



ANNUAL REPORT **2012**



I - THE AUTHORITY'S MISSIONS AND OPERATIONS 05

II - THE DEVELOPMENT OF TRAFFIC AND COMPETITION 19

III - NETWORK ACCESS 27

IV - PRICING OF MINIMUM SERVICES 38

> V - PASSENGER STATIONS 42

VI - OTHER SERVICE INFRASTRUCTURES 53

APPENDICES58Glossary59Main Opinions and Decisions62

63

Main Rail Texts

Article L2131-2 of the Transport Code

ARAF, the french railway regulatory body, compiles an annual activity report on the application of the provisions regarding access to the rail network and its use, based on claims and observations of network access. This report provides the results of the investigations the Authority has carried out and evaluates the effects of its decisions on the conditions of access to the rail network and its conditions of use. It comprises all the useful recommendations. It is addressed to the Government and the Parliament and is published.

Editorial



Member of the Parliament for Yvelines from 1993 to 2010, Mayor of Chanteloup-les-Vignes from 1983 to 2009, General Councillor and Vice-President of the Yvelines General Council from 1988 to 1994 and President of the 2 Rives de Seine Community until December 2012, Pierre CARDO was appointed president of the ARAF by the decree of the President of the Republic of 20 July 2010.



The year 2012 has been marked for the Authority by the loss of Claude MARTINAND

who played a key role in our work, both at my side and within the board. I pay tribute to the man and his intellectual qualities – he will be irreplaceable. This annual report is dedicated to his memory. resenting a year's worth of work in one document is always an exercise in reduction. As I flip through it, I see the progress of our doctrine since our first opinions and decisions, and the path still to be travelled in order for us to be able to contribute to the greater efficiency of the rail system.

During 2012, which was rich in news, the Authority will have appeared before parliamentary missions, the Economic, Social and Environmental Council, deputies and senators, European parliamentarians, the European Commission and the French Regions Association. All these meetings gave us the opportunity to clarify our missions, present our work and contribute our expertise to the evolution of the rail system.

I take this opportunity to highlight and acknowledge the work carried out with our European counterparts regarding the recast of the 1st railway package, the implementation of European freight corridors and the pricing for rail infrastructures, in particular.

In addition to this permanent contact, we wanted to share our work, our questions and our thoughts with the whole rail sector by launching public consultations which, I am very happy to say, attracted a high level of response. I thank all those who were willing to take part and have contributed to improving our knowledge of the problems with which we are faced.

The announcement of a rail reform by Frédéric CUVILLIER, our Transport, Seas and Fisheries Minister and the expected communication of a 4th railway package by the European Commission were the points that marked 2012, as did the publication in mid December of the Single European Railway Area directive (recast of the 1st railway package).

The missions entrusted to Mr Jean-Louis BIANCO and Mr Jacques AUXIETTE by the Transport Minister last autumn, will, without any doubt, be an essential contribution to the preparation of the draft law that the government would like to submit to Parliament.

The Authority has shared its thoughts and proposals with this mission, both on the envisaged development of railway organisation and on the role of rail regulation in this context, strengthened by the independence granted to it by the legislator and the expertise it has acquired since it was founded.

I hope that on reading this report, each reader may appreciate the nature of our work and the quality of the Authority's expertise and that it will facilitate the understanding of the route we are pursuing in order to develop the railways.

> **Pierre CARDO** President of the ARAF

Interview **66** with the President

I want an Authority that listens to its stakeholders



an you tell us why rail regulation exists?

Rail transport is an element of the free circulation of people and goods. Europe has been committed to a common transport policy since 1991, and the rail part of this has been considered central right from the start. Rail transport has been gradually opening up to competition since 2003, starting with rail freight and then international passenger transport. It is to ensure the fairness of this new-born competition that the ARAF was created by law

in December 2009. The Authority is, however, also here to contribute to the efficient management of rail infrastructures for everyone's benefit, i.e. railway undertakings, organising authorities, clients and users. As part of this, it regulates the activity of the French infrastructure manager RFF (Réseau Ferré de France) via a set of incentives to better manage costs and provide better performance. Let's not forget that the rail system calls on significant public contributions and that it is in competition with other modes of transport.

What conclusions do you draw from the past two and a half years?

Since it was founded, the board has been listening to the views of the rail sector in order to understand the issues that concern it. It had to produce its first opinions only a few weeks after its creation. Everything had to be done from scratch; we were able to draw inspiration from the experience of our European counterparts, the other sector-based French authorities and the Competition Authority. We have already settled a number of disputes and issued various opinions on the regulatory texts that have been submitted to us. I believe that we have been able to provide proof of our expertise, independence and fairness through these actions. I can see the size of the task ahead of us; we need to collect much more data and continue our analyses, both legal and economic, in order to perfect our knowledge of the sector and act with all the objectivity required.

You have issued a number of public consultations. Is your internal expertise not sufficient?

We should not make our decisions alone, locked away in an ivory tower. I want an Authority that listens to its stakeholders in the rail sector. Public consultations allow them to bring their perspective on technical subjects. They have been very favourably received and I congratulate myself on that. This is the sign of strong sector expectations. We have closely examined all the contributions and our decisions show that we have taken them into consideration. Being ready to listen and being independent are not mutually exclusive.

What do you think of the economic situation of our rail system?

Obviously, we cannot but be concerned by the soaring debt of the infrastructure manager at a time when demands, particularly for network renewal, are still present. On the other hand, the economic crisis currently experienced by our companies does not allow us to increase rail charges by much. We therefore have to look at other possibilities, i.e. increase capital productivity by enabling better use of the network, which means we have to find a way out of the train path crisis in particular. Better management of the upkeep and renewal costs for the network is needed.

Does the condition of the rail network concern you?

In its report on the 2012 network reference document, the Authority expressed its concerns regarding the condition of the network, the piecemeal scheduling of the maintenance works and the shortcomings of the capacity allocation processes. This adversely affects train path reliability and has an adverse knock-on effect, on freight in particular. The significant network renewal work that has been carried out over the last five years must be continued and even stepped up in order for a satisfactory condition to be reached. The Audit Office report that came out in July 2012 is very enlightening on this subject. On the other hand, however, we observe saturation of the network, which does not seem to be able to support more works without having too great an effect on train operation. The balance will be hard to find.

What do you think of the rail freight situation in France?

The rail freight share has been declining for decades. For many, the reduction in traffic over the last ten years is a sign of the failure of the opening up to competition. I contest this view.

What is more, in 2011, rail freight regained market share whilst the new entrants saw their position strengthened. In 2012, rail freight was affected by the economic crisis, but it maintained its market share, for the most part. Let us not forget, either, that the train paths are not always reliable and that this dissuades transporters from choosing rail transport. There is, to say the very least, some margin for manoeuvre for offering a higher quality service.

Even though we like to highlight their differences, the example of other European countries is there to show us that the situation is not irreversible. We can reverse this trend by encouraging local initiatives and local rail operators. Commercial links are to be made and ways found of working together with the railway undertakings who have the know-how on long distance transport.

Do you have any suggestions for the scheduled rail reform?

First of all, I remind you that any legislative reform is the responsibility of the Government and the Parliament. Frédéric CUVILLIER's announcement of a reform on 30 October last year definitely caught our attention. The Transport Minister's appointment of Mr AUXIETTE and Mr BIANCO and the hearings to which they have invited us have enabled us to present our observations and our suggestions for better rail efficiency.

What, if any, reinforcement do you think is needed to strengthen the role of the regulator, with a view to rail reform?

First and foremost, the reform needs to provide a framework which is conducive to regulation. We must be firm in our demands on the separation of the essential infrastructure manager functions. Our experience of the accounting separation rules for SNCF activities has cast doubt on the integrity of the «Great Walls of China» We must also ensure that situations of lack of balance in information do not develop further. There is no point in improving the regulator's vision if a brick wall is in the way! It is therefore crucial that the strengthening of the regulator's role is not used as a pretext for a governance which does nothing to allay the stakeholders' suspicions. Rail reform is, however, above all an opportunity to introduce a multiple-year regulation model which encourages better cost management and better performance. This is indispensable if we want to check the financial excesses of the system. The Authority is ready to play its role in this field, as in others. This is the aim of our proposals.

Are your European counterparts experiencing similar problems?

We have points in common as regards European legislation and the development of the 4th railway package, or, for example, with respect to European transport policy for freight corridors and cabotage for passenger transport. Although the rail networks are different sizes and have different governance, we do experience common problems, such as, for example, the pricing for infrastructures or the link between network management and the rail transport operators.

We are often in contact with our European counterparts, whether this is within the context of the exchange group founded by the European Commission or within IRG-Rail.

What are your next jobs?

I would like to tell you about some of the work we have just completed first. In addition to giving our opinion on the 2014 network reference and pricing document, we gave our opinion on the conditions under which a railway undertaking is able to provide domestic services, known as cabotage, during an international passenger transport service. We are going to continue our work on the accounting separation of SNCF activities, the full cost of the rail network, the model for infrastructure pricing and the cost model for high speed trains, etc.

Regarding disputes, the Board will also adjudicate on several disputes and on the shortcomings noted during sanction procedures regarding access to service infrastructures. Having organised our first economic seminar in May, we will host all our European counterparts next July along with the European Commission for two days of discussions. And we should not forget our continued work with IRG-RAIL on freight corridors, pricing and the 4th railway package, in particular. So, as you can see, 2013 is going to be another busy year for the Authority.

Key points of the 2012 Rail Year

22 JANUARY

Decree No. 2012-70 on passenger stations and other service infrastructures on the rail network was published in the Official Journal.

13 MARCH

The 1st annual report of the ARAF was presented.

28 APRIL

NTV launched the first private European high-speed trains in Italy.

7 JUNE

The ARAF opened a public consultation on the WACC (capital payment rates) in passenger stations.

JULY

The ARAF opened a public consultation on the supply of traction power on the national rail network.

30 JULY

The ARAF opened a public consultation on the supply of traction power on the national rail network.

12 OCTOBER

The ARAF opened a public consultation on the conditions for providing domestic services as part of international passenger services (cabotage).

30 OCTOBER

Frédéric Cuvillier, Transport Minister, presented his proposals for a reform of the rail system.

6 DECEMBER

The Paris Court of Appeal rejected NOVATRANS' appeal against ARAF's decision regarding a dispute between Novatrans and RFF and Combiwest.

19 DECEMBER

Jacques RAPOPORT has replaced Hubert du Mesnil as president of RFF.

25 JANUARY

The ARAF issued its opinion on the national rail network document for the 2013 timetable.

17 APRIL

The ARAF opened a public consultation on framework agreements.

MAY

Frédéric Cuvillier, Deputy Mayor of Boulognesur-Mer, was appointed minister in charge of transport, seas and fishing to the Minister for Ecology, Sustainable Development and Energy.

JULY

The Audit Office report regarding the upkeep of the national rail network was published.

JULY

The ARAF approved a communication on the expected SNCF accounting separation rules for passenger station management activity.

OCTOBER

The ARAF issued three opinions on draft infrastructure capacity framework agreements between Réseau ferré de France and T3M, EUROPORTE France and the SNCF, respectively.

17&18 OCTOBER

IRG RAIL held its general meeting in Luxembourg.

7 NOVEMBER

The ARAF approved the Gares & Connexions accounting separation rules.

14 DECEMBER

Directive 2012/34/EU on the Single European Railway Area (recast) was published.

18 DECEMBER

The decision of the ADLC on practices operated in the rail freight transport sector.

The Authority's **Missions** and **Operations**



1/ Its tasks and powers

The ARAF is an independent public authority created by Law No. 2009-1503 of 8 December 2009 in order to «work towards correct operation of the public rail transport service and competitive rail transport activities to the benefit of the users and clients of the rail transport services».

It must ensure in particular that the different railway undertakings have fair and non-discriminatory access to the rail network and railway undertakings.

The ARAF acts in the name of the State, under court and Parliamentary supervision.

The ARAF carries out a general mission to observe the access conditions to the rail network and ensure the coherency of the economic, contractual and technical provisions implemented by the infrastructure managers and the railway undertakings with their own constraints. It may, after carrying out the appropriate consultations, make any recommendation regarding the operation of the sector that pertains either to the government or to those involved in the sector.

The ARAF issues opinions on the provisions that govern the operation of the rail sector. These opinions cover the following, in particular:

• The draft regulatory texts regarding access to the rail network, the design, realisation and use of the infrastructures and the rail transport equipment;

• The Network Reference Documents (DRR), which gather together all the «rules of the game», whether economic, technical or administrative, for access to the different networks;

• The infrastructure charges (tolls) to be paid by the railway undertakings in return for use of the rail network; these charges may only come into force after the ARAF has issued the opinion «compliant» as regards the principles and pricing rules as stated by the legislation;

• The appointment or early departure of the Director of Traffic and Train Management Service, who currently fulfils this role on behalf of the RFF within the SNCF.





The ARAF is responsible for settling any disputes which may arise during the exercise of the right of access to the network and the associated services, between the railway undertakings and the infrastructure managers, in particular.

The ARAF must also issue an opinion on any decisions of the Public Rail Safety Establishment that are regarded as discriminatory by the stakeholders.

It ensures the mainly international character of a passenger rail service implemented between France and other European countries within the framework of the opening up to competition, allowed since December 2009, on the request of the competent Authority or the companies concerned.

It will also issue an opinion on the existence of a possible violation of the economic balance of a public service contract, resulting from cabotage operations carried out during an international passenger transport service.

In order to allow it to fully carry out its missions, the ARAF has significant powers granted by law:

• The power to conduct extensive investigations, regarding access to accounts, in particular; to this end the Authority's sworn agents may collect information, carry out inquiries, inspections and seizures and provide official reports of violations that come within the scope of the Authority;

• A backup regulatory power enabling the following to be specified: provisions that govern rail network connection conditions, the technical and administrative conditions for network access and use, the conditions of access to the essential services and their conditions of use, the perimeters of each of the activities that have been separated for accounting purposes within the historical operator, the accounting rules applied and the principles that determine the financial relationships between these activities;

• Powers to impose sanctions for any shortcomings observed either by referral or on its own initiative: it may issue fines of up to 5% of the turnover of the offender and restrict access to the infrastructure.

DISPUTE SETTLEMENT: HOW CAN I APPROACH THE AUTHORITY?

The Authority's registry office, which is part of the Legal Directorate, is available to any party who wishes to call on the ARAF for dispute settlement, in order to obtain the information required for the procedure to go smoothly.

Who can call on the ARAF?

Anybody who is authorised to request rail infrastructure capacity or any infrastructure manager may call on the ARAF if they consider themselves to have been the subject of unfair treatment, discrimination or any other prejudice associated with access to the rail network.

What type of dispute?

The dispute must pertain to access to the national rail network or rail lines open to public traffic that are connected to it, including port access lines and lines to terminals that serve or could serve more than one end user.

