

ARAF

The French rail regulatory authority



2010-2011
ACTIVITY REPORT



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**Article L.2131-2
of the Transport Code**

"Each year, the ARAF (French rail regulatory authority - *Autorité de Régulation des Activités Ferroviaires*) draws up an activity report that outlines the way in which measures for accessing and using the railway network are applied, as well as detailing complaint investigations and observations regarding network access.

"This report covers the ARAF's investigations, assesses its decisions' effect on railway-network use and access conditions and includes any appropriate recommendations.

"The report is sent to the government and to parliament, and is also made public."

A word from the chairman

Pierre Cardo represented France's Yvelines département from 1993 to 2010 and was mayor of Chanteloup-les-Vignes from 1983 to 2009. He is now president of the urban community of *Deux Rives de la Seine* and was appointed chairman of the ARAF via decree of French President Nicolas Sarkozy on 20 July 2010.

The broad range of issues covered and the intense discussions that ensued, the board members took every decision unanimously, which brings us great satisfaction. However, rapidly establishing ourselves as an operational body in a sector as complicated as this one is no mean feat, and we can only boost our human and material resources gradually. The fact that we were mandated to establish our head office in Le Mans has made recruitment somewhat difficult for many candidates, the majority of whom were living in the Paris region. We therefore had to include compensation measures in our recruitment efforts; even so, day-to-day constraints are still an issue for nearly one-third of all staff. This could have had a negative impact on our efficiency, as the number of dossiers and court submissions we have had to deal with grew rapidly, but we were able to meet the challenge through investment in services. In addition to activities directly tied to our responsibilities, the various hearings conducted by the board and the contacts established by its chairman have enabled us to assemble a complete picture of the rail sector in France and Europe.

What can we learn from this vision as a regulatory body?

- We have not yet finished reforming the railway sector in France.
- This sector has been opened up to competition under conditions that do not facilitate the role played by the SNCF or the transparent, straightforward use of the network and its infrastructure by new operators.
- Pricing is complex and hard to predict, making reliable forward planning difficult for operators.
- The current railway price-indexing system needs to be replaced with an index based on price caps, with performance incentive schemes.
- The RFF (*Réseau Ferré de France - French rail network*), which owns and maintains the French national railway system, has neither the resources nor the necessary autonomy to carry out its responsibilities.
- The policymaker that should clarify and define railway transport policy - in short, the State - did not carry out its duty until it finally decided to hold the *Assises du Ferroviaire* rail-sector conference.



What constructive conclusions can we draw from these less-than-optimistic observations?

- Competition is not an end in itself: rather, it is a way of achieving the highest productivity levels in a sector whose monopoly does not encourage reform.
- Properly structured governance - removing all ambiguity, disputes and suspicion - is fundamental if the railway sector is to develop successfully.
- The State's responsibility is to serve as a shareholder in this infrastructure management body and not to be a railway operator.

The ARAF's chairman
Pierre Cardo

The ARAF, which was founded pursuant to the law of 8 December 2009 on the organisation and regulation of France's rail-transport sector, has now completed its first year. Established in July 2010 and properly operational in December 2010, the ARAF has gradually established itself as France's rail sector regulatory body. As required by law (parliamentary monitoring), this report details the various initiatives carried out in 2010-2011 under the ARAF's responsibility, and is evidence of the tremendous amount of work undertaken by both the ARAF's board members and its staff. Despite the





1. THE ARAF'S RESPONSIBILITIES AND OPERATIONS





The ARAF's responsibilities and powers

The ARAF aims to clarify the various regulations with which railway undertakings must comply and make them more transparent by issuing opinions and resolving disputes, and ensures that operators are not discriminated against.

The ARAF (*Autorité de Régulation des Activités Ferroviaires* - French rail regulatory authority) is an independent public authority created by law no. 2009-1503 of 8 December 2009. Its main task is to “ensure the smooth operation of the public service and competitive activities involved in providing railway transport for both customers and other users of railway transport services.”

