions in contracts related to infrastructure projects, if such an injunction would hinder or delay the completion of the project;
  - have the government designate special courts to deal with cases related to infrastructure projects. Such cases must be disposed of in 12 months. Notably, infrastructure projects cover 'railway track, tunnels, viaducts, bridges, terminal infrastructure, including stations and adjoining commercial infrastructure'; and
  - engage technical experts in cases where an expert opinion may be needed at the cost of the parties.

The proposed amendments, upon coming into effect, will have a positive impact on all contracts, and more specifically on the infrastructure sector, including rail transport.

Formation of the Rail Development Authority

The government has approved the formation of the Rail Development Authority (RDA), which will be responsible for:

- pricing of services commensurate with costs;
- suggesting measures for enhancement of non-fare revenue;
- protecting consumer interests by ensuring quality of service and cost optimisation;
- promoting competition, efficiency and economy;
- encouraging market development and participation of stakeholders in the rail sector and ensuring a fair deal to the stakeholders and customers;
- creating a positive environment for investment;
- promoting efficient allocation of resources in the sector;
- benchmarking of service standards against international norms, and specifying and enforcing standards with respect to the quality, continuity and reliability of services provided by them;
- providing a framework for non-discriminatory open access to the dedicated freight corridor infrastructure and others in future;
- suggesting measures to absorb new technologies for achieving desired efficiency and performance standards; and
- suggesting measures for human resource development to achieve stated objectives.

Network access

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

With regard to freight transport, network access may be provided to private container operators. Upon such access being provided, the private container operators will be responsible for the custody and security of containers, as well as for cargo on the ground awaiting loading, unloading, removal, stuffing or destuffing.

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

The prices for granting network access are regulated for the movement of freight. Further, the freight rail terminal operators can also impose certain charges for haulage, terminal access, detention for containers and wagons, ground usage, etc.

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

No.

Service standards

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

Indian Railways should provide services to the general public without any restrictions; however, it is subject to the conditions under the Railways Act. The Act provides that any person that wishes to travel on a railway shall, upon payment of the fare, be supplied with a ticket by a railway servant (a government employee), a member of rail staff or an agent authorised in this regard. However, the tickets are issued subject to the condition of availability of accommodation in the class of carriage and the train for which the ticket is issued. Further, section 56 of the Railways Act provides that a person suffering from a contagious or infectious disease is restricted from boarding or remaining in any carriage on a train, or to travel on a train, without the permission of a government employee or member of rail staff.

Section 70 of the Railways Act prohibits undue or unreasonable preference or advantage to, or in favour of, any person or any particular description of traffic in the carriage of goods. Pursuant to section 68 of the Railways Act, a railway company can also refuse to carry any animal suffering from a contagious or infectious disease. Private entities operating rail port connectivity projects or those projects in which the MOR has shares generally provide freight transport and can refuse service to their customers.

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

The government recently approved the formation of a Rail Development Authority, which will be responsible for, among other things, protecting consumer interests by ensuring quality of service and cost optimisation; benchmarking service standards against international norms; specifying and enforcing standards with respect to the quality, continuity and reliability of services provided; and suggesting measures to incorporate new technologies for achieving desired efficiency and performance standards.

Further, rail transport companies are required to meet various service standards laid down in codes and manuals issued by the MOR (these standards relate to passenger amenities, catering and vending services (Indian Railway Catering and Tourism Corporation), transport of goods and materials, etc) and in case of any deficiency of services the claims can be raised under the Railways Act or in a consumer court. The service standards are laid down for different purposes by the MOR. For instance, rail transport companies are required to abide by the Manual for Standards and Specification of Railway Stations issued by the MOR.

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?

Yes, freight shippers or passengers can challenge the quality of service they receive. The Department of Administrative Reforms and Public Grievances administers a public grievance portal where a citizen can register his or her grievance pertaining to any central government department or ministry, including the MOR, and any subdepartments under a ministry.

Additionally, a railway claims tribunal has been instituted under the Railway Claims Tribunal Act 1987 for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it, or for the refund of fares or freight, or for compensation for death or

injury to passengers occurring as a result of railways accidents. The procedure for discharging claims has been provided under the Railway Claims Tribunal Act 1987.

Safety regulation

25 How is rail safety regulated?

The Commissioner of Railway Safety, appointed by the government and working under the Ministry of Civil Aviation, is responsible for, among other things:

- inspecting any railway with a view to determining whether it is fit to be opened for the public carriage of passengers, and submit a report in this regard to the government;
- making such periodical or other inspections of any railway or of any rolling stock used on the railway as the government may direct; and
- making an inquiry into the cause of any accident on a railway.

26 What body has responsibility for regulating rail safety?

The Commissioner of Railway Safety deals with matters pertaining to safety of rail travel and train operation, and is charged with certain statutory functions as laid down in the Railways Act, which are of an inspectorial, investigatory and advisory nature.

The Railway Board, as the safety authority, and the zonal railway administrations frame rules, regulations, instructions, manuals and records relating to safety of train operations. These manuals and other publications are used by the commissioners of railway safety during the course of their functional duties.

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

Safety regulations are the responsibility of the Research Design and Standards Organisation (RDSO), which operates under the MOR. The RDSO's functions include inspection of critical and safety items of rolling stock, locomotives, signalling and telecommunications equipment, and track components.

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

The MOR issued the Manual for Standards and Specifications for Railway Stations in 2009 and a policy manual. These contain the standards required for tracks and platforms and other rail infrastructure.

29 What specific rules regulate the maintenance of rail equipment?

The Operating Manual for Indian Railways issued by the MOR is a highly detailed handbook for operation and maintenance of rail equipment, and contains, for example, the Wagon Maintenance Manual and Maintenance Manuels WDG3A, WDS and WDM on diesel locomotives.

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

The provisions of Chapter XII of the Railways Act deals with rail accidents and the Statutory Investigations into Railway Accidents Rules 1998 are in place under the Railways Act for investigation of rail accidents.

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

There are special rules and special procedures that are provided under the Railways Act as well under the Railways Claims Tribunal Act 1987. Chapter XII of the Railways Act provides detailed provisions with regard to rail accidents and Chapter XIII of the Act deals with the liability of the railway administration for death and injury to passengers as a result of accidents.

Special rules deal with the liability of rail transport companies for rail accidents in addition to the ordinary liability regime, including the following:

- the Rules for the guidance of the Officers of the Commission of Railway Safety for holding inquiries into railway accidents are contained in the Statutory Investigation into Railway Accidents Rules 1998;
- the Railways (Notice of and Inquiries into Accidents) Rules 1998 as amended in 2013; and
- the Railways Passengers (Manner of investigation of untoward incidents) Rules 2003 issued under the Railways Act.

A statutory inquiry by the Commissioner is obligatory for every accident in relation to a passenger train that results in grievous hurt or loss of human life as defined in the Indian Penal Code (www.crs.gov.in/acts_and_rules.php).

Financial 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 government provides direct financial support to the railways by allocating a fixed amount in the budget. Investments made or that are due to be made by the government in railway infrastructure are treated as loans.

The Indian Railway Finance Corporation (IRFC) is the financing arm of Indian Railways for mobilising funds from domestic as well as overseas capital markets in order to fund the rolling stock requirements.

Additionally, rail transport companies can receive financial support from FDI (see question 7). Foreign investment in the rail transport industry from April 2000 to December 2017 was US$897.09 million (www.ibef.org/industry/indian-railways.aspx).

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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?

The Indian Railway Financial Code issued by the MOR serves as a compendium of general rules and orders on financial matters, including a summary of the annual budget. The Code deals with various important aspects of financial management, such as project appraisal, budget formulation, reporting and control, parliamentary financial control, award of contract, allocation of expenditure, rules relating to inter-railway and interdepartmental services, contingent expenses and investigation of losses.

The IRFC follows a lease-cum-licence arrangement for financing of railway projects in which the IRFC acquires a leasehold interest in the project under a lease agreement with the MOR (yet to be executed). The IRFC also raises funds from Life Insurance Corporation of India for financing railway projects. Further, financial assistance is allocated through a bidding and tender process.

Labour regulation

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?

Specialised labour and employment laws apply to the rail transport industry regarding hours of work and periods of rest for workers, in the form of Chapter XIV of the Railways Act and the Railway Servants (Hours of Work and Period of Rest) Rules 2005. Further, the Railway Services (Conduct) Rules 1966 regulate the employment and terms of employment of railway employees.

The rail transport industry is also subject to the general labour laws of India (pertaining to minimum wage, use of child labour, industrial disputes, etc).

Environmental regulation

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. However, there are exceptions that apply when obtaining approvals for railway and metro projects.

Indonesia

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General

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

Under prevailing Indonesian law, the same business entity can control both rail infrastructure and rail operations over that infrastructure. Currently, PT Kereta Api Indonesia (Persero) (PT KAI), a state-owned enterprise (SOE), and its subsidiaries are the only entities engaged in the rail infrastructure and rail operations industry, although other entities are free to enter the industry providing that certain requirements are met.

According to Law No. 23 of 2007 concerning Railway Transportation (the Railway Law), rail transport for public purposes is divided into the following categories.

Railway infrastructure business
A business entity that acts as a railway infrastructure operator deals with the construction, operation, maintenance and business of infrastructure. The latter must comply with the railway infrastructure standards and criteria as determined by the Ministry of Transportation (MOT) according to article 18 of the Railway Law. In this context, infrastructure means the railway, railway station and railway operation facilities that enable the train to operate.

Railway facility business
A business entity that acts as railway facility operator deals with the procurement, operation, maintenance and business of facilities. The latter must comply with the railway facility standards and criteria as determined by the MOT as stated in article 25 of the Railway Law. In this context, facility means a vehicle that moves on the railway infrastructure.

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 government owns shares in PT KAI (see question 1). This is made possible because the definition of 'business entity', as referred to in article 1(10) of the Railway Law, includes SOEs, region-owned enterprises and Indonesian legal entities that are established solely to engage in railway business activities.

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

No. As there is no Indonesian law that prohibits freight and passenger operations from being controlled by the same company engaged in railway facility operations, PT KAI (as the only company engaged in the rail transport industry) controls both freight and passenger operations.

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

As stated in article 13(1) and (2) of the Railway Law, the development of railways, which includes regulation, control and supervision, is conducted by the government, and all matters are referred to the President.

In 2015, the President issued Presidential Regulation No. 40 concerning the Ministry of Transportation (PR 40/2015), article 18 of which states that the Directorate General of Railways (DGR) (under the MOT) has the task of formulating and implementing policy in the rail industry.

Market entry

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

A company engaged in railway facility operations for public purposes must have the following licences as required by article 32(1) of the Railway Law.

Business licence
The business licence for railway facility operations is valid for as long as the business entity conducts its business activities, as stated in article 338 of the Railway Law.

The MOT will then carry out an evaluation within 30 working days of receipt of the complete application for the business licence, including the required supporting documents, and will issue the business licence once the requirements for the application have been fulfilled as provided in article 16(1) of MOT Regulation No. PM 31 of 2012 concerning Licensing of Railway Facility Operations (MOT 31/2012).

Operation licence
The operation licence is valid for five years and may be extended for five years each time.

Upon receipt of an application for an operation licence, the MOT or, depending on the jurisdiction, a governor, regent or mayor will conduct an evaluation within 30 working days of receipt of the complete application and will issue the operation licence if the requirements have been met as provided in article 21 of MOT 31/2012.

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

The Railway Law and its implementing regulations are silent on any requirement to obtain regulatory approval to acquire control of an existing rail transport provider. Thus, the general rules for the acquisition of a company, as regulated in Law No. 40 of 2007 on Limited Liability Companies (the Company Law), its implementing regulations and other related laws and regulations, apply to the acquisition of a rail transport provider.

Under the Company Law, acquisition of a company may be carried out by (i) acquisition through the board of directors or (ii) procedures for acquisition directly from the shareholders.

In relation to the above and considering that the only rail transport company in Indonesia (PT KAI) is a persero (an SOE in the form of a limited liability company), the acquisition of the shares in PT KAI will be subject to the provisions contained in Government Regulation No. 33 of 2005 concerning the Privatisation Procedures for Persero Companies, as amended by GR 59 of 2009 (GR 59/2009). Based on article 1(2) of GR 59/2009, privatisation means the sale of some or all of the shares in a persero to another party.

Article 3 of GR 59/2009 provides that the government may conduct a privatisation after the House of Representatives approves the National Budget Plan containing the target state revenue from the result of

privatisation. The National Budget Plan is issued annually. The privatisation plan will be contained in an annual programme, and consultation with the House of Representatives is required before implementation.

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

Foreign investors, whether individuals or entities, who own or control an Indonesian legal entity, including rail transport companies, need to obtain the following approvals from the Investment Coordinating Board (BKPM).

Business identification number

A business identification number (NIB) is issued to a business after it registers with the online single submission (OSS) system, which is operated by the OSS Agency. As stated in article 21 of Government Regulation No. 24 of 2018 concerning Electronically Integrated Business Licensing Service (GR 24/2018), a business must register in order to carry out business activities, and must supply the following information to the OSS:

- single identity number, if the business is an individual;
- ratification of the deed of establishment or company registration number; and
- the legal basis for establishing a public company or other business entities owned by the state.

A NIB is used by the business to obtain a business licence and a commercial or operation licence, including fulfilling the requirements of those licences. Further, the NIB shall be valid as long as the business carries out its activities in accordance with the prevailing laws as provided in article 25 of GR 24/2018.

Business licence

Article 31 of GR 24/2018 provides that a business licence must be obtained by a business that has obtained a NIB. This licence is required to commence business activities before the implementation of commercial or operational activities.

A business that has obtained a business licence may conduct the following activities: land acquisition; change of land area; construction of buildings and their operation; equipment or facility procurement; human resources recruitment; completion of certification or worthiness; production commissioning; and implementation of production.

Commercial or operational licence

A commercial or operational licence is required to carry out commercial or operational activities. According to article 39 of GR 24/2018, the companies applying for this licence must meet certain requirements regarding standards, certifications, licences or registrations (eg, Good Manufacturing Practice certification, import approvals), in order to receive the commercial licence, which is issued by the OSS Agency.

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

A business entity that operates railway infrastructure must have the following licences as required in article 24(1) of the Railway Law.

Business licence

Prior to the implementation of the construction of railway infrastructure, a railway line route must be determined. A business entity may apply for the determination of a railway line route to the MOT or a governor, regent or mayor as provided in articles 4 and 5 of MOT Regulation No. PM 66 of 2013 concerning the Licensing of Implementation of Railway Infrastructure (MOT Regulation 66/2013). A business entity that intends to operate railway infrastructure must be designated a public railway infrastructure operator by the MOT or a governor, regent or mayor prior to the issuance of the business licence.

A business entity that has been designated as a public railway infrastructure operator and already has a technical plan will be granted the right to operate the railway infrastructure, which will be regulated in a railway infrastructure operation agreement as stated in article 9 of MOT Regulation 66/2013. The business entity must also apply for a business licence to operate railway infrastructure after it is has been designated as a public railway infrastructure operator.

The MOT or a governor, regent or mayor will then carry out an evaluation and assessment within 30 working days of the receipt of the complete application, and will issue the business licence no later than 14 working days after it has been determined that the applicant requirements have been met, as provided in article 21 of MOT Regulation 66/2013.

Construction licence

Article 29 of MOT Regulation 66/2013 provides that a business entity may apply for a railway infrastructure construction licence after it has obtained a business licence, fulfilled its obligations as referred to in article 22(1) of MOT Regulation 66/2013, and signed the railway infrastructure implementation agreement. A building construction permit and other permits are needed to meet the technical requirements for the issuance of a construction licence.

The application for a construction licence must be submitted to the DGR or a governor, regent or mayor in accordance with their respective authorities.

The business entity must submit an application for a construction licence to the relevant government institution together with the requirements provided for in article 29 of MOT Regulation 66/2013. The DGR or a governor, regent or mayor will then carry out an evaluation of the fulfilment of the requirements within six months of the receipt of the complete application and, if approved, the DGR or governor, regent or mayor will issue the construction permit to the business entity in 14 working days.

Operation licence

A business entity that has completed the construction of railway infrastructure must apply for the infrastructure inspection and, if it passes, the DGR will issue a certificate of fitness for the operation of railway infrastructure as provided in article 50 of MOT Regulation 66/2013. Further, a business entity that has obtained the aforementioned certificate is entitled to apply for the railway infrastructure operation licence.

The application for the operation licence must be submitted to the DGR or a governor, regent or mayor in accordance with their respective authorities.

The business entity shall apply to the relevant government institution for the operation licence together with the requirements set out in article 51 of MOT Regulation 66/2013. The DGR or a governor, regent or mayor will then carry out an evaluation of the fulfilment of the requirements within 30 working days of receipt of the complete application and, if approved, the DGR or governor, regent or mayor will issue a construction permit to the business entity in 14 working days.

In relation to the above, a railway infrastructure operator that is already engaged in railway infrastructure business may expand its rail line or increase its railway infrastructure as stated in article 60 of MOT Regulation 66/2013. In order to do this, the operator must obtain a construction licence and operation licence as well as approval from the MOT. Before a construction licence for the expansion of a rail line is granted, the business entity must amend the agreement for the railway infrastructure operation referred to in article 61 of MOT Regulation 66/2013.

Market exit

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

Pursuant to article 348 of GR 6/2017, a railway facility operator that has obtained an operation licence is obliged to operate its railway facility. As stated in article 398(4) and (5) of GR 6/2017, if this obligation is not fulfilled, the entity will be subject to administrative sanctions in the following order: written warnings; suspension of the certificate or licence to operate; and revocation of the certificate or licence.

Regarding the removal of rail infrastructure over a particular route, according to article 9 of MOT Regulation 66/2013, the right to operate a business entity that has been declared a railway business provider will be governed by the agreement between the MOT or a governor, regent or mayor in accordance with their respective authorities and the business entity.

Furthermore, article 10(2) of MOT Regulation 66/2013 provides that one of the elements that must be contained in such an agreement

is the mechanism for removal of the rail infrastructure over a particular route.

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 government may force a rail transport provider to cease operations by revoking the operation licence of the company as the last phase of administration sanctions imposed on a rail transport provider that does not meet the obligations stated in the Railway Law and its implementing regulations. See article 398 of GR 6/2017.

A rail transport company whose business licence has been revoked by the DGR or a governor, regent or mayor could file a suit to challenge this administrative decision according to Law No. 5 of 1986 concerning State Administrative Court, last amended by Law No. 51 of 2009 (Law 51/2009). Article 53(1) of Law 51/2009 states the following:

> *A civil person or legal entity that feels its interests are being harmed by a State Administrative Decision may file a written suit with the competent court which contains the demand for the disputed State Administrative Decision to be cancelled or declared invalid, with or without any claim for compensation and/or rehabilitation.*

Given the above, as the administrative decision of the DGR, governor, or regent or mayor is issued by a state administrative body, any decision rendered by it may become the object of a dispute for the following reasons (as provided in article 53(2) of Law 51/2000):

- the administrative decision against prevailing laws and regulations; and
- the administrative decision that goes against the general principle of good governance.

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?

Article 318(1) of GR 6/2017 provides that if a business entity is declared insolvent, the DGR or a governor, regent or mayor may revoke the business licence of the railway infrastructure operation for public services. Further, business licences and operation licences granted to a railway facility operator will be revoked when the operator becomes insolvent (MOT Regulation 31/2012).

However, there are no specific regulations that govern the insolvency of a railway transport provider and therefore such insolvency will be subject to the general provisions related to insolvency as regulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payments of Debts (Law 37/2004).

With regard to the operation of rail transport services in the case of insolvency, article 104 of Law 37/2004 provides that a rail transport provider may continue providing services during insolvency on the condition that the business activities are conducted by a trustee or an individual appointed by the court to manage and liquidate the assets of a bankrupt debtor under the supervision of a judge (article 1(5) of Law 37/2004).

Competition law

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

The rail transport industry is subject to general competition rules as governed by Law No. 5 of 1999 concerning the Restriction of Monopolistic Practices and Unfair Business Competition (the Competition Law). There is no specific regulation governing competition rules for rail transport.

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

The Commission for the Supervision of Business Competition (KPPU) has the duty to supervise the implementation of the Competition Law as stated in article 30 of the Competition Law. The President formed the KPPU by issuing Presidential Decree No. 75 of 1999 concerning Commission for the Supervision of Business Competition, last amended by Presidential Regulation No. 80 of 2008. The DGR does not have any responsibility for enforcing the Competition Law.

Article 35 of the Competition Law lists the duties of the KPPU. Moreover, according to article 36 of Competition Law, one of the authorities of the KPPU has the power to impose an administrative sanction on entrepreneurs who violate the provisions of the Competition Law.

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

There are no main standards to assess the competitive effect of a transaction involving rail transport companies. This is because the assessment made by the KPPU for determining the competitive effect is carried out case by case.

The Competition Law divides violations into two categories: prohibited agreements; and prohibited activities in which some actions of the entrepreneur are strictly prohibited, while other actions are only prohibited if they cause monopolistic practices or unfair business competition.

Further, in order to determine whether there has been a violation of the Competition Law, the KPPU may use the following evidence, among others, as stipulated in article 42 of Competition Law: witness testimony, expert testimony, letters or documents, information and entrepreneurs' testimony.

Price regulation

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

Prices charged by rail carriers for freight transport are regulated by Government Regulation No. 72 of 2009 concerning Traffic and Railway Transport, last amended by Government Regulation No. 61 of 2016 concerning the Amendment of Government Regulation No. 72 of 2009 (GR 61/2016). Article 146 of GR 61/2016 provides that tariffs for railway transport are divided into passenger rail transport and freight rail transport.

Freight rail transport tariffs are the cost per ton per kilometre as stated in article 153 of GR 61/2016. If the goods being transported have a particular nature and certain characteristics, the cost will be determined based on the agreement between the service user and the railway facility operator in accordance with the guidelines for the determination of tariffs stipulated by the MOT. This agreement may be in the form of an agreement preceded by negotiations or an agreement on tariffs set by the railway company as stated in article 154(2) of GR 61/2016.

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

A passenger rail transport fare is the cost per passenger per kilometre, which is determined by the rail transport company as stated in article 147(1) and (2) of GR 61/2016. The fares must be announced by the rail transport company at railway stations or in the media, or both, no later than three months before they come into effect.

The rail transport company must report its fares to the MOT or the governor, regent or mayor who issued the operation licence as provided in article 148 of GR 61/2016. The MOT or governor, regent or mayor will then evaluate the determination and implementation of the fares.

The MOT or governor, regent or mayor may determine the transport fares in the following circumstances, according to article 149(1) of GR 61/2016:

- the community has not been able to pay the fares determined by the railway infrastructure operator for economy class transport services; or
- in an undeveloped region, where there has previously been no rail transport. In this case, the fares will usually be lower than developed regions to encourage use of rail transport and its developments in the region.

The implementing regulation on the procedures for the calculation and determination of passenger rail transport fares is MOT Regulation No. PM 17 of 2018 concerning the Guidelines for the Procedures for the Calculation and Determination of Passenger Rail Transport Fares (MOT Regulation 17/2018).

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

Freight shippers or passengers may give feedback or make complaints regarding the price levels, which must be submitted to the MOT or the governor, regent or mayor that supervises the railway business, as provided in articles 393 and 394 of GR 6/2017. Such feedback may be in the form of information, suggestions or opinions and must be conveyed in written form accompanied by the complainant's name and address attaching a photocopy of his or her identity. The MOT or governor, regent or mayor will provide a written or verbal response on the feedback from the freight shippers or passengers.

In relation to the above, articles 12(1) and 13 of MOT Regulation 17/2018 state that the DGR supervises the implementation of passenger rail transport fares by monitoring the fares printed on tickets or receipts of payment, or announcements in news or advertisements released by the advertising company employed by the rail transport company, or in print or electronic media. It will impose sanctions on the railway facility operator if the following occurs:

- the determination and implementation of passenger rail transport fares by the railway facility operator is not in accordance with the guidelines for passenger rail transport fares as regulated in MOT Regulation 17/2018;
- the passenger rail transport fares for economy class services assigned by the government exceed the fares stipulated by the MOT; or
- standards of service for the transport of passengers in all classes, including economy and first class, are violated.

As stated in article 14(2) of MOT Regulation 17/2018, the sanctions imposed by the DGR on railway facility operators that violate the above-mentioned provisions will consist of the following: written warnings; suspension of the operation licence; and revocation of the operation licence.

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

In providing its services to the community, a railway company must ensure that its infrastructure and facilities are available to all customers in an equal fashion as provided in article 396(1) of GR 6/2017.

However, shippers and passengers who use special services at a railway station may be subject to an additional service tariff as stated in article 57 of the Railway Law. Special services may take the form of passenger waiting areas, loading and unloading of goods, warehousing, parking of vehicles or deposit counters that are provided in the railway station.

A railway facility operator that provides transport for passengers is entitled to reduce the fares for its services on the condition that the DGR must be informed of the reduction as required by article 11 of MOT Regulation 17/2018.

Network access

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

The Railway Law and its implementing regulations are silent on whether or not business entities controlling rail infrastructure must grant network access to other rail transport companies.

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

See question 19.

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

There are no specific policies on allowing new market entrants network access or increasing competition in rail transport.

Service standards

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

The Railway Law and its implementing regulations are silent on whether or not rail transport providers must serve all customers who request service.

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

According to article 2 of MOT Regulation No. PM 48 of 2015 concerning Minimum Service Standards for the Transport of People by Train (MOT Regulation 48/2015), the operation of rail transport must meet minimum service standards, including at the railway station and at the time of travelling. This applies to railway infrastructure operators that operate the railway station and provide services to customers, and to railway facility operators providing services to passengers.

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?