The Transport Code gives a non-exhaustive list of eight subjects to which the dispute may relate, with it being stipulated that any litigation pertaining to network access comes under the responsibility of the Authority:

- The content of the network reference document;
- The rail infrastructure capacity distribution procedure and associated decisions;
- The specific conditions applied and the charges to be paid in application of the rail pricing;
- The exercise of the right to access the network;
- The rail safety monitoring carried out;

• The supply of the minimum, additional or connected services associated with the infrastructure and the access to the services infrastructure, including stations;

• The implementation of framework agreements and contracts for use of the infrastructure;

• The creation of internal passenger transport services carried out during an international passenger transport service (cabotage).

What is the legal form?

Legal representation is not compulsory before the ARAF and the procedure is free, so that referral is accessible to any company.

The Authority's internal regulations (viewable on the site) which set out the different steps of the procedure stipulate that the referral shall be made in French and sent to the Authority's head office in as many copies as there are parties plus three, either by registered letter or by filing with receipt.

The referral describes the facts at the root of the dispute, the means called into play and the specific content of the claims.

The Procedure for Dispute Settlement by the Authority

The dispute settlement procedure follows very strict procedural rules set in part by the law and in part by precedent applicable to the different sector-based Authorities. The aim is to guarantee the parties «fair hearing», by respecting the «adversarial» principle, in particular. Adherence to this principle is monitored by the Paris Court of Appeal which could set aside a decision of the Authority should it be based on elements that were not submitted to the adversarial process.

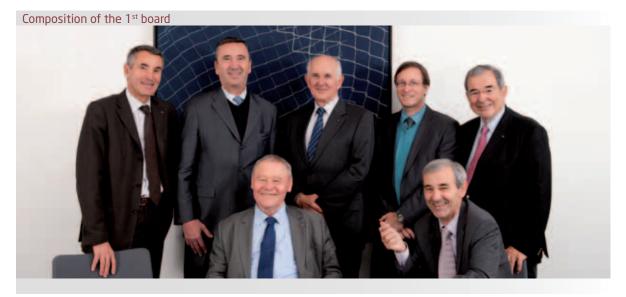
The Registry office can be contacted on 02 43 20 64 65 and by email at greffe@regulation-ferroviaire.fr

2/ The board and its Activities

The board is the decision-making body of the ARAF. It defines the main orientations of the Authority. It adopts its decisions and its opinions on a majority of the members present, subject to the actual presence of at least four members of the board. In the event of a tie, the president holds the deciding vote.

The board comprises seven members, including its president, who have been chosen for their skills in the rail, economic or legal fields or for their expertise in competition.

Four members of the board, including the president, are appointed by the government. The three other members are appointed by the President of the National Assembly, the President of the Senate and the President of the Economic, Social and Environmental Council, respectively.



Seated, from left to right: Claude MARTINAND, Pierre CARDO. Standing, from left to right: Henri LAMOTTE, Jacques BERNOT, Jean PUECH, Dominique BUREAU, Daniel TARDY.



Pierre CARDO, president, whose mandate expires in July 2016;



Jacques BERNOT, appointed by the President of the Senate, whose mandate has expired;





Henri LAMOTTE, appointed by the Government, whose mandate expires in July 2014;



Claude MARTINAND, appointed by the Government, who passed away in June 2012;



Jean PUECH, appointed by the Government, whose mandate has expired;



Daniel TARDY, appointed by the President of the Economic, Social and Environmental Council, whose mandate expires in July 2016.

In order to guarantee their independence, the members of the board cannot be removed. Their mandates are for six years and cannot be renewed. They cannot have any interest in a company in the rail transport sector, either directly or indirectly, nor deliberate in an affair in which they have or have had an interest during the three years prior to the deliberation. A third of the board is renewed every two years. In order to allow for this arrangement, the president was appointed for six years on the creation of the ARAF and the length of the mandate of the other members was set at two, four or six years by the drawing of lots.



Seated, from left to right: Anne BOLLIET, Pierre CARDO. Standing, from left to right: Michel SAVY, Jean-François BENARD, Dominique BUREAU, Henri LAMOTTE, Daniel TARDY.

The board was renewed in July 2012 with the appointment of three new members:



Anne BOLLIET,

general finance inspector, appointed by the President of the Senate to replace Jacques BERNOT for a six-year mandate.



Jean-François BENARD,

Honorary Attorney General at the Audit Office, appointed by the Government to replace Claude MARTINAND for four years.



Michel SAVY,

university professor, appointed by the Government to replace Jean PUECH for a six-year mandate.

THE ACTIVITY OF THE BOARD

The board held 35 sessions during 2012.

It carried out 22 hearings from within in the rail sector and adopted 20 opinions and decisions, all unanimously.

It also carried out several site visits.

The board of the Authority thus went to eastern France in May 2012 to a track renewal site using an all-in-one work train. It ended this visit by going to the Lérouville (Meuse) logistical platform where major flat sorting operations are carried out.

THE FOUR PHASES OF AN ALL-IN-ONE TRACK REMOVAL/REPLACEMENT WORKSITE

1. Thinning: the engine lifts up the track and removes the old ballast. The recoverable part is put back under the track, the rest is loaded into wagons at the front of the machine.

2. Installation: the rail ties are removed so as to remove the old track rails. The old sleepers are removed and replaced with concrete sleepers. The new rails are set in place, fixed to the sleepers and welded together.

3. Levelling: the track is re-aligned via a sequence of accurate levelling operations. The ballast is poured out and the track is positioned before the ballast is profiled.

4. De-stressing: the rail is heated to a temperature of between 20 and 32°C. This prepares the rails for the dilation and traction forces to which it will be constantly subjected during temperature variations.



35 sessions

- 20 opinions and decisions
- 22 hearings
- 4 public consultations



The board visited the operations centre of SNCF Voyages in June 2012 for an Income Management presentation given to optimise ticket sales via the detailed management of the capacity offered. This procedure is derived from Yield Management, invented in the United States at the end of the 1970s, at the time when air transport was deregulated.

The board went to the HQ of the Swiss Federal Railways in Bern in September 2012. The main theme of this visit was the Swiss railway organisation, the implementation of phasing and a presentation of «rolling roads», the Swiss version of the rail highway, where the wagons that carry the lorries are fitted with small wheels, enabling them to use the gauge of the existing tunnels.

The visit was continued in Basle with a presentation of the multi-modal platform managed by CFF Cargo SA.

INTERVAL-SERVICE TIMETABLES IN SWISS

Initiated in the 1970s, the regular service timetables of the Swiss rail network was introduced in 1982 and was at a peak on completion of the Rail 2000 project in December 2004. The proposed regular service in Switzerland is the result of a logic that has been very well thought through regarding the planning of timetables/rolling stock/infrastructures.

This achievement is particularly exemplary in the organisation of connecting trains not only between trains in the rail hubs, but, more generally, between trains and other modes of public transport (buses, coaches and boats).

3/ The Authority's Services

The missions devolved to the ARAF mean that recourse must be made to a high level of expertise in the railway field and also in the fields of transport economy and financial and legal audits.

The agents come from various professional worlds (companies, audit offices, design consultancies, universities and other regulators, etc.) and are recruited with a very high level of training and technical expertise.

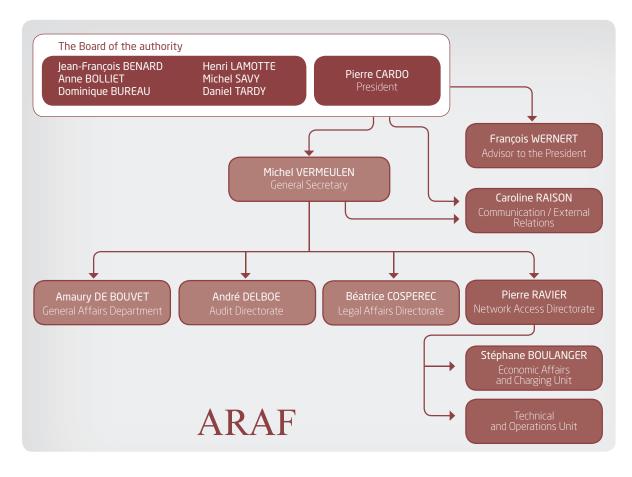
The services of the ARAF have been placed under the responsibility of the General Secretary appointed by the President. They have been structured around three operational directorates:

• The Directorate of Legal Affairs is in charge of all the legal aspects of the Authority's activity. It carries out the dispute regulation and sanction procedures and ensures the legal safety of the decisions of the board, in particular. It also prepares the legislative and regulatory proposals and opinions formulated by the Authority and bears responsibility for the disputed claims.

• The Network Access Directorate is in charge of the economic and technical aspects of the Authority's activities. To this end it regulates company and applicant access to the rail network infrastructures and services.

• The Accounting Audit Directorate is in charge of all the activities that pertain to the separation of the activities' accounts and cost control for regulated services, and services that come within the scope of essential facilities, in particular. It carries out the accounting control of the monopoly operators.

The General Affairs Department manages all the Authority's resources and means. It is in charge of human resource management and accounting and financial management functions, and the information and documentation systems.



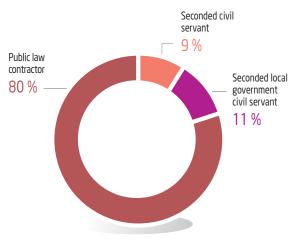
HUMAN AND FINANCIAL RESOURCES

Human Resources

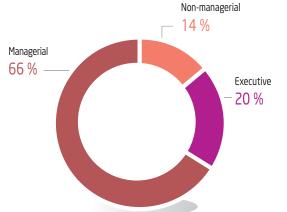
The ARAF may employ judges and seconded civil servants. It may also recruit public law contractors. The Authority had 35 agents on 31 December 2012, excluding the board. It should eventually have 60 or so once it is at full strength.

The average age of the agents was 38 at the end of 2012. 75% of them have been directly allocated to regulation positions and have professions that correspond to the ARAF's own activity (engineers, economists, financiers, legal officers). The support roles (administration, accounting, IT, communications) are covered by 25% of the employees.

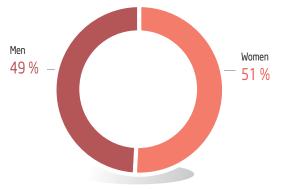
Distribution by type of contract - 2012

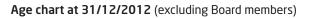


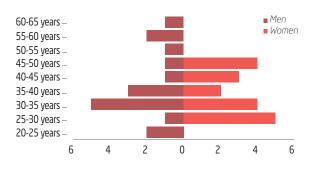
Distribution by socio-professional category - 2012



Job distribution Men/Women (excluding Board members)







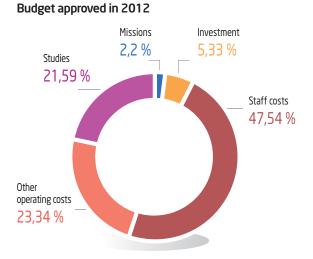
Financial Resources

The ARAF, as an independent public authority, has financial autonomy. It is subject to post-audit control by the Audit Office and Parliament.

Its resources come from a fixed charge payable by railway undertakings which represents 3.7 thousandths of the fees for the use of the national rail network that they pay to RFF.

These charges totalled approximately € 12.3M in 2012.

However, following the legislative provision introduced by the 2012 Finance Law, the ARAF's budget is capped at \in 11M, with the remainder being paid to the State budget.



6 000 000 5 000 000 4 000 000 3 000 000 2 000 000 1 000 000 0 2010 2011 2012

Trends in operating expenditure - 2010 to 2012

Depreciation expenses and provisions

Other day-to-day management costs (Board expenses, etc.)

Staff costs (salaries, social security charges, etc.)

Taxes, levies and similar charges (salary tax, CNFPT, property tax, etc.)
 Other external services (outside staff, public relations, travel costs,

- other external services (outside staff, publi training, cleaning, etc.)
- External services (rents and hire charges, maintenance, insurance, documentation, etc.)
- Purchases and inventory change (purchase of studies, administrative supplies, power, etc.).

The level of the charge allocated (3.7 thousandths) has been calculated with reference to the needs of the Authority for one year of operation.

However, in 2010, the year the Authority was created, it received resources for an entire year of activity, whereas it only really started to work during the last few months of the year. Therefore the progressive increase in the Authority's load has reduced the annual result which still remains mainly positive, with the location of the ARAF at Le Mans slowing the employee recruitment process.

The Authority thus has operating funds which exceed its needs and which could be reduced without causing any inconvenience.

This is why, in order to reduce these funds, the Authority proposed that the Transport and Budget ministers do not collect this charge for one year, exceptionally fixing its rate at 0 thousandths for 2014, in favour of the railway undertakings.

4/ Relations with stakeholders in the railway sector

INSTITUTIONAL RELATIONS

It is essential for the Authority to explain its role and its missions, the work that it is carrying out and the expertise that it has developed to the institutional stakeholders, both French and European.

During the last year, it has been heard by a variety of institutions; the Economic, Social and Environmental Council, regarding the opening up of regional express traffic (TER) to competition and a mission of the National Assembly regarding the rail situation in Île-de-France.

It was received by the Transport Minister, the European Commission and various French and European parliamentarians to discuss the situation of the rail system and the role of regulation.

It also met Jacques AUXIETTE and Jean-Louis BIANCO, within the framework of the mission with which they have been entrusted so as to prepare the rail reform announced by the Government. It has also continued its exchanges with the Competition Authority and its foreign counterparts.

REGULAR CONSULTATION OF RAIL SECTOR STAKEHOLDERS

Since it was founded, the board has wanted to organise regular meetings with all rail sector stakeholders. In 2012 it thus met with eight railway undertakings who operate passenger and freight transport businesses in France and in other European countries. It also heard representatives of users and clients, including the National Federation of Transport User Associations (FNAUT). These meetings provide the opportunity to share information on the economic operating models for rail services and the prospects for development of the rail market given inter-modal competition. They enable the companies' expectations as regards regulation, both legal and economic, to be heard.

In 2012, the Authority also developed a specific discussion method with stakeholders by launching four public consultations on the following subjects: Framework Agreements, Levels of Capital Payment in Passenger Stations, The Provision of Traction Current on the National Rail Network and International Passenger Transport Services Comprising Domestic Services.

Public consultation is a procedure for improving transparency and the efficacy of the regulation by interacting with all those involved in the rail sector. It can be broken down into three phases: • Notification/information: the Authority informs the stakeholders of the subjects that it wishes to debate and sends them a consultation support document (questionnaire, analysis results, draft decision, etc.);

• **Consultation:** within the framework of the public consultations on the conditions for implementing domestic services (cabotage) during international passenger services, the Authority held a working and exchange meeting on 20 November with the interested parties. This meeting brought something new to the traditional public consultations procedure. It highlighted the importance of multilateral exchanges in order to stimulate contributions from the stakeholders and examine the problems together.

The Authority intends to repeat this initiative during future consultations in order to enrich the contributions received.

• **Summary:** the Authority provides the actors with a summary of the contributions received during the public consultation, thus reinforcing the transparency of its decisions and actions. This feedback cannot cover all the information contained in the stakeholder contributions in view of the confidentiality of the data. The publication of the replies of the contributors on the Authority's website may be supplemented with a summary of the opinions.

The public consultations enable the authority to improve the quality of its decisions, capitalise on the expertise and the ideas of those involved, discuss the points of view and identify any unanticipated effects..

By the Commission

Created and hosted by the European Commission, the regulators group aims to enable better coordination between the European regulatory authorities in order to improve the exchange of information on their activities and on the principles which govern their decisions.