In particular, it is charged with ensuring that the various railway undertakings are able to access the railway network and its associated services in a fair, non-discriminatory way. The ARAF operates on behalf of the French government and is monitored by parliament and the courts.

It constantly monitors the conditions under which railway undertakings access the railway network, and ensures that the economic, contractual and technical measures implemented by infrastructure managers and railway undertakings are consistent with their own constraints. Following appropriate consultations, it may make any necessary recommendations regarding the way in which the sector operates, and may submit these recommendations to the government or any relevant sector body.

It issues opinions relating to the various measures governing the railway sector's operation. In particular, such opinions involve:

- Draft regulatory documents covering how the railway network is accessed as well as the design, creation and use of infrastructure and railway transport equipment.
- Network statements (DRR - *Documents de Référence des Réseaux*), which lay out all the economic, technical and administrative regulations that operators must comply with in order to access the various networks.
- The infrastructure fees (tolls) that railway undertakings must pay in order to use the network, which may only come into force once the ARAF has delivered a recommendation regarding pricing principles and rules, in particular those emerging from regulations.
- The appointment or early termination of the director of the traffic management department (DCF), which works within the SNCF on behalf of the RFF.

The ARAF is tasked with resolving any disputes that may arise when operators exercise their rights to access the network and its associated services, in particular disputes between railway undertakings and infrastructure managers. The ARAF must also issue an opinion regarding any French Railway Safety Authority decisions that might be deemed discriminatory by a given stakeholder.

At the request of the relevant authority or companies concerned, it ensures that passenger railway transport services established between France and other European countries (within the context of the opening up of competition as authorised in December 2009) are mainly international in nature. It also decides whether any damage is done to economic equilibrium by public service contracts that result from navigation in coastal waters as part of international passenger services.

In order for the ARAF to carry out its assignments properly, the law grants it a number of far-reaching powers, including:

- Extended investigative powers, particularly regarding accessing accounts; in this regard, sworn officers acting on its behalf can gather information, carry out enquiries, perform checks and seizures, and report any breaches of regulations that fall within its jurisdiction.
- Additional regulatory powers, which it may use to specify the various measures governing the conditions under which operators can be connected to the railway network, technical and administrative conditions for access and use of the network, conditions for accessing and using services that are deemed essential, and the scope of each activity that was separate, in accounting terms, within the incumbent operator, the settlement regulations applicable to them and the guidelines used to determine the nature of the financial relationships between these activities.
- Sanction powers for any breaches noted, either within the context of a case being submitted to the courts or on its own initiative; it may issue fines of up to 5% of the offending party's turnover and restrict its access to the infrastructure.



The ARAF's organisation

Despite having a light organisational structure, the ARAF boasts a high level of expertise through both its seven board members and the various managers who handle requests and prepare its decisions.

Board members

The ARAF's board is its decision-making body, responsible for setting its major policies. It makes decisions and formulates opinions based on majority vote, subject to the presence of at least four members. In the event of a tied vote, the chairman has the casting vote.