Article 9(2) of MOT Regulation 48/2015 provides that the community is entitled to give advice and feedback on the minimum service standards, which must be provided either verbally or in writing to the MOT or to the DGR. However, this Regulation is silent on the procedure for freight shippers or passengers to challenge the quality of service they receive.

In relation to the above, article 310 of GR 6/2017 states that an agreement between the DGR or a governor, regent or mayor and the business entity as a requirement to obtain a business licence for the operation of public rail transport infrastructure provided in article 307 shall at least contain service performance standards and procedures for handling public complaints.

Safety regulation

25 How is rail safety regulated?

Under the Railway Law and its implementing regulations, rail safety applies to both railway infrastructure operations and railway facility operations, as outlined below.

Railway infrastructure operation

Pursuant to article 67 of the Railway Law, railway infrastructure must meet certain eligibility requirements when in operation, including the following:

- technical requirements relating to the system and components of the infrastructure; and
- operational requirements relating to the capability of the infrastructure in accordance with the railway operation plan.

Railway facility operation

Every type of railway facility must fulfil the railway facility operation eligibility requirements specified in article 198 of GR 6/2017, which include testing of the railway facility by comparing the condition and functioning of the railway facility with the technical specifications; and examination of the railway facility consisting of the first test and any subsequent tests.

In connection with the above provisions, MOT Regulation No. 24 of 2015 on the Standard of Railway Safety (MOT Regulation 24/2015) specifically regulates the safety standards to be implemented by the railway infrastructure operator and railway facility operator to avoid the risk of accidents.

Articles 2 and 3 of MOT Regulation 24/2015 stipulate that operators of railway facilities and operators of railway infrastructure must meet safety standards relating to infrastructure, facilities, traffic and transport, and human resources.

26 What body has responsibility for regulating rail safety?

The government – in this case the MOT – has responsibility for regulating rail safety, as article 13(1) and (2) of the Railway Law provides that a railway is controlled by the state and its development is carried out by the government. The term 'development of the railway' covers regulation, control and supervision.

As mentioned in question 4, the President issued PR 40/2015, article 18 of which states that the DGR as a directorate under the MOT has the duty to arrange the formulation and implementation of policy in the rail industry.

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

MOT Regulation 24/2015 applies to the manufacture of rail equipment.

Pursuant to article 11 of MOT Regulation 24/2015, the safety standards of the railway operations facility relate to the following: signal equipment, telecommunications equipment and electrical installation. Article 11 regulates safety standards for railway facilities that have been designed to accommodate locomotives, trains, etc.

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

The following regulations govern the maintenance of track and other rail infrastructure:

- MOT Regulation No. 31 of 2011 concerning the Procedures for Inspection of Railway Infrastructure (MOT Regulation 31/2011); and
- MOT Regulation No. 32 of 2011 concerning the standards and procedures for the maintenance of railway infrastructure.

In addition to the above regulations, with respect to the maintenance of track and rail infrastructure, there are also provisions set forth in MOT Regulation 24/2015.

29 What specific rules regulate the maintenance of rail equipment?

The following rules regulate the maintenance of rail equipment:

- MOT Regulation 31/2011 concerning the Procedures for Inspection of Railway Infrastructure;
- MOT Regulation No. 32 of 2011 concerning the Standards and Procedures for the Maintenance of Railway Infrastructure;
- MOT Regulation No. 30 of 2011 concerning the Procedures for examination and granting Railway Infrastructure Certificates;
- MOT Regulation No. 17 of 2011 concerning the Standards, Examination Procedures and Certification of Wagon Eligibility;
- MOT Regulation No. 14 of 2011 concerning the Standards, Examination Procedures and Certification of Automotive Eligibility;
- MOT Regulation No. PM 50 of 2018 concerning the Technical Requirements of Railway Electrical Installation; and
- MOT Regulation No. 24 of 2015 concerning the Standards of Railway Safety.

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

The procedure for investigating rail accidents is regulated under Government Regulation No. 62 of 2013 on the Investigation of Transport Accidents as amended by Government Regulation No. PM 122 of 2015 (GR 122/2015).

Pursuant to article 3 of GR 122/2015, the transport accident investigation must be conducted professionally and independently, and all information relating to the cause of the accident must be obtained. Moreover, article 4 of GR 62/2013 provides that the transport accident investigation as referred to in article 3 shall be conducted by the National Committee for Transportation Safety (KNKT).

Article 6 of GR 62/2013 provides for rail accident investigations. Further, article 7 provides that such accidents consist of a collision between trains, an overturned train, a train that has plummeted or a train that has caught fire.

In addition to the above, the KNKT is a government agency that operates under the MOT that conducts investigations and research on transport accidents, and must report its findings to the MOT. The investigation and research tasks conducted by the KNKT is part of the MOT's effort to improve transport safety. The results of the examination and research on the causes of train accidents made in the form of recommendations will be followed up by the government, the railway infrastructure operator and railway facility operators, and may be announced to the public.

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

The general provisions on the liability of rail infrastructure companies and rail facility companies are regulated in the Railway Law as follows.

Liability of railway infrastructure operator

Article 87 of the Railway Law provides the following:

- railway infrastructure operators shall be liable to the railway facility operator and third parties for the loss resulting from an accident that occurred as a result of an error in the railway infrastructure;
- the liability of the railway infrastructure operator to the railway facility operator is based on the cooperation agreement made between them;
- the railway infrastructure operator shall be liable to third parties for the damage of property, or injury or death resulting from the implementation of railway infrastructure;
- the railway infrastructure operator shall be liable to the officer of railway infrastructure (or his or her family) in the event of his or her injury or death as a result of the operation of railway infrastructure; and
- the liability must be calculated based on the real loss suffered by the railway facility operator or third party.

The exceptions to the railway infrastructure operator's liability are provided in article 88 of the Railway Law: if the authorised party (eg, a government agency) states that the loss is not the result of an error in the operation of railway infrastructure; or an event of force majeure occurred.

Liability of railway facility operator

Article 157 of the Railway Law provides the following:

- the railway facility operator shall be liable to passengers who suffer loss, injury or death as a result of the operation of railway transport;
- the liability starts from the moment a passenger boards the train until he or she disembarks, and is calculated based on the real loss suffered by the passenger; and
- the railway facility operator shall not be liable for the loss, injury or death of a passenger that is not the result of the operation of the railway transport.

Regarding the transport of goods, article 158 of the Railway Law provides the following:

- the railway facility operator shall be liable for the loss suffered by the sender of the goods owing to the loss, damage or destruction of the goods as a result of the operation of the railway transport;
- the liability starts from when the goods are received by the railway facility operator until the delivery of goods to the receiver;
- the loss is calculated based on the real losses suffered by the sender of the goods, not including the profit received and fee for the service that has been used; and
- the railway facility operator shall not be liable for the loss resulting from incorrect information in the list of goods provided with their transport.

Article 159 of Railway Law provides that the railway facility operator shall not be liable for the loss suffered by a third party as a result of the operation of railway transport, except if the third party is able to prove that the loss resulted from the negligence of the railway facility operator.

The right of a third party to file an objection and compensation request to the railway facility operator shall be submitted no later than 30 days from the date of loss.

The provisions on the liability of railway infrastructure operators and railway facility operators are further regulated in GR 6/2017.

Financial 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)?

Yes, the government provides direct assistance to railway companies in the form of subsidies. The grant is a public service obligation as

stipulated in the MOT Regulation No. 68 of 2016 on Procedures for the Implementation of Public Service Obligation of Public Transport by Economy Class Service.

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 transport companies.

Labour regulation

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?

In addition to the standard labour and employment law, the following specialised labour and employment laws apply to workers in the rail transport industry:

- MOT Regulation No. PM 5 of 2017 on the Certificate of Railway Travel Regulators and Railway Travel Controllers;
- MOT Regulation No. 22 of 2011 on the Certificate of Railway Inspectors;
- MOT Regulation No. PM 5 of 2017 on the Certificates of Train Travel Arranger Proficiency and Train Travel Controllers;
- MOT Regulation No. 19 of 2011 on the Certificate of Proficiency of Guard Railway Crossings; and
- MOT Regulation No. 18 of 2011 on the Certificate of Railway Auditors.

Environmental regulation

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

There are no specialised environmental laws that apply to rail transport companies. In other words, the general environmental law – Law No. 32 of 2009 on Environmental Protection and Management – applies to rail transport companies.

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General

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

Rail infrastructure and rail operations over the infrastructure are controlled by the same companies in Japan. However, there are a number of exceptions. For example, in the Shinkansen Railways project, which will be carried out under the Nationwide Shinkansen Railways Development Act in accordance with the 1973 plan, the Japan Railway Construction Transport and Technology Agency (JRTT), an independent administrative agency, constructs and owns the railway facilities in question and leases them to the passenger companies, which were derived from Japanese National Railways (JNR) (see question 2). Further, in the metropolitan areas, control of the rail infrastructure and rail operations over them are separated into several passenger railway sections, in order to promote and facilitate network access for multiple railways. In addition, because of a surge in land prices in the metropolitan areas, in some cases public organisations construct the railway facilities and a private company is responsible for the operation of the railway (eg, the Hokuso Railway in the Tokyo metropolitan area, and the Kansai Rapid Railway and Nara–Ikoma Rapid Railway in the Osaka metropolitan area). Lastly, for a few airport-access railways and several local railways, control of the rail infrastructure and rail operations over it are separated.

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?

After World War II, the most important railways in Japan were owned and managed by JNR, a public enterprise wholly owned by the government, which was established in 1949. However, in 1987, JNR was divided into six passenger railway companies (Hokkaido Railway Company (JR Hokkaido), East Japan Railway Company (JR East), Central Japan Railway Company (JR Central), West Japan Railway Company (JR West), Shikoku Railway Company (JR Shikoku) and Kyushu Railway Company (JR Kyushu)), and one freight railway company, Japan Freight Railway Company (JR Freight)), for the purpose of privatisation. Of these seven companies, four have been listed on the stock market as private companies, with the aim that the remaining three will eventually be listed. However, considering the business conditions of the respective companies and the stock market environment, JR Hokkaido, JR Shikoku and JR Freight are currently being treated as private holding companies, which are wholly owned by the JRTT.

In addition, subways in the major cities (Tokyo, Osaka, Sapporo, Sendai, Yokohama, Nagoya, Kyoto, Kobe and Fukuoka) are owned and managed by the local municipalities, excluding two of the 'privatised' services, Tokyo Metro Co, Ltd (Tokyo Metro) and Osaka Metro Co, Ltd (Osaka Metro). Tokyo Metro and Osaka Metro were converted from public organisations to joint-stock companies, although all of the stocks are still owned by the government and the local municipalities. However, it is intended that Tokyo Metro will be listed on the stock market in the future.

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

Although there is no particular regulation on this issue in Japan, generally speaking, freight operations and passenger operations are controlled by separate companies. As mentioned in question 2, in 1987 JNR was divided into six passenger railway companies and one freight railway company, JR Freight. The former companies only operate for passengers and the latter only operates for freight shipments. Among private railway companies, only a very limited number of the companies, which are connected with JR Freight, engage in freight operations.

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

Rail transport in Japan is regulated by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT), the JRTT and the Japan Transport Safety Board (JTSB).

The MLIT is the main regulator of rail transport and it is responsible for the use, development and maintenance of land, the promotion of transport policy, the development of tourism, etc. It therefore deals with various matters relating to railways, including maintenance, transport, safety, development of business, manufacture, distribution and improvement of equipment. The JRTT is responsible for construction of railways, support for promoting the development of railway facilities, disposal of the assets that were owned by JNR after it was divided and support of the management of the unlisted successors of JNR, JR Hokkaido, JR Shikoku and JR Freight. The JTSB is responsible for the following:

- researching the cause of accidents and incidents on railways;
- giving an opinion on incidents and accidents to the relevant authorities and the relevant parties, and giving advice in order to prevent the recurrence of incidents and accidents; and
- conducting studies and research on accident prevention and mitigation of damages.

Essentially, the MLIT exercises its authority under the Railway Business Act and the Railway Operation Act, and the JRTT and JTSB exercise their authority under the Act on the Japan Railway Construction, Transport and Technology Agency and the Act for Establishment of the Japan Transport Safety Board, respectively.

Market entry

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

When a person or a corporation (the applicant) wishes to enter the market as a rail transport provider, the licence to do so is granted by the Minister of Land, Infrastructure and Transport. In relation to the respective route and the respective categories of the railway business provided in Railway Business Act, the applicant has to submit an application form, which must include several documents relating to the basic business plan, information on the assets and background of the applicant, the relevant charts of the planned route, etc, to the MLIT or the responsible local department of transport.

Railway business is categorised as follows:

- Category I: businesses that provide transport services by using their own railway facilities;
- Category II: businesses that provide transport services by using facilities owned by third parties (ie, a Category I railway business provider or a Category III railway business provider); and

- Category III: businesses that construct railway facilities for the purpose of transferring the business to a Category I railway business provider, and businesses that construct and maintain railway facilities for the purpose of leasing them to a Category II railway business provider.

In order to grant the licence for a railway business, the Minister has to review the following requirements:

(i) the appropriateness of the plan from a business perspective;
(ii) the appropriateness of the plan from a safety perspective;
(iii) how effective the plan will be for conducting business if it fulfils requirements other than (i) and (ii); and
(iv) the applicant's ability to properly conduct the business by itself.

Whether item (iv) is satisfied or not is judged by considering, among other things, the applicant's ability to finance and repay, its ability to manage the business, and its competency in technology. Although there is no legal requirement regarding the period for the review, it should be conducted in one to five months.

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

In relation to the acquisition of control of an existing rail transport provider, different types of approval are required depending on the deal.

First, in relation to the transfer of the railway business, approvals from the MLIT are required for the transferor and the transferee. Both parties shall submit the application for transfer to the local transport bureau, together with a copy of the transfer agreement of the railway business in question, statements of the transfer price for the transferor and transferee, etc.

Second, regarding mergers and company splits, approval is required for both a merger between railway business providers and the splitting up of a railway business provider. In relation to a merger, both parties must submit the applications for merger to the local transport bureau, together with a copy of the merger agreement of the railway business in question, explanatory materials of the method and conditions of the merger, etc. With respect to a company split, the parties to the company split agreement of the railway business in question shall submit the applications for company split to the local transport bureau, together with a copy of the company split agreement, explanatory materials of the method and conditions of the split, etc.

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

According to the Foreign Exchange and Foreign Trade Act, (i) acquisition of not less than 10 per cent of the shares of the listed company operating railway business or (ii) acquisition of shares of the unlisted company operating railway business requires the submission of a report to the Minister of Finance and the Minister of Land, Infrastructure, Transport and Tourism in advance. As a result of the Ministers' review, it may be recommended that the investment plan be changed or cancelled if (i) national security is impaired, the maintenance of public order is disturbed or the protection of public safety is hindered, or (ii) the smooth management of the Japanese economy will be significantly adversely affected. However, as the meaning of 'national security' and 'public order' is not clear in Japanese law, it is uncertain how the acquisition of shares of companies operating railway business by foreign companies will be treated as such by the relevant authorities.

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

Yes. Regulatory approval is required in order to commence construction of a new rail line. The railway business provider must determine the plan for constructing the facilities required for the railway as are provided in the ordinances enacted by the MLIT, including but not limited to the rail line and stations. The railway business provider must then apply for approval to commence construction by the deadline designated by the MLIT, attaching the relevant documents and charts of the planned route as provided in the ordinances enacted by the MLIT.

Market exit

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

The Railway Business Act provides for the following procedures for the railway company to voluntarily discontinue service or to remove rail infrastructure over a particular route:

- In relation to suspension, the railway business provider shall submit the report of suspension to the MLIT. The period of suspension cannot exceed one year.
- In relation to abolition of a railway service for passengers, the railway business provider shall submit the abolition report to the MLIT one year prior to the date of abolition. The Minister hears the opinions of the relevant local municipalities and the stakeholders on whether the public will be inconvenienced if the service is abolished and if the Minister finds that there is no risk of this happening, the railway service provider will be notified of the decision.
- In relation to the abolition of a railway service for freight, the railway business provider shall, in principle, submit the abolition report to the MLIT six months prior to the date that the service is abolished.

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 grounds for cancellation or suspension of the railway business's licence are as follows:

- if the railway business breaches the Railway Business Act, an order based on the Act or an administrative decision that directly forms or decides the rights and obligations of the people, or breaches the conditions of the approval or the licence;
- if the railway business fails to perform the action approved or licensed without any reasonable ground;
- if the railway business performs any action that falls under the reasons for disqualification in article 6 (excluding item (ii) thereof) of the Railway Business Act;
- if the railway business does not receive approval to commence construction under article 8.1 of the Railway Business Act;
- for a Category I railway business provider, abolition of the railway business or cancellation of approval for the licence granted to the Category III railway business provider that is the counterparty of the assignee of the rail line in relation to the railway business in question, for the route relating to that line;
- for a Category II railway business provider, abolition of the railway business or cancellation of approval for the licence granted to the Category III railway business provider, who is the granter of the use of the rail line in relation to the railway business in question, on the route relating to that line; and
- for a Category III railway business provider, abolition of the railway business or cancellation of approval for the licence granted to:
  - the Category I railway business provider that is the counterparty of the assignee of the rail line in relation to the railway business in question; or
  - all of the Category II railway business providers that are users of the rail line in relation to the railway business in question, on the route relating to that line.

If the licence holder would like to challenge the validity of the cancellation or suspension of the licence, there are two options available: he or she can initiate an administrative procedure in accordance with the Administrative Appeal Act; or he or she can bring a lawsuit against the government in a judicial procedure in accordance with the Administrative Litigation Act.

Under the Administrative Appeal Act, the complaint regarding the administrative decision to cancel or suspend the licence, or other acts constituting the exercise of public authority by administrative agencies, shall be submitted in writing. The complaint must be submitted within 60 days of the moment the applicant knew of the decision or within one year after the decision was made. The standing to submit the complaint is accepted if the applicant is the person whose rights or legally

protected interests are infringed or are to be infringed by the decision. The review of the case is based on the documents and the agency in charge of the review handles procedures.

Under the Administrative Litigation Act, the lawsuit regarding the administrative decision can be brought to the district courts. The complaint must be submitted within six months of the moment the plaintiff knew of the decision or within one year after the decision was made. The standing to submit the complaint is accepted if the plaintiff is the person whose rights or legally protected interests are infringed or to be infringed by the decision. The parties of the litigation have the initiative of performing the procedures.

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 in relation to the insolvency of rail transport providers – general insolvency rules apply. There is no legal obligation for a rail transport provider to continue providing services during insolvency. If a railway service provider submits a petition for bankruptcy, it is necessary for the company to obtain the approval of the court in order to continue the business.

Competition law

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

General competition rules, as provided for in the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (the Act on Antitrust), apply to rail transport. It regulates private monopolisation, unreasonable restraint of trade and unfair trade practices.

There are some specific rules that apply to rail transport, which are provided in article 16 of the Railway Business Act on fares for passengers (see question 17). Fares are strictly controlled by the authorities on the basis of what is considered to be appropriate profit of the railway companies and can be changed from the perspective of promoting competition, in accordance with the provisions of the Railway Business Act. For a similar purpose, the agreement on transport between the railway business providers must be reported to the MLIT. In this sense, the provisions of the Railway Business Act can be seen as sector-specific competition rules.

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

Generally, the Fair Trade Commission has the authority for enforcing competition law in accordance with the Act on Antitrust. The MLIT has the authority to enforce the provisions of the Railway Business Act.

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

In relation to the Act on Antitrust, there has only been a small number of cases in relation to the competitive effect of a transaction involving rail transport companies, so the main standards are not well established.

With respect to the Railway Business Act, the number of cases is very limited (most were dismissed) and the observable standard is quite vague. For example, in a case involving Hokuso Railway Co, Ltd (judgment dated 19 February 2014), the Tokyo High Court said that even if a passenger on a short-distance train pays a higher fare per kilometre than a passenger on a long-distance train that incorporates the same section of the line, it does not mean that the passenger on the short-distance train is 'unreasonably treated in a discriminatory manner' because both passengers are paying the same fare for the same section.

Price regulation

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

No. In 2003, the price regulations on freight transport by railway were abolished. Before 2003, any changes to the prices for freight transport had to be approved by the relevant authorities. However, reflecting the political movement of deregulation in the early 2000s in Japan, the requirement for this approval was abolished.

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

Yes. As mentioned in question 12, these prices are regulated under article 16 of the Railway Business Act. The railway business provider must decide the upper limit of fares for passengers and must obtain approval for this from the MLIT. The same rule applies to changing the upper limit. In relation to the process of approval, the MLIT will review whether the upper limit does not exceed the amount of the appropriate costs and the appropriate profit under efficient management. The railway business provider determines the prices of passenger fares, which must not exceed the approved upper limit, and submits them to the MLIT in advance. The same rule applies to changing the fares. Moreover, the MLIT may order the railway business provider to change the prices of fares for passengers if specific passengers are treated in a discriminatory manner or the fare may cause unreasonable competition with other railway business providers. If the agreement on the transport is to be executed by the railway business provider, the agreement must be reported to the MLIT under article 18 of the Railway Business Act.

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

Yes. As mentioned in question 16, according to article 16 of the Railway Business Act, deciding on and changing the upper limit of prices for passengers requires approval from the MLIT. Generally speaking, this approval takes the form of an administrative decision. Therefore, if other requirements for the relevant procedures are satisfied, price levels can be challenged under the procedures in accordance with the Administrative Appeal Act and Administrative Litigation Act (see question 10).

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

Yes. According to article 16 of the Railway Business Act, the MLIT may order the railway business provider to change the fares for passengers if specific passengers are unreasonably treated in a discriminatory manner.

However, see question 14 in relation to the *Hokuso Railway Co, Ltd* case.

Network access

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

No. There are no laws and regulations that require entities controlling rail infrastructure to grant network access to other rail transport companies. However, in practice, there are many examples of railway companies granting network access to other rail transport companies by contract. This is particularly the case in Tokyo and its suburban area, and, in accordance with the advice of the Transportation Policy Council (an advisory body of the MLIT) in 2000 and 2016, the construction of a rail line is being planned on the assumption that network access will be granted to some extent.

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

No. The prices for granting of network access are not regulated by legislation but are determined by negotiation between the parties. In Japan, generally speaking, every railway business provider owns the cars and the rail lines, and is responsible for the operation of the line in question, so granting network access is usually managed by a railway business provider leasing the cars to another railway business provider. Therefore, in most cases, the parties that require network access negotiate the car rental fee with the railway business provider, which determines the prices.

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

In the advice of the Transportation Policy Council after the 1980s, promotion of network access in the metropolitan area is strongly emphasised, although 'allowing new market entrants' or 'increasing

competition in rail transport' is not clearly mentioned. Japanese policy focuses more on the promotion of network access between existing railway services.

However, in relation to railway services for passengers, which are or may be difficult to continue, network access to existing railways may be permitted for new market entrants for the purpose of improving the management of the existing railway business provider. In such cases, the local municipalities and an existing railway business provider jointly draft the plan for restructuring railway services and execute it, in accordance with Act on Revitalisation and Rehabilitation of Local Public Transportation Systems.

Service standards

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

No. According to article 6 of the Railway Operation Act, rail transport providers do not have to serve customers who are not in compliance with the laws and regulations on railway transport; who request a special condition for transport from the rail transport provider; whose transport would be against the public interest; whose transport by rail would not be appropriate; or whose transport is inappropriate because of unavoidable circumstances, including but not limited to acts of God.

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

Yes. The Railway Business Act and the Railway Transport Regulations provide for the standards that rail transport companies are required to meet. Based on these, JNR provided for the Passenger Business Rules and the Freight Business Rules. After the division and privatisation of JNR, each of its successors adopted these Rules and slightly revised them from time to time depending on its respective circumstances. Private rail companies and public rail entrepreneurs in Japan adhere to terms and conditions that are modelled on the Passenger Business Rules.

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?

Yes. As the relationship between freight shippers and passengers and a railway business provider is understood to be a contractual relationship between private parties, the Civil Code applies. Therefore, the district courts have authority to adjudicate and the Civil Procedure Act applies.

Safety regulation

25 How is rail safety regulated?

Rail safety is mainly regulated by the Ordinance providing for the Standards on Technology relating to the Railway and the Ordinance relating to the Assurance of Safety of Operation, both of which are enacted by the MLIT. The former Ordinance assures the technical standards, including those which relating to safety. The latter Ordinance is more closely related to the operation of the railway. It provides for the most important rules, with which the employee engaging in the operation of railways shall be compliant.

26 What body has responsibility for regulating rail safety?

The MLIT is responsible for regulating rail safety. In addition, the JTSB has the authority to advise the parties involved in a railway accident and to publish an opinion relating to the accident.

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

The following regulations apply to the manufacture of rail equipment:

(i) the Ordinance providing for the Standards on Technology relating to the Railway;
(ii) the Notification providing for the Standards on Technology relating to the Railway;
(iii) the Notification in relation to Periodical Inspection of Facilities and Cars; and
(iv) the Notification providing the Technical Standards in relation to the Special Railways.

Update and trends

JR Central hopes to begin construction of the Linear Chuo Shinkansen Line, which is scheduled to operate in 2027 and will travel between Tokyo and Nagoya reaching a top speed of around 500km per hour. In theory, this journey will take 40 minutes.

The Linear Chuo Shinkansen Line is different from the Shinkansen railways. The latter will be constructed by the JRTT under the Nationwide Shinkansen Railways Development Act according to the 1973 plan, and the JRTT owns the railway facilities in question and will lease them to the passenger transport companies derived from JNR. However, as the Linear Chuo Shinkansen Line was planned after 1973, the features of the Shinkansen railways (in particular, separation of the owner of rail infrastructure and the rail operator) do not apply to it.