This group is open to the authorities of the twenty-five countries of the EU who have railways and to observers, i.e. the Franco-British Governmental Commission responsible for regulating the Channel Tunnel and the Swiss, Croatian, Macedonian and Norwegian regulatory authorities.

The operation of this group has been strengthened in the recast of the 1st railway package.

RECAST OF THE 1st RAILWAY PACKAGE

The 2012/34/EU directive of the European Parliament and Council establishing a single European Railway Area was published on 14 December 2012 and recasts the directives from the 1st railway package. This new European legislation must be transposed to national law by 16 June 2015 at the latest.

For example, it specifies the content of the reference document for the network or the accounting separation obligations. It also introduces changes to the definition of the minimum services or the pricing for the service infrastructures.

The directive reinforces the independence of the rail regulators, regarding physical resources in particular, so that they can carry out their rail contract inspection missions. The ARAF's field of jurisdiction and powers already meet many of the new requirements of Articles 55 and 56.

The IRG-RAIL Association

In parallel with the work carried out within the rail regulators group hosted by the European Commission, in June 2011 the ARAF became a founder member of IRG-RAIL, an association which gathers together 21 European regulation authorities.

The IRG-RAIL aims to strengthen the exchanges between regulators and share best practice in order to ensure reliable and coherent regulation throughout Europe. It also expresses the point of view of the regulators on the main rail problems on a European level.

Ms Anna WALKER, Chair of the ORR (Office of Rail Regulation, the British regulator), has been President since 1 January 2013, replacing Ms Iris Henseler-Unger, Vice-President of the German Federal Regulation Agency. Jacques PROST, President of the IRL (the rail regulation authority of Luxembourg) was elected vice-president.

Five working groups have been created within the IRG-Rail framework in order to discuss the following subjects in detail:

- The implementation of international freight corridors;
- The balance of the public rail transport service agreements impacted by cabotage in international passenger services;
- The development of a common approach for the supervision of rail contracts (statistical indicators);
- The development of common positions on the legislative and regulatory proposals: recast of the first package of European Directives for the rail sector, fourth railway package;

• The development of common approaches for pricing questions, a group proposed and coordinated by the ARAF.

During the Plenary Meeting of 17 and 18 October, the members of IRG-Rail decided to expand the remit of the first group to the development of common positions on network access issues.

The list of IRG-Rail members and all the documents and opinions adopted are available on their website www.irg-rail.eu.

THE WORK OF THE IRG-RAIL WORKING GROUPS

The European Freight Corridors

Within the context of the IRG work, the regulators have examined in depth the freight corridors stemming from European Regulation 913/2010 and, more particularly, those which must be brought into service in November 2013.

These corridors are intended to support cross-border rail freight by offering guarantees for international train paths both at the time that they are constructed and during their operation. The countries and infrastructure managers in question must implement unified management structures for each corridor.

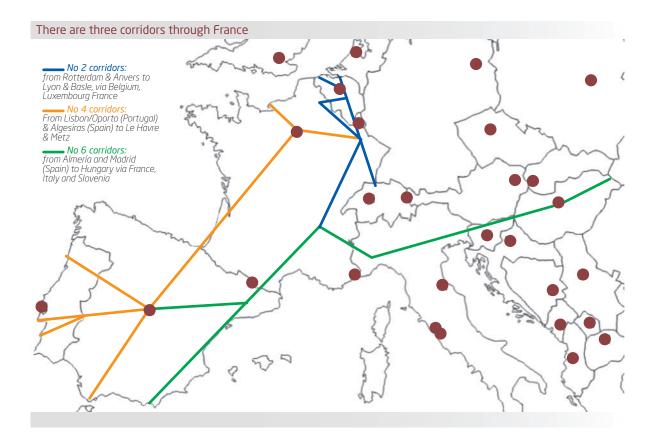
The working group has firstly focused on clarifying their respective skills for the efficient control of a supranational unified "one-stop-shop" for issuing train paths on these corridors.

The balance of the public rail transport service agreements impacted by cabotage on international passenger services

The international passenger services market has been open to competition since 1 January 2010. The railway undertakings may, under certain conditions, carry out services within another Member State as part of this international service - this is the cabotage principle.

IRG-Rail has published its position on this subject in order to do the following:

- Provide a snapshot of current practices;
- Identify and recommend common processes and criteria for the regulators;
- Provide elements for establishing a test on the main objective;
- Establish terms for cooperation between the regulators.



Monitoring of the rail sector via statistical indicators

Since 2010, the members of IRG-Rail have been collecting rail data based on a common list of indicators.

In all, 95 common indicators are used to evaluate the situation of rail markets. The accent has been clearly placed on the degree of opening to competition and the costs of the rail infrastructures.

The data comes from both external sources (railway undertakings or administrations, for example, for transport statistics) and the regulators' own sources.

In addition to the collection of quantitative data, a joint qualitative survey has been carried out among railway undertakings in order to gather information on the cost of access to infrastructures and the acquisition of licenses, for example, which may affect the activity of railway undertakings.

95 common indicators for evaluating the situation of rail markets.

Infrastructure Pricing

ARAF chairs the IRG-Rail charges working group.

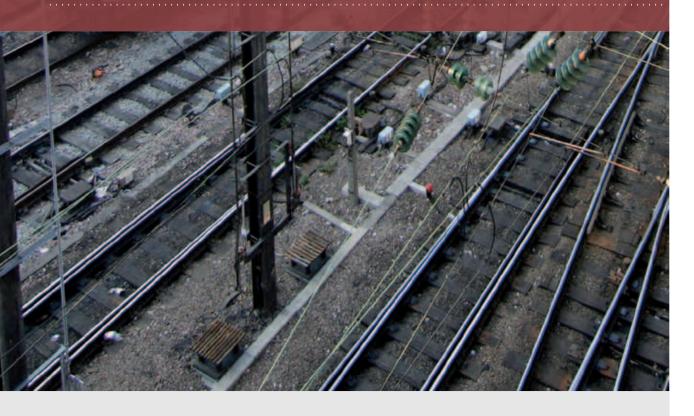
This group aims to exchange information between the regulators and define a common approach on subjects associated with the access charges. This involves, for example, setting charges at the «cost that is directly incurred», as stated in Article 7.3 of Directive 2001/14/EC or the assessment of the ability of the market to bear the mark-ups according to article 8.1 of the same directive.

In 2012, the working group produced its first two documents regarding charges for the minimum access package. The first one presents a common approach to the definition and implementation of charges at the «cost that is directly incurred»; the second proposes a detailed description of charges for the minimum access package in twelve of IRG-Rail members. These two documents were adopted during the IRG-Rail plenary meeting which was held in Luxembourg on 17 and 18 October 2012.

For 2013, the working group has undertaken to come up with a common position on the question of the definition of «direct costs» as stipulated in the 2012/34/EU directive and expand the document describing the national charging methods, integrating specific information on the role and the missions of the regulators with respect to charges.



The development of traffic and competition



1 / The rail freight

GENERAL TRENDS

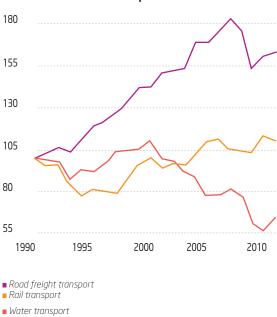
The trend in goods transport is in direct correlation with the French economy. The upturn in 2011 (+ 2.3% all modes other than oil pipelines) was obtained thanks to a dynamic first quarter in 2011, despite a slowing down of traffic in the second half.

2012 can be characterised by a 4.4% (in tkm) reduction in all these modes of transport. This reduction is mainly due to the reduction in national transport.

The continued reduction in rail freight transport since 2000 stopped suddenly in 2011, with a significant upturn in traffic (+14.1% in tkm).

2012 saw a downturn in this traffic (5.9% in tkm) which was slightly higher than the overall trend. Rail freight traffic therefore stands at the level it was at in 2009.

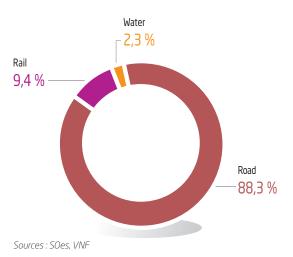
This figure shows the contrast with national traffic, which is down by 13.9%, whereas international trade and transit traffic is up (by + 9.2% and + 39.5% after + 16.6% and + 29.5% in 2011, respectively).



Trends in domestic transport

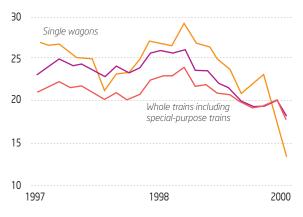
Terrestrial transport shares in 2012

in % of t-km year 2012



Thanks to the increase in traffic, rail freight transport regained its market share last year, with its modal part going from 8.8% in 2010 to 9.5% in 2011. In 2012, rail freight consolidated this gain with its modal share standing at 9.4%.

Freight by type of commercial transport



Domestic rail freight transport

in % of t-km year 2012

	2000	2010	2011	2012	2012/ 2011
Rail	57,7	30,0	34,2	32,2	-5,9
National	29,9	22,6	25,4	21,8	-13,9
International	18,5	5,7	6,6	7,2	9,2
Transit	9,3	1,7	2,2	3,1	39,5

Sources: SOes – survey of rail operators then collection within decree 555/2012



OPENING UP TO COMPETITION

The market share of new entrants has not stopped growing since rail freight was fully opened up to competition in 2006 and now stands at approximately one third of the national rail transport tkm (32% in

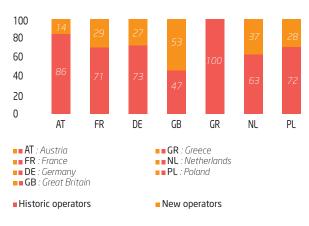
2012) in contrast with 29% in 2011 and 20% in 2010. It is slightly higher for international trade and transit transport than for national transport. In 2012, however, international traffic experienced less growth than the SNCF.

France is thus one of the European countries in which the growth of the market share held by the new entrants is the highest, despite the opening up to competition only dating back to 2006 (this market share has reached a level that is comparable to that found in Germany, which opened its market up to competition twelve years earlier).

Today, 23 railway undertakings hold a safety certificate allowing the transport of goods. Companies other than SNCF Fret with the highest traffic: EuroCargoRail (subsidiary of DB), VFLI (subsidiary of the SNCF group), Europorte (subsidiary of the Eurotunnel Group) and Colas Rail.

The Market Share of Freight Operators in the Different European Countries

Percentage of net tonne kilometres in 2011



2/ the passenger rai

GENERAL TRENDS

Whilst roads remain the clear leader for passenger transport, rail has been experiencing strong growth for fifteen years or so with more than 10% of the modal share.

This growth is both part of the significant development of long-distance high speed transport and the growth of public transport traffic.

In 2012, the growth of national passenger transport slowed (+0.3% after an average of +0.8% in 2010 and 2011). Rail transport revived with growth in 2011 after a drop in 2009 and plateauing in 2010 associated with the economic crisis.

The level in 2012 was slightly positive (+0.1%).

The high speed train traffic in 2012 was stable.

Less sensitive to the economic situation, local transport (TER and Transilien), that holds an important place in daily work and study commuting, has continued to grow and drive the growth of rail passenger transport.

The TER (+ 5.5%) and the Transilien (+1.9%) both grew in 2012.

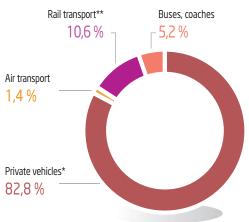
140 120 100 80 1990 1993 1996 1999 2002 2005 2008 2011 Private vehicle Air transport Rail transport

Trends in domestic passenger transport by mode

Bus and coach

Sources : SOes, according to traffic report, SNCF, RATP, TIF, Optile, Annual urban public transport survey (DGITM, Certu, Gart, UTP) UTP, DGAC

Domestic passenger transport by mode

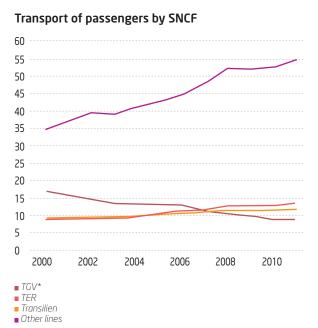


Sources : SOes, according to traffic report, SNCF, RATP, TIF, Optile, Annual urban public transport survey (DGITM, Certu, Gart, UTP) UTP, DGAC

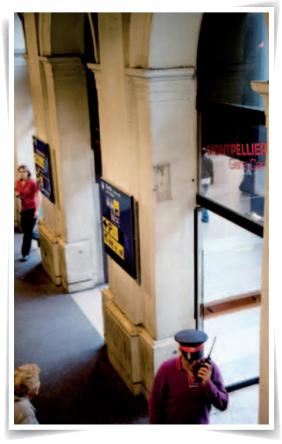
* including vehicles registered abroad and two-wheel motorised vehicles trains, metro, RER

*** routes within the metropolitan area only

II / THE DEVELOPMENT OF TRAFFIC AND COMPETITION

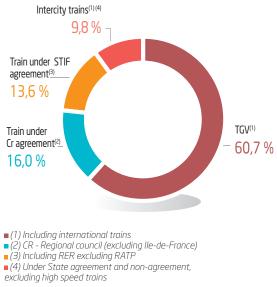


Sources: SNCF, SOes, survey among train operators * including IDTGV from 2006 and including Eurostar (autonomous SNCF company since September 2010)



Distribution of SNCF passenger activity by network type

In % of pass-km, year 2012





Sources: SOes, all rail operators



OPENING UP OF INTERNATIONAL PASSENGER TRANSPORT TO COMPETITION

International rail passenger transport services have been open to competition since December 2009.

International transport of passengers is currently almost exclusively carried out via cooperation or subsidiary agreements between the SNCF and the historical operators from other European countries (Eurostar, Thalys, Alleo, Lyria, etc.).

The opening up to competition of international passenger traffic, however, became a reality in December 2011 with the arrival of the first new entrant (Thello), which offers night trains on the Paris-Venice line. Thello has continued to grow with the launch of Paris-Milan-Rome services in December 2012.

The opportunity for cabotage, i.e. domestic services as part of an international passenger service, is a key factor for enabling the development of these services by new railway undertakings. The regulations allow cabotage on the condition that the main aim of the service remains international transport. What is more, cabotage must not jeopardise public service agreements with which it may be in competition. The Authority is responsible for verifying that these conditions are met and for setting the method and criteria to be used.

To this end, the Authority started a public consultation with all rail sector stakeholders in autumn 2012. This consultation gathered 22 contributions from 8 railway undertakings or their representative associations, an infrastructure manager, 4 regions, 6 European rail regulators, a user association, the Ministry of Transport and the European Commission.

In February 2013, based on the results of this consultation, the Authority defined the procedure and the criteria, both quantitative and qualitative, that it will use to verify the international nature of the passenger service and determine whether the balance of a public service agreement has been compromised.



3/ Condition and Maintenance of the Rail Network

Goods and passenger traffic is developing on a network which is undergoing considerable renewal and development work.