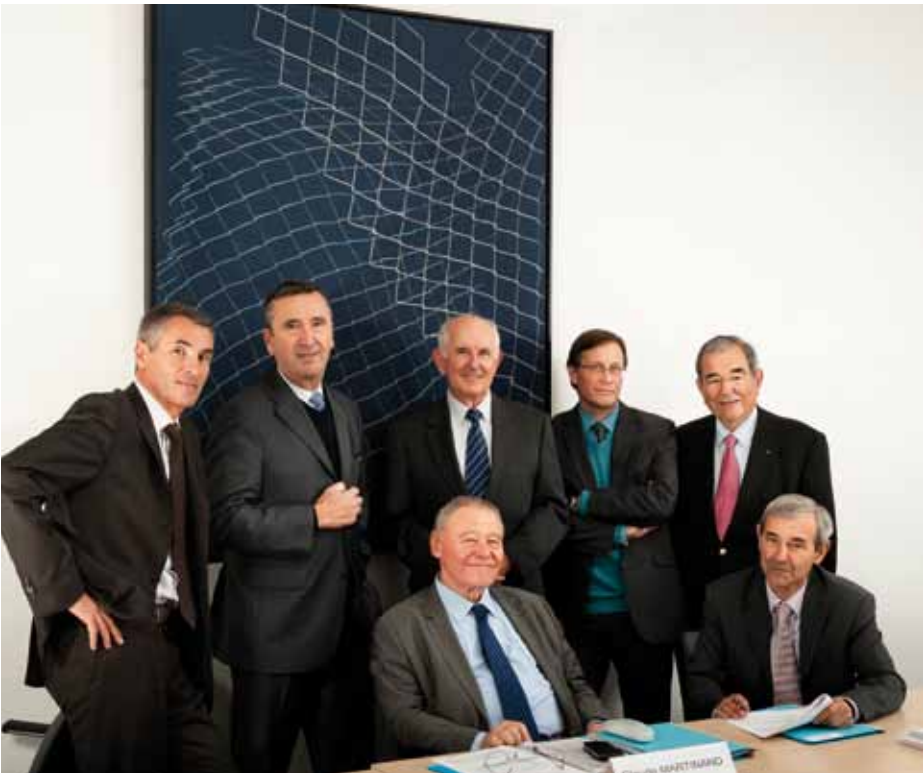
The board is comprised of seven members (including its chairman) chosen for their expertise in the railway sector, economics, legal matters or competition issues. In order to ensure that they remain independent, board members may not be dismissed. They

are appointed for non-renewable periods of six years, are prohibited from directly or indirectly holding an interest in companies involved in the rail transport sector, and may not rule on any affair in which they have or have had an interest for a period of three years preceding the ruling. Four board members, including the chairman, are appointed by the government. The remaining three are appointed by the president of the National Assembly, the president of the Senate and the chairman of the Economic, Social and Environmental Council. One-third of the board's membership changes every two years. In order for this system to operate, when the ARAF was created the chairman was appointed for a period of six years and the terms of the other members were set at two, four or six years by drawing lots.

As of 31 December 2011, the board was made up of:

- Pierre Cardo, chairman, whose term will end in July 2016.
- Jacques Bernot, appointed by the president of the Senate, whose term will end in July 2012.
- Dominique Bureau, appointed by the president of the National Assembly, whose term will end in July 2014.
- Henri Lamotte, appointed by the government, whose term will end in July 2014.
- Claude Martinand, appointed by the government, whose term will end in July 2016.
- Jean Puech, appointed by the government, whose term will end in July 2012.
- Daniel Tardy, appointed by the president of the economic, Social and Environmental Council, whose term will end in July 2016.

The board met 57 times during the 2010-2011 period, conducted 37 hearings for rail-sector stakeholders and issued 30 opinions and decisions, all unanimously carried.



Seated, from left to right: Claude Martinand, Pierre Cardo.
Standing, from left to right: Henri Lamotte, Jacques Bernot,
Jean Puech, Dominique Bureau, Daniel Tardy.

The ARAF's departments

The ARAF's departments are under the responsibility of the secretary general, who is appointed by the chairman. They are divided into three operational divisions:

- The legal affairs division has responsibility for all legal aspects of the ARAF's work. In particular, it oversees the procedures used to resolve disputes and issue sanctions, and ensures that the board's decisions are legally sound. It also oversees the preparation of proposals and opinions formulated by the ARAF regarding legislative and regulatory matters, and is responsible for litigation.
- The network access division is responsible for the economic and technical aspects of the ARAF's work. As such, it is responsible for regulating the access of companies and other requestors to the railway network's infrastructure and services.
- The accounting division is responsible for all tasks involved in maintaining separate accounts for the ARAF's various activities and managing the costs of regulated services, particularly those relating to essential facilities. It also audits those operators that enjoy a monopoly.