Another interesting legal issue concerns the method of construction of the Linear Chuo Shinkansen Line. JR Central hopes that in the metropolitan areas the line will be constructed mainly by using 'great depth', which generally means a depth of more than 40 metres underground. If the area of construction includes this depth, which means that the ownership of the land is restricted, the construction will be easier than in other areas.

The MLIT enacts (i), and notifies (ii), (iii) and (iv).

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

The regulations referred to in question 27 also apply to the maintenance of track and other rail infrastructure.

29 What specific rules regulate the maintenance of rail equipment?

The regulations referred to in question 27 also apply to the maintenance of rail equipment.

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

The JTSB, which was established in 2008, has authority to investigate rail accidents. Conceptually, the JTSB is an 'independent administrative committee', which is independent from any ministries, including the MLIT, although the members of the committee are appointed by the Prime Minister. Generally, the JTSB has the authority to determine its budget and manage its personnel, to enact regulations and notifications in certain matters as designated by the law, and to publicise these regulations and notifications at its discretion.

In relation to the railways, the JTSB investigates the following:

- accidents caused by collision of trains;
- accidents caused by derailment (except for those relating to working snowploughs);
- accidents caused by fire;
- any other types of accidents, which are limited to:
  - accidents that caused the death of a passenger, member of the train crew, etc;
  - accidents that caused a minimum of five casualties, including at least one death;
  - accidents that involved a death that might have been caused by the fault of rail staff, or disorder, damage or destruction of railway facilities;
  - accidents that involved a death at a railway crossing without a barrier; and
  - particularly abnormal accidents; and
- material incidents.

When the accident is reported, the JTSB appoints a chief investigator and other investigators to assess the accident, and coordinates with other relevant authorities, including the police. During the investigation, the investigators will obtain the relevant information by interviewing train crews, passengers, eye witnesses, etc; collecting the materials relating to the accident; and investigating the damage to the train and railway facilities. The information they have collected will then be examined and analysed. Afterwards, the JTSB drafts a report, advice and an opinion, which are discussed internally, and then hears the opinion of the parties involved in causing the accident (or causing damage

in connection with the accident) and determines whether the report, advice and opinion should be submitted to the MLIT and disclosed to the public.

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 accidents. The Civil Code governs the liability of private companies. In relation to the acts that fall under 'exercise of public authority of a state or of a public entity', companies owned by government agencies or municipalities, the State Redress Act applies, although such cases seem to be very rare.

Financial 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 JRTT has supported rail transport companies by providing direct financial subsidies. For example, it is involved with the following:

- construction of railways – the JRTT is involved with the construction of Shinkansen railways and the private railways in metropolitan areas, the provision of construction services, etc;
- payment of subsidiaries to railway businesses – in 2017, the JRTT had a budget of approximately ¥144 billion for subsidiaries;
- contribution to the regional public transportation networks – in 2017, the JRTT had a budget of ¥1.2 billion for this purpose; and
- liquidation of JNR – since 1987 the JRTT has been involved with the disposal of the assets transferred from JNR, included but not limited to the lands acquired.

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?

As mentioned in the answer to question 32, the JRTT is involved in the payment of subsidiaries to railway businesses. This process is regulated under the Act on Regulation of Execution of Budget Pertaining to Subsidies, etc. The decision regarding subsidiaries can be challenged under the procedures of the Administrative Appeal Act and Administrative Litigation Act (see questions 10 and 17).

Labour regulation

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?

No. When JNR existed, the legal status of its employees was different from those of other employees, and the Japanese National Railway Act specifically provided for the relationship between the JNR and its employees. However, this Act is no longer in effect and there are no specialised labour or employment laws that apply to workers in the rail transport industry – standard labour and employment laws apply.

Environmental regulation

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

There are no specialised environmental laws that are applicable to rail transport companies – standard environmental laws apply.

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General

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

The Mexican Constitution establishes that railways are a priority area for national development. The federal government is the main authority in this industry as it plans and establishes policies, as well as coordinates, regulates and supervises the rail sector. The rail transport industry is being developed mainly through concessions granted to private parties for the latter to render cargo and passenger transport public services, although passenger trains are still undeveloped. Ferrocarril del Istmo de Tehuantepec (FIT) is the only rail cargo line that is still owned and operated by the government through an entitlement that is granted to a state-owned commercial entity.

Considering elements such as national security and sovereignty, the government maintains full domain over the general communication networks and key infrastructure such as, for instance, railways and associated buildings and workshops, as well as right of way (ROW) and signalling. Private parties acting as concessionaires are obligated to exploit, increase, operate and maintain the network as well as to render transport public services. However, the concessionaires are the owners of the rolling stock and related equipment. At the end of the concession, concessionaires shall hand over to the government the network and the associated key infrastructure, including any improvements. The government has the right of first refusal and preferential right to acquire the rolling stock and associated equipment owned by the concessionaire.

The rail transport industry has been structured under basic principles such as free competition, operative efficiency, reduced costs, and access and interconnection between lines and systems.

Under the applicable legal framework, there are three types of regulatory approvals:

- concessions to private parties to render the cargo or passenger transport public service;
- permits to private parties to render ancillary services such as cargo terminals and maintenance workshops, as well as to conduct other activities, such as constructing crossings or bridges over the railways; and
- entitlements to local or municipal governments, as well as to government-owned entities, such as FIT.

The Ministry of Communications and Transport (SCT) is in charge of granting the concessions, permits and entitlements, and supervising compliance with their terms. However, the Railway Transport Regulatory Agency (ARTF) is the agency expressly created by the government to, among other things, regulate the railway transport in general, including technical, operative and safety features and standards; supervise the services rendered by concessionaires; secure interconnection; and establish guidelines to implement tariffs when there is a lack of competition.

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. For example, as mentioned in question 1, the government owns FIT, which holds an entitlement because it is a state-owned entity. Although the rail sector is open to private participation through the granting of concessions, the government decided it was vital to hold ownership of FIT for many reasons, including national sovereignty and security. FIT connects the Port of Coatzacoalcos (Gulf of Mexico) with the Port of Salina Cruz (Pacific Ocean) over a distance of approximately 300km, through the region known as the Isthmus of Tehuantepec. Geographically and conceptually, the Isthmus of Tehuantepec divides the country into northern Mexico and southern Mexico, and for decades many foreign governments and companies have tried to obtain access to the Gulf of Mexico and Pacific Ocean through it. Originally, FIT's entitlement contemplated maintaining the railway as a key activity as well as granting and receiving pass-through rights with other companies. However, the entitlement was amended this year to include exclusivity for the rendering of cargo transport public service, among other things.

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

Not necessarily. Freight and passenger operations can be controlled by separate companies depending on the terms and conditions of the concession granted to each concession holder. For instance, the most relevant concessions in Mexico are solely dedicated to rendering cargo transport public service; this includes companies such as Kansas City Southern de México, Ferrocarril y Terminal del Valle de México, Ferromex and Ferrosur. However, by law, rail transport is contemplated for both passengers and freight. For instance, Grupo México, which owns Ferromex and Ferrosur, also owns Chepe, a passenger train dedicated to the tourism industry. However, the Ojinaga-Topolobampo line carries freight and passengers, and both operations are controlled by the same company under one concession.

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

Rail transport and related rail services are mainly regulated by the Rail Service Law and by the Regulations of the Rail Service. Other laws and regulations that apply include the following:

- the General Communications Networks Law;
- the General Law of National Assets;
- the Federal Law of Administrative Procedure; and
- the Federal Commercial Code, the Federal Civil Code and the Federal Code of Civil Procedure.

The SCT and ARTF are the main regulatory authorities.

Market entry

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

Yes, for purposes of being awarded a concession, bidders participating in a public tender process must obtain clearance from the antitrust agency, the Federal Economic Competition Commission (COFECE). The procedure and time frame to obtain clearance will be expressly laid down in the tender rules and must be strictly followed by each interested bidder.

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

In principle, it is not necessary to obtain regulatory approval to acquire control of an existing rail transport provider. Any concession holder must notify the SCT about any change in the shareholding structure, whether direct or indirect, of the capital of the concessionaire, when such participation is equal to or greater than 5 per cent. Depending on various factors, including the size of the transaction and monetary value or the end result regarding the combination of market sales and assets, the parties wishing to acquire control may have to obtain clearance from COFECE.

However, any assignment of rights and obligations by concession and permit holders to any third parties will require prior authorisation from the SCT.

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

Foreign entities cannot wholly own or control a rail transport concessionaire in Mexico, or a company engaged in constructing, operating and maintaining railways. The Rail Service Law and the Foreign Investment Law provide that the participation of foreign shareholders cannot exceed 49 per cent of the total capital stock of the relevant company, unless the Foreign Investments Commission approves a higher percentage. Only Mexican commercial companies organised under Mexican law may act as concessionaires or permit holders.

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

When participating in a tender process to obtain a concession for a new rail line, construction will typically form part of the concession itself, and therefore it will not be necessary to obtain a permit separately. However, concession holders may contract construction with third parties. In that case, those third parties must obtain a permit from the SCT, although the sole party liable before the SCT will always be the concession holder.

Market exit

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

The Rail Service Law foresees the scenarios in which concessions and permits are revoked. If a rail transport company voluntarily refuses to perform or discontinues service, the concession may be revoked. In addition, the rail transport companies do not have the ability to remove rail infrastructure over a particular route either because they do not own that infrastructure, such as the tracks, or because even if they own equipment such as rolling stock and associated equipment, that equipment can only be used under the terms of the concession or permit. Failure to comply will also result in revocation of the concession or permit. The SCT's and ARTF's supervising and sanctioning faculties are set forth in the Rail Service Law.

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 Rail Service Law contemplates various scenarios under which a concession or permit can be revoked, including if the concessionaire or permit holder (i) fails to exercise its rights and duties; (ii) transfers the concession or permit, or assigns rights and obligations without prior consent; (iii) changes nationality; (iv) interrupts the operation of the railway or the transport service, unless expressly permitted; or (v) applies higher tariffs than those registered with the ARTF. In scenarios (i), (ii) and (iii) the SCT will immediately revoke the concessions or permits. In other cases, such as (iv) and (v), it may revoke the concessions or permits prior to receiving the ARTF's opinion, if the holder has breached or defaulted three times within five years.

If a controversy arises between a concession holder and a third party, the ARTF is empowered to investigate and resolve it.

The initial measure available to a concession or permit holder in case of revocation is to initiate an administrative procedure against the resolution adopted by the SCT, under the provisions of the Federal Law of Administrative Procedure. Legal remedies can result in a constitutional trial or *amparo* proceeding.

The government may also force a rail transport service provider to temporarily discontinue service over a particular route or cease to operate in case of a natural disaster, war, disturbance of public order or an event that may threaten national security, internal peace or the economy of the country. If this occurs, the government may be able to take control of the concession. This condition will be enforced for as long as the element that motivated it exists. With the exception of an international war, the government will indemnify the rail transport provider for any damage and financial loss caused.

The government can also suspend services but the concession holder is entitled to challenge the suspension through an administrative appeal under the Federal Law of Administrative Procedure.

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 insolvency laws apply. The Rail Service Law provides that in case of liquidation or insolvency the concession or permit will be terminated. However, the termination of the concession or permit for this reason does not remove the obligations of the holder, acquired during the term of the concession or permit.

Competition law

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

Under the current competition legal framework, the Federal Law of Economic Competition and its Regulatory Provisions are the only competition provisions that apply and regulate rail transport in Mexico (ie, there are no sector-specific competition rules). Consequently, COFECE is the agency that enforces this legal framework.

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

The sector-specific regulatory agency is the ARTF and it is not empowered to enforce any competition provisions. In accordance with the Rail Transport Law, the ARTF can request COFECE to intervene in the rail transport industry, in order to issue an opinion on the lack of effective competition conditions on a particular market.

In addition, COFECE and the ARTF are working on the development of an official methodology to enhance competition in the rail industry, by establishing the basis of tariff regulation and the consideration of pass-through rights, towing rights, interconnection and terminal services when providing the public service of freight and passenger rail transport in Mexico. At present, only a draft version of the above-mentioned methodology is available and has been published for public consultation.

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

As in any other transaction, at the outset, COFECE analyses the levels of concentration in the market (both before and after the intended transaction takes place) in order to determine whether the transaction could negatively impact the market and, therefore, if it requires a thorough analysis before being cleared.

Additionally, in line with COFECE's legal precedents in cases related to the rail industry, it conducts its analysis of the possible competition effects resulting from an intended transaction on a route-by-route basis considering the relevant railway networks available and involved in each case.

Ultimately, COFECE will approve the transaction if it concludes that the transaction will not produce anticompetitive effects, for example if the involved routes are not affected, or the resulting entity would have enough competitive constraints and would not attempt to manipulate the price of its services to increase the costs for the clients in the relevant market under analysis.

Price regulation

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

The Rail Service Law provides two schemes for fixing the prices and tariffs regulation. The first scheme is under the principle of freedom of tariffs regulation in which concession and permit holders can freely fix the tariffs. The second scheme is through agreed tariffs between the concession holders and final users.

Regarding the first scheme, in order to become effective, the concession and permit holders will register before the ARTF the maximum tariffs applicable to the provision of the rail transport service and rail-related services. In that sense, according to the specific characteristics of each service, the concession and permit holders shall publish the prices and tariffs in electronic media. Any modification to the maximum tariffs of rail-related services and charges must be registered before the ARTF before being applied, in which case the concession or permit holders must submit a justification of such modifications. Regarding the second scheme of agreed tariffs, figures should be available at any time so that the ARTF may review them when it chooses to do so.

The tariffs must contemplate the general principles of quality, efficiency, competitiveness, security and permanence in order to foster a competitive environment. If the ARTF determines that there is no effective competition, then it can set forth the guidelines to establish said tariffs.

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

The same regulations and principles apply for both passenger and freight transport, as described in question 15.

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

Freight shippers or passengers can challenge price levels before the ARTF. Charging tariffs above those registered with the ARTF can result in revocation of the concession or permit.

In the event a concessionaire or permit holder wants to modify the maximum registered tariffs, the ARTF may issue recommendations regarding any increases and, if it deems convenient, may request an opinion from COFECE.

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

Following the principles of tariff freedoms, effective competition, quality, efficiency, competitiveness, security and permanence, rail transport companies must charge similar prices to all freight shippers and passengers who are requesting similar service. That is to say, the rail transport companies should not discriminate between freight shippers and passengers who, under the same circumstances, request a service.

Network access

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

According to the Rail Service Law, network access must be granted. The concession holders, in exchange for a consideration, must grant to other concession holders pass-through rights and towing rights. In that sense, the ARTF must supervise the network access, and should design and set forth the conditions and considerations when the pass-through rights and towing rights are not being granted.

The concession holders must allow network access when it is established in the terms and conditions of the concession titles, or mutually agreed or demanded by the ARTF if COFECE has determined that there is an absence of effective competition.

The only restriction for granting network access is in terms of total length. Access right to a network cannot exceed the length of the concession and pass-through rights acquired by the concessionaire.

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

The concession holders granting network access must negotiate and agree the consideration to be paid. If the parties do not reach an agreement within 60 calendar days of starting negotiations, they must appear before the ARTF, which may commence a negotiation procedure in order to set forth the consideration for granting network access. If the parties fail to reach an agreement, the ARTF is entitled to request an opinion from COFECE that it will use to determine the applicable conditions and considerations.

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. However, the Rail System Law and the rail transport industry aim to foster railway development in a competitive environment with a strong emphasis on cost efficiency, tariffs and service quality.

Service standards

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 the service. Freight or passenger services shall be rendered to all users in a uniform manner, and in equitable conditions regarding opportunity, quality and price. Restrictions include, for instance, the right of a transport provider to deny service to passengers who are inebriated or under the influence of drugs, who are carrying any weapons, explosives or dangerous merchandise, or who otherwise pose a risk to the other passengers on board. With regard to freight services, shippers must refuse to transport any goods that are illegal or prohibited under Mexican laws.

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

The service standards that rail transport companies are required to meet are set forth in each concession title and also through the provisions of Mexican Official Standards (NOMs). The SCT will add a document to the concessions or permits describing the service standards that must be fulfilled. Generally, the service standards regulate efficiency and safety, including for crossings and towing equipment.

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 or passengers can challenge the quality of the service received from the rail transport companies before the ARTF. The agency will resolve the controversy, considering the technical specifications and quality of service with which the rail transport company must comply, and may impose monetary sanctions upon the concessionaire or permit holder.

Safety regulation

25 How is rail safety regulated?

Rail safety is mainly regulated in the Rail Service Law and the Regulations on Rail Service; it is also regulated through NOMs. For instance, NOM-025-SCT2-2016 issued by the SCT deals with safety measures for towing equipment involved in cargo service.

The Rail Service Law foresees two types of liabilities if the concession holder fails to keep the passengers or freight safe. For instance, the measures adopted by the concession holders for passengers must guarantee the safety and integrity of passengers during the journey, from boarding the train to disembarking. The concession holder will be liable for any damage suffered during the journey. In any case, the concession holder must possess insurance that covers passengers as well as any damage to their belongings.

From the moment that freight concession holders receive the goods to be transported to the moment they conclude the delivery, they are liable for the losses and damage suffered, with the exception of the following cases:

- defects of the freight or inadequate packaging;
- when the freight, because of its nature, suffers deterioration or damage, provided that the concession holder meets the delivery time;
- when, upon written request from the customer, the goods are transported in unsuitable vehicles; and

Update and trends

Mexico has recently formalised the launch of the special economic zones (SEZs), which are intended to attract investment into the less-developed southern regions of Mexico, and, at the same time, provide many incentives to investors, such as tax exemptions and preferential treatment. There are currently seven SEZs and the rail transport industry is expecting substantial amounts of investment in those zones that will connect the southern regions with the rest of Mexico and abroad.

The recent energy reforms have created opportunities to expand the rail transport industry and its infrastructure. Trains are considered to be a crucial part of the transport system that provide more flexibility for the energy market, as well as faster and more secure deliveries. For instance, according to the ARTF, in 2017 the rail transport industry transported 13.9 per cent more oil and by-products than in 2016. From a cost perspective, and considering Mexico's lack of pipeline infrastructure and security issues with pipelines, trains are probably the best option for transporting oil products. Strategic distribution lines, storage facilities and terminals are currently under construction, and rail cargo companies should benefit from this expansion. These opportunities, coupled with growing imports and exports including those related to key industries such as automotive, agriculture and mining, will undoubtedly encourage further development of Mexico's railway infrastructure.

Another hot topic is the construction of the Mexico City–Toluca high-speed passenger train. This project is the first of its kind in Mexico but progress has been slow owing to numerous delays and corruption scandals. The President-elect, Andrés Manuel López Obrador, will take office on 1 December 2018. It is expected that this project will still be under construction by that date. It is yet to be determined how Mr López Obrador will receive this project and how it will be completed and commissioned. He has stated that his team will very carefully audit each and all contracts related to the project.

Finally, since 1 July 2018, Mr López Obrador has been unveiling the list of top infrastructure projects for the new administration. The top project consists of redesigning and revamping roads and railways in the Isthmus of Tehuantepec corridor that connects the Port of Coatzacoalcos with the Port of Salina Cruz. As mentioned in question 2, FIT holds an entitlement to render rail cargo transport service on its route through the Isthmus of Tehuantepec. This will be a great opportunity to revamp FIT and its rail infrastructure. In addition, Mr López Obrador has proposed to resume the Mexico City–Queretaro high-speed passenger train as one of his top priorities. He has also proposed building a passenger rail line to cover the Cancún-Palenque route (recently expanded to cover Yucatán and Campeche states), which will be used solely in the tourism sector. The administration may also be responsible for creating a new national rail network.

- when the statements or instructions of the shipper or consignee are incorrect.

26 What body has responsibility for regulating rail safety?

The SCT and ARTF are the responsible entities for establishing and regulating rail safety. For instance, the SCT publishes NOMs that rule on diverse matters such as railway crossings and signalling. The ARTF is responsible for determining technical specifications of railways and cargo or passenger service, and for applying NOMs, among others.

Permit and concession holders are also obligated to implement their own safety programmes and submit them before the ARTF, prior to initiating operations.

In addition, the ARTF may issue recommendations to federal, local and municipal administrative entities and concessionaries to collectively promote public safety measures and actions, in large part because theft and vandalism are causes of significant concern.

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

This is not applicable in Mexico because concessionaries rent or acquire rail equipment primarily from the United States. Therefore, rail equipment must conform with US standards, which are familiar and accepted in Mexico.

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

There are various NOMs that regulated the maintenance of track and other rail infrastructure. For example, NOM-055-SCT2-2016 provides rules on how to assure quality related to welding railway tracks, while NOM-064-SCT2-2001 regulates how to conduct inspections of locomotive equipment (this NOM adopts the US Railroad Locomotive Safety Standards). The SCT approved the Conservation of Roads and Infrastructure for Mexican Railways Regulations, which provides specific regulation regarding maintenance of track and other rail infrastructure. Concession holders are also obligated to implement their own investment, maintenance and upgrading programmes.

29 What specific rules regulate the maintenance of rail equipment?

NOMs regulating the maintenance of rail equipment include NOM-044/1-SCT2-1997 and NOM-044/2-SCT2-1995. These NOMs establish the procedure to conduct inspections and scheduled repairs for rail equipment, which can take place daily, or for every journey at every quarter or intervals of 48,000km. As mentioned in question 28, concessionaires are required to implement their own investment, maintenance and upgrading programmes as a condition of their concession titles.

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

If a rail accident occurs, the ARTF will form a specific commission to determine the causes and factors of the accident. The commission must compile information, and investigate and analyse the physical, technical and administrative evidence, including photographs and testimonials. The ARTF must cooperate with the authorities that participate in the administrative and judicial procedures. The ARTF will designate specialised personnel to travel to the place of the accident in order to assess the condition of the tracks and the rail infrastructure, for which it can request the services of third-party experts. Moreover, the concession holder must submit a technical report to the authorities, which establishes, among other aspects, the causes and circumstances of the rail accident. The ARTF will issue a final report on the accident and will determine the responsible parties.

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

As mentioned in question 25, the Rail Service Law makes reference to certain types of liabilities for rail transport companies in case of rail accidents, which are provided for in the ordinary liability regime regulated in the Civil Code.

Financial 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)?

As described in question 1, the rail sector mainly operates by granting concessions through third parties by means of a public tender process. This arrangement does not contemplate any monetary investment by the government. However, as part of the concession, the government contributes assets such as ROW, and tracks and buildings. The government will be entitled to receive a consideration for awarding the concession, as well as on an annual basis for the exploitation of the concession. The concessionaire is obligated to provide all funding required to construct, operate and maintain the line, and provide the cargo or passenger service.

There are other cases in which the government has provided support for rail projects. For instance, there is an urban railway project known as Tren Suburbano that was structured under a concession in different phases. In order to make the Cuautitlán-Buenavista phase viable and bankable, the federal government, together with the local governments of the state of Mexico and Mexico City, contributed non-recoverable grants. The tariff collected from users covers operations and

maintenance. Currently, the federal government owns 49 per cent of Tren Suburbano. Other projects include the Guadalajara Light Train System and the Monterrey Metro Line 3.

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?

Until 2008, there were no sector-specific rules governing financial support to rail transport companies; in the event that a rail company needed support, it had to resort to traditional or standard loan or project finance structures. However, in 2008 the National Infrastructure Fund (Fonadin) was established, which provides financial support to public or private entities that want to develop infrastructure projects or conduct research for these projects. This financial support can be loans, guarantees or recoverable and non-recoverable support in the form of grants.

Labour regulation

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?

There is a specific chapter in the Federal Labour Law that refers to the public service work in areas or zones under federal regulation. This chapter applies to work involving loading, unloading, stacking, handling, inspection, docking, berthing, hauling, storage and transfer of cargo and baggage performed on board ships or on shore, at ports, navigation waterways, railway stations and all other areas falling under federal jurisdiction, including activities performed with tow boats and additional or related activities.

Environmental regulation

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

The general environmental laws that apply are the following:

- General Law of Environmental Protection;
- General Waste Law;
- Federal Law of Environmental Responsibility; and
- General Law of Climate Change.

The only specific framework that applies are the Regulations for Terrestrial Transport of Hazardous Materials and Waste. NOMs also apply to environmental matters related to this sector; for instance NOM-021-SCT2/2017 deals with the compatibility and segregation of towing units transporting hazardous material and waste.

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Netherlands

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General

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

From 1938 to 1994, Dutch Railways (NS) was the only state-owned rail transport company operating in the Netherlands. Although it was a private company, 100 per cent of the shares were owned by the state. NS was the owner of rail infrastructure and was the only organisation providing all internal rail transport (freight as well as passengers), the management of the rail infrastructure, the education of railway employees such as locomotive drivers, and the design and ordering of the rail equipment (eg locomotives, wagons). For decades, it was heavily subsidised by the state. Foreign railway companies were allowed to cross the border only for certain agreed international transport and under conditions controlled by NS; open access was impossible.

In 1991 the European Community enacted Directive 91/440 on the development of the Community's railways. The aim of this Directive was to have railways within the Community adopt the needs of the single market and to increase their efficiency. To this end, member states had to ensure the management independence of railway undertakings, separate the management of railway operations and infrastructure from the provision of railway transport services, and allow access to the networks of member states for – at that time – international groupings of railway undertakings and for railway undertakings engaged in the international combined transport of goods. These goals implicated a reorganisation of the rail sector and established the first step to open access.