The growth in the renewal work is a direct result of the decisions the Government and RFF made in 2006 following the Rivier audit (2005). This audit highlighted a worrying ageing of the network and the need to invest a considerable amount of money in its renewal.

Two major reports in particular marked 2012:

• An Audit Office report on the maintenance of the national rail network (July 2012);

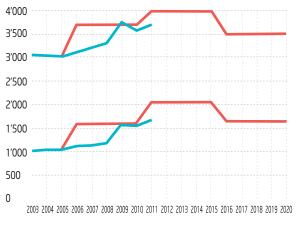
• An update audit for the Rivier report (September 2012).

These reports trace the increase in maintenance and renewal expenses over recent years.

They observe the increase in the budgets for renewal, reflecting a redirection of the network maintenance policy towards increased investment. This work, however, has not focused sufficiently on the conventional lines of the structuring network, which continue to age.

Maintenance Budget / Rivier Audit Scenario Comparison

Maintenance budgets (2003 - 2011) in comparison with the recommendations of the Rivier audit ("optimised" scenario)

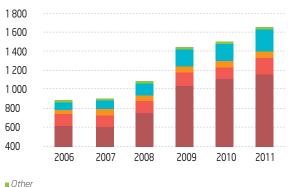


Maintenance carried out

- Renewal carried out
- Maintenance « optimised » scenario audit
 Renewal « optimised » scenario audit

Sourc : Audit EPFL 2012

Renewal expenditure by type of asset 2006-2011





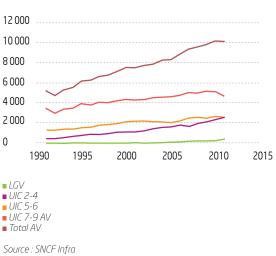
Electric traction

Structures and earthworks

Track

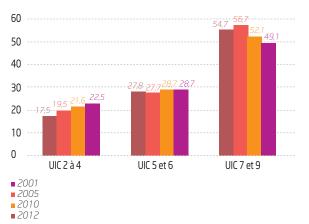
Sourc : SNCF-Infra





Trend in km of outdated track

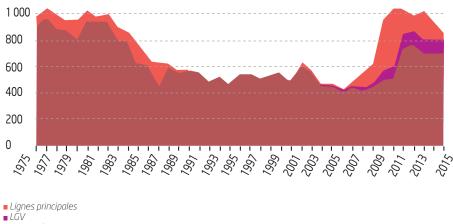
Trend in the average age of the lines by UIC group



The development of traffic and competion



Length of track renewed by line category (km)



Lignes régionales

Source : Assises du ferroviaire

The intensification of this work increases the complexity of train path allocation. In 2012, therefore, RFF and the SNCF, its delegated manager, had to coordinate almost 1200 work sites on top of routine interruptions (windows and set train paths for work to be carried out) resulting in nearly 9 700 individual work paths.

III Network Access



1 Allocation of train paths

The persistence of the difficulties encountered by RFF in allocating quality train paths causes significant organisational problems for freight activities and some passenger offers.

This is an obstacle to the development of competition on the open markets and is a loss of profit for both the rail operators and the infrastructure managers. This situation is the result of external causes, such as renewal work carried out on the network, but also of internal causes inherent in the allocation process (works/operation coordination, outdated systems, etc.).

RESULTS OF TRAIN PATH ALLOCATION

The companies must have a train path in order to use the rail network, i.e. the possibility of moving from one point on a network to another at a given point in time. The orders for the train paths used in 2013 were submitted between December 2011 and April 2012. The regulations oblige RFF to reply to these requests in September.

THE REGULATORY SCHEDULE FOR RFF ALLOCATION OF TRAIN PATHS

The capacity allocation system introduced by RFF is articulated around the following four main phases (Y being the year of travel):

• Y-5 to April Y-2: structuring of the capacity of the graph,

• April Y-2 to December Y-2: pre-construction of the base line of the graph

- December Y-2 to September Y-1: construction of the service timetable,
- September Y-1 to December Y: adaptation of the service timetable

As each year, RFF gave the Authority the information on the replies sent in September 2012.

This information is a good indicator of the difficulties the companies encounter in accessing the network.

In September 2012, the level of processing of train path requests was 99.7% on average, i.e. a substantial increase over the previous service timetable.

A train path request may receive one of three replies: fixed train path allocated, precarious train path allocated, available gap.

The data RFF sends must be viewed with caution as it changed its method for estimating the number of precarious train paths in 2012.



	Number of train path-days requested			Percentage of fixed train path-days allocated			
				2011	2012		2013
	2011	2012	2013	Former method	Former method	New method	New method
Passenger paths	5 252 697	5 364 648	5 368 972	81 %	81 %	89%	90%
Freight paths							
- SNCF freight	718 530	661 579	621 325	70 %	67 %	69%	73%
- Other RU	224 736	211 148	301 268	55%	49 %	48%	57%

Source : RFF sept. 2010 / sept. 2011 / sept. 2012

This extremely partial data does not provide a clear view of the performance of the train path allocation system. Indicators that reflect the quality of the procedure, regarding the removal of uncertainty, for example, and providing useful information for users are needed to monitor actual network access conditions. The Authority considers it a matter of urgency for RFF to introduce such indicators as of 2013, for monitoring its commitments and the efficacy of the capacity allocation process, in consultation with the companies requesting capacity.

A NETWORK IN THE THROES OF MAJOR WORKS

The circulation graph is established in a context that is constrained by the extent of the network renewal and development work, which will continue for a few years yet. It did, however, benefit in 2012 from the generalisation of timetable regular service so as to enable better use of the network and simplify the allocation process.

Aware of the amount of work envisaged on the network and the economic stakes involved, RFF has chosen to introduce an industrial policy aiming to define the desired level of performance for each line and provide a better balance between the needs of maintenance and operating requirements.

This is the aim of the "unavailability windows" that RFF introduced in 2012 on the main lines of the network. Although the Authority supports the principle of this procedure, it will examine its actual impact, in light of the disputes submitted to it. The RFF must continue its efforts to achieve better works scheduling.

The Authority also recommends that strong incentives be introduced, for instance in the contractual relationship between RFF and SNCF Infra, in order to better meet the needs of the railway undertakings.

The Authority considers it crucial that RFF propose a mechanism that reflects the value of the infrastructure capacity downtime resulting from maintenance, in order to make its service providers, and the delegated infrastructure managers in particular, aware of their responsibility as regards both the correct dimensioning of the capacity requirements and the better anticipation of operational modifications.

It therefore asked RFF to include work window and train path usage indicators in the network maintenance agreement, along with the appropriate incentives allowed by Article 11-2 of Decree No. 97-444. These incentives may penalise SNCF-Infra if it does not use the reserved work paths or provide financial bonuses for the early release of work capacity that is no longer needed.

"PRECARIOUS TRAIN PATH" PROCEDURE

Since the constraints on the network do not allow RFF to provide for all the work scheduled at the time the timetable service is established, RFF has introduced a procedure known as "precarious train paths".

In this procedure, a train path request receives a conditional response when the reply to this request is a train path which, for some traffic days, is in conflict with one or several allocated work sites on the national rail network. The train path is called «precarious» for each of the days concerned.

The Authority has stated on several occasions that the "precarious train path" procedure can only be maintained on a temporary basis, and that whilst awaiting its removal the infrastructure should offer companies a minimum of visibility on their train paths.

This is why the network reference document calls for the removal of uncertainties at least two months before freight movements and four months before passenger train movements. The Authority has observed, during several disputes which were referred to it, that RFF did not respect these confirmation deadlines and this is likely to be treated as a violation under the conditions stipulated in Article L. 2135-7 of the Transport Code.



EFFICACY OF THE CAPACITY ALLOCATION PROCESSES TO BE EVALUATED

Since 2008, RFF has modified its processes considerably, particularly owing to the implementation, in December 2011, of a first timetable regular service. The current processes comprise, in particular, a pre-construction phase prior to the service construction phase:

• This phase mobilises all the users in order to facilitate the preparation of train path orders and the schedule compilers' replies to the requests;

• This leads to the production of pre-constructed passenger train path and freight train path catalogues.

The Authority conducted a first audit of the capacity allocation process in 2012. It asked RFF to compile an annual report of these processes so that they may be evaluated.



REFINING RESIDUAL CAPACITY MANAGEMENT

The examination of the results of the allocation of the train paths shows that there are still a significant number of last minute train paths. To date, RFF has not studied the possibility of bringing forward the automatic release of capacity not used for maintenance, for example on D-14 instead of D-7. The Authority considers that this could provide greater room for manoeuvre for meeting the organisational requirements of the railway undertakings.

What is more, the data provided by RFF on the 2012 service indicates that, on average:

• 2.5% of the capacity confirmed by the passenger transporters, i.e. approximately 10 million train path-km are not used;

• 20% of the capacity confirmed by the freight transporters, i.e. approximately 20 million train path-km is not used;

The non-recovery of capacity is an obstacle to the efficient use of the network and could be viewed as discrimination or a barrier to network access.

The Authority has asked RFF to ensure that the train path allocation procedures do not encourage such behaviour. It recommends reinforcing the economic incentives aimed at preventing this, as recommended in Article 36 of Directive 2012/34/EU.

INFORMATION SYSTEM IMPROVEMENT

The improvement of the information systems is viewed as a priority for RFF so that it may:

• **Provide full traceability** of the development of a train path-day for the expression of travel requirements;

• Establish links between the IT applications, allowing the work paths and train paths to be monitored without losing any information and without requiring any manual processing;

• To improve productivity by providing the schedule writers with new design and decision-making tools.

Besides the improvements to several IT applications made in 2012, including those intended to facilitate work paths and train path orders, RFF has indicated that it would like to finalise the deployment strategy for an Industrial Timetable Production System in 2013. The Authority considers that this system must be launched before the 2017 service timetable when high speed lines which are currently under construction will come into operation.



SIGNING OF THE FIRST FRAMEWORK AGREEMENTS

A framework agreement is a multiple-year reciprocal contractual commitment regarding the infrastructure capacity that railway undertaking or the authorised candidate commits to order and that the infrastructure manager commits to provide, for a set period of time that exceeds that of the service timetable. On request of the parties, the Authority may issue an opinion on a draft framework agreement between them, regarding its pricing section in particular.

In order to prepare for the opinions it is called on to give, the Authority launched a public consultation on framework agreements in April 2012. This public consultation enabled 41 contributions to be collected.

These contributions show that the parties to a framework agreement expect the following benefits:

• Those submitting the request for train paths primarily want to secure the capacity associated with the traffic schedules and, by reducing the risks, facilitate investment and the development of traffic;

• The infrastructure manager wants to have advance knowledge of the traffic requirements needed to plan the timetables; this early notification should enable network management to be improved, through better scheduling of maintenance work or investment in modernisation and expansion, for example.

For those involved, the framework agreements nevertheless only provide an isolated response that is not comprehensive enough to solve all the current capacity management problems (quality and precarity of train paths, train path allocation deadlines, timetable stability, modernisation of the information systems, etc.). The public consultation also confirmed the following points:

• The need for contractual flexibility to allow for the diversity of the traffic and market segments, e.g. in terms of time tolerances in the definition of the capacity commitments, contract duration and exit clauses

• The obligation to not obstruct other applicants' access to the capacity by the signing of framework agreements and, to this end, the need, where necessary, to envisage capping the capacity open to multiple-year subcontracting;

• Expected clarification from RFF, in the network reference document, of the method of coordinating requests for train paths that are covered in a framework agreement with the other train path requests;

• **The predictability of pricing,** which, if not present, can hold back the signature of such agreements;

• The request to combine this type of agreement with appropriate contractual incentives.

The Authority issued a favourable opinion in 2012 regarding three proposed framework agreements between RFF on the one hand and Europorte France, SNCF and T3M on the other. Two framework agreements have been signed at the beginning of 2013, between RFF and EUROPORTE on the one hand and between RFF and the SNCF, within the framework of the OUIGO TGV services, on the other.

2/ Train Path-Allocation Disputes Referred to the Authority

The Dispute Referred by Eurocargorail

EurocargoRail (ECR) called on the ARAF for the settlement of a dispute contesting the lack of response from RFF to its train path requests as regards the GEFCO traffic schedules (in partnership with Colas Rail and Europorte for the transport of cars), with Société anonyme des Eaux d'Évian, Kombiverkher and Spain Shuttle.

It also requested that the SNCF, the delegated infrastructure manager, assist RFF in answering its grievances. First of all, the Authority observes significant progress following its decision of January, which introduced protective measures.

In the Authority's opinion:

- ECR's demands regarding the GEFCO traffic schedule are admissible under the right of access to the network.
- RFF and EPSF must study a simplification of the request procedures for the incorporation of an exceptional transport notification.

• The definition of transparent and non-discriminatory terms for consultation between the railway undertakings and the departments responsible for allocating the train paths is under the sole responsibility of RFF as the order giver for the rail circulation directorate (DCF).

In its decision, the Authority ordered RFF to do the following:

• Respond to the train path requests for the GEFCO, KOMBIVERKHER and SPAIN SHUTTLE traffic schedules;

• Record the GEFCO traffic schedule train paths in the computer systems.

It asked RFF to improve the method for the exceptional transport procedure during train path requests and to submit the corresponding proposals to it.

It rejected the other demands of the parties.

The Dispute Submitted by Froidcombi

FROIDCOMBI is a company that specialises in controlledtemperature combined transport for the delivery of fruit and vegetables from Avignon to Paris and Lille, in particular. FROIDCOMBI were informed of the train paths allocated by RFF for 2012 and, considering the conditions for the allocation of its train paths to be unfair and discriminatory, submitted a dispute settlement request to the ARAF on 11 October 2011.

It asked for the following, in particular:

- The priority maintenance of the existing combined contract by allocating firm, quality times to operators based on historical data or justified by call to tender, for example;
- The maintenance of the quality of the train paths throughout the service and coherency with the different contracts in the combined journey;
- The introduction into the DRR and implementation by RFF of a range of coherent service offers for door-to-door transport similar to the platform-to-platform model for passengers, based on contract characteristics (guaranteed minimum average speed, systematic diversion solution in the event of works and timetable tolerance appropriate to the type of traffic, criteria which are currently not present in the train path request procedure);
- That the train path performance for a late train path request, i.e. one not made within the annual process, may not be better than that for the paths that already exist, unless these are improved at the same time;
- The non-respect of these market fundamentals provides the grounds for financial indemnities to compensate for the differences in direct production costs.

In response to these demands, the ARAF considered that no rights, similar to the «grandfather right» for air traffic, existed in the rail sector for priority in keeping a historical train path from one year to another. The infrastructure manager is only obliged to provide a way to solve any conflicts that may arise during the consultation procedure. The ARAF brought up the extremely constrained context in which the traffic graph for the 2012 service timetable was compiled. It asked RFF to offer better visibility to the companies within its "precarious train path" procedure, following the recommendations contained in its opinion on the DRR on this subject.

The ARAF also asked the following:

• That the combined transport site constraints be integrated into the preparation of the freight train path catalogue and the allocation of freight train paths.

• That the RFF provide a better match between the freight train path catalogue and contract requirements and infrastructure manager coordination, following the recommendations contained in the opinion on the DRR on this subject.