The general services department is responsible for managing all of the ARAF's resources. In particular, it covers human resources and financial/accounting management, as well as the ARAF's information and documentation systems.



The ARAF's organisational structure

The ARAF's board



Jacques Bernot
Dominique Bureau
Henri Lamotte
Claude Martinand
Jean Puech
Daniel Tardy

**Pierre Cardo,
chairman**

Advisor to the chairman
François Wernert

Communications/external relations
Caroline Raison

Secretary general
Michel Vermeulen

General services
department
Amaury de Bouvet

Accounting
division
André Delboe

Legal affairs
division
Béatrice Cosperec

Network access
division
Pierre Ravier

Economics and
pricing unit
Technical and
operations unit

16 February 2012

The ARAF's location

In accordance with law no. 2010-1064 of 8 September 2010, the ARAF's head office is in Le Mans, near the station at 57 Boulevard Demorieux (interior photo).. The head office hosts all of the ARAF's departments (photo at right).

The ARAF also has a Paris office at 3 Square Desaix, 75015 Paris. The ARAF uses this office for board meetings, and its various departments use it for meetings with other railway-sector stakeholders, most of which are based in the Paris region.



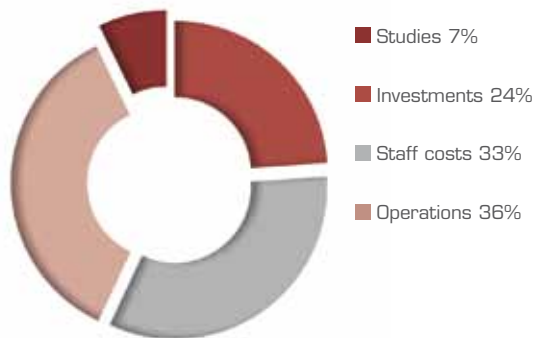
The ARAF's operations

Parliament. Its resources, which come from fixed fees paid by rail companies, are a proportion of the said fees (to a limit of 5 thousandths of the total) that such companies pay directly to the RFF for using the national rail network. Following a proposal from the ARAF's board, a law passed on 7 October 2010 now limits the fees to 3.7 thousandths of the total of all fees for using the network (lower than the legal maximum of 5 thousandths as set by the law). The ARAF's total resources therefore stood at €12.7 million in 2011.

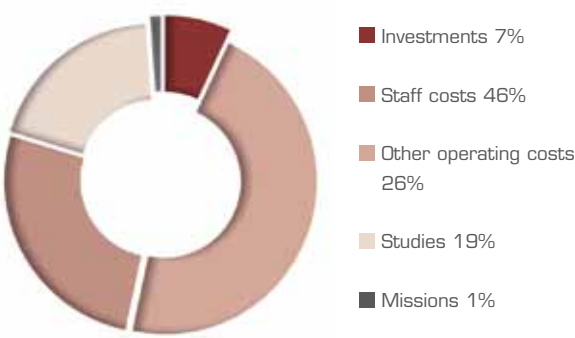
The ARAF's resources

The ARAF is an independent public authority established as a corporation. It has financial independence and is subject to ex-post monitoring by the French Audit Office and

2010 budget (Sept.- Dec.)