In the Netherlands, the more rigorous option was chosen to separate the management of the rail infrastructure and the operation of rail transport at an organisational and institutional level. First, NS was changed into a market party, although its shares continued to be owned by the state. In 1995 the company loosened the ownership of railway infrastructure, and in 2002 ownership was formally transferred to the state. The managerial tasks, such as allocation of infrastructure capacity and the maintenance and renewal of the infrastructure, were split off from NS and dedicated to a new private rail infrastructure manager, ProRail, which has been in operation since 2003. Arrangements between the Dutch state and NS were made to reduce the subsidies to zero. Passenger transport and rail freight transport were also split up. The rail freight part of NS (NS Cargo), which at the time was the only rail goods carrier in the Netherlands, was separated in 1999. This was essentially the starting point for a sometimes arduous liberalisation of the rail (freight) market. In the 20 years since then, freight transport has been provided by a growing number of rail freight undertakings concurrently on the whole of the Dutch rail infrastructure (about 7,000km).

NS, whose tasks were reduced to rail passenger transport only, is still responsible for the main part of Dutch rail passenger transport. In 2000 it received, without any tendering, an exclusive 10-year concession for rail transport from the Minister of Infrastructure, and a new, exclusive concession once the 10 years had expired. The more regional lines are generally open tendered for periods of 10 years. The rail passenger transport over these lines is operated by the (sole) passenger rail transport company that wins the respective tenders. Even though these regional lines form 25 per cent of the Dutch rail infrastructure, only around 10 per cent of rail passengers are transported over them. This means that in spite of the liberalisation, 90 per cent of rail passenger transport is exclusively provided by NS. The national rail passenger transport is mainly provided by four companies: NS, Arriva, Keolis and Syntus. International rail passenger transport is carried out by different rail passenger transporters.

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?

NS is a limited liability company under Dutch law, and the sole shareholder is the Dutch state. It is managed by a managing board, which is guided by a supervisory board. These organs are independent of each other. Both bodies are accountable for their performance to the general meeting of shareholders, which in fact means that they report to the state. The role of shareholder is fulfilled by the Ministry of Finance.

The government plays an important and influential role, not only as sole shareholder of NS, but also because the Ministry of Infrastructure grants the rail passenger transport concession for the main part of the Dutch railway infrastructure. Passenger transport is the most profitable part of the national rail network. This concession is granted without a tendering procedure for a period of 10 years. For the past 20 years NS has been granted this concession.

Regional concessions for rail passenger transport are granted by regional governments. These regional concessions are tendered.

The state also owns 100 per cent of the shares of ProRail, which is a limited liability company under Dutch law. In 2015, ProRail received a 10-year management concession from the Minister of Infrastructure. As part of this concession, the government instructs ProRail on its managerial tasks and clear agreements between both parties are made, for example concerning the number of disruptions on the rail infrastructure.

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

Since the liberalisation of the rail industry, freight and passenger operations are carried out by separate rail companies. There are also holding companies that operate both freight and passenger transport, the operations of which are carried out by its subsidiaries.

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

Competition aspects, including those specific to the railway industry, such as open and fair access to the market for railway undertakings, are regulated by the Authority for Consumers and Markets (ACM). Appeals against the decisions of the ACM can be lodged before the Trade and Industry Appeals Tribunal.

Rail safety is regulated by the Minister of Infrastructure and by the Human Environment and Transport Inspectorate (the Inspectorate), which fulfils the role of the railway safety authority. Its decisions are appealable, first at the District Court of Rotterdam and finally at the Trade and Industry Appeals Tribunal.

The main laws are the Railway Act and the Passenger Transport Act. The decrees and ministerial regulations under these acts mostly elaborate on different aspects regulated in the Railway Act. For example, there are regulations on safety conditions that concern railway

infrastructure, 'safety functions' in the railway sector (eg, the train driver) and the railway undertakings that want to operate on the railway infrastructure.

There is also local railway infrastructure, which is regulated by the Act on Local Railway Infrastructure. This Act is mainly concerned with tram and metro transport in and around cities.

Market entry

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

A railway undertaking that intends to provide rail transport services and to gain access to the Netherlands' railway infrastructure must comply with a large number of legal requirements. These requirements derive mainly from European directives that regulate both the safe participation in rail traffic and the qualifications for access to the rail transport market. The conditions are established in the Railway Act and its decrees and regulations. The fundamental requirements that the railway undertaking must satisfy are the following:

- a valid business (operation) licence;
- a valid safety certificate or a test certificate;
- an access agreement with the rail infrastructure manager; and
- liability insurance.

The railway undertaking has to submit an application for a business licence and safety certificate to the Inspectorate. The undertaking must meet the requirement of good repute by demonstrating that it and the persons in charge of its management have not been convicted of serious criminal offences (including offences of a commercial nature), have not been declared bankrupt, have not been convicted of serious offences set out in specific legislation applicable to transport and have not been convicted of serious or repeated failure to fulfil social or labour law obligations. It must also demonstrate that it meets requirements relating to financial fitness, professional competence and cover for civil liability. Therefore the fourth requirement mentioned above (liability insurance) must also be satisfied when applying for a business licence. The minimum cover is €10 million per event.

The licensing authority has to make a decision on an application as soon as possible; in principle, this should not be more than three months after all the relevant information has been submitted. If a licence is refused, the grounds for refusal must be stated in the decision, which is communicated to the undertaking.

As mentioned above, the application for a safety certificate must be submitted to the Inspectorate or, in certain cases, the European Railway Agency. There are different types of safety certificate for rail freight transporters and rail passenger transport providers.

Regarding the third requirement listed above, the railway undertaking must conclude a contract with the railway infrastructure manager (ProRail). As ProRail is a monopolist, there is little room for negotiation.

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

Any railway undertaking that provides rail transport on the Dutch main railway infrastructure must have all the (control) documents mentioned in question 5. A business licence is valid throughout the territory of the Netherlands (and the European Union) and as long as the railway undertaking fulfils its obligations of good repute, etc (articles 28 to 31 of the Railway Act; and the Licence and Safety Certificate (Main Railways) Decree).

The safety certificate issued by the Inspectorate has to be renewed upon application by the railway undertaking and at intervals not exceeding five years. It must be fully or partly updated whenever the type or extent of the operation is substantially altered. The procedure to obtain this document is generally the same as it is for obtaining a business licence (articles 32–35 of the Railway Act; and the Licence and Safety Certificate (Main Railways) Decree).

The rail access agreement, which has to be concluded between all railway undertakings and the railway infrastructure manager, has to be renewed and concluded again every year.

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

The requirements listed in question 5 apply to all railway undertakings, regardless of whether the owner is Dutch or foreign.

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

The Minister of Infrastructure (according to article 5 of the Railway Act) and ProRail have the authority to approve the construction of railway infrastructure.

Companies and natural persons can construct rail lines on their own property, for which certain municipal and other licences are required (eg, concerning environmental requirements), but these rail lines cannot connect to the main railway infrastructure without permission and assistance from ProRail and the state (eg, ProRail must provide technical information and grant licences, among other things). As privately owned plots of land are not very extensive in the Netherlands, the construction of private railways would be unpopular.

Market exit

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

Rail transport for passengers is regulated in several EU directives and regulations, in the Passenger Transport Act, the Railway Act and in other subsidiary legislation. Passenger transport is not only considered to be a business, but also a social responsibility. For that purpose the state governs the 'main' passenger transport by granting a concession to NS. During the concession period (10 years) discontinuing service is not an option for the rail transport company because it would be breaching the agreements made in the concession. For example, the minimum number of train stops per hour is agreed for large stations (from 06.00 to midnight at least two times per hour in each direction) and other stations (at least once per hour in both directions).

Local authorities grant regional concessions in public tenders to ensure regional passenger rail traffic. In these concessions the continuation of passenger railway services is also guaranteed. Discontinuation of service and even a reduction in the number of stops at a station would require lengthy discussions between the Minister (or the local authorities at the regional level) and the passenger railway undertaking.

ProRail acts on the basis of several EU regulations, the Railway Act, various Dutch decrees and regulations, and the management concession it has granted with the Minister of Infrastructure. Removing main rail infrastructure cannot be carried out without the permission of the Minister or at least ProRail. Almost all the main rail infrastructure in the Netherlands is owned by Railinfratrust, a state-owned company (whose shares are also owned by the state). Private companies like Tata Steel with private railway infrastructure on their property can remove their own railway infrastructure. This concerns only a very small part of freight railways in the Netherlands. These wholly private freight railways are governed by the Decree on Special Railways.

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?

Only railway undertakings that hold a valid business licence, a valid safety certificate or test certificate, that are insured against risks related to statutory liability and that have concluded an access agreement with the network manager. For most rail passenger transport, a concession from the government is also obligatory.

If a company is convicted of a serious criminal offence, such as breaching the rules for transport of dangerous goods, the rail safety authority could withdraw its business licence. Without this licence, a railway undertaking is prohibited from providing rail services.

The Inspectorate, as rail safety authority, also audits railway companies on a regular basis in relation to the requirements for these licences and certificates. When it appears that safety rules are not sufficiently respected by a company, the Inspectorate will give instructions to this company and intensify the audits. If after a certain period of time

no significant improvement is made, the Inspectorate can withdraw the company's business licence or safety certificate. As of the moment of withdrawal, access to the railways of the Netherlands is denied for the company involved. The relevant stakeholders, such as the infrastructure manager, will be informed about the withdrawal of the licence or safety certificate. The railway undertaking involved can ask the court of first instance for a provisional injunction to suspend the withdrawal.

ProRail is also authorised to stop the service of a rail transport provider. When no access agreement is concluded between the network manager and a railway undertaking, the railway undertaking no longer has access to the rail infrastructure, even if it had an access agreement in the past. This means that the network manager can also force a railway undertaking to stop its operations. Because of the monopolistic character of ProRail and the legal obligation for railway undertakings to obtain an access agreement with ProRail, a certain degree of contract coercion is assumed. In any case, a valid reason must exist for not concluding a contract. In the event that no access agreement is concluded, the railway undertaking can initiate summary proceedings in civil court.

Concerning rail passenger transport, it is theoretically possible that the state or the local authority that granted the transport concession (which gives an exclusive right to the concessionaire) can also withdraw the concession, for example when the transport company infringes several important obligations. As continuity of passenger transport is considered very important, this remedy is not applied quickly.

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?

No specific insolvency rules apply. All railway undertakings seeking to access rail infrastructure most prove that they are financially fit in order to obtain the necessary business licence. The Inspectorate verifies financial fitness by examining a railway undertaking's annual accounts or balance sheet, among other things. The licensing authority will not consider an undertaking to be financially fit if it has considerable or recurrent arrears of taxes or social security as a result of its activities. The Inspectorate may require the submission of an audit report and suitable documents from a bank, accountant or auditor to assess financial fitness. When a railway undertaking becomes insolvent or is declared bankrupt after it obtained a business licence, it no longer meets the requirements of the licence. There are no legal obligations to continue providing rail freight services if the transporter becomes insolvent (other than its contractual obligations).

A rail passenger transporter must meet its obligations during the concession period. If the concessionaire becomes insolvent during this period, it has to continue its transport obligations until the end of the concession period.

Competition law

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

General competition rules are applicable to rail transport, for example regarding abuse of a dominant position. In addition, quite a few sector-specific rules are applicable in order to facilitate and promote competition. The railway policy of the European Union regards competition among railway undertakings as a key element to achieve efficient operations (Directive 91/440/EEC). Because the European and Netherlands railway markets were traditionally dominated by state enterprises with a total railway monopoly (both managerial and in operations), several supporting rules were necessary to enable a phased introduction of open access and a level playing field.

An important obligation is that member states ensure the separation of infrastructure management and transport operations (article 6 of Directive 2012/34/EU). This requires the organisation of distinct divisions within a single undertaking or that the infrastructure and transport services shall be managed by separate entities. The Netherlands chose the more rigorous option to separate the infrastructure manager and the (incumbent) railway company into two different entities in 2003 (NS and ProRail).

To ensure transparency for all railway undertakings and non-discriminatory access to rail infrastructure and to rail service facilities, the network manager is obliged to publish all the information required to use access rights in a network statement. The Railway Act includes provisions to ensure that the procedures maintaining and amending licences for railway undertakings are transparent and in accordance with the principle of non-discrimination. Railway capacity has to be allocated in a fair and non-discriminatory manner (Decree on Railway Capacity Allocation). In addition, EU rules are implemented in the Railway Act to ensure that railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access the railway infrastructure for the purpose of operating all types of rail freight services.

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

The sector-specific regulator is the ACM, whose powers are not only based on acts containing provisions for enforcing competition law, but also acts and regulations that apply to the rail industry. If a company fails to comply with the rules, the ACM has various legal instruments at its disposal in order to force compliance. It also has the competence to impose fines for violations of railway law and competition law, which can be imposed on both the firm and the individuals involved. The ACM has used this power more than once in relation to the railway market; for example, in 2016 it concluded that NS had abused its dominant position during the tender process in 2014 for the public transport contract in Limburg (a southern province) and put its competitor at a disadvantage in this regional tender process. The ACM imposed a fine of €40.95 million on NS (see www.acm.nl/en/publications/publication/17397/Dutch-Railways-NS-abused-its-dominant-position-in-regional-tender-process).

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

The abuse of a dominant position is an important standard. Fair and non-discriminatory treatment, for example by ProRail, is also a main standard. For example, four passenger railway undertakings complained about the tariff for the use of railway infrastructure because they felt it did not reflect the (lower) costs connected with the lighter trains they usually use. The ACM concluded that the network manager had infringed the principles of fair and non-discriminatory treatment in regard to this aspect of the tariff. Consequently, ProRail reduced the tariff for lighter trains and, at the instruction of the ACM, reorganised the weight classes, taking these lighter trains into account.

Another example concerns the capacity allocation on the 'Valley Line' between two cities in the east of the Netherlands. By winning the concession for this line, rail passenger transporter Connexxion entered the rail transport market for the first time in 2007. The ACM established that ProRail had not treated Connexxion's request in the same way as it had NS's request, and that it had unlawfully given priority to the latter. ProRail was fined €776,000 (see www.acm.nl/en/publications/publication/6347/NMa-fines-ProRail-for-violating-Dutch-Railway-Act).

Price regulation

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

Rail freight transporters can set their own prices, which are not regulated. All railway undertakings have to pay a cost-based rail access charge (see question 20) to the rail infrastructure manager. There is no obligation to include this in the tariff that is charged to railway customers.

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

Prices charged by rail carriers for passenger transport are part of the deal of their transport concessions. For the main part of the rail network the annual rate increase is limited for 'protected travel rights' (article 54 of the passenger transport concession from the Minister of Infrastructure to NS). Protected travel rights are rights of travellers with a second-class single train ticket and certain domestic second-class subscriptions. NS has also had to consult with consumer organisations about intended tariff changes regarding the protected travel rights.

The passenger train companies Arriva, Keolis and Connexxion, operating on the publicly tendered regional rail lines in the Netherlands, share a common tariff system with NS.

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

Prices for rail freight transport are negotiated between the rail freight companies and their clients. There are no legally fixed prices or a cap on prices for rail freight transport.

The price increases for 'protected' rail passenger transport tickets (which enable a passenger to travel across all rail lines in the Netherlands) are limited in the passenger transport concessions and are subject to feedback from advisory consumer organisations. The concessionaire has to ask for feedback from consumer organisations at least once a year (article 31 of the Passenger Transport Act). It can ignore the advice of the consumer organisations, but must explain its motivation for doing so.

A passenger can file a complaint about tariffs to the train operating company and to a specialised omudsman for better public transport called OV Loket. These procedures are free and there are no specific instructions for making a complaint. In addition, a passenger can submit a complaint to a civil court.

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

There is no rule requiring an undertaking to use uniform prices in rail freight transport. However, the prices have to be equal for all passengers who are requesting the same service.

Network access

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

The entity controlling railway infrastructure (ProRail) is separated from entities that are operating on the infrastructure. The network manager must ensure that infrastructure capacity is allocated in a fair and non-discriminatory manner and in accordance with EU law (article 39 of Directive 2012/34/EU). This principle is implemented in article 27, section 1 of the Railway Act and specified in the Regulation concerning the allocation of railway capacity on main railways.

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

The infrastructure manager has to supply the minimum access package to all railway undertakings in a non-discriminatory manner. Part of this package concerns the handling of requests for rail infrastructure capacity and the right to utilise the capacity that is granted (article 13, section 1 and Annex II of Directive 2012/34/EU, implemented in article 61 of the Railway Act). Railway undertakings have to pay for the minimum access package – the track access charge (TAC) – which is determined and collected by the network managers. This TAC reflects only the costs directly incurred by the train service. These are the costs that ProRail 'can objectively and robustly demonstrate that they are triggered directly by the operation of the train service' (article 31, section 3 of Directive 2012/34/EU and Regulation (EU) 2015/909). Over the past decade, there has been a lot of discussion about the calculation of these costs. In the Netherlands, several proceedings are being conducted about the direct costs that ProRail wanted to charge railway undertakings (see www.acm.nl/en/publications/publication/6336/NMa-ProRail-must-lower-rail-tariff-charged-to-NS). The same applies for other European countries. The European Commission wanted to clarify which elements can be included in the TAC and which cannot. To this end, the Commission has set out the modalities for the calculation of these costs in Regulation (EU) No. 2015/909.

The price for granting access to the network has to be addressed in the access agreement between ProRail and the railway undertaking, which these parties have to renew and conclude every year (article 59, section 1 of the Railway Act).

The ACM should be able to check whether the different charging principles are applied consistently with the information ProRail provided to them. Therefore, Annex IV of Directive 2012/34/EU requires the infrastructure manager to specify in the network statement the methodology, rules and, where applicable, scales as regards both costs and charges. At the request of four passenger rail transport companies, the ACM examined the TAC for 2015 and 2016, and ruled that the information provided by ProRail was not sufficient (see www.acm.nl/en/publications/publication/14576/ProRail-is-to-adjust-its-train-tariffs and www.acm.nl/en/publications/publication/14994/Tariff-substantiation-by-ProRail-is-still-insufficient).

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

To obtain network access, a railway undertaking needs a company licence, a safety certificate, an access agreement with the network manager and liability insurance. The conditions for an undertaking to obtain the licence and safety certificate are harmonised in the European Union by Directive 95/18/EC and its subsequent legislation, including Directive 2012/34/EU. These conditions are implemented in articles 28 to 31 (on company licence) and in articles 32 to 35 (on safety certificate) of the Railway Act. The requirements for obtaining the company licence and safety certificate are outlined in a subsidiary regulation (State Journal No. 661, 2004). In addition, it is important that rail vehicles (eg, locomotives, wagons) can be used throughout the European Union without technical or administrative impediments. To increase competition and to facilitate cross-border activities from railway undertakings, EU directives set out standards to reach these goals. The network manager, in a non-discriminatory manner, must supply all railway undertakings that request access to the network with the minimum access package. The price for this minimum access package is regulated in order to ensure fair treatment.

Service standards

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

There is no legal obligation for passenger train operating companies or rail freight transporters to serve all customers who request service. For passengers, the right to be transported existed until 1999. This changed with the entry into force of the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV) and the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) (see question 23 for the legal framework of the CIV and COTIF. The general terms and conditions of a rail transport undertaking may provide that a passenger who refuses to pay the carriage charge (or the surcharge upon demand if he or she did not buy a ticket before the start of his or her journey), may be required to discontinue his or her journey. The same applies for passengers that present a danger for safety and the good functioning of the operations or for the safety of other passengers, and for passengers who inconvenience other passengers in an intolerable manner (article 9, COTIF–CIV). The Passenger Transport Act codifies mostly the same rules for Dutch rail passenger transport.

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

Train operating companies are required to meet a number of legal and regulatory standards in the form of international conventions, European Union law and national legislation, which increasingly incorporates the provisions of international conventions and EU law. The transport concessions also contain additional obligations to serve passengers.

International rail passenger transport in most EU countries, including the Netherlands, has for almost 130 years been dominated by conventions agreed by the Intergovernmental Organisation for International Carriage by Rail. This organisation developed international service standards for passengers for cross-border rail traffic in Europe, parts of Asia and the Maghreb. Most relevant is the CIV, which forms attachment A of COTIF (www.cit-rail.org/secure-media/files/documentation_de/passenger/civ/civ1999-f-d-e.pdf?cid=21961). COTIF regulates in particular the private law aspects of rail passenger transport, and most of its rules are mandatory. For example, a passenger can carry luggage, even living animals, if he or she takes care of this luggage. Important liability principles are also codified. In principle, the carrier shall be liable for the loss or damage resulting from the death of,

personal injury to, 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 (articles 26 to 31 of the CIV). The passenger is entitled to be compensated for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his or her journey cannot be continued on the same day.

In addition to COTIF, EU law also establishes service standards. Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 (Regulation 1371/2007) aims to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to increase the share of rail transport in relation to other modes of transport. The CIV is fully incorporated into Regulation 1371/2007 as Annex 1. Service standards in Regulation 1371/2007 include the rights of users to receive information regarding the train service before as well as during the journey, and it strengthens the rights of disabled persons and persons with reduced mobility (whether caused by disability, age or any other factor) to have opportunities for rail travel comparable to those of other citizens. It also strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service.

As a result of the direct effect of Regulation 1371/2007 in the Netherlands, the CIV became increasingly important for national rail passenger journeys. The rules concerning national transport of passengers in Dutch civil law (article 8:100-116a of the Civil Code) are only relevant insofar as the CIV allows for national rules, but in fact the rules in the Civil Code mainly became important for other modes of transport such as national buses and the metro.

Service standards are expanded on in the transport concessions. Minimum service levels are agreed; for example, the rail passenger transporter has to serve all stations on business days from 06.00 to 20.00 two times per hour in each direction and it must improve its performance in regard to, among other things, the following:

- the availability of seats for passengers;
- the comfort of passengers at the stations and on the trains;
- the cleanliness of trains and stations, including toilets;
- the accessibility of the trains to all passengers; and
- having a user-friendly and accessible public transport payment system.

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?

Article 12 of the Passenger Transport Act provides that each transport company has to establish an arbitration committee. Furthermore, the passenger has the option to submit a complaint to the transport undertaking itself. Any complaint concerning rail transport can be handled by this committee. The fee for each complaint is €27.50. This amount will be paid back if the committee rules in favour of the passenger.

In addition, as mentioned in question 17, OV Loket hears complaints regarding public transport. It handles complaints that public transport companies have not dealt with or resolved to the satisfaction of the passenger, and, where necessary, it will mediate when resolving these complaints. OV Loket is considered to be very approachable, and does not present any financial or other barriers. It cannot, however, force a passenger transport company to enter into a mediation process, or to follow up its recommendations. One of OV Loket's strengths is that it is has the competence to publicly pillory transport companies that have failed to perform well.

In addition, passengers or passenger organisations can bring a lawsuit to the civil courts. The rules of civil proceedings in the Netherlands are applicable. This means, among other things, that the complaining party has to be represented by a barrister, and has to pay court and counsel fees. For example, a lawsuit was initiated in 2017 by a traveller who complained that he did not have a seat during his journeys with NS because the trains were frequently overcrowded and he was forced to stand. The judge rejected his claim for a seat with references not only to the general terms and conditions of NS, but also to the Dutch Civil Code and Regulation 1371/2007: a passenger has (in principle) the right to be transported but does not have the right to a seat during his or her journey (District Court of Midden-Nederland, Utrecht, 6 May 2018).

Safety regulation

25 How is rail safety regulated?

Rail safety is regulated at several levels, the first level being the railway company. All railway undertakings must have a company licence. To obtain this, a company is obliged to have a safety certificate (see questions 5, 6 and 21).

The network manager must have a concession for network management from the Ministry of Infrastructure. Like railway undertakings, the network manager is obliged to have a safety certificate that has to meet several safety standards (article 16a of the Railway Act, Directive (EC) No. 2016/798 and Commission Delegated Regulation (EU) 2018/762 establishing common safety methods on safety management system).

Railway infrastructure and all rail vehicles must also meet certain safety standards. These are set out in Directives 2016/797/EU and 2016/798/EU on the safety and interoperability of the rail system within the European Community, and in technical specifications for interoperability (TSI). The TSI set all the conditions that railway infrastructure and rail vehicles must adhere to, and the procedure to be followed in assessing conformity. Every rail constituent must also undergo the conformity assessment and suitability assessment for the use indicated in the TSI, and have the corresponding certificate (articles 36 to 47 of the Railway Act and its implementing Regulations).

Finally, rail personnel that have a function that is related to rail safety, such as the train driver and the shunter, must undergo training, and complete physical and psychological tests (articles 49 to 51 of the Railway Act and its implementing Regulations).

26 What body has responsibility for regulating rail safety?

The Inspectorate monitors and encourages compliance with both national and European railway legislation and regulations in favour of safe and sustainable railway transport. Its tasks, both preventive and reactive, are based on articles 55 and 56 of Directive 2012/34/EU. The supervision carried out by the Inspectorate has to meet the standards set out in the Railway Act and, among others, Directive 2016/798/EU and the Commission Delegated Regulation (EU) 2018/761.

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

The manufacture of rail equipment is regulated in detail in Directive 2016/798/EU on railway safety, Directive 2016/797/EU on the interoperability of railway systems and in several TSI. Each subsystem covered by TSI needs to be controlled and certified by a specialised notified body before it can be used for the (further) construction of rail equipment. The manufacturer confirms with an EC declaration of verification that the vehicle complies with the specifications. Thereafter the railway vehicle (as a whole) has to be licensed by the national safety authority (the Inspectorate). Articles 36 to 41 of the Railway Act and the Regulation on rail vehicle assessment incorporates these rules into Dutch law.

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

The maintenance of railway infrastructure is regulated by the EU Directives mentioned in question 27 and by TSI. The rules are generally the same as for the construction of railway vehicles.