The Authority highlighted the fact that FROIDCOMBI did not report having experienced a situation in which a late request would have received a better response than a request placed earlier.

The ARAF finally rejected the introduction of a financial compensation system as the RFF is not in a position to allocate an applicant a train path compatible with its contract, since this type of mechanism is not envisaged by the regulations and the infrastructure manager only has an obligation of means and not of results, with a view to «meeting all capacity requests».

Beyond the facts of the case, the Authority set out the following procedural and legal principles in its Froidcombi decision:

• The referral to ARAF by a person authorised to request infrastructure capacity is possible even when no contract for use of the infrastructure or train path allocation contract has been signed with the infrastructure manager;

• The ARAF is not competent to hear allegations that a railway undertaking has made against the SNCF regarding their contractual relationship which does not come under the regulation of access to the infrastructure;

• The ARAF may request that a party implement a provision that it set out in the «motivated opinion» section of its opinion on the network reference document during settlement of a dispute.

Froidcombi invoked this decision on 9 March 2012, but dropped its appeal before the Paris Court of Appeal issued its ruling and its analysis of these principles.



THE FIRST APPEAL AGAINST ONE OF THE AUTHORITY'S DECISIONS REGARDING ACCESS TO THE NETWORK (NOVATRANS/COMBIWEST-RFF CASE)

Novatrans called on the Authority on 19 April 2011 with a dispute settlement request pertaining to the allocation of a train path to Combiwest for carrying out a combined transport service between Lyon and Rennes, a route on which the two companies were in competition. The dispute also concerned access to a service infrastructure, in this case the combined transport site in Rennes, managed by Combiwest.

On 8 July 2011, the Authority rejected Novatrans' demands, observing that the latter had abandoned its initial request to delete Combiwest's train path and that it had not demonstrated that the train path requests for the two companies in the second half of 2011 had been treated in a discriminatory manner. The Authority also rejected the claim of irregularity on the grounds that these requests did not aim to settle a dispute associated with access to the network.

The Court of Appeal of Paris, when called on by Novatrans, upheld all the points of the decision of the Authority in its Ruling of 6 December 2012. No appeal for annulment was launched against this Ruling.

In addition to the facts of the case, the decision of the Paris Court of Appeal upheld the Authority's analysis on various points of principle and procedure which will need to be applied to other similar cases:

• The need for prior discussions between the parties before referral to the Authority for dispute settlement:

The Authority does not consider it to be «reasonable and in proportion» to set the terms for access to the network when the parties have not usefully discussed the requests they are submitting. This requirement of «useful discussion» is not a condition for acceptance of the claim, inasmuch as it is not required by Article L.

2134-2 of the Transport Code. The Authority, however, is necessarily bound to evaluate the existence, content and utility of prior discussions between the parties within the framework of dispute regulation. It may, therefore, abstain from accepting the request when it considers that prior discussions, should they have been held, would have enabled the parties to solve the dispute themselves, thus obtaining tangible results more quickly than by referring the matter to the Authority.

The Authority, however, may not reject the request, citing lack of «useful discussions» when it is demonstrated that one of the parties artificially and pointlessly postponed examination of the requests, under conditions which would, in any case, render the demand for prior discussion pointless.

• In the event that the Authority does not process a request which does not concern dispute settlement:

The Court of Appeal confirmed that the ARAF was entitled to not accept a request if it considers that this request would not settle the dispute, but would rather constitute a sanction request as per Article L. 2135-7 of the Transport Code. In this case, it was a request to confirm irregularities regarding the handling of a modification to a train path of a competing railway undertaking. What is more, the prejudice suffered by the claimant must still exist at the moment the Authority issues its decision.

• On RFF's lack of communication on the state of progress of the handling of train path modification requests:

Article 14, paragraph 3, of Directive 2001/14 obliges the infrastructure manager and the distribution body to respect the confidentiality of the information given to them. The systematic communication of the state of progress of the examination by RFF of a train path modification request to the competing company and the beneficiary company therefore goes against this principle.

RFF must, moreover, abstain from communicating any claims received on finalisation of the service timetable to all train path requesters.

• If the Authority is able to identify desirable modifications to the regulations during the settlement of a dispute:

In addition to the settlement of the dispute referred to it, the Authority may suggest such modifications to its decision, if the circumstances of the affair lead to the identification of desirable modifications to the regulations or the DRR. In the present case, the Authority noted a contradiction between Article 21 of Decree 2003-194 and Article 14.3 of Directive 2001/14/EC.

3/ The Technical Conditions for Network Access

The Traction Unit Compatibility Verification Procedure

Before a new type of traction unit may have access to the network, RFF imposes a procedure for verifying its compatibility in addition to the commercial operating licence already issued in France by the Public Rail Safety Establishment (Etablissement Public de Sécurité Ferroviaire - EPSF). This compatibility verification procedure which is, in actual fact, carried out by SNCF-Infra, determines access to the network.

The Authority has stated several times that it considers the uncertain deadlines for this procedure to constitute a significant barrier to the arrival of new entrants and a source of increased cost for them. RFF justifies its existence by the lack of infrastructure registers, which would allow railway undertakings to know all the characteristics of the infrastructure and thus verify the compatibility of their equipment themselves. RFF states that it intends to gradually introduce infrastructure registers between March 2015 and March 2017. The Authority asked RFF to accelerate the production of these infrastructure registers.

Meanwhile, the Authority has invited RFF to join with the EPSF to study the possibility of bringing this verification forward by combining it with the authorisation procedure for the commercial service launch of the equipment, for use on the structuring network at least.

Security Questions

Although rail security questions do not come directly within the competence of the Authority, it is, however, an interested party on this subject, via different connections: government referral regarding the regulatory texts or complaints issued against the Public Rail Safety Establishment (ESPF).

Two opinions were given on the draft ministerial resolutions, one regarding the registration of rail vehicles, the other regarding licences for the creation and commercial operation of subsystems (elements that originate from the division of the rail system). The Authority examined these draft resolutions as regards the following:

- The smooth running of competitive rail transport activities;
- The transparency of the rail network access conditions;

• The fairness of access, as regards the absence of discrimination, cross-subsidisation and distortion of competition, in particular;

• The coherency of the economic, contractual and technical provisions implemented with the economic, legal and technical constraints of the sector.

The Authority issued a favourable opinion on the draft resolution regarding the registration of rail vehicles, on the condition that it keeps the option for European Vehicle Number (NEV) holders to modify their registration number via a streamlined procedure open beyond 31 December 2013.

The flexibility thus granted is not without effect on the operational level. A rail vehicle holder may wish to register its vehicles in another Member State other than the one in which they have already been registered.

The Authority considers it to be beneficial to maintain this provision beyond 31 December 2013.

This resolution was published in the Official Journal on 27 July 2012.

It issued an unfavourable opinion on the draft resolution on the licences for the creation and commercial operation of subsystems or rail transport vehicles, given that the absence of a motivated reply from the EPSF on refusal to approve or authorise the commercial service launch is not in line with the transparency requirements and furthermore could be detrimental to railway undertakings which are likely to appeal to the Authority. It also considered the procedures stipulated to be cumbersome and costly.

The resolution was published in the Official Journal on 23 July 2012, without the observations issued by the Authority having been taken into account.

EUROPORTE, a subsidiary of the Eurotunnel group, referred a dispute to the Authority regarding the security services invoiced by RFF for the detection of the potential presence of migrants on the trains, along with the monitoring of trains and provision of security guards.

These services aim to prevent people from leaving for Great Britain illegally and contribute to the security of the Channel Tunnel.

The Authority declared that it was not competent to settle this dispute as it considered that security services do not come under access to the national rail network but rather access to the Channel Tunnel «system»

and that under such conditions, the competent regulation authority was the tunnel regulation authority, i.e. the Franco-British Intergovernmental Commission responsible for monitoring all questions associated with its construction and operation, on behalf of both governments. The Authority did, however, note that:

- RFF's charges did not discriminate between the railway undertakings in that they were proportional to the number of trains and the difference in make-up of the trains did not cause significant differences in inspection costs that were likely to call into question the choice of a single price per train;
- The pricing of the services for 2012 appears to correspond to the costs borne by RFF deriving from the contract it signed with its service provider;
- The pertinence of entrusting RFF with inspection responsibilities is questionable, given the parallel intervention of the customs services;
- The legal bases applicable to these inspections must be clarified, along with the legal methods for the payment and distribution of the associated costs;
- The ownership and use of the various parts of the Calais-Frethun site should be clarified between RFF, France-Manche, the State and the SNCF.



IV Charges for the minimum access package



1/ The chargesfor Minimum Services

Within the framework of its opinion on the 2013 network reference document, the Authority issued a negative binding opinion on the charges for the minimum access package, i.e.:

- The processing of infrastructure capacity requests;
- The right to use the capacity granted;
- The use of connections and points on the network;
- The regulation of the circulation of trains, including signalling;
- The communication and supply information on the circulation of the trains or any other information required to operate the service for which capacity has been granted.

The negative binding opinion is restrictive. It obliges RFF to modify the charging section of its DRR for it to be compliant. The modifications made by RFF must, in turn, be submitted to the Authority for approval.

Article L.2133-5 of the Transport Code stipulates that the Authority issues this opinion «in light of the pricing rules and principles applicable to this network».

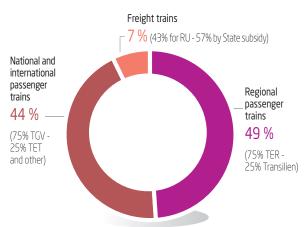
For 2013, charges for the minimum access package represented 5.5 billion Euros, i.e. 88% of the revenue expected by RFF for the year. They can be split into three main categories:

• **Train running charge**, paid by all trains from the point at which they circulating on the network and which cover the variable cost of use of the infrastructure;

• **Reservation charge**, which aim to encourage efficient use of the network by reflecting the cost of infrastructure congestion and which cover all or part of the capital costs;

• The charges for specific access to activities under public service contract (TET, TER, Transilien) which cover the fixed costs of the infrastructure.

Distribution of charges by User



	Activities under an agreement	Competitive activities	Sum 2013
Access charge	«fixed operating and maintenance charges» for non-HS lines (Decree 97/446, article 5)	-	€ 1 974M
Circulation charge	« directly incurred cost » (Directive 2001/14, article 7.3) « variable part of operating and maintenance charges» (Decree 97/446, article 7)		€ 1 627M
reservation charge	«All or part of the capital investment cost» and possible modulations (timetable period, quality of paths, scarcity of capacity, etc.) (Decree 97/446, article 6)		
	«Scarcity of capacity on the identifiable section of the infrastructure during saturation periods» (Directive 2001/14, article 7.4)		€1913M
	-	Increases «if market can bear » (Decree97/446, article 6 and directive 2001/14, article 8.1)	

(source : RFF)

2/ Chargingfor the minimum access package

In 2012, the Authority issued two opinions on the pricing of the minimum services for the 2013 service timetable.

In its opinions, the Authority endeavoured to verify that the charging rules and principles had been properly respected, i.e. transparency in the compilation and publication of charges, non-discrimination, the relationship with the infrastructure costs and the capacity of the market to bear the level of the charges.

Charging for Better Utilisation of the Network

The charging system must enable stakeholders to make choices for the benefit of the users and clients of the rail transport services, with the aim of the smooth running of the public service, on the one hand, and competitive rail transport activities, on the other hand. The development of new capacity is particularly costly, while at the same time constraints on capacity are a major factor. The pricing must promote incentives for the better use of the capacity offered and direct the investments of the infrastructure manager and the railway undertakings.

It is therefore imperative that the charges send a relevant signal regarding the network usage levels.

A Multiple-Year View of charges

It is essential for the infrastructure manager to be able to present the railway undertakings with multiple-year pricing principles, as required by law and as applied in other countries. Railway undertakings need to be able to see how tolls will change in order to develop their activities.

Incentives for the Infrastructure Manager to Reduce its Costs

As stipulated in Article 30 of Directive 2012/34/EU, which re-iterates Article 6.2 of Directive 2001/14/EC, incentives must be used to encourage the infrastructure manager to reduce the costs of the infrastructures and thus reduce the charges for the use of the network. The Authority considers this to be a major factor, which must be taken into account straight away, without waiting for the announced creation of the unified infrastructure manager.



3/ The Authority's Observations on the Pricing Proposed by RFF for 2013

The outdated "2008 cost model" is being revised by RFF

The circulation charges are intended to cover the cost directly imputable to the operation of the rail services. The infrastructure manager must use an economic model to estimate the marginal operating, maintenance and renewal costs. The cost model enables the marginal costs to be estimated and also, by deduction from the full costs, the fixed costs for each of the activities, based on the analysis, line section by line section, of the different types of costs borne by the RFF.

It uses econometric methods and expert opinions to this end. The Authority noted that the cost model introduced by the RFF in 2007/2008 was outdated in the pricing proposed by RFF for 2013. As for the date of the data and the method used, work has been carried out by RFF to establish a new cost model; its first results will be integrated into the pricing for the 2014 service timetable.

The reservation charge does not give sufficiently clear signals

In its opinion on the 2013 DRR, the Authority considered that the reservation charges sent mixed economic signals to those involved:

• The part that reflects the rarity of capacity is an economic signal sent to the railway undertakings to encourage them to optimise use of the network;

• The increase in pricing aims to better cover the full cost of the network and is limited by the capacity of the different rail markets to pay them.

The specific nature of high speed international passenger services must be taken into account

Directive 2001/14/EC stipulates that the pricing of the infrastructures may, under certain conditions, go beyond just covering the marginal social costs in order to «recover all the costs incurred by the infrastructure manager». The State has decided to apply this possibility to high speed lines by increasing the reservation charges.

In its opinion on the 2013 DRR, the Authority asked RFF to justify the specific price increases that go beyond the rail index for each of the segments of the international high speed passenger market. The current level of the

reservation charges for high speed lines is the result of decisions made several years ago, the impact of which on international transport - a market segment which is now open to competition - has not been fully measured. The Authority has nevertheless taken note of the results. On request of the Authority, RFF carried out additional tests for gauging whether the proposed price increase could be borne by the international high speed services. Given the results of these tests and once the RFF had made the commitment to conduct them systematically, within the framework of the development of the next price-setting operations, the Authority issued a favourable opinion on the RFF proposals for the pricing of the minimum services for 2013.

The rail indexing formula must be justified and must provide an incentive

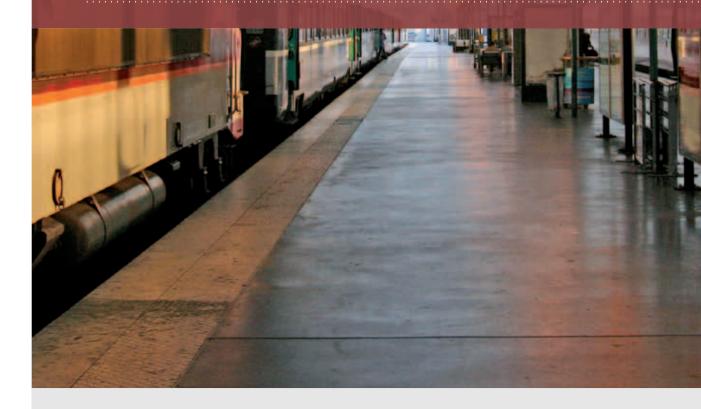
The updating of the pricing scale, until the 2013 DRR, was a result of the application of a composite index established during the re-working of the price-setting operations in 2010. The Authority criticised the use of this index.

While the use of an index may be allowed, since it works towards the objective of price foreseeability, the justifications made by RFF on its composition were considered insufficient to enable it to properly reflect the increase in costs borne by RFF. The Authority also considered that the systematic use of a formula based on an observation of the evolution of external costs and taking into account a permanent loss of productivity, was indicative of insufficient infrastructure cost management, associated with insufficient productivity commitments and choices for industrial maintenance and renewal. The Authority highlighted the need for such productivity targets in order to ensure the effective implementation of the requirement to provide incentives for reducing the infrastructure supply costs and the size of the access charges, stipulated by the European directives. To this end, the regulations stipulate that the convention concluded between RFF and the SNCF for infrastructure maintenance sets productivity targets for the SNCF for these missions and the methods for inspecting their implementation, objectives which should serve as a base for the pricing calculation.

The reciprocal productivity commitments signed by RFF and the SNCF in February 2012 are a first step in this direction. These must be included in the infrastructure management agreements and be accompanied by an accurate description of the products, production factors and general monitoring indicators for the production volume, enabling the monitoring of their actual implementation.

Passenger Stations

V



Implementation of Decree 2012-70 on Passenger Stations

Defining transparent and non-discriminatory access conditions for passenger stations is a crucial factor in the opening up of passenger services, international services today, and national services tomorrow, to competition.

However, although the stations belong to the State, they are presently managed by the SNCF, via one of its subsidiaries created on 1 January 2010 - Gares & Connexions. Only the platforms belong to RFF and are managed by it.

The Transport Code covers the management of passenger stations in order to ensure that such a structure is not detrimental to new railway undertakings:

• By obliging the SNCF to manage the passenger stations that the State or other public entities entrust to it in a transparent and non-discriminatory manner;

• By stipulating that the use of the stations by a railway undertaking shall give rise to the signing of a contract with the stations manager;

• By imposing accounting separation between station management, carried out by Gares & Connexions, and the operation of the SNCF transport services, so that none of the public assistance paid to one of these activities may assigned to the other.

The Authority issued the following five opinions and decisions on passenger stations during 2012:

• Opinion 2012-014 of 13 June 2012 on the draft resolution on Determining the Thresholds that Define the Category of Passenger Stations;

• Opinion and decision 2012-016 of 11 July 2012 on Capital Commitment Costs for Creating the Charges for the Regulated Services in Passenger Stations for the 2014 service timetable.

• Deliberation 2012-017 of 18 July 2012 on Communication on the Accounting Separation Rules for the Passenger Station Management activity expected from the SNCF.

• Decision 2012-023 of 7 November 2012 on The Approval of the Accounting Separation Rules for SNCF Passenger Station Management.

• Opinion 2012-025 of 14 November 2012 on the Draft Passenger Station Reference Document for 2014 service timetable.

This intense activity can be explained to a large extent by the need to implement the provisions of Decree 2012-70 which stipulates the access conditions for passenger stations, the services offered in them and their pricing, in particular.

The Authority also issued an opinion for the first time on the 2014 Station Reference Document (DRG) compiled by Gares & Connexions and RFF. The DRG aims to specify the technical conditions and pricing for access to passenger stations. It is for stations what the network reference document (DRR) is for network access.



2/ Services Offered at the Stations

Decree 2012-70 distinguishes, on the one hand, between the basic service that must be provided to railway undertakings when there is no other economically reasonable option, which is often the case for railway undertakings, and the additional services that must be made available to all railway undertakings as soon as they have been provided to one of them.

The basic service is covered by a single price. It mainly comprises the following:

•The use of the installations equipped to receive passengers and the public as far as the train, including access to shared services, shops and public buildings;

•The reception, information and direction services for their passengers and the general public as regards the timetable and access to its trains.

The basic service of boarding and alighting assistance for handicapped passengers or those with reduced mobility is also available in staffed stations when this is not provided by the railway undertaking or taken in hand by the authority that organised the transport. These services are subject to separate pricing.

Each of the additional services is subject to a specific price. These include the following:

- Pre-heating of the wagons and locomotives;
- Provision of spaces or buildings for the sale of rail transport service tickets;
- Provision of service buildings for the train crew or rail company managers;

• Provision of the buildings and installations the rail company service providers need to provide technical services such as fuelling or cleaning.

In its draft DRG for 2014, Gares & Connexions intended to individualise and price other services that are not included in the basic or additional services, including the following:

- Station familiarisation visits, technical visits and study and administration costs;
- Exceptional station opening services;
- Services for the passage through Automatic Suburb Controls

(Contrôles Automatiques Banlieue - CAB) in the stations in the lle-de-France region for passengers without travel tickets at the lle-de-France pricing.

The Authority considered these services, which are not envisaged by the decree, to be discriminatory, since the first ones apply to new entrants only, as SNCF-Voyages and SNCF Proximités are in effect exempt, and the CAB passage assistance was a constraint imposed on all railway undertakings other than Transilien, which could in no way be a service to their benefit and therefore constituted a service for which they should not be invoiced.

Gares & Connexions withdrew these services other than the "studies", which could give rise to specific costs.

All the railway undertakings which request a study including the SNCF transporters shall be invoiced for the study costs.



3/ Station Pricing

The economic model for the stations is a cost-oriented model, the charges associated with regulated services having been established with the aim of covering all the estimated charges. These charges must also take into account «the actual use of the infrastructure for the last three years and the traffic development prospects».

RFF and the SNCF therefore establish annually the charges associated with regulated station services for the goods and services that they manage so as to cover the following:

• All the estimated maintenance and operating charges that correspond to the provision of the services.

- Payment for the use of the assets, including:
- The funding of investment depreciation expenses, including the renewal and standard-alignment investments, excluding grants received;
- The corresponding weighted average capital cost for the capital used for the loan charges and associated financial charges, on the one hand, and the capital commitment cost for the self-financed part, on the other hand.

Calculated in spring 2012, the station charges for the 2014 service timetable were based on data from before 2011. Their construction therefore not only requires an in-depth knowledge of operating costs, depreciation charges and traffic, along with their distribution, but also the ability to reliably estimate their evolution over the coming years.

The Authority gave its opinions on the elements making up this pricing and the following in particular:

• The accounting separation of Gares & Connexions which is a pre-requisite for establishing access prices on a nondiscriminatory and transparent basis;

- The segmentation which defines the perimeters of the equalisation of the charges between stations;
- The financial costs to be taken into account;
- The capital commitment cost for the funds invested in the station.



4/ Gares & Connexions Accounting Separation

Accounting separation has a double objective in a regulated sector in which the historical operator continues to operate as both infrastructure manager and rail transporter, i.e.: to stop any cross-subsidising within the SNCF between monopoly activities and competitive activities, and also the provision of objective and detailed information on the costs actually committed, which is used to calculate the prices.

This is why the law asks the ARAF to ensure that the Gares & Connexions accounts are properly separated from the SNCF's other activities. In order to enable such a verification, the ARAF must firstly approve the accounting separation rules proposed by the SNCF, which it did in Decision 2012-023 of 7 November 2012.

The Authority's examination is more specifically centred on the following points:

• The presentation of the accounting separation rules:

The accounting separation rules, which constitute the basis for the pricing, must provide the required transparency and stability for a multiple-year view of station charges. This is why the Authority has deemed it necessary to gather these together in a single, autonomous document that is homogeneous and legible, without reference to dates or other documents that are periodically updated.

The durability requirement for this document and the accounting separation rules that it contains is strengthened by the fact that the station charges are calculated two years before the corresponding service timetables, by estimating the charges and traffic. The accounting separation rules must offer similar foreseeability, thus imposing their stability.

• The compilation of the 2010 opening balance for the Gares & Connexions activity, which must provide an accurate picture of all the assets and a debt/equity ratio that is coherent with the expected investment programme;

 The accounting imputation rules, which must promote the principle of the direct imputation of costs and charges to the regulated activities or, failing that, the use of justified and pertinent distribution keys;

• The financial relations between Gares & Connexions and the activities within the SNCF in order to prevent any possibility of cross-subsidisation.

The Authority has, in particular, examined the financial relations between Gares & Connexions and Cross-Sector Functions that are governed, for example, by the provisions on the tax on internal companies, internal dividends and financial costs.

The Authority officially acknowledged the SNCF's internal tax rate proposal of 34.43% of the accounting result.

The tax on internal companies paid by Gares & Connexions should not, however, exceed the companies tax actually paid by EPIC SNCF, other than for the tax on railway undertaking results (TREF) which is an additional tax that only concerns rail transporter activities.

The Authority considered that the payment of dividends should not jeopardise the funding of the station investment programme and that the accounting separation rules should translate this priority. This is why a potential dividend may be paid in the event that Gares & Connexions has a positive result, on the condition that the target ratio between the debt and the operational margin for the activity is not affected and that it is adapted to the requirements of the investment programme.

The Authority estimates that too great a deviation between the financial cost rate that Gares & Connexions pays to Cross-Sector functions and the average level of EPIC's debt could be considered to be a cross-subsidy. It has therefore limited this difference to 0.5%.

Finally, in order to maintain transparency, the Authority considers that the regulations should require the annual publication of the separate accounts of Gares & Connexions after certification by the statutory auditors, which is not currently the case.

The approval given by the ARAF, after two years of discussions, must not hide the difficulty of establishing the true accounting separation of Gares & Connexions within the SNCF and the limits of such an exercise.

5/ Station Segmentation

The decree also stipulates the distribution of stations into the following three categories: passenger stations of national interest, stations of regional interest and stations of local interest.

This segmentation is primarily for pricing reasons. It identifies management perimeters for analytical accounting and on which the charges associated with regulated services are established, as per a recovery principle for foreseeable charges.

Each station of national interest is covered by a specific price, based on the charges and the foreseeable traffic for the station concerned; if the result of the non-regulated activities is positive, the transporters shall benefit from a charge reduction which they shall pay to a total of 50% of said result.

Each regional set of stations of regional interest or

of local interest shall be subject to a price averaged from the sum of the charges and foreseeable traffic for the stations in the region concerned. These stations may be covered by a multiple-year management agreement between the SNCF, on the one hand, and the STIF or the region concerned, on the other hand.

This segmentation has not inconsiderable practical consequences. Therefore in its draft DRG for 2014, RFF set the pricing for passenger stations of national interest based on an average for each of the regions, going against the stipulations of the regulations.



This method of calculation presents the risk of discrimination between activities since it generates equalisation between stations in a single region, specifically between the TGV stations and the other stations. Such an equalisation modifies the distribution of the charges paid between the different activities and increases the share for Transilien and some TERs. The Authority therefore asked RFF to bring its prices into line with the regulations and it complied.

The Ministry of Transport called on the Authority for a draft resolution setting occupancy thresholds, aiming to distribute the stations into these three categories.

• The threshold stipulated by the draft resolution for determining the stations of national interest (occupancy by users of national or international services of at least 300 000 passengers or 100% of the passengers) led to 94 stations being selected for this category, which represents approximately 92% of the national or international occupancy and 36% of the total occupancy.

Owing to the diversity of their rail traffic and the size of their operating and investment charges, the Authority did actually deem it justified and in-proportion to establish analytical accounting for each of these stations, enabling the individual charges per station to be determined. The threshold proposed does not, however, allow for other major stations where competition or value-enhancement are factors.

• The draft resolution stipulated an occupancy threshold of 100 000 passengers per year to make the distinction between stations of regional interest and stations of local interest. Such a threshold would classify approx 950 stations in category b) and 1 970 stations in category c).

Of 3 000 stations in France, 94 stations receive 36% of the total passenger occupancy.

V / PASSENGER STATIONS

In the Authority's opinion, such a threshold does not allow categories of homogeneous regional stations to be established in terms of management charges and type of traffic. Thus in the 950 stations of regional interest, approx 230 stations are multi-transporter stations and approx 720 stations only have TER or Transilien services.

With such a definition, category b) would encompass both stations with buildings intended to receive passengers and with a high level of service, and peripheral urban stops without buildings or any particular reception service but with heavy TER or Transilien traffic. It is likely that the average rates in some regions would not be very representative and would not allow the prices for national and international trains to be set in a satisfactory manner.

The Authority considers that this classification of stations must primarily aim to do the following:

• Offer a transparent and non-discriminatory framework for the development of competition in multi-transporter stations where several types of traffic or several operators are present; this criterion may be evaluated using the presence or absence of several distinct rail activities (TGV, TET, Transilien, TER) in a single station;

• Offer a framework that encourages managers to exploit their stations better, from a commercial point of view and from the point of view of public benefit.

This is why the Authority has proposed a different segmentation to that proposed by the ministry, which comprises two categories and not three:

• The stations of national interest would comprise

200 to 250 stations so as to encompass almost all the stations that currently contribute to national and international occupancy;

• The stations of regional interest would comprise all the other stations, in each region, since there are no objective grounds, including pricing, for justifying a distribution of the stations into two categories, regional and local.

In conjunction with this, out of a desire for simplification, station managers may be given the opportunity to establish the charges in all the stations of regional interest, in association with the regional organising authorities, without separation between regulated and non-regulated perimeters.

The Ministry of Transport did not adopt the Authority's proposal.



6/ Capital Commitment Cost

The regulations stipulate that the manager may incorporate in the station charges the Weighted Average Capital Cost (WACC) it has committed corresponding, on the one hand, to the loan charges and financial costs that it is paying on the debt it took out and, on the other hand, to the capital commitment cost for the part it self-financed using its own equity.

In a company, the weighted average capital cost corresponds to the cost of the financial resource and therefore appears as the minimum profitability threshold enabling the commitment to an investment to be justified.

The equity commitment cost must offer, not only a payment that is at least equivalent to that of a no-risk placement, but also cover the risks taken. This requirement corresponds to the expectations of the investors who demand greater or lesser profitability depending on the risk they associate with the project, the economic sector and the country in which this project is envisaged. They will only commit to a project if they consider the expected profitability to be sufficient to cover the risk taken.

In a world in which resources are rare, the public decider, just as the private decider, but in different situations, is held to account for any uncertainties by analysing the risks of the projects and integrating these into its economic calculations. It is therefore justified to envisage payment for the capital committed and integrate a risk bonus associated with fluctuations which may affect the results of the station activities.

The regulatory framework for passenger stations, in contrast to other regulated sectors, does not stipulate a specific method for the evaluation of the capital payment rate. This rate, however, is usually calculated as the sum of a no-risk rate and a rate that represents the specific risk associated with the activity sector in question.

Gares & Connexions and RFF have proposed that a pre-tax equity commitment cost of 11.7 % and 10.9 % respectively be used, calculated using the Financial Asset Evaluation Model (MEDAF) which is widely used in the private sector despite its acknowledged limits. In this method, the specific risk taken by the station managers is evaluated in relation to that borne by companies that work in what are considered to be neighbouring activity sectors and are quoted on the financial markets, in this case airport companies.