29 What specific rules regulate the maintenance of rail equipment?

Each railway vehicle must have a registered entity in charge of maintenance (ECM), according to article 46, section 1 of the Railway Act and article 14 of Directive 2016/798/EU. The ECM must be certified for maintenance by the Inspectorate. To obtain this certificate, the ECM has to have several qualifications specified in Directive 2016/789, which have been implemented into Dutch law. The ECM must ensure that the vehicle is in a safe condition and maintained in accordance with international standards. In Regulation (EU) No. 1078/2012 a common safety method is set out for monitoring, which should be applied by the ECM.

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

A railway undertaking involved in an accident has to report all railway incidents and accidents to the Inspectorate without delay. In many cases, the Inspectorate will start an investigation and publish the outcome in a public report. If it deems it necessary, it will take enforcement measures. In addition to the Inspectorate, the Dutch Safety Board can investigate railway accidents. It then operates as a research institute as provided for in Directive 2016/798/EU. When conducting research on accidents, there is always an emphasis on safety to avoid recurrence.

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

In general, the liability framework outlined in the Civil Code is applicable.

Railway undertakings have to be insured for liability with a legal minimum of €10 million per event. Liability towards rail passengers is limited (article 8:85 of the Civil Code).

The network manager must conclude an access agreement with each railway undertaking. The network manager's terms and conditions are attached to this agreement, and include several liability clauses. These clauses not only regulate the relationship between the infrastructure manager and the contracting railway undertaking, but also the liability between railway undertakings themselves (third-party liability). It regulates that a railway undertaking that has an access agreement with the infrastructure manager can rely on the liability regime in the general terms and conditions of this access agreement not only towards its contract partner (the network manager) but also to the other railway undertakings that concluded an access agreement with the network manager.

Financial 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 concessionaire of the main part of Dutch passenger rail transport (NS) has to pay for the exclusive concession it received without any tendering from the state (article 66 of the concession).

The passenger transporters that won the concessions for regional rail passenger transport receive financial support from the regional governments. Generally, regional passenger transport is not very profitable; however, because of the importance of having good passenger transport throughout the country, it is subsidised.

Rail freight transporters operate, in principle, without any financial support from the government and in competition with each other. Nevertheless, the TAC is sometimes subsidised by the state to stimulate rail freight transport and to create a more level playing field with, for example, inland shipping, which is a form of transport that can use the main waterways without any charge.

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?

With the exception of the financial support mentioned in question 32, no.

Labour regulation

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?

Standard labour and employment laws apply, as well as several specialised national decrees. These decrees cover requirements regarding typical railway functions, such as the function of the train driver, the shunter and the rail wagon inspector. The requirements relate to the minimum age, and physical and psychological health of rail personnel, and the knowledge and experience required for the different roles.

Environmental regulation

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

The Act concerning transport of dangerous goods has a specialised Decree for rail transport of dangerous goods (State Gazette No. 250, 1998, recently updated by State Gazette No. 23,654, 2018). In general, the standard environmental laws apply, principally the Environmental Act. These laws contain, among other things, standards for noise and vibration emissions that railway undertakings have to meet.

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Poland

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CMS

General

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

There are 14 railway infrastructure managers in Poland that manage the railway infrastructure and make the tracks available to rail operators. The largest manager is the state-controlled company PKP Polskie Linie Kolejowe SA, which is responsible for the maintenance of rail tracks, managing the rail traffic across the country, scheduling train timetables and managing the railway land. More than 95 per cent of the infrastructure is managed by this company and the remaining part of the infrastructure is managed by local railway operators (eg, metropolitan railways, power plants, mines). A separate entity, PKP Energetyka SA, which was privatised in 2015, provides nationwide maintenance and emergency response services to the railway network.

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 government owns 100 per cent of shares in PKP SA, which controls leading nationwide rail passenger carrier, PKP Intercity SA. A second nationwide rail passenger carrier, Przewozy Regionalne, is controlled by the Industrial Development Agency (a state-controlled company responsible for implementing restructuring processes) and by regional self-government units (voivodeships). Regional self-government units and cities are owners or the majority shareholders of regional or metropolitan rail passenger carriers (currently there are 10 regional and municipal carriers). The government also indirectly controls approximately 30 per cent of shares in PKP Cargo SA, a freight carrier listed on the Warsaw Stock Exchange.

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

Yes, freight and passenger operations are controlled by separate companies.

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

Under section 3 of the Railway Transport Act, the president of the Office of Rail Transport (ORT), appointed by the Prime Minister, is the regulatory authority responsible for rail transport in Poland.

Market entry

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

Provision of passenger or freight transport services by rail (as well as the provision of traction services) is subject to approval issued by the president of the ORT. In order to apply for an approval, the rail transport provider must fulfil the following criteria: have good standing, financial credibility and professional competence; possess stock at its disposal; and be insured from third-party liability. The president of the ORT must issue the approval within three months after having obtained the application with all necessary documents.

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

Approval from the railway regulatory authority is not necessary to acquire control over an existing rail transport provider and standard antitrust laws apply. Therefore, if the total global turnover of entrepreneurs in the fiscal year preceding the acquisition exceeds the equivalent of €5 billion or the total turnover in Poland exceeds the equivalent of €50 million, the consent of the president of the Office of Competition and Consumer Protection is required– he or she may issue an approval, a conditional approval or prohibit the concentration.

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

No, there is no such requirement.

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

The voivode (who is a representative of the government administration in the voivodeship) issues the decision on establishing the location of the rail line at the request of PKP Polskie Linie Kolejowe SA or the competent local government unit. The application to issue a decision should be preceded by a number of written arrangements, such as arrangements with managers of public roads that the railway will cross. The voivode further informs the property owners where the railway is to be located about the commencement of the proceedings. As of the date the owners are informed, no building permits may be issued with respect to such property and the land owners have to inform the voivode about the sale of land within the area where the new railway is to be located. The voivode should issue the decision within three months from the date of filing the complete application. However, in the case of the construction of a private railway siding, the above procedure will not apply. The investor will be required to declare the intention to build a railway line or submit an application for the building permit to the relevant municipality.

Market exit

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 of closing a railway is set out in the Railway Transport Act. The manager of a particular route may apply to the Minister of Infrastructure to approve closure of a railway route (and, as a consequence, removal of infrastructure) if the revenue from operations carried out on this route does not cover the costs incurred by the manager for maintenance of that route, and if no financing from the state treasury or the local government unit's budget was provided to cover the manager's loss.

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?

Under the provisions of the Railway Transport Act, the president of the ORT is obliged to withdraw the approval for a railway operator in the following circumstances:

- upon commencement of insolvency proceedings;
- when the operator is deprived of the right to conduct business activities based on a final and non-appealable court judgment; or
- when the rail transport operator's approval was suspended owing to irregularities and these irregularities were not corrected within the deadline prescribed by the president of the ORT.

The withdrawal of the approval (as well as the approval itself) is issued in the form of an administrative decision and, as such, it may be appealed before the administrative court.

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?

As mentioned in question 10, if insolvency proceedings have commenced, the president of the ORT is obliged to withdraw the approval for the railway operator. In these circumstances, the railway operator should discontinue providing services when the decision to withdraw approval becomes final.

Competition law

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

Sector-specific competition rules apply to the access to infrastructure. General competition rules apply to antitrust practices and competitiveness.

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

The president of the ORT supervises non-discriminatory treatment of all applicants in the field of access to infrastructure. The president of the ORT also monitors the state of competition on the rail transport market, cooperates with competent authorities in counteracting the use of monopolistic practices by administrators and applicants, coordinating the operation of the rail transport market and respecting passengers' rights.

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

The railway sector is supervised in the same way as in other industries. First, the president of the ORT will check whether the activities do not adversely affect passengers, and subsequently whether the transaction would result in a large company using its dominant position towards suppliers when concluding contracts.

Price regulation

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

Prices for freight transport are not subject to regulations and are charged on a free-market basis.

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

As a rule, transport prices are not regulated, but if the railway route is of a public utility nature and is co-financed, pursuant to the Act on Public Collective Transport, local government units' councils may set maximum prices for such journeys. In addition, pursuant to the Act on Entitlements to Concessionary Public Transport, public rail carriers, which constitute the majority of railway carriers, are obliged to apply discounts specified for passenger groups (eg, students, pensioners, soldiers, veterans and disabled persons) that will be refunded to them from the state budget.

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

Neither freight shippers nor passengers can challenge price levels. However, the passenger railway operators are bound by the Transportation Law, which requires that the tariffs applied by a given operator be situated in visible places. In case of serious delays, passengers are entitled to reimbursement of the price of the ticket and to compensation payable by the operator.

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

In the case of freight transport, the parties individually set the prices for transport and they do not have to be the same, although the principal freight operator, PKP Cargo SA, publishes price tariffs on its website and some companies may use these prices for reference. For passenger transport, the same prices for services must be established if the transport is subsidised as public transport. In the case of commercial passenger transport services, prices may vary.

Network access

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

The applicants can submit requests for infrastructure capacity to the infrastructure managers. If the infrastructure manger refuses to consider the request or refuses to allocate the infrastructure capacity, the applicant can submit a complaint to the president of the ORT, who may state that the refusal is valid or that the infrastructure manager's decision should be modified or withdrawn. The infrastructure manager is bound by the decision. The application should be preceded by an agreement to allocate the capacity entered into by the applicant and the infrastructure manager. Such an agreement may contain appropriate, transparent and non-discriminatory obligations to provide financial guarantees to secure future payments. In order to gain access to the railway infrastructure, the applicant must submit to the manager certified copies of the valid carrier's licence and a valid security or safety certificate as well as submit a statement that he or she will use the rolling stock, meeting the conditions set out in the regulations to carry out the railway service. Once the capacity is allocated, an agreement for use of the capacity should be entered into by the applicant and the infrastructure manager.

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

Railway infrastructure managers are required to develop a uniform, non-discriminatory price list for the duration of a yearly train timetable. The infrastructure manager is obliged to submit the draft price list to president of the ORT for approval no later than nine months before the start of the annual train timetable. The president must approve or or reject the price list within 90 days of receiving it. If the decision is not issued within this period, the price list is considered approved.

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

All Polish market participants, including market entrants, are entitled to minimum access to the railway infrastructure (with observance of equal treatment rules), including, inter alia, having the right to review their capacity allocation application, use the services of controlling the railway traffic, and use railway stations and ancillary infrastructure. Market participants from other member states of the European Union are entitled to minimum access to the railway infrastructure only for the purposes of performing international passenger transport and freight services. Notwithstanding this, the infrastructure manager may limit minimum access to the railway infrastructure because of technical parameters of rolling stock or by prohibiting railway vehicles carrying dangerous goods to enter the tunnels. In May 2018, the President of Poland signed into law the bill introducing the fourth EU railway package, the aim of which is to increase competition through the obligation to award tenders.

Service standards

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

Under article 6 of the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment, any discrimination in access to the services offered publicly based on gender, race, ethnicity or nationality is forbidden.

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

Service standards are set out in the legislation both at the European Union level (Regulation No. 1371/2007 of the Parliament and the Council) and at the national level in the Railway Transport Act and in the Transportation Law.

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?

In case of infringement of their rights guaranteed by European and national legislation, rail passengers may submit complaints to the president of the ORT. There is an independent rail passengers' rights adviser working alongside the ORT who conducts out-of-court proceedings and settles the disputes between passengers and rail operators.

Safety regulation

25 How is rail safety regulated?

Pursuant to the Act on Railway Transport, the president of the ORT supervises safety management systems in accordance with the principles set out in Commission Regulations (EU) Nos. 1158/2010 32 of 9 December 2010 on a common safety method for assessing conformity with the requirements obtaining railway safety certificates and 1169/2010 of 10 December 2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation.

26 What body has responsibility for regulating rail safety?

The president of the ORT is the administrative body responsible for regulating rail safety.

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

There are both national and EU rules regulating manufacturing of rail equipment. A regulation of the Minister for Infrastructure and Development lays out the grounds for authorisation for placing in service certain types of structures, equipment and railway vehicles. At the EU level many pieces of legislation have been issued, the most relevant being Regulation No. 2016/919 on the technical specification for interoperability relating to the 'control-command and signalling' subsystems of the rail system in the European Union.

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

There are both national and EU rules regulating the maintenance of track and other rail infrastructure. At the national level, the Regulation of the Minister for Infrastructure and Development on common safety indicators (CSI) deals with, among other things, such matters as the length of tracks and the number of level crossings or pedestrian crossings on the railway lines. Commission Regulation (EU) No. 1078/2012 regulates the European common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation.

29 What specific rules regulate the maintenance of rail equipment?

The maintenance of rail equipment is regulated in the provisions of the Act on Rail Transport and the Regulation of the Minister of Infrastructure of 12 October 2005 on general conditions for railway vehicles operation, amended by the Regulation of the Minister of Transport of 7 November 2007 and the Regulation of the Minister for Infrastructure and Development of 10 December 2014.

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

If an accident occurs, the railway employee must notify the supervisor and the dispatcher of the infrastructure administrator, whose tracks the siding is connected to. If necessary, the employee should notify the emergency services, including the police. The president of the ORT (either directly or through a competent local branch) and the chairman of the State Commission for Investigation of Railway Accidents should be notified of the accident. If the accident is a threat to the environment, the voivodeship inspector for environmental protection must be notified. If there are dangerous goods on the railway siding, the voivode should be notified. Depending on the size of the siding, the employee should check whether the other tracks can be traversed. Victims should be assisted and material secured to help determine the cause of the accident. The State Commission for Investigation of Railway Accidents investigates the accident or incident, and seeks to determine the cause and circumstances of the accident or incident, estimates losses, and draws preventive conclusions; however, it does not establish fault or liability. Members of the Commission include a railway siding user and a railway carrier who operates the siding.

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 road transport accidents, but EU law requires railway undertakings to have adequate insurance or appropriate warranties under market conditions to cover their civil liability. This insurance must cover, in particular, passengers, luggage, parcels, mail and third parties. Ultimately, the minimum amount of civil liability of railway carriers is €100 million.

Financial 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)?

State and local railway companies receive financial support in accordance with the principles established in the Treaty on the Functioning of the European Union and EU regulations regarding state aid in the railway sector. The aid may take the form of direct payments in case of restructuring and the cancellation of debt of the railway companies. In addition, the railway companies may receive compensation payments for providing sustainable and accessible railway services within the territory of local government units.

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?

The sector-specific rules governing financial support to rail transport companies are regulated at the EU level. Generally, all public aid should be prohibited unless it qualifies as an exception. Sectoral aid, granted to companies acting in a given sector, is characterised by some specific rules. As regards transport, public aid may be granted only for passenger transport. The EU legislation sets forth that certain actions made by the governments of EU member states with the aim to support passenger transport companies will not constitute the prohibited state aid. For instance, Regulation No. 1370/2007 concerning the opening of the market for domestic passenger transport services by rail lays down that competent authorities may decide to take appropriate measures to ensure effective and non-discriminatory access to suitable rolling stock.

Labour regulation

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?

Generally, standard labour and employment regulations, such as the Labour Code or the Trade Unions Act, apply to the rail transport industry. Additionally, appendices to the Rail Transport Act constitute some specific requirements concerning particular posts (eg, train dispatcher,

conductor) and sector workers' duties. Some specific rules concerning workers in the rail transport industry are set out in regulations of the Minister of Infrastructure and Development, which lay down the requirements for the personnel employed in posts directly related to the operation and safety of rail traffic, and driving certain types of railway vehicles (which requires a specific driving licence and certificate). Certification of train drivers operating locomotives and trains on the railway system in the European Union are regulated in Directive 2007/59/EC. The rail industry has traditionally been and continues to be a highly unionised sector.

Environmental regulation

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

There are no specialised environmental laws that apply to the rail transport industry (including rail transport companies) and standard environmental regulations shall be applied. According to these regulations, building and rebuilding railway lines constitutes an investment that is deemed to have a potentially significant effect on the environment and should, therefore, be preceded by an environmental assessment report.

For many years there has been a debate about the need to prioritise freight rail transport over road freight transport because of the environmental advantages of the former, such as less congestion and less traffic. However, this shift is not likely to take place in the near future as the road transport sector in Poland is a vital part of the transport industry. This would also require a significant increase in investments in the railway infrastructure.

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Russia

Karina Chichkanova and Valentin Yurchik

Dentons

General

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

The rail transport industry in Russia is divided into three groups:

- rail transport for public use, which is the rail infrastructure, rolling stock and other property serving the rail transport needs of individuals, legal entities and the state based on a public (standard form) contract, as well as for other related works (services) in connection with such transport;
- rail transport for non-public use, which is railways for non-public use, buildings, rolling stock (in certain cases) and other property serving the needs of individuals and legal entities for works or services in non-public places based on contracts or for their own purposes; and
- technological rail transport of organisations, which is the rail transport of organisations that transport goods within the territories of the organisations, and carry out initial and tail-end operations with railway rolling stock for the organisations' purposes.

Non-public-use rail transport and technological rail transport are typically privately owned and operated by the owners.

The opposite is true of almost all rail infrastructure related to public-use rail transport, which is owned by Russian Railways Joint Stock Company (RZD). Rail operations over that infrastructure are typically performed by RZD and its subsidiaries, while the market share of other rail operators is relatively low.

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 government owns 100 per cent of the shares of RZD. The company was established by the Government Regulation on the establishment of Russian Railways Joint Stock Company. RZD also has a number of affiliated companies in the different sections of the railway services market.

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

As mentioned in question 1, RZD controls a huge part of all rail operations. It has a strong monopoly on passenger operations on the public-use railways, while its market share of freight operations is quite similar to the market share of the private rail service providers. RZD has a small presence on the non-public-use railway freight market (the industrial rail transport enterprise section).

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

The following government bodies regulate rail transport:

- Ministry of Transport: the federal executive body for transport, including rail transport. The Ministry of Transport defines and implements governmental policy and regulates rail transport.
- Federal Agency of Rail Transport: a federal executive body under the authority of the Ministry of Transport that renders state services and manages state property in the area of rail transport. Among other things, the Agency adopts decisions on commissioning of railway stations and public-use railways, and keeps track of rolling stock and containers by number.
- Federal Service for Supervision in the Sphere of Transport (FSSST): a federal executive body under the authority of the Ministry of Transport performing control and supervisory functions in the transport sector, including rail transport.
- RZD is given certain regulatory functions, for instance, issuance of technical conditions and approval of design documentation for the construction of new railways that connect with RZD railway infrastructure.

The key regulatory acts relating to rail transport are:

- the Federal Law on Rail Transport;
- the Federal Law Rail Transport Charter of the Russian Federation (the Rail Transport Charter); and
- by-laws, including government regulations.

Market entry

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

The general requirements to start operations as a rail transport provider are stipulated in the Federal Law on railway transport and include the following:

- obtaining a licence, if the operations must be licensed;
- owning or being otherwise entitled to possess rolling stock;
- having qualified employees; and
- having an executed agreement for railway infrastructure use (if applicable).

The following operations must be licensed:

- passenger rail transport;
- hazardous materials and goods transport; and
- handling of hazardous materials and goods.

The rail transport provider must obtain the respective licence from the FSSST or its local offices. The list of documents required for the licences is stipulated by the Government Regulation on the licensing of certain operations on rail transport. The licence fee stipulated by the Tax Code is relatively low. Licences are issued for unlimited terms.

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

There is no specific regulatory approval necessary to acquire control of an existing rail transport provider. However, there are some general competition regulation requirements. If the circumstances listed below apply, the rail transport provider or buyer (accordingly) must submit an application for consent to the transaction or deliver a notification to the Federal Antimonopoly Service (FAS) in accordance with the FAS Order 'on approval of the rules for the Federal Antimonopoly Service and its territorial bodies to examine applications and notifications submitted in accordance with the requirements of article 7 of the Federal Law on natural monopolies'.

- If the aggregate value of assets of the person (group of persons) or aggregate revenue from goods sales in the past calendar year exceeds a specific amount, then acquisition of the stocks (shares), rights or property of the rail transport provider (which meet the requirements stipulated by the Federal Law on Competition Protection) may be subject to preliminary approval by the FAS.
- If the rail transport provider is the subject of a natural monopoly, and:
  - the sale as a result of which the buyer acquires the right to own, possess or use part of the fixed assets of the rail transport provider intended for the production (sale) of goods and the price of these assets exceeds 10 per cent of the provider's equity capital; or
  - if stocks (shares) of the provider valued at more than 10 per cent of the authorised capital are being acquired.

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

The Federal Law on Procedures for Foreign Investments in Business Entities of Strategic Importance for Russian National Defence and State Security provides that rail services, which are treated as a natural monopoly, have strategic importance for national defence and state security. The law requires that prior authorisation be obtained from a special Government Commission on Monitoring Foreign Investment for foreign investors to acquire control over companies of strategic importance. Furthermore, any investor may be required by a decision of the chairman of the Commission to request preliminary approval for the transaction (even if it is not a strategic industry). Detailed grounds for the aforementioned decision other than 'national defence and state security' are not stated.

Transactions that result in a foreign investor obtaining control over rail transport companies, and that are made in violation of the abovementioned Federal Law, are void.

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

There are general and specific rules regarding new rail line construction.

The general rules are stipulated, inter alia, by the Town Planning Code and the Land Code. Such rules include obtaining title to the land, construction permits, etc.

Specific rules are stated in the Federal Law on Rail Transport. Non-public-use railway construction must be approved by the government of the Russian constituent entity in which the railway is located. A special commission handles commissioning of the non-public-use railway in accordance with the Federal Law on Rail Transport.

There are also different procedures for situations when and if the constructed railway connects with non-public-use railways or public-use railways. In the first case, construction must be approved by the owner of the existing railway (Order of the Ministry of Transport on approval of the procedure connecting non-public-use railways under construction with non-public-use railways). In the second case, construction must be approved by the Federal Agency of Rail Transport (Government Regulation on the rules for connecting new or renovated non-public and public-use railways to public-use railways).

The Ministry of Transport is authorised to regulate project design and construction of public-use railways; however, specific regulation does not exist.

Market exit

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

While there is no requirement to obtain special approval for non-public-use railways, there is a voluntary closure procedure for public-use railways stipulated by the Ministry of Transport Order on approval of the order for closure of public-use railways, including lines and plots of low intensity. This order sets forth quite a complicated procedure that includes Ministry of Transport approval that is based upon the Federal Agency of Rail Transport's or its local office's reports. The rail transport company must submit a set of documents, including a railway closure feasibility study and the offer from the respective constituent entity of Russia regarding the closure.

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 general grounds for licence withdrawal are material breaches of the licence conditions. A licence can only be withdrawn by a court on the basis of an FSSST claim that the transport company failed to remedy material breaches after receiving a preliminary order from that body. Prior to withdrawal, the FSSST may suspend the licence on the same grounds or suspend the provider's operations in accordance with the Code of Administrative Offences.

The FSSST and the courts consider a breach to be material when it (i) results in the death of or injury to a person, (ii) results in harm to animals, the environment or cultural heritage sites, or (iii) poses a risk of (i) and (ii). The following are considered breaches:

- violation of rules of passenger transport, rules of freight transport and the respective technical conditions;
- not having the required number of employees with the appropriate qualifications and experience; and
- the required equipment (containers, rolling stock, etc) being of poor quality.

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 rules of the Federal Law on Insolvency (Bankruptcy) apply to the insolvency of rail transport providers. In general, legal entities must continue operations during insolvency. Whether services can be provided during insolvency depends on the insolvency phase and amount of assets needed to pay debts. A rail transport provider must stop operations if a court decides that it must be liquidated.

Competition law

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

The general legislative acts relating to competition are the Federal Law on Protection of Competition and the Federal Law on Natural Monopolies. In addition to these two laws, rail transport is regulated by specific by-laws relating to fees and charges, among other things. The FAS is the government body authorised to regulate competition.

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

Despite the fact that the Ministry of Transport is authorised to take measures to develop competition in relevant spheres, including special-purpose government programmes, it does not have the power of direct competition law enforcement.

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

To the extent that public-use rail transport services are part of a natural monopoly they have specific features in competition regulation. For example, there are two main methods for regulating natural monopolies:

- price regulation (fixing prices or the maximum price level); and
- stating a list of consumers who must be provided with services or the minimal level of service provision.

The following competition standards, which may indicate a violation of competition rules, apply to other railway services (which are not part of a natural monopoly):

- reduction of the number of players in the relevant market;
- price manipulation;
- restricting certain market players from acting independently;
- determination of joint conditions for the circulation of goods; and
- other circumstances allowing some of the market players to influence the conditions for the circulation of goods.

Price regulation

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

Prices for freight services on public-use rail transport are regulated by the government in accordance with the Federal Law on Natural Monopolies, because they are considered natural monopolies. The main piece of legislation is the Government Regulation on state regulation of charges, fees and payments relating to works (services) of natural monopolies in rail transport.

Previously, prices (tariffs) were regulated by the Federal Tariff Service (FTS), but this right was subsequently transferred to the FAS. For example, the limits within which service providers are entitled to determine prices are stipulated by the FTS Order on the approval of the method for rail transport companies to state price limits (maximum and minimum levels) for freight transport. In addition to the FAS, executive government bodies of the constituent entities of Russia regulate prices, including setting tariffs for carriage on local transport services.

Prices for non-natural monopoly services emerge on a free basis, but they must comply with competition rules.

International transport service prices are regulated by international treaties.

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

Price regulation of passenger rail transport services is relatively similar to that of freight services, if they are natural monopolies. The Government Regulation on state regulation of charges, fees and payment for works (services) of natural monopolies in rail transport also applies to passenger transport tariffs.

An important feature of tariff regulation is that service providers must meet break-even criteria.

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

The general rule is that freight shippers or passengers are entitled to challenge acts that set prices with the FAS, if these acts violate the competition rules. The resulting FAS decisions may be challenged in the state courts.