The Authority does not consider this comparison to be pertinent.

For the most part, the airports selected are international hubs. Their income that is directly associated with passenger traffic is much more sensitive to the economic situation than rail activity. This lesser sensitivity of rail is reinforced by the fact that the income of railway stations is based on the traffic expressed in number of trains and not in number of passengers and this comes, for 75% of their regulated turnover, from agreement-based local transport (TER and Transilien).

V / PASSENGER STATIONS

Moreover, air sector regulation is normally based on multiple-year contracts combined with price capping and productivity targets, whereas the annual station pricing framework does not enable the manager to be rendered accountable and the risks to be minimised:

• The manager may readjust its financial trajectory each year and may even make up for errors identified in traffic or charging forecasts;

 These forecasts are made on the sole initiative of the manager, who may choose cautious or even favourable values;

• The cost recovery principle does not encourage productivity, and therefore comprises very little risk. Gares & Connexions and RFF, moreover, have not set ambitious productivity targets.

The Authority therefore considers that the station manager risk profile differs significantly from that of the activities selected as «comparable».

The Authority has therefore asked that the specific characteristics of the regulated public monopoly activity at passenger stations be better taken into account.

The risk premium specific to passenger stations (excluding commercial activities) must take the following into account, in particular:

• The nature of the regulated activities of the station manager in the railway field and the sensitivity of their results to economic fluctuations, in particular;

• The station manager economic pricing model and its time horizon;

• The public nature of the station manager and its assets.

To this end, the Authority recommended reference to the report by the Centre for Strategic Analysis of July 2011 - *The Calculation of Risk in Public Investment* - which covers the consideration of risks for public investments. This report offers a more appropriate economic approach for the risk premium to be integrated into the calculation of the average cost of the capital committed in stations. It thus proposes that a macroeconomic risk premium of 3% be chosen (equivalent to the premium for the market risk taken into account in the MEDAF method).

On this basis, and given the low level of risk borne by the station managers, the Authority gave an unfavourable opinion on the Gares & Connexions proposal, considering it to be excessive. It did, however, give a favourable opinion on the RFF proposal.



7/ The Technical Conditions of Access to Passenger Stations

In its examination of the draft DRG for 2014, the Authority specifically aimed to prevent all risk of discrimination towards new railway undertakings with regard to station access.

From this standpoint, it firstly criticised the role of the Railway undertakings Service Platform (*plateforme de services aux entreprises ferroviaires* - PSEF).

In order to benefit from access to passenger stations and the services they provide, the railway undertakings must contact the PSEF, a department of the Strategy and Regulation Directorate, which itself is attached to the General Directorate of the SNCF. The PSEF is systematically present and intervenes throughout the process, from the handling of requests to contract management. This procedure only applies to new entrants, since SNCF-Voyages and SNCF-Proximités do not have to go through the PSEF for their station services access requests.

The role given to the PSEF poses a problem regarding the confidentiality of the data which it receives, feeding third-party suspicions regarding possible discrimination or anti-competitive behaviour.

Gares & Connexions has committed to take over the missions of the PSEF, with an the aim of effecting this transfer during 2013, with invoicing to be transferred during the first phase.



8/ A Regulation Framework which is Already Showing its Limits

Although only recently introduced, the management model used for the stations has already shown its limits and does not seem to be able to meet the operational, economic and governance challenges, either for competitive activities or for public service activities.

Practical examination of the pricing model shows that this yearly framework for cost recovery (cost-plus) does not instil responsibility:

• It does not include any incentive to control costs, with managers being able to transfer all their costs, even those due to inefficiency, to the price; this situation is aggravated by the principle of annuality;

• The productivity commitments are purely for show, and have no real effect;

• This regulation framework does not commit the managers in terms of performance (service quality) either.

Another limit of the economic model stipulated by the regulations is that it has not been able to organise a consensus (or a governance system) between stakeholders on the self-financing capacity required for station managers to carry out ambitious investment plans. The regulations actually stipulate charges covering the past accounting costs, whereas the size of the future investments would require increased self-financing capacity in the future.

In this regard, Decree 2012-70 comprises an adversarial requirement by reconciling «the capital commitment cost», which must reflect the specific risks associated with the activity, with the «sustainable funding of investments».

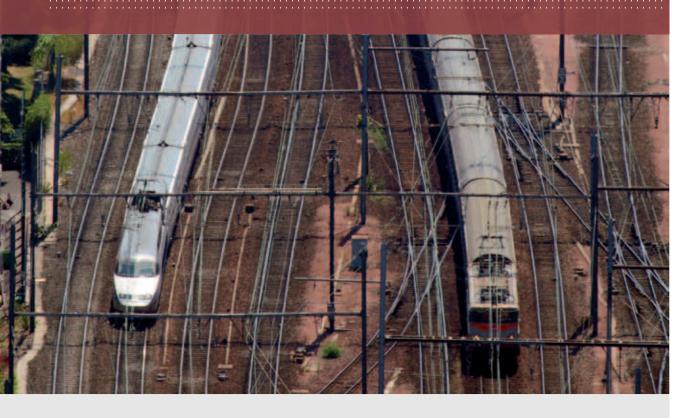
No clear relationship can be seen between these two concepts.

It may, therefore, be supposed that the excessive value of the capital commitment cost adopted by Gares & Connexions primarily reflected the desire to have more resources available to fund the investments rather than a correct evaluation of the risks. To the same end, RFF proposed a waiver of the regulations by incorporating economic amortisation greater than the accounting amortisation in the platform pricing.

The Authority recommends that the economic regulation framework be evolved towards multiple-year regulation, via performance contracts that actually encourage the station managers to control costs (productivity) and improve performance (service quality).



VI The other service Infrastructures



1/ The Regulatory Framework for Access to Infrastructures

Access to service infrastructures, other than passenger stations, also constitutes an essential factor for the railway undertakings, and for new entrants in particular, since it may constitute a crippling obstacle to entry into the market.

The draft decree contents itself with listing the services offered by these service infrastructures. It does not define methods which could guarantee the non-discriminatory management of these installations, nor does it specify the pricing principles in any further detail.

In its Opinion 2012-005 of 25 January 2012 on the national rail network reference document for the 2013 service timetable, the Authority thus highlighted the fact that the access conditions for the service infrastructures should be described with the same concern for transparency, accuracy and justification as the conditions of access to minimum services presented by RFF.

This gap in the regulatory framework may be a source of dispute and uncertainty for new entrants.

This is all the more the case given the number of these infrastructures that are still managed by the historical operator.

Thus, in its decision of 18 December 2012, the Competition Authority confirmed that **the management of some service infrastructures by a company which itself is in the dominant position on the rail transport market could promote anti-competitive practices.** It fined the SNCF the sum of 60.9 million Euros for having implemented several practices that hindered or delayed the entry of new operators on the rail freight transport market. The Competition Authority considered, in particular, that the SNCF had used strategic confidential information on its competitors that it received in its role as delegated infrastructure manager in its own commercial interest. It requires managers of service infrastructures under the direct or indirect control of an entity or a company which is also active and occupies a dominant position on the national rail transport markets to be structured in such a way as to ensure their organisational and decision-making independence from said company.

The Authority will be particularly vigilant regarding respect of this objective within the framework of the rail reform.

2/ The Pricing of Service Infrastructures

THE PRICING OF SERVICE INFRASTRUCTURES

For service infrastructures other than passenger stations, Decree 2012-70 of 20 January 2012 only specified the nature of these infrastructures and the list of the services concerned, along with conditions for providing the services for the access and use of these infrastructures. It did not sufficiently specify the pricing principles and the pricing conditions set by the managers of these infrastructures.

The decree distinguishes the following two types of service for each of these infrastructures:

> Basic service which, in turn, comprises one or several clearly-defined services but which form a single non-divisible block of services offered; this basic service must be offered to the authorised candidates and railway undertakings in a transparent manner, without discrimination, when no other economically reasonable option exists; the service infrastructure manager must justify any decision to refuse to provide a service and, in such a case, state the economically reasonable alternatives that are available on other service infrastructures. The basic services, by their very nature, are qualified as a regulated service.

The latter give rise to the collection of a **charge associated with the cost of the services calculated from the actual level of use.** The Authority regretted the decree's lack of precision as regards this pricing principle. > **One or more additional services,** specific to the use of or the services on each infrastructure. Two principles characterise this service category:

• As soon as the manager of a service infrastructure provides a railway undertaking or authorised candidate with one of the additional services, it must provide it on the same service infrastructure, under transparent conditions and without discrimination, to any railway undertaking or authorised candidate that requests it.

• These are qualified as regulated services when they are only offered by a single supplier, which is therefore a monopoly. In this case, as for the basic service, these give rise to the collection of a charge associated with the cost of the services calculated from the actual level of use. Here again, the text does not provide any specification regarding this general pricing principle.

The Authority has committed to the most thorough examination of the relationship between the costs and prices of each of these infrastructures. Directive 2012/34/ EU stipulates that the charges collected in return for regulated services on the service infrastructures must be less than or equal to the cost of the services, with the possibility of adding «reasonable» profit.

This directive therefore caps the charges and the Authority has endeavoured to specify the rules which may lead to a fair calculation of such charges within this limit.

The Authority has observed that the managers apply the service cost principle based on the actual level of use in a fairly non-uniform way.

Some charges are therefore calculated with a view to obtaining a pre-determined level of revenue. Others are actually based on forecasted accounting costs, but take unjustified costs into account.

The Authority has identified two main lines of doctrine in the current state of its analyses and work:

• Within each manager, the service infrastructures should have accounts that are separated from the manager's other activities and those dedicated to rail transport in particular. This requirement is given in Article 13-3 of Directive 2012/34/EU which must be transposed by 16 June 2015 at the latest;

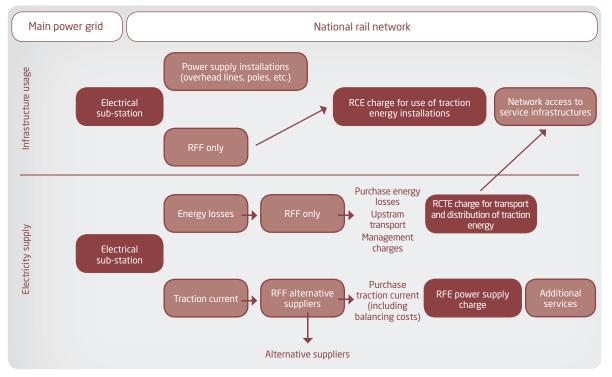
• The construction of service infrastructure charges must not only respect the forseeability and transparency requirements, but must also incorporate productivity and performance targets. This is why the costs taken into account for the calculation of the charges must respect the principles applied in the regulation of all the network activities, i.e.be justified, pertinent and effective.

The Supply and Invoicing Conditions for Traction Current on the Network (settlement of dispute 2012/019)

This dispute settlement concerned only the charges for the supply of electricity (RFE) invoiced by RFF when the railway undertaking requests this service which is categorised as an additional service as per Appendix II of Directive 2001/14/ EC and Decree 2012-70.

In its decision, the Authority aimed to set transparent and proportionate conditions that encourage better management of the use of electricity by the undertakings, whilst closely considering the reality that very few trains of the railway undertakings that operate in France have been fitted with electricity meters.

In the pricing system, the RFE is one of the three charges collected for power supply for the trains as shown by the following diagram:



In the Authority's opinion:

• The electricity supply charges must be transparent. The electricity tariff must have the characteristics of contractual prices that have been or can be determined. It must be foreseeable in order for railway undertakings to be able to sign contracts with their clients under the best conditions possible. RFF must publish the applicable pricing rules for the supply of the traction current and describe their content in the network reference document which sets the rules for network access each year.

• RFF must justify the price of the electricity sold to the companies. In the event of some of the information required for this justification being covered by confidentiality laws, RFF shall send its justification to the Authority which, after verification, shall act as guarantor for the railway undertakings.

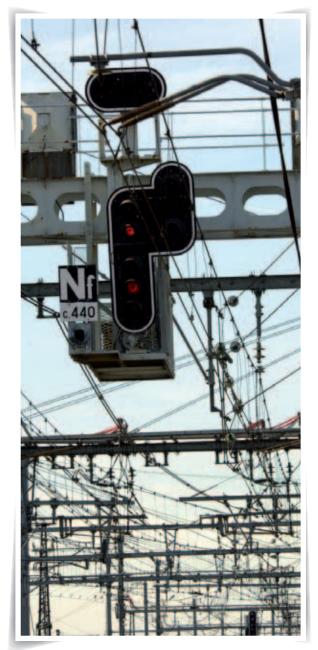
• The price of the electricity RFF sells to the companies must be established on the basis of the costs actually borne by the infrastructure manager.

- As of 2013, RFF must establish the amounts invoiced to the railway undertakings on the basis of their actual consumption when all their fleet of locomotives is fitted with meters. As of 2015, this consumption-based invoicing shall be extended to the companies that are not fully equipped.

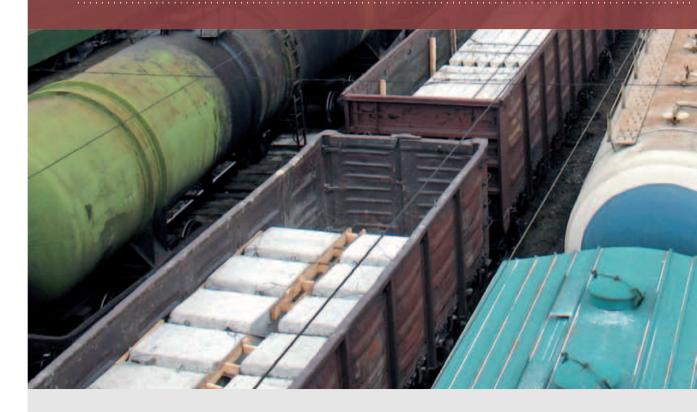
- Three years from now, RFF must improve its consumption estimation model for locomotives that are not fitted with meters, taking the characteristics of train traffic into account (locomotive power performance, tonnage, timetables, etc.).

The Authority did not want to cast doubt on the consumption model of the SNCF, the main network consumer (at approx. 90%), in the short term, which allows it to use the supplier of its choice without its fleet of locomotives being fitted with meters. But, it considers that such equipment should eventually be installed across the board for all railway undertakings.

Therefore, if the supply of electricity by RFF to new undertakings is essential for removing an obstacle to entry onto the market, they must quickly be able contact their chosen electricity supplier, which supposes that their locomotives are fitted with meters and that they have sufficient historical records of their consumption. Finally, it should be noted that Directive 2012/34/EU recategorises the use of the installations and traction current supply system as minimum services. Consequently, as of transposition of the text to national law, these services must be calculated from the directly imputable cost, and possibly supplemented under the conditions stipulated by the directive.



Appendices



1/ Glossary

Access charge: Applied only to passenger trains that operate within the framework of a public service contract (regional passengers trains (trains régionaux de voyageurs -TER), regional passenger trains on the IIe-de-France (Transilien) and Trains d'équilibre du territoire (TET)), the access charges aim to cover the fixed cost of operating and maintaining the rail network (Article 5 of Decree 97-446 of 5 May 1997, modified - The Pricing of Minimum Services).

Force majeur: Unforeseeable and unavoidable circumstances which free a person from their responsibilities or obligations.

Adversarial principle: The ARAF may only include the means, explanations and the documents mentioned or produced by the parties in its decision if these have been available for discussion by both parties.

Average Cost: Expenses for one year including operating, maintenance and regeneration costs. The sum of the fixed cost (irrespective of traffic volume) and the variable cost (related to traffic volume).

BAR: Regulated Asset Base.

Cabotage: The possibility of taking passengers in one country to make a local journey during an international service.

CAPEX (CAPITAL EXPENDITURE): Investment expenditure.

Circulation Charge: Charge covering the variable part of the operating and maintenance charges for the rail network (Article 7 of Decree 97-446 of 5 May 1997, modified - The pricing of minimum services).

Combined Transport: Movement of goods in individual loading units, using several modes of transport during one journey (rail, road or water).

Combined Transport Site: All the fixed installations (comprising rail installations such as specialised tracks and transhipment and storage installations such as gantry, cranes and handling yards) enabling the transfer of freight from rail to road and vice versa.

Decision: Legal act issued by the Council of the European Union or the European Commission. All its provisions are compulsory. It is directly applicable, without requiring transposition into national law.

Directly incurred cost: Cost of a specific rail service.

Directive: Legal act issued by the Council of the European Union with the European or alone, in some cases. It binding on the States targeted by the directive as is the objective to be obtained, and leaves them to choose the means and method for attaining this objective by the deadline it sets.

Economic amortisation: The need for the long-term renewal of a given asset in order to ensure it is maintained in its current state.

Financial Asset Balance Model (MEDAF): Model for assessing the intrinsic value of the financial assets. This is based on the analysis of the balance between the financial risk and profitability.

Framework Agreement: Agreement which stipulates the characteristics of the rail infrastructure capacity offered to a train path applicant for a period of time determined by the infrastructure manager.

Full cost: Sum of the average cost and the capital cost.

Gopeq (large scheduled operation equivalent): Work unit for evaluating the different track and switch renewal operations.

Grandfather rights: Rule which consists in not questioning the capacity used by an operator, as long as it actually uses this capacity.

Hub: Transport network platform which incorporates a maximum of connections.

Intermodality: Combination of several modes of transport in a single journey.

Last Minute Train Path: Train path constructed between day D-7 and D-Day when the train makes its journey.

Marginal cost: The cost of an additional transport unit using the infrastructure. The marginal cost is called a "social" cost when it integrates external costs (dimensions, pollution, accidents).

Network Reference Document: Document that gives the in-depth detail of the general rules, deadlines, procedures and criteria for the pricing and capacity distribution systems; this document also contains all the other information needed to enable the infrastructure capacity requests to be introduced.

regular service: Repetition at regular intervals of the same service diagram, departure time, stops on the route, time of arrival. This structure is constructed by integrating the train paths, from the fastest to the slowest, via a symmetrical diagram (the structure is the same in both directions and the trains connect in all directions).

OFP: Local Rail Operator.

OPEX (Operational expenditure): Operating expenses.

Precarious train path: Conditional allocation of a train path which is in conflict with one or several allocated work sites on the national rail network.

Price Cap: Ceiling below which a company is free to set its price. The ceiling price is calculated based on the costs and volumes processed by the company. This mechanism is intended to act an incentive, with any difference between the price cap and as the actual costs being a profit for the company.

Regulation: Legal European Act. All its provisions are compulsory and the Member States are obliged to apply them as defined by the regulation. The Regulation is therefore directly applicable in the judicial system of the Member States.

Renewal works: Works that consist in replacing all or part of the track elements i.e. ballast, sleepers, rails and their fixing systems.

Reservation Charge: Charge covering all or part of the capital costs and encouraging the efficient use of the network by passing on the cost of infrastructure congestion; this may be increased for certain types of train, insofar as the market allows (Article 6 of Decree 97-446 of 5 May 1997, modified, on the pricing of minimum services).

Rolling road and/or rail highway: The combined transport of entire lorries or trailers only, using railway tracks and trains consisting of low-bed wagons.

RVB: Ballast and Track Renewal (ballast, sleepers, rails).

Service Infrastructures: The passenger stations open to the public, including the platforms and stops and their buildings; the power supply and traction current distribution on the rail tracks that are open to public traffic; the installations yards or train formation yards; the storage tracks; the goods terminals including the combined transport sites and the non-rail infrastructures at these terminals; the fuel and sand supply infrastructures and the roof inspection walkways; the maintenance centre installations and the other technical installations required to carry out light maintenance services.

Spur Terminal Installations (ITE): Connections between activity zones and the national rail network.

Subsystem: The result of dividing up of the rail system. This corresponds either to structural fields (infrastructure, power, command control and signalling, rolling stock) or to operational fields (operation and traffic management, maintenance, telematic passenger service and freight service applications).

Train Diagram: Space-Time document which graphically translates the movement of each of the trains on a given section of line.

Train-km: 1 train travelling 1 km = 1 trains.km.

Train path: Infrastructure capacity required to move a given train from one point on the network to another at a given point in time.

TREF: Tax on the profit of railway undertakings, payable by passenger rail transport service companies.

UIC Classification: Rail lines are classified from 1 (heavy traffic) to 9 (light traffic).

Unavailability Window: Restriction placed on capacity in order to allow work to be carried out on a given section of the network. It is characterised by a typical positioning and duration (e.g. 2 to 6 hours) and is established for a period covering either all working days or a number of days in a year or a shorter period. This window is shown by a trapezium on the train diagram. The windows are finalised in April of year Y-2, where year Y is the year of the service timetable.

Variable Cost: The maintenance, upkeep and operating expenditure, associated with the intensity of the traffic. This is similar to the marginal cost, i.e. the production cost for an additional unit when the production capacity, train paths, are available.

Wall of China: Device that should guarantee separation between different departments as regards the circulation of sensitive information.

Weighted Average Cost of Capital: The Weighted Average Cost of Capital (WACC) is the average rate of annual profitability that the shareholders and creditors expect in return for their investment.

Yield Management: Technique for optimising overall revenue, which consists in varying the price subject to the deadline for departure and flexibility in demand, in order to attract clients when demand is low.

AUTHORITIES / STAKEHOLDERS

ARAF: the french rail regulatory body.

AUTF: The French Freight Transport Users Association

Bundesnetzagentur: German Authority for the Regulation of Network Activities

Rail Circulation Directorate (DCF): Specialised department of the SNCF which carries out traffic and circulation management missions on the national rail network, on behalf of RFF.

IRG-Rail (Independent Regulators' Group-Rail): Association which gathers together 21 independent rail regulation authorities from countries that are Members of the European Economic Zone Austria, Croatia, Denmark, Estonia, Germany, Finland, France, Greece, Hungary, Latvia, Luxembourg, Macedonia, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

ORR (Office of Rail Regulation): The British Rail Regulation Authority.

Paris Court of Appeal: The Court of Appeal is the only competent entity for appealing against the dispute settlement decisions of certain sector-based regulation authorities, including the ARAF

RFF: Réseau ferré de France, public industrial and commercial establishment, founded in 1997, responsible for the maintenance, development, coherency and enhancement of the national rail network.

RO SCO (Rolling Stock Company): Company specialised in the letting of rail equipment.

UIC: Union internationale des Chemins de Fer (International Railway Union), international union for operators and managers of rail infrastructure.

UTP: French Public Transport Association.

2/ Summary of Opinions and Decisions

(The opinions and decisions of the Authority can be seen in full on its web site)

Opinion 2012-025 of 14 November 2012 on the draft passenger station reference document for the 2014 service timetable.

Decision 2012-024 of 7 November 2012 observing the lack of grounds to pursue the sanction procedure against the SNCF for breach of the provisions of the Transport Code regarding the accounting separation rules for the passenger station management activity.

Decision 2012-023 of 7 November 2012 on the approval of the accounting separation rules for the passenger station management activity by the SNCF.

Opinion 2012-022 of 10 October 2012 on the draft framework agreement between *Réseau ferré de France* and T3M on infrastructure capacity.

Opinion 2012-021 of 10 October 2012 on the draft framework agreement between *Réseau ferré de France* and the SNCF.

Opinion 2012-020 on infrastructure capacity of 10 October 2012 on the draft framework agreement between *Réseau ferré de France* and Europorte France.

Decision 2012-019 on infrastructure capacity of 3 October 2012 on the Dispute Settlement Request instigated by ECR against RFF, regarding the supply and invoicing conditions for the traction current on the national rail network.

Deliberation 2012-017 of 18 July 2012 concerning communication on the accounting separation rules for the passenger station management activity expected from the SNCF.

Opinion and decision 2012-016 of 11 July 2012 on capital commitment cost used to establish the charges for the regulated services in the passenger stations for the 2014 service timetable.

Opinion 2012-015 of 27 June 2012 on the draft resolution regarding the creation and commercial operating licences for subsystems, or new or significantly modified rail transport vehicles.

Opinion 2012-014 of 13 June 2012 on the draft resolution regarding the application of Decree 2003-194 of 7 March 2003, modified - Determination of the Thresholds that Defining the Category of Passenger Stations.

Opinion 2012-013 of 16 May 2012 on the draft resolution modifying the Resolution of 27 October 2010 regarding the registration of rail vehicles mentioned in Paragraph 2 of Article 57 of the Decree of 19 October 2006 - The Safety of Rail Traffic and the Interoperability of the Rail System.

Decision 2012-011 of 9 May 2012 on the request submitted by Europorte Channel within the context of a dispute with RFF regarding «security» services on the Calais-Frethun sidings.

Opinion 2012 - 009 of 4 April 2012 on the modifications made to the pricing of the minimum services for the 2013 service timetable, in application of Opinion 2012 -

005 issued by the Authority.

Decision 2012 – 007 of 15 February 2012 on the request to settle a dispute instigated by Euro Cargo Rail against the RFF and the SNCF on the allocation of train paths.

Decision 2012-006 of the 1st February 2012 pertaining to the request submitted by FROIDCOMBI within a dispute with RFF and SNCF, regarding the allocation of train paths.

Opinion 2012-005 of 25 January 2012 regarding the national rail network document for the 2013 service timetable.

Decision 2012 – 002 of 11 January 2012 on the request for preventive measures submitted by Euro Cargo Rail within a dispute between it and RFF and the SNCF regarding the allocation of train paths and the Gevrey station situation.

Decision 2012-001 of 11 January 2012 acknowledging Euro Cargo Rail's relinquishing of its requests for preventive measures against the SNCF, within the context of a dispute with RFF and the SNCF regarding the allocation of train paths and the Gevrey station situation.

3/ The Main Rail Texts

European Texts

• Directive 91/440/EC of 29 July 1991, supplemented by the following two directives:

• Directive 95/18/EC of 19 June 1995 on railway undertaking licences,

• Directive 95/19/EC of 19 June 1995 on the distribution of rail infrastructure capacity (train path allocation) and charges for using the infrastructure.

The 1st railway package was adopted in February 2001.

This instigates the limited opening up of rail freight and comprises the following:

• Directive 2001/12/EC of 26 February 2001, which modifies Directive 91/440/EEC and provides for the opening up to competition of freight on the trans-European rail freight network;

• Directive 2001/13/EC of 26 February 2001, which modifies Directive 95/18/EC of the Council, on Railway Undertaking Licences;

• Directive 2001/14/EC of 26 February 2001, on the distribution of rail infrastructure capacity, the pricing of the rail infrastructure and safety certification.

The 2nd railway package was adopted in April 2004.

This opens up the European rail freight market to competition. It establishes the right of new entrants to access the European and Trans-European rail networks:

• Regulation 2004/881/EC of 29 April 2004, creating a European Rail Agency in Valenciennes, the main task of which is to propose gradual harmonisation measures for safety rules and compile technical specifications for interoperability (TSI);

• Directive 2004/49 of 29 April 2004 on railway safety, which envisages the establishment of a national rail safety authority in each Member State and also a permanent accident enquiry body;

• Directive 2004/50 of 29 April 2004 on the interoperability of the Trans-European high speed and conventional rail system;

• Directive 2004/51 of 29 April 2007 modifying the Directive 91/440/EEC, which opened the transport of goods up to competition on the whole international rail network on 1 January 2006 and on the national market on 1 January 2007.

The 3rd railway package was adopted on 23 October 2007

It envisages, in particular, the opening up to competition of international passenger rail services and the acceleration of the technical and legal integration of the European Railway Area:

• Directive 2007/58/EC of 23 October 2007 modifying Directive 91/440/EEC and Directive 2001/14/EC allowing the opening up to competition of international passenger transport;

• Directive 2007/59/EC of 23 October 2007 on the certification of train drivers introducing a Community-wide certification system;

• Regulation 2007/1371/EC of 23 October 2007 introducing a unified system of rights and obligations for rail passengers within the European Community.

The recast of the railway packages

• Directive 2008/57/EC of 17 June 2008 on the interoperability of the rail system within the European Community (recast);

• Directive 2012/34/EU establishing a single European Railway Area (recast).

National Texts

The main laws (in the French Transport Code)

• Law 82-1153 of 30 December 1982, modified, on the orientation of national transport, creating the EPIC SNCF, in particular;

• Law 97-135 of 13 February 1997 creating the public establishment Réseau ferré de France with a view to revitalising rail transport;

• Law 2006-10 of 5 January 2006 on the safety and development of transport, founding the public rail safety establishment (EPSF);

• Law 2009-1503 of 8 December 2009 on the organisation and regulation of rail transport and comprising various transport provisions and also founding the ARAF;

(Now incorporated into the Transport Code).

The Main Decrees

• Decree 97-444 of 5 May 1997, modified, on RFF's missions and status.

- Decree 97-446 of 5 May 1997, modified, on the charges for the use of the national rail network.
- Decree 2003-194 of 7 March 2003, modified, regarding the use of the national rail network.
- Decree 2006-1279 of 19 October 2006, modified, regarding the safety of rail traffic and the interoperability of the rail system.

• Decree 2010-932 of 24 August 2010 on passenger rail transport.

• Decree 2011-891 of 26 July 2011 on traffic and travel service and comprising various rail provisions.

• Decree 2012 -70 of 20 January 2012 on passenger stations and other rail network service infrastructures.

Document published by the ARAF Publication Director: Pierre Cardo Head Office: 57 boulevard Demorieux - CS 81915 - 72019 LE MANS Cedex 2 Tel.: 02 43 20 64 30 Branch Office: 3 square Desaix - 75015 PARIS Tel.: 01 58 01 01 10

Design and Production: Obea Communication Photo Credits: ARAF / RFF, Lionel Charrier - TO MA / RFF, Jean-Jacques of ANGELO / RFF, MARIE GENEL / RFF, Philippe Giraud / RFF, Christophe RECOURA / RFF, M. Vigneau / ©SASSO - TO MA / Thinkstock.

Printed on 100% PEFC Paper

June 2013





57, boulevard Demorieux CS 81915 - 72019 LE MANS Cedex 2 Tel.: 02 43 20 64 30 - Fax: 02 43 24 78 23 3, square Desaix 75015 PARIS Tel.: 01 58 01 01 10 - Fax: 01 45 71 63 51