Furthermore, there are specific ways to reduce prices for freight shippers or passengers within the limits stated by the FAS or FTS. For example, the procedure for reducing prices for freight shippers on the RZD rail infrastructure is stipulated by RZD Order No. 2314p dated 15 November 2016.

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

Rail transport providers are required to charge similar prices for similar services if they provide public-use rail transport services in accordance with article 789 of the Civil Code, the Rail Transport Charter, the Federal Law on Rail Transport and other by-laws. However, this obligation does not apply to non-public-use railway services.

Network access

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

A public-use railway owner is not allowed to deny network access to such railways and other public-use rail infrastructure in accordance with the Government Regulation on approval of the rules for rail transport of public-use infrastructure usage services.

The only reason for denying network access is when it is not possible to execute an agreement granting network access. This would need to be assessed case by case.

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

Prices for granting network access to public-use railways and other public-use rail infrastructure services also relate to the natural monopoly sphere and are regulated as described in questions 15 and 16.

In addition to the price for granting network access, the regulator is entitled to establish additional special-purpose costs related to prescribed financing needs (eg, rail transport infrastructure major repairs).

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

Russia has announced the process of rail transport market demonopolisation. The main objective is to switch from regulating all natural monopolies in all rail transport services to regulating public-use transport services only.

There are plans to move away from price regulation of passenger transport and reduce the cross-subsidisation of passenger transport through freight. These plans are outlined in the Ministry of Transport Order on approval of Russia's Transport Strategy for the period until 2020. The Rail Transport Improvement Strategy for the period until 2030 (approved by a government regulation) also aims to deregulate competitive sections of the rail transport market.

Service standards

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

As mentioned in question 18, service providers are required to serve anyone who requests service on public-use transport in accordance with article 789 of the Civil Code, the Rail Transport Charter, the Federal law on Rail Transport and other by-laws. However, a service provider is entitled to deny service if it does not have the capacity to provide it.

This rule does not apply to non-public-use transport services.

Regarding restrictions, there are a number of items that are not allowed on rail transport, including those that are flammable, poisonous, explosive or otherwise dangerous.

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

General regulation for service standards is stipulated by the Rail Transport Charter, which states, for instance, that railway stations and other buildings must comply with construction and sanitary regulations. Passengers must be provided with free use of waiting areas and toilets, special equipment must be provided for people with disabilities, etc.

The Government Regulation 'on the provision of rail transport services for carriage of passengers and cargo, baggage and freight baggage for personal, family, household and other needs not connected with the approval of commercial operation rules' is the specific act regulating service standards, which are primarily established for passenger transport services and for private freight.

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 who are individuals and passengers (consumers) are entitled to challenge the quality of service under the Federal Law on the protection of consumer rights.

If shortcomings are discovered in service received, consumers have the right, inter alia, to demand:

- to remedy the shortcomings in the service at no charge;
- a commensurate reduction in the price of the service; or
- reimbursement of the consumer's or a third party's costs to remedy the shortcomings in the service.

The Rail Transport Charter establishes specific liability for rail transport providers (primarily in the form of fines), including the following:

- damage to or the loss of cargo or baggage;
- delay of freight or passenger transport; and
- use of a freight shipper's equipment without approval.

Freight shippers (companies and individuals) and passengers may challenge service quality on the grounds listed above without taking legal action. However, they can also challenge service quality in court, pursuant to the general rules stipulated by Russian civil and procedural legislation.

Safety regulation

25 How is rail safety regulated?

There is a wide range of transport safety regulations in Russia, including technical, criminal and fire safety regulations.

One of the general acts for transport safety is the Federal Law on Transport Safety. It prescribes different types of safety requirements:

- transport safety requirements;
- transport safety requirements regarding transport infrastructure safety during project design;
- transport safety requirements regarding non-transport infrastructure facilities that are located near transport infrastructure; and
- requirements for the transport safety of individuals.

The Government Regulation on federal transport supervision regulates rail transport supervision, including safety supervision. The Regulation sets forth a timetable for planned inspections of providers: depending on the risk category of the facility, an inspection takes place every year, or every three, five or 10 years.

The Federal Law on Fire Safety and the Federal Law on Technical Regulation also apply to transport safety.

For convenience of researching transport safety regulation, the most important acts on rail transport regulation can be found in the FSSST Order 'on approval of the FSSST list of legal acts that contain obligatory requirements for commercial operations based on a notification procedure'.

26 What body has responsibility for regulating rail safety?

The Ministry of Transport regulates the safety of transport and maintenance of rail infrastructure and prepares the state transport safety policy.

As mentioned in question 4, the FSSST performs control and supervisory functions in the transport sector, including rail transport.

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

Primarily, the manufacture of rail equipment must comply with provisions of the Technical Regulation on the Safety of Rail Equipment (approved by a decision of the Customs Union Commission). It includes, inter alia, requirements for mechanical, chemical, biological and radiation safety.

A safety compliance assessment may be in the form of certification or in the form of declaration of conformity. The Technical Regulation contains lists that state the form of assessment for particular equipment.

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

The general rules of the Town Planning Code apply to the operation, construction and commissioning of buildings that are part of rail infrastructure. As already mentioned, rail transport and other rail infrastructure are also regulated by the Federal Law on Rail Transport and other specific by-laws. This includes the Technical Regulation on the Safety of Rail Infrastructure (see question 27).

Rules for the maintenance of track and other rail infrastructure are stipulated by the Ministry of Transport Order on the approval of railway technical maintenance rules, which regulates, inter alia, the following:

- rail transport employees' obligations regarding transport safety;
- the maintenance of buildings and track equipment;
- the maintenance of electrical equipment; and
- train traffic management.

29 What specific rules regulate the maintenance of rail equipment?

The Ministry of Transport Order on the approval of railway technical maintenance rules also regulates the maintenance of rail equipment. It prescribes requirements for planned repairs. An access permit can be obtained following equipment repair provided the relevant notes were made in the technical passport, which each locomotive, carriage or other part of the rolling stock must have.

The rules also require certain signs and titles to be made on rolling stock (eg, owner's name, dates of repair, identification numbers).

Update and trends

One of the hottest topics in business is investment in transport infrastructure (including rail transport) on the basis of public–private partnerships (PPPs). There are a number of large rail infrastructure PPP projects in Russia, including the following:

- Moscow–Kazan high-speed railway. The entire high-speed railway project includes construction of a railway connecting Moscow to Yekaterinburg. The first phase consists of the construction of the Moscow–Kazan railway (770km) that will cross several regions in Russia, including Moscow Oblast, Tatarstan and Udmurtia, and will pass through the cities of Vladimir and Nizhny Novgorod.
- Development of the Tobolsk–Surgut–Korotchaevo railway (reconstruction of train stations and construction of 27,000km of track).
- Belkomur railway line (1,161km from Arkhangelsk to Perm). The project was valued at approximately 176 billion roubles.

Infrastructure development is one of the main targets in current state policy. For instance, some of the Russian President's May 2018 instructions to the government are related to infrastructure upgrades. Moreover, an infrastructure mortgage roadmap was adopted by the government on 12 March 2018. The roadmap defines infrastructure mortgage as a set of measures to improve the system of managing the creation and upgrading of Russia's infrastructure and Russian legislation to make PPP tools, including concessions, more attractive and effective. These measures involve not only developing new financing models for infrastructure construction and reconstruction, but also improving existing mechanisms.

Moreover, the rules contain separate regulation for the maintenance of rail infrastructure, including rolling stock, on tracks where high-speed trains (140 to 250 km/h) are operated.

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

The procedure for the investigation of rail accidents is prescribed by the Ministry of Transport Order on the approval of provisions for classification, investigation and recording of rail accidents and other events related to violations of rail safety regulation procedure.

This procedure requires the rail infrastructure owner to inform a range of government bodies (including the FSSST and the relevant public prosecutor's office) about accidents such as train crashes, accidents involving hazardous cargo spills, etc.

A commission of FSSST representatives must be formed to investigate these accidents. The commission's decisions are binding on the rail infrastructure owner.

The RZD Order 'on the approval of provisions for the classification, investigation and recording of rail accidents and other events related to violations of rail safety regulation procedure on RZD infrastructure' corresponds to the above-mentioned Ministry of Transport order.

Investigation of accidents involving a transport company owner's employees is regulated by the Labour Code, which also requires the employer to immediately report accidents to the relevant government bodies. In this case the investigation is conducted by a commission formed by the employer. The commission must include a state labour inspector if the accident caused death or injury.

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

The Rail Transport Charter states that a transport company is liable for the death of and injury to passengers or for damage to baggage in accordance with international treaties or Russian civil law. The Charter or the respective transport contract may set a higher amount of compensation than is determined by civil law.

According to the Rail Transport Charter, the compensation for a passenger's death is 2 million roubles and for injury up to 2 million roubles.

Liability for safety rule breaches is also regulated by the Criminal Code (liability of individuals) and Code of Administrative Offences.

Financial 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 financial support to rail transport companies and especially to RZD as the exclusive public-use rail infrastructure owner is primarily provided in the form of reimbursement of expenses.

Generally, loss of income of rail infrastructure owners and service providers resulting from government tariffs or consumer benefits below an economically feasible level must be subsidised by the state budget.

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?

The government's obligation to reimburse expenses (see question 32) is stipulated by the Federal Law on Rail Transport. The government issues specific procedures for this reimbursement depending on the particular tariffs or grounds for the consumer benefits. As a general rule, the transport company has to deliver a loss of income report to the Federal Agency of Rail Transport on a monthly basis to request reimbursement.

Labour regulation

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?

In addition to the Labour Code, employment of workers in the rail transport industry is regulated by the Federal Law on Rail Transport. In accordance with this law, a large part of the specific regulation in this field falls under the authority of the Ministry of Transport. For example, the Ministry of Transport governs special aspects of working conditions, and rail workers' work and rest.

Moreover, there are special requirements for workplace discipline in rail transport stipulated by the Government Regulation on the approval of the discipline regulation for rail transport workers. In addition to the disciplinary liability stipulated by the Labour Code, this regulation, inter alia, prescribes rail transport workers' disqualification from driving trains or other rail vehicles and dismissal of rail transport workers on special grounds.

Environmental regulation

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

There is no specific environmental regulation for rail transport, therefore the Federal Law on Environmental Protection applies.

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General

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

The public rail transport industry in Singapore consists of a metro system known as the mass rapid transit (MRT) system as well as various light rail transit (LRT) lines (collectively, the Rapid Transit Systems).

In 2016, the Land Transport Authority (LTA) announced the conclusion of discussions with SMRT Trains Limited on the transition of the North-South and East-West lines, the Circle Line and the Bukit Panjang LRT to the New Rail Financing Framework (NRFF), which provided for the transfer of all rail operating assets (including trains, signalling systems and maintenance equipment) for these lines to the LTA.

In February 2018, the LTA announced the conclusion of discussions with SBS Transit Limited (SBS Transit) on the transition of the North East Line, Sengkang LRT and Punggol LRT to the NRFF. The rail operating assets for these lines transferred to the LTA on 1 April 2018.

Together with the Downtown Line, which began to be developed under the NRFF in 2011, the entire rail network has been transferred to the NRFF and the LTA owns all rail operating assets.

Prior to the NRFF, rail operators owned the operating assets and were responsible for building up, replacing and upgrading these operating assets.

Operation of the rail assets and systems, however, are undertaken by private transport operators SMRT Corporation Limited (SMRT) and SBS Transit under licences issued by the LTA. The operators are also responsible for the maintenance of these assets.

In addition, there is a shuttle train service that links the Woodlands Train Checkpoint in Singapore with Johor Bahru Sentral in Malaysia (the KTM Line). Keretapi Tanah Melayu (KTM) owns and operates the KTM Line. KTM is owned by the government of Malaysia.

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 government owns (through its sovereign wealth fund Temasek Holdings) a 100 per cent interest in SMRT. As at the date of writing, SBS Transit is privately owned.

As described in question 1, under the NRFF, the government (through the LTA) now owns all rail operating assets relating to the Rapid Transit Systems.

The LTA is also 'operator of last resort' as it is required under the Rapid Transit Systems Act (Chapter 263A) (the RTS Act) to operate any rapid transit system in the event there is, for any reason, no licensee to operate the system. A rapid transit system is defined under the RTS Act as any railway line, or a combination of two or more railway lines, and any part thereof comprised in that line or those lines set up or intended to be set up under the RTS Act to meet the transport requirements of the public.

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

To the best of our knowledge, there are currently no freight rail operations in Singapore.

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

The LTA is the key regulatory body for rail transport in Singapore.

The main statutes governing rail transport are the RTS Act, the Railways Act (Chapter 263) (the Railways Act) and the Public Transport Council Act (Chapter 259B) (the PTC Act), and their relevant subsidiary legislation.

The Railways Act does not apply to the LTA or any railway covered under the RTS Act. The Rapid Transit Systems are railways under the RTS Act.

Market entry

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

The RTS Act prohibits the operation of any rapid transit system (subject to the RTS Act) by any person (other than the LTA) unless that person is licensed by the LTA to do so.

Interested applicants will typically have to participate in an invitation to tender conducted by the LTA for the right to operate a rapid transit system. An applicant shall be required to state the amount that it is willing to pay for the grant of a licence (cash bid). The cash bid shall be payable if the applicant is granted a licence (the operator licence).

The LTA will then grant the selected company an operator licence to operate the relevant rapid transit system for the period specified in the licence unless the licence has been revoked, cancelled or suspended.

The granting of an operator licence is discretionary. The LTA will have regard to the financial standing of the applicant and its ability to maintain an adequate, satisfactory, safe and efficient service.

The proposed licensee will also have to pay:

- a licence fee, which is prescribed under the Rapid Transit Systems (Fees) Regulations; and
- a licence charge, which is determined by the LTA and specified in the licence after taking the following into account:
  - the relative viability of operating and maintaining the relevant rapid transit system in the network of rapid transit systems;
  - the long-term operational and maintenance needs of the railway network and the long-term sustainability of each rapid transit system comprised in the network; and
  - the benefits and burdens that the operation and maintenance of the relevant rapid transit system are likely to bring to and impose on the network.

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

In relation to the Rapid Transit Systems, this will depend on the conditions imposed in the relevant operator licence.

The RTS Act entitles the LTA to impose (as part of the relevant operator licence) conditions relating to the control and restriction, directly or indirectly, on the creation, holding and disposal of shares in the licensee or of interests in the undertaking of the licensee.

Separately, the RTS Act also prohibits the transfer or assignment of any operator licence unless the licence contains a condition authorising the transfer or assignment and the LTA consents in writing to the transfer or assignment.

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

There are no express prohibitions against the ownership of interests by foreign entities in rail transport companies.

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

Generally, the construction of new railway lines for the Rapid Transit Systems is undertaken by the LTA (through its subcontractors).

The LTA is entitled to prepare plans and maps to delineate areas of land that may be acquired for the purposes of and incidental to any railway (including the construction of new railways). These will be prepared in accordance with the Planning Act (Chapter 232).

The RTS Act further entitles the LTA (or any person authorised by the LTA) to the following:

- in relation to state land, at any reasonable time, to enter upon and subject to the approval of the Collector of Land Revenue, lay, construct and operate a railway on, under or over such state land; and
- in relation to land that is not state land but is within or adjoining the railway area, to enter upon and take possession of any land to lay and construct a railway. The LTA is, however, required to give a minimum of two months' notice (to the relevant owner and occupier of the relevant land) of its intention to exercise such right.

The construction of new railways that are not part of the Rapid Transit Systems will be governed by the Railways Act, which will require the approval of the President of Singapore.

Market exit

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

Regarding the discontinuation of services for the Rapid Transit Systems, this is likely to be dealt with in the conditions of the operator licence that is issued to the relevant rail transport company.

The RTS Act prohibits the surrendering of any operator licence without the consent in writing of the LTA, and any surrender or purported surrender of a licence shall be void if the consent is not obtained.

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 RTS Act prescribes the grounds on which the LTA may, by notice in writing (the notice), suspend or cancel an operator licence. These grounds include if the licensee:

- contravenes or fails to comply with, or fails to secure the compliance of its employees, agents or contractors with, any conditions of its licence to operate any rapid transit system or with any provision of the RTS Act that is applicable to the licensee and for which no criminal penalty is prescribed for a contravention of the provision;
- is convicted of any offence under the RTS Act;
- in the opinion of the LTA, fails or is likely to fail to provide and maintain an adequate, safe and satisfactory service;
- fails to comply with any code of practice issued or approved by the LTA;
- fails to comply with any direction given by the LTA;
- goes into compulsory or voluntary liquidation other than for the purpose of reconstruction or amalgamation; or
- makes any assignment to, or composition with, its creditors.

In the event the licensee is aggrieved by the LTA's decision to suspend or cancel the operator licence, it may appeal to the Minister of Transport (the Minister) within 14 days of receipt of the notice.

The Minister may then confirm, vary or reverse any decision of the LTA or amend any licence condition, code of practice or direction affecting the licensee. Such a decision in any appeal is final.

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 insolvency rules under law will continue to apply to rail transport providers (subject to the RTS Act) to the extent that they are not excluded or varied by the provisions of the RTS Act.

The RTS Act provides for certain specific provisions that may apply to a rapid transit system licensee (which is a company) in cases relating to insolvency. For example, the RTS Act provides that:

- such licensee shall not be wound up voluntarily without the consent of the LTA;
- no judicial management order under the Companies Act (Chapter 50) (CA) may be made in relation to such licensee;
- no step shall be taken by any person to enforce any security over the licensee's property except where that person has served 14 days' notice of his or her intention to take that step on the LTA; and
- the LTA shall be a party to any proceedings under the CA relating to the winding up of the affairs of such licensee.

Additionally, the LTA may make an application to the Minister for a railway administration order to be made in relation to a licensee on (among others) the grounds that the licensee is or is likely to be unable to pay its debts.

The express purposes of such an order are broad-ranging and include, without limitation:

- ensuring the safety, security and continuity of the supply of railway passenger services and facilities;
- the survival of the licensee, or the whole or part of its undertaking as a going concern; and
- for the transfer to another person or two or more different persons, as a going concern, of so much of the licensee's undertaking as it is necessary to transfer in order to ensure that the functions that have been vested in the licensee may be properly carried out.

Competition law

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

The Competition Act (Chapter 50B) (the Competition Act) provides that the prohibitions relating to the following do not apply to rail services supplied by persons licensed and regulated under the RTS Act (rail specified activities):

- agreements, decisions or concerted practices having the object or effect of preventing, restricting or distorting competition within Singapore; and
- conduct that amounts to the abuse of a dominant position in any market in Singapore

Additionally, the Competition Act also provides that the prohibition against mergers that have resulted or may result in a substantial lessening of competition within any market in Singapore do not apply to any merger involving any company relating to rail specified activities.

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

There are no specific duties relating to competition law imposed on the LTA.

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

This is not applicable with respect to rail-specific activities.

With respect to non-rail-specific activities, the general principles set out in the Competition Act will apply.

Price regulation

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

Even though there are currently no rail carriers for freight transport in Singapore, the Railways Act provides for the ability of a railway administration (subject to the approval of the Minister) to make general rules

to fix the charges for the conveyance of, among other things, goods, animals and vehicles.

For the purposes of the Railways Act, railway administration means the person appointed by the governments of Singapore or Malaysia to manage the railway and in the case of a railway administered by a railway company, the railway company.

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

Fares and fare pricing policies for train services as part of the Rapid Transit Systems are set and approved by the Public Transport Council (the Council) established under the PTC Act.

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

There are no procedures under law for passengers or freight shippers to challenge price levels.

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

There are no express provisions under applicable legislation that prescribe that rail transport companies must charge similar prices to all shippers and passengers who are requesting similar services. In fact, a pricing policy that applies different pricing to different categories of passengers requesting a similar service is adopted in practice.

Applications are made to the Council for approval of the price of or the pricing policy for train fares to be charged. In considering any application for approval, the Council is required to take into account the need for fare concessions to address the interests of certain passengers, such as the elderly and students.

Network access

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

As stated in question 5, the right to operate any railway within the Rapid Transit Systems will require an operator licence issued by the LTA at its discretion.

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

As stated in question 5, the proposed licensee will have to pay a cash bid (which it will propose in its application for the operator licence), a licence fee (as prescribed under the Rapid Transit Systems (Fees) Regulations) and a licence charge (which is determined by the LTA depending on certain factors) for a licence to operate a rapid transit system.

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

We are not aware of any such policy. Currently, each of the railway lines within the Rapid Transit Systems is run by a single licensed operator.

Service standards

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

Generally, in relation to the Rapid Transit Systems, the operator licence is likely to contain conditions setting out the extent, hours and general level of services to be provided by a licensee. The LTA is also entitled (from time to time) to give directions to be observed by licensees in respect of these matters.

The Rapid Transit Systems Regulations (the RTS Regulations), however, provide a general discretion that allows the LTA and any licensee to refuse to admit any person onto the railway premises at any time, including opening or closing any entrance to or exit from any station or platform or any other part of the railway premises at such times as it considers expedient without incurring any liability to any person.

Additionally, the RTS Regulations provide that no person can enter or remain on the railway premises if he or she is in an intoxicated or drugged state; is in an unfit or improper condition to travel by passenger train; or if his or her dress or clothing is in a condition liable to soil or damage the railway premises or the dress or clothing of any passenger, or to injure any passenger.

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

In relation to the Rapid Transit Systems, under their existing operator licences, all operators are required to meet a set of mandatory operating performance standards issued by the LTA that establishes the performance required relating to service quality, safety and key equipment reliability, including the following:

- frequency of occurrence of train disruptions and severe service degradation incidents;
- reliability standards for key station equipment; and
- security standards.

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?

This is not applicable with respect to freight shippers.

There is no formal procedure (under legislation) for passengers to challenge the quality of rail services they receive.

However, in relation to the Rapid Transit Systems, members of the public are entitled to provide feedback to the LTA (via the LTA website) about issues of concern.

Safety regulation

25 How is rail safety regulated?

Generally, the safety of the Rapid Transit Systems is regulated by:

- the RTS Act;
- various subsidiary legislation under the RTS Act (namely the Rapid Transit Systems (Railway Protection, Restricted Activities)) Regulations and the Rapid Transit Systems (Development and Building Works in Railway Corridor and Railway Protection Zone) Regulations); and
- various codes of practice issued by the LTA.

The Railways Act contains certain provisions relating to rail safety but these do not apply to the Rapid Transit Systems.

26 What body has responsibility for regulating rail safety?

The main body responsible for regulating rail safety for the Rapid Transit Systems is the LTA.

In relation to railways that are not subject to the RTS Act, under the Railways Act, it is generally the Minister that has powers in relation to safety.

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

We are not aware of any specific safety regulations under law that relate to the manufacture of rail equipment.

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

In relation to the Rapid Transit Systems, the RTS Act provides that the LTA may do the following:

- impose conditions on the operator of a rapid transit system relating to the maintenance of the rapid transit system and the relevant railway;
- issue codes of practice in connection with the maintenance of rapid transit systems and any equipment relating thereto; and
- from time to time, issue directions to be observed in respect of the maintenance of rapid transit systems.

Some codes of practice and information issued by the LTA that may relate to maintenance of track and other rail infrastructure include the following:

- Code of Practice for Railway Protection (October 2004 edition);
- Handbook on Development & Building Works in Railway Protection Zone (January 2005 edition);

Update and trends

Kuala Lumpur–Singapore high-speed rail link

In 2013, the governments of Singapore and Malaysia announced plans for the development of an approximately 350km high-speed rail link (HSR) between the two countries. It was anticipated that the HSR would connect Jurong East in Singapore with Bandar Malaysia (Kuala Lumpur) in Malaysia with six stops along the way (Putrajaya, Seremban, Ayer Keroh, Muar, Batu Pahat and Iskandar Puteri).

In October 2017, as part of the arrangements for the HSR, the Ministry of Transport introduced the Cross Border Railways Bill to provide for, among other things, the 'construction, maintenance, operation and regulation of cross-border railways between Singapore and Malaysia in accordance with bilateral railway agreements'.

The Cross Border Railways Act 2018 was passed by Parliament on 19 March 2018 and assented to by the President on 11 April 2018. It is not yet in force.

In May 2018, the newly elected Malaysian Prime Minister Mahathir Mohamad announced plans to cancel the HSR project.

As at the date of writing, there has been no official notice of termination of the HSR project issued by the government of Malaysia.

Johor Bahru – Singapore rapid transit system

The governments of Singapore and Malaysia are also in the midst of discussing the development of a mass rapid transit system connecting Singapore to Johor Bahru (the RTS).

The RTS is currently envisioned as a two-station line with the Singapore terminus at Woodlands North and the Johor Bahru terminus at Bukit Chagar in Johor Bahru, Malaysia.

It is anticipated that the two stations will each have combined customs, immigration and quarantine facilities so that passengers can clear both countries' border controls before boarding the RTS train, and not require further customs clearance procedures upon arrival at the other station.

It is also intended that the KTM Line will cease operations within six months after the RTS commences operations in 2024.

- Guide to Carrying Out Restricted Activities within Railway Protection and Safety Zones (May 2009 edition); and
- LTA Circulars for Building Works and Restricted Activities in Railway Zones.

Further, the RTS Act also grants broad discretion to the Minister in respect of defects. If, in the opinion of the Minister, the condition of any part of any railway (or any machinery, plant or equipment) is such as to cause (or to be likely to cause) a risk of injury to any person, the Minister may give directions to the LTA or the relevant licensee to take steps to ensure that the condition of the railway (or machinery, plant or equipment) in question will cease to constitute a risk.

29 What specific rules regulate the maintenance of rail equipment?

See question 28.

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

In relation to the Rapid Transit Systems, under the RTS Act, the Minister may appoint an inspector to, among other things, investigate an accident on any part of any railway when an inspector is directed to do so pursuant to any regulations made under the RTS Act.

The general powers of the inspector includes, among other things, the following:

- entering into the relevant premises at all reasonable times;
- carrying out on the premises, or on any machinery, plant or equipment, such tests and inspections as the inspector considers expedient; and
- requiring any person to provide the inspector with such information relating to any railway or any machinery, plant or equipment connected with the railway as the inspector may specify, and to answer any question or produce for inspection any document that is necessary for that purpose.

In relation to accidents on railways that are not covered by the RTS Act, generally, the Railways Act requires that:

- notice of the accident shall be given (to the police and to the Minister);
- a joint inquiry of the causes of the accident shall be made by a committee of railway officials; and
- the result of the inquiry shall then be reported to the Minister (which shall be accompanied by proposed actions to be taken with regard to responsible parties or for the revision of the rules or system of working).

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

The provisions in the RTS Act and the Railways Act relating to safety and accidents (if any) do not apply to the exclusion of the ordinary liability regime under law.

The Rapid Transit Systems

There are no specific provisions in the RTS Act that relate to the liability of rail transport companies for rail accidents.

It is possible, however, that the licence to operate a rapid transit system may contain conditions relating to the security and safety of persons using or engaged in work on the rapid transit system. The occurrence of a rail accident may therefore result in a breach of a condition.

The RTS Act does additionally provide for penal provisions relating to wilful acts or omissions that result in the safety of any person being endangered or the wilful removal, destruction or damage to any part of the railway.

A person who removes, destroys or damages any part of the railway (wilfully or otherwise) will, in addition to any penalty, be liable to pay compensation for the damage, which shall be recoverable by civil action.

Railways that are not subject to the RTS Act

The Railways Act prescribes certain penal provisions with respect to the failure of any railway company to comply with notice requirements and submission of a return of accidents.

The Railways Act also prescribes that the court or any person having authority to determine the claim may order that the relevant injured person be examined by a duly qualified medical practitioner and may make such order as to the costs of the examination.

Financial 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)?

We understand that the licence charge payable by SMRT to the LTA for the right to use the operating assets and operate the lines is structured such that the risks (and rewards) associated with uncertainties in relation to revenue from fare collection and fluctuations in operating costs is shared with the LTA through the fare revenue shortfall sharing scheme (FRSS scheme).

In order to share the revenue risk between SMRT and the LTA, a revenue collar mechanism was determined based on a set of projected revenue figures set by the LTA. SMRT and the LTA will then share in any shortfall or excess based on a tiered structure.

SMRT may apply to the LTA for a grant if it suffers a net reduction in operating revenue or a net increase in operating costs as a result of certain specified unanticipated events, such as enhancement of

operating standards or regulatory changes. The amount of the grant is determined at the LTA's discretion.

A similar structure applies to SBS Transit (including the applicability of the FRSS scheme).

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?

Not applicable.

Labour regulation

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?

There are no specialised labour and employment laws that apply to workers in the rail transport industry and the general employment laws will apply.

The First Schedule of the Employment Act (Chapter 91) provides that the definition of 'workmen' includes train drivers and train inspectors, and the definition of 'industrial undertaking' under the Employment Act includes private or public undertakings engaged in the transport of passengers or goods by rail.

Environmental regulation

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

There are no specialised environmental laws that apply to rail transport companies and the general environmental laws apply, which include the Environmental Protection and Management Act (Chapter 94A) and its subsidiary legislation.

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General

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

Operation of the national rail network in Great Britain comprising all regional and intercity routes, and most urban heavy rail routes is split between infrastructure and rolling stock.

The rail infrastructure is owned and operated by Network Rail, a company limited by guarantee that does not pay dividends. Although notionally a private company, since 2014 it has been classified as a public sector organisation owing to its government debt support.

Train services are separately operated by passenger train operating companies (TOCs) and freight operating companies (FOCs).

This chapter focuses on the national rail network in Great Britain, but there are also a number of mainly urban regional networks where other structural models can be found. Examples include the Edinburgh Tram, owned and operated by Transport for Edinburgh; the Blackpool Tram network owned and operated by Blackpool Borough Council; and Sheffield Supertram, whose infrastructure is publicly owned by South Yorkshire Passenger Transport Executive and privately operated under a concession by Stagecoach. In addition, the London Underground network is owned and operated by Transport for London (TfL) and railways in Northern Ireland are vertically integrated, with track and rolling stock operated by Northern Ireland Railways.

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 UK government has no ownership interest in the national rail network in Great Britain, or in TOCs or FOCs. However, rail franchising authorities (the Scottish Ministers in Scotland and Secretary of State for Transport in England and Wales) have a duty under section 30 of the Railways Act 1993 (RA93) to provide or secure the provision of passenger services where a franchise agreement in respect of those services ceases and is not replaced by another franchise agreement. This obligation has become relevant in recent years following, for example, the failure of the East Coast passenger rail franchise in 2018. The government has created a wholly owned public sector entity to act as the 'operator of last resort' to take over the franchise while preparations are made for a new private sector franchisee to be appointed.

Franchising authorities are also responsible for specifying franchised services, and, as counterparty to franchise agreements, are closely involved in managing the performance of franchisees. Although the Secretary of State for Transport is the franchising authority for England and Wales, its role as counterparty to the forthcoming Wales and Borders franchise agreement has been devolved to the Welsh government.

The Secretary of State for Transport provides grant funding to Network Rail and has a role in setting its priorities. There is also a 2014 framework agreement between Network Rail and the Secretary of State for Transport dealing with, among other things, governance and financial management.

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

Track access rights are granted to operators for passenger or freight services, not both. Most passenger services are operated by TOCs that have a franchise agreement with the rail franchising authority. Freight operators, in contrast, are open access operators that have no contract with the public sector, and negotiate track access rights with Network Rail.

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

The Office of Rail and Road (ORR) was established under the Railways and Transport Safety Act 2003, and its powers and duties are set out in the RA93. It is responsible for the public interest and economic regulation of Network Rail and (to a lesser extent) of TOCs and FOCs. It is also responsible for competition regulation and for regulation of access to railway facilities (track, stations and depots). In discharging its functions, the ORR must comply with its general duties under section 4 of the RA93, which include promoting improvements in railways service performance and promoting the use of the railway.

The ORR's main functions are the following:

- Licences: the grant, modification and enforcement of licences to operate trains, networks, stations and light maintenance depots. This includes Network Rail's network licence.
- Financial regulation: regulation of the monopoly power of owners of rail infrastructure, most particularly of the monopoly owner and operator of the national infrastructure in Great Britain, Network Rail.
- Access: rail facility access agreements are void without the ORR's approval, and it can also direct mandatory access to railway facilities and enhancement of existing railway facilities.
- Competition: the ORR has certain powers concurrently with the Competition and Markets Authority.
- Safety: see question 26 regarding the role of the ORR and other bodies related to rail safety.

The government also has key regulatory functions, as follows:

- Track access charges: there is a periodic review process under which the ORR reviews and fixes Network Rail's track access charges for each five-year control period. This process is guided by the Railways Act 2005, under which the Secretary of State for Transport (in respect of England and Wales) and Scottish Ministers (in respect of Scotland) are required to define the high-level outputs they require and provide a statement of the funds available from the government, each of which informs the charges the ORR ultimately sets.
- Franchising authority: the franchising authority is responsible for establishing which rail passenger services should be delivered under a franchise agreement, and for appointing franchisees to operate those services under a franchise agreement with the authority.
- Competent authority: the Secretary of State for Transport is the competent authority for the purposes of Directive 2008/57/EC on the interoperability of the rail system (the Interoperability Directive) (other than in Northern Ireland, where this role is fulfilled by the Department for Regional Development established by article 3(1) of the Departments (Northern Ireland) Order 1999 (DRDNI). Its functions in relation to interoperability include determining

applications for derogation from the need to have authorisation for placing rolling stock and other subsystems into service.

Market entry

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

In most cases rail transport providers must have an operating licence (a European licence) and a related statement of national regulatory provisions (SNRP), each granted under requirements of EU directives, in particular Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (recast). In Great Britain the licensing authority is the ORR, and European licences and SNRPs are granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005; in Northern Ireland the licensing authority is the Department for Infrastructure, and European licences and SNRPs are granted pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016.

The licensing authority must be satisfied that the licence applicant meets requirements as to good repute, financial fitness, professional competence and insurance cover for civil liability, and there are detailed guidelines about what must be taken account of in determining if those requirements are met.

Each rail facility operator (whether the facility is track, a station or a light maintenance depot) will also need to have an operating licence for that facility granted by the ORR pursuant to the RA93, or an exemption from the need to obtain one.

Any rail transport provider will, in addition to obtaining relevant licences, also need to obtain a safety certificate (where operating services) or an authorisation (where operating infrastructure).

The Secretary of State for Transport also operates a streamlined pre-qualification questionnaire (PQQ) passport process for rail franchises in England and Wales. Franchise bidders must also have a PQQ passport issued under this process.

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

Licences and SNRPs may be terminated if control of the licence holder changes and the ORR has not approved the change of control, or the change of control does not cease within three months of a notice from the ORR that it served within one month of becoming aware of the change of control.

An approval application form must be submitted and the ORR will usually make its decision to approve or reject the change of control within four weeks.

Passenger operator franchise agreements typically contain change of control restrictions that require consent of the Secretary of State for Transport (or equivalent) before a change of control arises.

The acquisition of a franchisee may also have implications for its PQQ Passport (see question 5). It will constitute a change in circumstances that must be notified to and approved by the Department for Transport.

A change of control, whether in respect of a passenger or freight operator, could also trigger a competition investigation.

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

There are no specific additional approval criteria that arise where the owning or controlling entity is non-UK based. However, the licensing, control and competition restrictions identified above would equally apply in this case. In addition, it may be more time-consuming to evidence compliance with some of the specified criteria for obtaining a PQQ Passport.

The UK government is proposing to intervene in transactions involving foreign entities that it considers to be undesirable from a national security perspective. Certain sectors are more likely to pose a national security risk, such as national transport infrastructure, including the rail network, although the government's proposals to date have not identified rail as a 'core area' in this regard.

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

Approval is required to construct a new rail line, with different regimes applying in England, Wales and Scotland.

The process for obtaining regulatory approval for the construction of a new rail line in England will depend on whether or not it is a nationally significant rail scheme. A rail line will only fall within this classification if it involves the laying of a continuous stretch of track of more than 2km, and meets other defined criteria under section 25 of the Planning Act 2008 (as amended by the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013), including that it will be operated by Network Rail.

A nationally significant rail scheme requires development consent under the Planning Act 2008. The consent takes the form of a statutory instrument (a piece of secondary legislation), termed a development consent order (DCO). A DCO can grant planning consent for the works, but also include other powers, for example the power to acquire land compulsorily and the disapplication of local legislation.

The process is heavily front-loaded at the pre-application stage. Proposers have a statutory duty to consult on their proposals prior to submission; the length of time to prepare and consult on an application will vary depending on its complexity and scope. An application for development is submitted to the Planning Inspectorate, which, on behalf of the Secretary of State, then has 28 days to determine whether the application meets the required standards to proceed to examination.

If it is accepted, members of the public can then apply to make representations on the application and a preliminary meeting will be held, setting the examination timetable. This stage usually takes around three months.

Up to five independent inspectors appointed by the Secretary of State for Transport examine the application over a six-month period. The development consent process is focused on written submissions, but hearings will be held on specific topics (eg, compulsory acquisition). The examiners will issue a recommendation to the Secretary of State for Transport within three months of the close of the examination. The Secretary of State then has a further three months to issue a decision.

If the proposed new rail line is not nationally significant then this can be consented, most usually, via an order under the Transport and Works Act 1992. Again, the consent takes the form of a statutory instrument. Applications are made to the National Planning Case Work Unit that processes the application on behalf of the Secretary of State for Transport in England or the Welsh government (as applicable). Like a DCO, the order can also include compulsory acquisition powers.

Decisions on both DCO and Transport and Works Act order applications can be challenged by judicial review in the High Court within six weeks of the date of the decision.

The DCO regime for rail does not extend to Scotland or Wales. In Wales an application for a rail line with a stretch of track of more than 2km would be made to the Welsh government.

In Scotland, it is likely that an order will be required under the Transport and Works (Scotland) Act 2007 (a TAWS order), with an application being made to the Scottish Ministers. Prior to the 2007 Act coming into effect, guided transport schemes were normally authorised by way of a private Act of the Scottish Parliament, but a TAWS order can grant similar rights and powers, and it is now unlikely that the Scottish Parliament would entertain a private bill for matters that can be authorised by a TAWS order. There have been no private bills for rail projects since the 2007 Act came into force.

Where a scheme is of national importance a hybrid bill could be used. Procedure requires that to do so the rail line must affect the general public but would also have a significant impact on a specific group (eg, a particular geographical area will be impacted). Such bills have been used in the development of both Crossrail and High Speed 2. Hybrid bills are a combination of public and private bills and subject to parliamentary process, involving debates in the House of Commons and House of Lords.

Theoretically, it would also be possible to authorise a new rail line in Scotland by way of a hybrid bill, but the Scottish Parliament has only considered one hybrid bill to date and that was not for a rail project.

Any structural subsystem such as a new railway line must, before being put into use on or as part of a rail system, be granted authorisation under the Interoperability Directive by the ORR.

Market exit

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

The Railways Act 2005 sets out statutory procedures concerning proposals for the closure of passenger services, passenger networks and stations.

Certain minor modifications, such as those that are determined not to affect the use of a station, require additional changes or increase journey times, are exempt from the closure regime. Services that have been designated as experimental for up to five years, which run through the Channel Tunnel or that are not regular scheduled services are also exempt. In addition, networks or services may be exempted by order.

If the closure regime applies, the operator that intends to discontinue or close a passenger service, passenger network or station must first assess whether the proposal satisfies criteria set out in closures guidance published by the ORR. After that, the proposal is submitted to the relevant national authority (the Secretary of State for Transport or the Scottish Ministers) for them to form an opinion on whether to allow the closure after consulting about it. If the national authority concludes that the closure should be allowed, this decision must be ratified by the ORR.

The closure must not be implemented while the consideration set out above is being carried out. If it is concluded by the national authority or the ORR that the closure should not go ahead, the national authority must secure the continued operation of the service, network or station concerned.

The Secretary of State for Transport and Scottish Ministers are required to publish guidance outlining how closure proposals should be assessed and processed.

The closure regime does not apply to services required to be secured by the government, such as franchised services. However, franchised passenger operators are contractually obliged to deliver a defined service level. See the reference to section 30 of the RA93 in question 2.

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?

There are customary default provisions in each track access contract that can lead to suspension or early termination of a track access agreement by Network Rail.

European licence holders are subject to ongoing monitoring of whether they satisfy the requirements as to good repute, financial fitness, professional competence and insurance cover for civil liability. The licence may be revoked if they do not, or if specified circumstances of insolvency arise.

In addition, each operating licence includes provisions dealing with its revocation. The ORR may (after consulting with the franchising authority if the operator has a franchise) revoke the licence:

- at any time by agreement with the operator;
- on three months' notice if it has made an enforcement order under the RA93 in respect of any contravention or apprehended contravention of a licence condition that the licence holder has not complied with within a period of three months;
- if the licence holder has not started licensed activities within a given period of the licence coming into force, or if the holder ceases to carry on its licensed activities for a given period;
- if control of the licence holder changes;
- if the licence holder is convicted under section 146 of the RA93 of making false statements in its application for a licence; or
- by notice of not less than 10 years, but the notice must not be given earlier than 25 years after the date that the licence takes effect.

If the ORR has made any enforcement order against a licence holder it may apply to court for the order to be overturned on the grounds that it was not within the ORR's powers under the RA93, or that procedural requirements have not been complied with.

An operator's safety certificate may be revoked if the operator is in breach of its conditions and a significant risk arises, or if the operator has not operated as intended pursuant to the certificate for a year after it was issued. Before revoking the certificate, the ORR must notify the operator and allow at least 28 days for it to make representations.

The operator may appeal to the Secretary of State for Transport if it is aggrieved by a decision of the ORR to revoke its safety certificate. The revocation shall be suspended pending the final determination of the appeal.

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 is a special railway administration regime that overlays the general rules of insolvency. The regime only applies to a protected railway company, which is defined as a private sector operator that holds a network licence, a passenger licence, a station licence or a depot licence. Differences between an ordinary administration and a railway administration include that the purpose of a railway administration is more limited. Its purpose is solely to transfer to another company as much of the undertaking as is necessary to ensure that the relevant licensed activities may be properly carried on, and to carry on those activities until the transfer is made. The transfer of the business to the new operator will occur under a statutory transfer scheme.

Competition law

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

The ORR's general duties under section 4 of the RA93 also include the duty to promote competition in the provision of railway services for the benefit of users of such services, and to protect the interests of users of railway services.

The ORR is required to consider whether the use of its competition powers is more appropriate before using its sectoral powers (including licence enforcement) to promote competition.

The prohibitions under the Competition Act 1998 (CA98) apply to rail transport: Chapter I prohibits agreements between businesses that prevent, restrict or distort competition; and Chapter II prohibits the abuse of a dominant position in a market. Where an agreement or conduct has an effect on trade between EU member states, articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) will apply instead.

Under the Enterprise Act 2002 (EA02), it is possible for the ORR to make a market investigation reference (MIR) to the Competition and Markets Authority (CMA) where any features of a market for goods or services relating to railways in the UK prevents, restricts or distorts competition. An MIR may be preceded by a market review, or formal market study under the EA02.

Market distortions, discrimination and undesirable competition developments are also regulated by the ORR under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (RAMs), which transpose relevant aspects of Directive 2012/34/EU establishing a single European railway area.

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

The ORR has concurrent competition powers with the CMA to apply and enforce Chapter I and Chapter II of the CA98, as well as articles 101 and 102 of the TFEU, where the relevant activities relate to the supply of services relating to railways in Great Britain.

Under the EA02, the ORR has concurrent powers to: undertake market studies; make an MIR in relation to the rail sector (although only the CMA can undertake a market investigation); agree undertakings in lieu of a reference; and make recommendations to the government in relation to the rail sector. It must respond to super-complaints made to it by designated consumer bodies under the EA02 if the complaint concerns the rail sector in Great Britain.

The ORR does not have concurrent powers in relation to criminal cartels, which are investigated by the CMA and the Serious Fraud Office. It does not have a formal role in respect of mergers, although in practice will advise the CMA on the implications of mergers in the rail sector.

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

A transaction or merger between rail transport companies is subject to the UK merger control regime in the EA02. The CMA has jurisdiction to consider a merger where the business being acquired generates UK turnover of more than £70 million, or where the merged entity would create or increase a share of supply over 25 per cent in the UK or a substantial part of the UK. If the merging parties satisfy the relevant turnover thresholds in the EU Merger Regulation, they must instead notify the merger to the European Commission for clearance.

Assuming the UK jurisdictional threshold is met, the CMA will assess whether the transaction could give rise to a substantial lessening of competition within any markets in the UK.

Under the RA93, entering into a rail franchise agreement constitutes an acquisition of control of an enterprise under the EA02. The CMA's assessment of rail franchise awards will focus on the impact of the award on competition between the winning bidder's existing rail, bus, tram or coach services and the rail franchise routes. As a starting point for the analysis, the CMA will identify point-to-point journeys (ie, flows) on which the rail services of the new franchise overlap with the existing transport services provided by the winning bidder.

The CMA will examine whether fare increases or degradation of services (or both) might arise where the successful bidder for a rail franchise already operates transport services on the same flows and routes.

Where a significant number of overlaps are identified, the CMA will apply a series of filters for prioritisation purposes in order to focus its analysis on the flows most likely to raise competition concerns. The CMA has published detailed guidance on its methodology for reviewing franchise awards.

Price regulation

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

While rail freight operators are broadly free to determine the prices they charge, they are indirectly impacted by the regulatory charging framework that determines the basis on which those rail freight operators are granted access to the network. Freight shippers and customers are also able to enter into access agreements with Network Rail directly in order to secure access rights.

When setting prices, freight operators may also need to consider any potential breach of competition legislation, including the CA98.

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

Around half of passenger rail fares are regulated by the government pursuant to section 28 of the RA93. They include standard returns and weekly season tickets. These fares are linked to indexation to determine the maximum amount by which they can rise.

Fares that are not regulated by the government, such as first-class tickets and advance purchase fares, are set by passenger operators. A collective agreement that those passenger operators adhere to, known as the ticketing and settlement agreement, also sets rules on how fares are created and sold. Prices are also theoretically limited by competition law, which would make it illegal for a TOC to take advantage of consumers. For example, in 2016 the CMA capped unregulated fares on certain routes to prevent a substantial lessening of competition.

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

Passengers can directly challenge a passenger operator if they believe they have been wrongly overcharged for a fare. If they are not satisfied with the response, from November 2018 they will be able to take their case to the Dispute Resolution Ombudsman, a recently appointed ombudsman that has the power to hold passenger operators to account. In 2017 several passenger operators signed up to a voluntary price guarantee to refund the difference if passengers have been forced to pay higher ticket prices owing to a lack of fare availability on ticket machines. More generally, regulated fares are controlled by the Department of Transport, which can enforce any breach of fares regulation under the terms of the relevant passenger operator's franchise agreement.

A freight shipper entering into access agreements directly with Network Rail can appeal to the ORR under regulation 32 of the RAMs or the RA93 in relation to the level or structure of railway infrastructure charges that it is required to pay. Facility licences also contain a duty on facility owners not to discriminate and freight shippers may be able to utilise the broad appeal rights under RAMs or the RA93 in this respect as well. The prices charged by freight operators could also be challenged under competition legislation.

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

Generally, passenger operators cannot discriminate between passengers when charging them for the same type of ticket. However, fares regulation distinguishes between adult and child fare prices in determining the maximum price for regulated fares. In addition, the government has created a series of discount fare schemes pursuant to section 28 of the RA93 for specific groups, including young persons, disabled persons and senior citizens. Other concessionary travel schemes also exist together with specific schemes for rail company employees. Passenger operators can also charge different prices to customers for the same service depending on how far in advance they purchase their ticket or the flexibility of their ticket.

See questions 5 and 17 in respect of freight.

Network access

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

Access to railway facilities, including track, station and light maintenance depots, is regulated by the ORR under the RA93, unless the facility concerned has been granted an exemption. This means that access contracts for a non-exempt facility entered into without ORR approval are void. The ORR also publishes model clauses for inclusion in access contracts.

Section 17 of the RA93 provides that the ORR may, upon the application of any person, give directions to a facility owner requiring it to enter into an access contract with the applicant unless the facility is exempt, performance of the access contract would necessarily involve the facility owner being in breach of another access contract, or the consent of a third party is required by the facility owner because of an obligation that arose before the RA93 came into force.

In addition, subject to what is said below:

- under the RAMs, an infrastructure manager must ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis; and
- except insofar as the ORR may otherwise consent, facility owner operating licences all require that the facility owner must not in its licensed activities unduly discriminate between particular persons or between any classes or descriptions of person.

An access applicant may appeal to the ORR if it believes that it has not been granted access rights to railway infrastructure on equitable, non-discriminatory and transparent conditions, or is in any other way aggrieved by decisions of the infrastructure manager concerning the handling of requests for infrastructure capacity in accordance with the RAMs.

The RAMs permit access rights for international passenger services to be restricted where they would compromise the economic equilibrium of a public service contract. In addition, after suitable consultation, and as long as suitable alternative routes for other types of services exist, an infrastructure manager may designate particular railway infrastructure for specified types of rail service. In that case, it may give priority to that 'specialised' type of service in allocating capacity. In addition, where infrastructure capacity has been determined to be 'congested' the infrastructure manager may, after undertaking capacity analysis, set priority criteria for allocating infrastructure capacity.

In addition to the specific regulations designed to address access issues (described above), competition law may require the infrastructure owner to grant third-party access, if the infrastructure is an 'essential facility'.

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

The general licence condition mentioned in question 19 that requires the facility owner not to unduly discriminate between particular persons or classes of person is overlaid by provisions relating to reviewing and setting charges for network access in the RA93, the Railways Act 2005 and RAMs, as follows.

The ORR's template terms for access to the national rail infrastructure provide for the ORR to undertake reviews of the access charges payable by operators. Schedule 4A of the RA93 sets out procedures required to be followed by the ORR to undertake such access charges reviews. (See questions 4 and 33 for details of the process that is followed in setting Network Rail's access charges.) In summary, the ORR mandates a detailed framework for track access charging by Network Rail. Charges depend on whether the operator concerned operates freight or passenger services, and whether or not it has a franchise. It includes both fixed and variable elements.

Under the RAMs, the ORR must establish a charging framework and specific charging rules in relation to infrastructure for which an infrastructure manager is responsible, and must ensure that charges for railway infrastructure comply with rules set out in those regulations. It must also ensure that under normal business conditions and over a reasonable period (up to five years), the accounts of an infrastructure manager balance revenue from infrastructure charges and other sources with railway infrastructure expenditure.

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

The ORR publishes guidelines about its approach to allocation of track access.

Nearly all passenger rail miles on the national rail network are operated by operators that have a franchise agreement. The ORR has calculated that non-franchise operators (open access operators) run just 1 per cent of passenger rail miles in the UK. At present, the ORR will only approve access rights for a new open access operator if the new service satisfies the 'not primarily abstractive test'. To pass the test, the new service must provide added passenger benefits on top of the benefits provided by those franchised services with which it will compete, measured as a ratio of new revenue from the open access operation to revenue abstracted from the franchisee of at least 0.3 to 1. At the same time (unlike franchised operators), the ORR mandates that open access operators pay variable track access charges for short-run costs and do not pay fixed track access charges.

The ORR stated in June 2018 that a 'key driver of our reforms to access charges for passenger services has been facilitating more competition in the provision of these services (on-rail competition)'. Changes in regulatory approach that this may lead to include adjustments to the 'not primarily abstractive test', balanced by a greater contribution from open access operators to Network Rail's fixed costs.

Lines between Ashford in England and Glasgow in Scotland are part of the North Sea–Mediterranean international rail freight corridor established pursuant to Regulation (EU) No. 913/2010 concerning a European rail network for competitive freight. The corridor's mission is to 'improve the efficiency of rail freight transport on the corridor by promoting measures to develop rail freight'.

Service standards

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

Under the National Rail Conditions of Travel any individual purchasing a valid ticket is entering into a binding contract with each of the passenger operators whose trains that ticket allows the individual to use. Passenger operators are not required to provide a service to individuals who do not possess a valid ticket for that service (or, if relevant, the appropriate accompanying documentation, such as a photocard).

Passengers can be prevented from travelling on services under various pieces of legislation. For example, railway by-laws enable passenger operators to refuse to allow certain individuals on their services. Any person reasonably believed by an authorised person to be in breach of those by-laws can be asked to leave the railway immediately and, if refusing to do so, may be removed by an authorised person using reasonable force. An authorised person in this context is an employee or agent of the passenger operator, any other person authorised by that passenger operator, or a constable acting in connection with their duties in connection with the railway. This right of removal is in addition to any penalty that can be levied for a breach of those by-laws.

Passenger transport operators generally cannot discriminate between customers wishing to use their services (although it is worth noting the schemes identified in question 18). Such operators must comply with equalities legislation, must produce a disabled persons protection policy as a requirement of their licence, and must comply with provisions in both the National Rail Conditions of Travel and their franchise agreement that relate to assisting passengers with disabilities.

In respect of freight, facility licences contain a duty on facility owners not to discriminate between potential beneficiaries and freight shippers may be able to utilise the broad appeal rights under the RAMs or the RA93 in this respect. The prices charged by freight operators might also be challenged under competition legislation.

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

Passenger operating licences contain a number of requirements relating to service standards. These include a requirement to comply with the National Rail Conditions of Travel. Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (the PRO Regulation) also creates a number of passenger rights, for example relating to compensation for delays.

Passenger operators must comply with service standards set out in their franchise agreement, as mandated by the Department for Transport (or equivalent). These include general standards of service and a number of key metrics. Typically these metrics will be split between:

- operational performance standards, covering performance in areas such as availability of service, cancellations, delays, headway between services and capacity; and
- service quality standards, covering areas such as train and station cleanliness, equipment functionality, customer satisfaction and ticket queuing times.

In franchise agreements, customer satisfaction is usually measured through the use of National Rail Passenger Surveys, which are conducted periodically across the industry.

Freight haulage agreements usually contain some form of performance regime. Typical measures of performance include safety performance, successful service scheduling, punctuality (but typically with less stringent arrival times than passenger services) and delivery (usually measured by goods delivered as a percentage of planned loading).

Both passenger and freight operators are separately subject to performance regimes under their track access agreements, which penalise them for delays that they cause to other passenger or freight operators or Network Rail.

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?

Passengers are entitled to compensation where services are cancelled or delayed beyond specified time limits. The current National Rail Conditions of Travel allow passengers who decide not to travel because their intended train is cancelled or delayed to return their unused ticket to the original retailer or passenger operator from whom it was purchased in exchange for a full refund with no administration fee being charged. This also applies to passengers who have begun their journey but are unable to complete it owing to delay or cancellations and return to their point of origin. If a train arrives 60 minutes late or more at a passenger's destination, the passenger is entitled to a minimum of 50 per cent of the price paid (for a single or the relevant leg of a return journey) or the discount or compensation arrangements in the relevant passenger operator's Passenger Charter (in the case of a season ticket).

Each passenger train operator is required to put in place a Passenger's Charter, which typically includes enhanced rights beyond those specified in the National Rail Conditions of Travel.

Passengers are also able to make a claim against a passenger operator under the Consumer Rights Act 2015.

Freight shippers' ability to challenge the quality of service they receive from freight operators is largely determined by the terms of their haulage agreement. Freight operators must also abide by the RAMs.

Safety regulation

25 How is rail safety regulated?

All railway operations in the UK are subject to the same general safety duties and obligations applicable to all businesses, as contained in the Health and Safety at Work Act (HSWA), and certain key safety regulations passed under it. This general safety legislation is supplemented by rail-specific safety legislation, which for the most part is, or transposes, European law. The key railway-specific legislation is:

- the Railways and Other Guided Transport Systems (Safety) Regulations (2006) (ROGs). These regulations implement Directive 2004/49/EC on safety on the Community's railways (the Railway Safety Directive);
- the common safety method on risk evaluation and assessment – EU Regulation 402/2013/EU (CSM RA), which has direct effect in UK law; and
- the Railways (Interoperability) Regulations 2011 (RIRs). These regulations implement the Interoperability Directive.

In addition to the legislation referred to above, the railway sector is also subject to a large body of safety standards and industry rules governing specific areas of railway operation and infrastructure maintenance.

26 What body has responsibility for regulating rail safety?

The ORR has primary responsibility for regulating rail safety in the UK.

It is responsible for enforcing the provisions of the HSWA and of health and safety regulations insofar as they relate to the operation of a railway. This responsibility extends to enforcement of the general duties of manufacturers to ensure that articles are 'so designed and constructed . . . [to] . . . be safe and without risks to health at all times when . . . being set, used, cleaned or maintained by a person at work' when that article is to be used exclusively or primarily in the construction or operation of a railway.

The operation of a railway includes:

- activities of an entity in charge of maintenance; and
- construction work for maintenance, repair, etc, of existing infrastructure, and the extension or enlargement of infrastructure if that work is in such close proximity to the operation of a railway that it creates a risk to the health, safety or welfare of those engaged in the work.

The ORR is also, pursuant to the ROGs and the RIRs, the Safety Authority for the purposes of the Railway Safety Directive and the Interoperability Directive, except in Northern Ireland where this role is fulfilled by the DRDNI. In this role it:

- issues safety certificates to railway operators and safety authorisations to infrastructure operators; and
- grants authorisation for placing new or upgraded trains and other subsystems into service.

The competent authority for the purposes of the Interoperability Directive and the RIRs (ie, the Secretary of State for Transport in Great Britain and DRDNI in Northern Ireland) is responsible for:

- determining applications for derogation from the need to have authorisation for placing rolling stock and other subsystems into service;
- determining applications for derogation from the need to apply technical specifications for interoperability (TSIs) (as issued by the European Union Agency for Railways);
- notifying the European Commission of those UK standards that are to be notified national technical rules (NNTRs), which are national rules designed to cover matters relating to local conditions that TSIs do not cover; and
- determining applications from a dispensation to apply NNTRs.

The European Union Agency for Railways has a number of functions related to coordination and monitoring of the implementation of safety requirements across member states.

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

Structural subsystems such as command and control equipment and rolling stock may not be placed into service unless they have been authorised by the Safety Authority under the RIRs. To grant such authorisation the Safety Authority must be satisfied that:

- the equipment is technically compatible with the rail system into which it is being integrated; and
- it has been designed, constructed and installed to meet the essential requirements set out in Annex III to the Interoperability Directive.

The general rule is that the essential requirements shall be met by conformity with all relevant TSIs. However, in certain defined situations, compliance with relevant NNTRs is required instead. These are:

- there are no relevant TSIs;
- a relevant TSI does not govern all aspects of the system or train; or
- a derogation has been granted by the Department for Transport.

Thus, the RIRs require compliance with TSIs, but where these do not apply or there is a gap, NNTRs apply. UK NNTRs consist mainly of Railway Group Standards (RGSs) issued by the Rail Safety and Standards Board pursuant to the Railway Group Standards Code, but also include certain industry standards.

Also, subcomponents (such as engines) of structural subsystems ('interoperability constituents') for which there is an applicable TSI must not be placed on the market unless they comply with relevant essential requirements.

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

General safety duties, including those under the HSWA and the ROGs, apply. Among other things, the ROGs mandate that the infrastructure manager must manage and use the infrastructure in accordance with a safety management system that meets the requirements of the ROGs. These requirements include the following:

- the common safety methods and common safety targets established pursuant to the Railways Safety Directive are met;
- the system complies with national safety rules such as those set out in RGSs, and relevant requirements of TSIs; and
- the system ensures control of risk, including risks relating to the supply of maintenance and material, and the use of contractors.

Also, Network Rail's network licence has obligations relating to the operation, maintenance, renewal and enhancement of the network, among other things in order to satisfy the reasonable requirements of persons providing services to railways and funders.

In practice, the safety procedures and practices that must be followed by track maintenance and other railway infrastructure workers are specialised and industry-specific. These procedures are established mainly in detailed railway standards and rules, for example the 'Rule Book' maintained by the Railway Safety and Standards Board. The Rule Book establishes detailed procedures for specific track maintenance operations, for example in relation to controlling vehicle movements within work sites and in relation to track safety practices.

29 What specific rules regulate the maintenance of rail equipment?

General safety rules, including those under the HSWA and the ROGs, apply. In addition, the ROGs provide that no person may use a vehicle on the mainline railway unless it has an entity in charge of maintenance assigned to it that is registered in the National Vehicle Register.

The entity in charge of maintenance must ensure by a system of maintenance that the vehicle is in a safe state of running. The system must ensure maintenance in accordance with the maintenance file, maintenance rules and applicable TSIs.

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

Following any major safety incident on the railway, a number of investigations will take place, which taken together can span many years after an incident. There is likely to be a police investigation, to assess

Update and trends

The ORR is currently carrying out its periodic review in preparation for setting Network Rail's priorities, budget and access charging framework for 'Control Period 6' commencing in 2019. Related changes to regulatory policy may also follow.

Network Rail has altered its structure to a route-based model and the ORR is proposing changes to its network licence, in part to reflect this.

The UK is scheduled to leave the European Union on 29 March 2019. Disruption to existing legal frameworks may be ameliorated by provisions under the European Union (Withdrawal) Act 2018 that provide for existing EU law to continue in UK law after exit day. In addition, at the time of writing, the White Paper on the European Union (Withdrawal Agreement) Bill proposes that there will be a transition period lasting until December 2020, during which time EU law will continue to apply in the UK as if the UK were still a member state.

Government and Network Rail policy is currently in favour of creating contractual arrangements between Network Rail and operators that seek to capture some of the benefits of a vertically integrated structure that Great Britain's disaggregated operating structure loses. New franchise operators are being required to negotiate and enter into 'alliancing agreements' with Network Rail.

whether a serious criminal offence such as manslaughter has been committed, an investigation by the ORR, to assess whether there has been a breach of the HSWA and other relevant safety legislation, and in the event of a fatal accident there will also be a coroner's inquest to establish the cause of death. Following very major (national scale) incidents there may also be a public inquiry.

Also, the Department of Transport has a Rail Accident Investigation Branch (RAIB) to investigate railway accidents. Its role includes determining and reporting on the cause of an accident, but subject to that is not to consider or determine blame or liability. RAIB inspectors have statutory powers to enter premises, gather evidence and require information to be provided in the conduct of investigations. The Chief Inspector of Rail Accidents may also direct persons involved in managing or controlling railway property where an accident took place, or that were involved in the accident, to conduct investigations, and the manner in which those investigations shall be conducted. Industry parties have duties to notify the RAIB of accidents and incidents.

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

There are two types of liability that arise from rail accidents: civil liability to pay compensation and damages to injured parties and those affected by an accident; and criminal liability arising in connection with offences committed by the companies and individuals involved in an incident.

With respect to civil liability, the ordinary liability regime applies to the liability of railway undertakings, save that it is a standard licence condition for all railway undertakings that they accede to the claims allocation and handling agreement (CAHA).

The CAHA deals with the allocation of liability for third-party liability claims that arise in connection with the operation of railway assets or on land owned or controlled by a party to the CAHA, which was being used in connection with the operation of railway assets. This agreement provides that compensation for damage below a minimum threshold (currently £7,500) is dealt with by operators in accordance with pre-agreed allocations set out in a schedule to the CAHA. Claims above the threshold or not in the schedule are handled by a lead party and the allocation of liabilities is agreed among the CAHA members involved. Disputes can be referred to mediation, to arbitration or the courts as determined by the CAHA rules and the nature of the dispute.

The CAHA is meant to keep costs down and to provide a unified face to claimants behind which industry parties allocate liabilities between them. It should mean an injured party does not have to pursue more than one industry party.

Also, under the PRO Regulation, in the case of death or injury the passenger operator must make an advance payment no later than 15 days after the identification of the natural person entitled to compensation. The payment must enable their immediate economic needs to be met, and be proportional to the damage suffered. It may be offset against civil liability.

All licensed operators are required to hold third-party liability insurance on terms approved by the ORR. Those requirements include that the limit of cover must be at least £155 million.

With respect to criminal liability, the same rules apply to railway undertakings as to other businesses within the UK. Most breaches of duty and specific safety obligations under UK law will amount to a criminal offence, punishable by a fine imposed in the criminal courts. In the event of gross breaches of duty, in addition to health and safety offences there is the risk of liability under the law of manslaughter. As a result of new sentencing guidelines in England and Wales (the Health and Safety Offences, Corporate Manslaughter Definitive Guideline, effective from 1 February 2016), the size of fines imposed for safety breaches has increased significantly over the past few years.

Financial 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)?

Some mainline passenger franchise operators receive subsidy payments under their franchise agreements, although franchisees of more profitable mainline routes pay a premium. Most franchise agreements for the mainline network contain revenue risk-sharing mechanisms. Franchise operators are also indirectly subsidised by the support provided to Network Rail.

Open access operators receive no subsidy other than indirectly by means of their track access rights, given that Network Rail receives government support and open access operators do not pay fixed charges (see question 21).

Under section 54 of the RA93, the franchising authorities are empowered to exercise their franchising functions with a view to encouraging railway investments, and may enter into agreements undertaking to do so. In practice, section 54 undertakings have frequently been given to a financier of a given railway asset that, for a given period, the franchising authority will procure a replacement lessee of the asset concerned if the existing lease ends during that period.

Under section 6 of the Railways Act 2005, the government may agree to provide financial assistance for the purpose of securing the provision, improvement or development of railway services or assets, or for any other purpose relating to a railway or railway services.

The government provides grant support to Network Rail, owner of the national rail network. It also provides a debt facility in the sum of £30 billion pursuant to powers under section 6 of the Railways Act 2005 and a facility agreement of July 2014.

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?

As mentioned in question 4, there is a periodic review process under which the ORR reviews and fixes Network Rail's track access charges, and which is informed by and helps set the level of government support available to Network Rail. This process is guided by the Railways Act 2005. There are also rules regarding financial management set out in a 2014 framework agreement between Network Rail and the Secretary of State for Transport.

Subsidy levels provided under franchise agreements are in effect set by the competitive process to award the franchise.

There is no formal process for requesting or awarding section 54 undertakings or assistance under the Railways Act 2005. Having said that, the availability of a section 54 undertaking is sometimes expressly stated in a franchise competition invitation to tender.

Government financial support is subject to the EU state aid rules. Specific guidance exists for the rail sector.

Labour regulation

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?

Rail transport workers are not subject to specialised employment laws in the UK. However, much of the industry is unionised, therefore collective agreements often supplement employees' individual terms of employment, and unions campaign for their members' rights. Strike action is also prevalent in certain parts of the sector. Given the safety-critical nature of some work, working time and health and safety matters are highly regulated, and alcohol and drug control is closely monitored. Long service in the industry is common, often leading to generous employee benefits under legacy schemes. The outsourcing of services or transfer of assets to third parties are both common events in the sector. This can often lead to the transfer of employees' employment, who are connected to the services or assets, to the third party. In this situation, the employees' employment and terms and conditions are preserved.

Environmental regulation

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

In the UK, the rail transport sector does not have its own specific set of environmental laws; however, rail transport companies must comply with standard environment laws and regulations like all others. Areas of environmental law most relevant to the railway sector include waste management legislation, environmental permitting, the remediation of contaminated land, the conservation of species and habitats, and the carriage of hazardous and dangerous cargo.

The primary regulators of environmental laws are the Environment Agency and the local authorities. However, the ORR also has a statutory duty under the RA93 to contribute to the achievement of sustainable development and to have regard to the effect on the environment of activities connected with the provision of railway services. The ORR also has an obligation under the Natural Environment and Rural Committees Act 2006 to have regard for the purpose of conserving biodiversity.

The ORR complies with its statutory duty with respect to the environment principally through its licensing role. All operators are required to produce an environmental policy within six months of their licence coming into effect, and the ORR environmental guidance must be taken into account when the operator prepares its policy.

In addition to obligations imposed by the ORR, rail transport companies must operate in accordance with all other environmental legislation, including the Environmental Protection Act 1990, the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011 and the Environmental Permitting (England and Wales) Regulations 2016.

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General

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 or switching agreements whereby another railway agrees to provide switching access to a customer facility. 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. (See question 19.)

Freight railways are categorised as Class I, Class II or Class III based on their annual operating revenue. Railways with over US$463 million in annual revenue are Class I railways that are subject to more rigorous regulation and reporting requirements. The seven Class I railways are BNSF Railway Co; CSX Transportation, Inc; Grand Trunk Corporation (the US affiliate of Canadian National Railway); Kansas City Southern Railway Co; Norfolk Southern Railway Co; Soo Line Corporation (the US affiliate of Canadian Pacific Railway); and Union Pacific Railroad Company. In addition, there are over 550 Class II and Class III railways in the United States, which include regional railways, switching and terminal railways, and short-line railways.

Passenger rail is largely government owned or supported. The largest passenger system is the National Railway 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 on the 'Northeast Corridor' between Washington, DC, and Boston. Outside 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 in Florida recently began operations between West Palm Beach and Miami, and plans to extend service north to Orlando. Other private intercity passenger systems have been proposed in various states, and construction has begun on a state-supported high-speed rail system in 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.

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, most of whom purchased them from private railways in order to preserve rail service. In the passenger sphere, the federal government owns Amtrak, and state and local governments often own or financially subsidise commuter railways.

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. As discussed in question 1, many rail lines host operations by both freight railways and passenger or commuter railways.

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 and regulations promulgated by the STB govern these issues. The Interstate Commerce Act dates back to 1887, and it 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 (which partially deregulated the rail industry) and the ICC Termination Act (which further deregulated the industry and transferred the ICC's remaining functions to the STB).

The 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 (FRSA) and safety regulations promulgated by the FRA. Other disparate laws affect rail safety, such as the Safety Appliances Act, Hours of Service Act and Rail Safety Improvement Act.

Commuter railways are outside the jurisdiction of the STB. They are regulated on the safety side by the FRA and in other areas by the Federal Transit Administration.

Amtrak was originally established by the Rail Passenger Service Act. 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.

Market entry

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 STB is required to enter the market as a rail transport provider, whether by constructing a new line or by acquiring existing rail lines. The STB has authority to grant approval upon 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 the national transportation policy, and either the transaction or service is of limited scope or regulation is not needed to protect shippers from the abuse of market power. The STB can grant petitions for exemption in individual cases, and it has also established 'class exemptions' that allow parties to forgo the application process for certain types of transactions.

The type of regulatory process that is required varies based on the type of transaction and the identity of the new entrant (and particularly

on whether or not it already controls a railway). See question 6 for the process required to acquire an existing rail carrier or line of railway, and see question 7 for the process required to construct a new line of railway.

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 differs for acquisitions by a non-carrier and acquisitions by an existing rail carrier. A non-carrier (ie, an entity that does not own and is not affiliated with any rail carrier) may acquire control of an existing carrier through a stock purchase without approval or exemption by the STB. 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. 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 of time (usually 30 days) before consummating a proposed acquisition. If the reviewing agency believes that a proposed transaction may violate the antitrust laws, it may seek an injunction in federal court to prohibit consummation of the transaction.

A non-carrier acquiring control of an existing carrier through an asset purchase can obtain STB authorisation through a class exemption. Under these streamlined procedures, non-carriers may file a verified notice providing specified details about the transaction. 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. If the projected annual revenue of the rail lines to be acquired or operated, together with the acquirer's projected annual revenue, exceeds US$5 million, the applicant must post a notice of the proposed transaction at least 60 days in advance.

Transactions involving combinations of two or more rail carriers are subject to more stringent regulatory review. The STB classifies proposed transactions involving more than one rail carrier as major, significant, minor or exempt. 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 that 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 the national rail transportation policy, and thus has adopted a class exemption (eg, the acquisition of non-connecting carriers and trackage rights agreements). 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 must submit a pre-filing notification describing the proposed transaction for publication in the Federal Register. The STB's rules prescribe the information to be included in the notice and the application, which differs based on the type of transaction. The STB also will establish a procedural schedule allowing interested parties to comment and to 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 to be 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 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'. A 2001 STB policy statement on major transactions indicates 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 completed since the STB issued its 2001 policy statement.

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 notice must specify which class exemption applies to the transaction, certify whether or not 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 required to include labour protections for workers affected by the transaction, and they also may contain environmental mitigation or measures to preserve competitive options.

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 major merger 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 may also review a transaction that would result in a foreign entity controlling a US railway.

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

Construction of new rail lines that extend a railway into new territory require 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 needed 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 submit an application to the STB, including the information specified by the agency's rules (49 Code of Federal Regulations (CFR) Part 1150), or submit an individual petition for exemption. Under either approach, parties must comply with the STB's energy and 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 typically will require an environmental impact statement.

Market exit

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'.

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. Abandonment is generally accomplished through a class exemption that permits abandonment of any line that has been out of service for two years or more. Abandonment can also be sought through a petition for exemption.

After an abandonment application 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 one or more financially responsible persons have offered financial assistance for the operation of the rail line at issue, the abandonment or discontinuance shall be postponed until the parties have reached agreement on a transaction for subsidy or sale of the line, or 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). While the STB may impose a condition that the property be offered for sale for public purposes over a railway's objection, it cannot force such a sale, and such a 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.

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.

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, thus preventing an orderly liquidation.

Competition law

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 multi-carrier 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 the antitrust laws.

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.

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

The STB's principal concerns in such cases are the preservation of competitive rail service where it exists and the enhancement of rail competition wherever possible. 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. The STB usually requires that competitive rail service by at least two rail carriers be maintained wherever it existed before a merger or control transaction.

Price regulation

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

The STB regulates some prices for freight transport, but it does not have jurisdiction to regulate (i) rates that are agreed to in rail transport contracts; (ii) rates for transportation that is subject to 'effective competition' from another railway or mode of transportation; and (iii) 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 Rail Costing System. In addition, the STB has granted commodity exemptions that preclude rate or other regulation of various commodities 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 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 (see question 17).

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 that is within its jurisdiction, but it has never done so and has no rules governing such determinations. Amtrak is exempt from STB jurisdiction 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.

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 (see question 15), 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 stand-alone 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 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 the future. The STB has several active proceedings in which it is considering potential changes to its rate methodologies.

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.

Network access

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

In general, entities controlling rail infrastructure are not required to grant network access to other rail providers. One important exception is for Amtrak: freight railways are required to grant Amtrak access to their network at Amtrak's request. The STB has authority to impose various forms of network access upon complaint, but under the STB's current rules such relief is only granted if the agency finds an abuse of market power or a service failure. The STB also sometimes imposes network access as a condition to a transaction in order to mitigate a loss of competition that might otherwise result from a merger.

While in most instances railways are not required to give other railways network access, they 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, to accept traffic from other railways where necessary to complete rail service, to provide reasonable facilities for interchanging traffic with other railways, and to establish reasonable through routes with other railways.

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. 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.

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.

Service standards

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.

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

Freight railways do not have specific service standards required by law or regulation, but they 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 STB requires Class I railways to regularly report on various service metrics.

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 (see 49 USC section 11123). These emergency service orders may be in place for a maximum of 270 days. This emergency authority has rarely been used.

Safety regulation

25 How is rail safety regulated?

Freight, passenger and commuter rail are all subject to federal regulation, primarily by the FRA.

The FRA also uses broader authority granted by the 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 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 (49 USC section 20104).

Some relevant statutory provisions and FRA regulations specifically reference and incorporate standards set by the Association of American Railways (AAR) – an industry association – as a minimum or safe harbour for compliance with the FRA's regulations.

Update and trends

Positive train control (PTC) technology is intended to limit accidents caused by human error by monitoring all trains on the PTC network and automatically stopping trains that are exceeding speed restrictions, that are travelling on the wrong track or that otherwise are outside appropriate parameters. Railways are required by statute to install PTC on all lines that carry passenger traffic or that transport certain volumes of toxic-by-inhalation chemicals.

Current law requires railways to begin operating under PTC by 31 December 2018, unless the FRA grants an extension of that deadline (which may be no more than two years). To receive an extension, railways are required to apply to the FRA and demonstrate substantial progress in installing PTC. It is expected that most railways will need to request this extension.

Broadly speaking, if the FRA has issued regulations on a rail safety issue, the 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.

26 What body has responsibility for regulating rail safety?

The FRA. In addition, 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 after investigations (see question 30).

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.

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 CFR Parts 213, 232, 233 and 237) address the maintenance of track, signal systems and other rail infrastructure.

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.

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. 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 train accidents. 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 they may be implemented by other regulatory agencies.

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). The US$200 million 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.

Financial 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. In addition, the Department of Transport administers the Railway Rehabilitation and Improvement Financing programme, through which low-interest, long-term loans can be obtained to finance freight or passenger projects.

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.

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. As noted in question 32, most passenger and commuter railways receive some form of public subsidy.

Labour regulation

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.

Environmental regulation

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 FRA and STB 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.

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Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
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