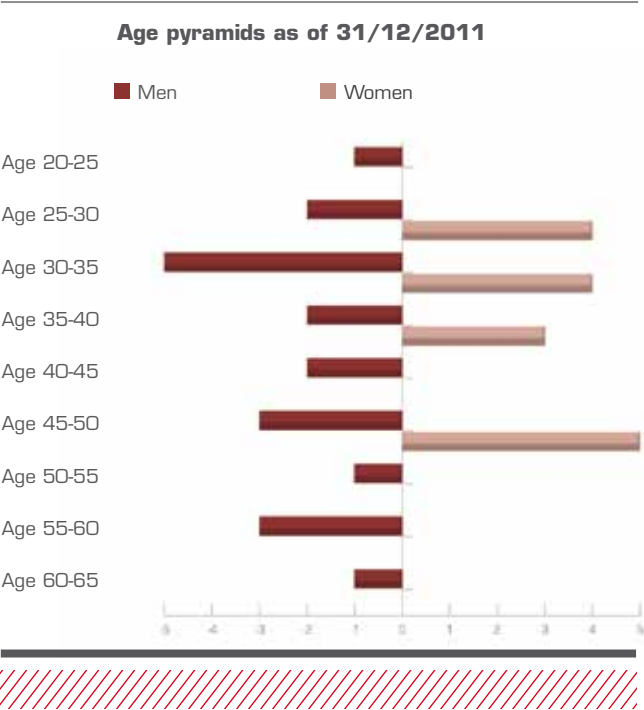
2011 budget



The Finance Law for 2012 changed these arrangements by capping the ARAF's budget at €11 million, as well as capping the number of people it could employ at 52 full-time equivalent positions. A consequence of these new arrangements is that the resources to which the ARAF has access are now checked beforehand rather than afterward. As far as the ARAF's board is concerned, this unfortunately compromises the management independence that Parliament sought to confer on the ARAF when it voted in the law of 8 December 2009 on the structuring and regulation of railway transport in France.

The ARAF's location

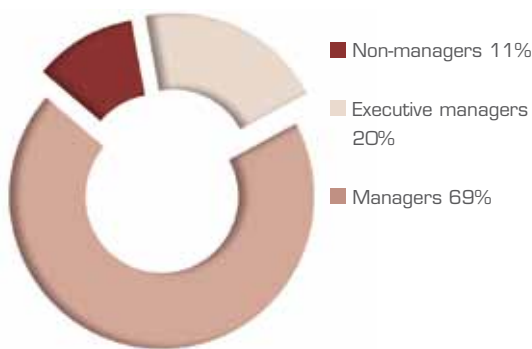
The ARAF recruited its first employees in August 2010. The total number of employees (excluding board members) increased from 15 as of 31 December 2010 to 36 as of 31 December 2011. This increase in staff numbers is evidence of the ARAF's growing influence, and it should eventually employ about 60 people. As of the end of 2011, 89% of all staff were managers, and there is a near-equal distribution of men and women (16 women and 20 men), with an average age of 39 and 2 months



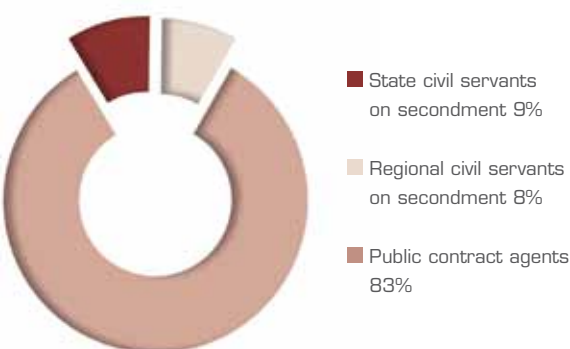
As an independent public authority, the ARAF may employ magistrates and civil servants; it can also recruit contract staff. The various assignments with which the ARAF is entrusted require high levels of expertise, not only in relation to the rail sector, but also in transport economics, financial auditing and law. Staff members come from a wide range of professional areas (including companies, audit and consultancy firms, universities and other regulatory bodies) and are all recruited for their very high levels of training and technical expertise.

Some 80.6% of all staff members are directly involved in regulatory tasks, and the work they do is directly related to the ARAF's specific activities (engineers, economists, finance specialists, lawyers). The remaining 19.4% of staff members are involved in support roles (administration, accounting, IT, communications).
As of the end of 2011, 33 employees were based in Le Mans and three in Paris. It should be noted, however, that 12 employees make the journey between the Paris region and Le Mans every day.

Breakdown of jobs in 2011



Breakdown by contract type in 2011





Relations with other relevant French authorities

- The Competition Authority passes on details to the ARAF of any cases referred to the courts that fall within its jurisdiction. It can also refer any other issue to do with the rail transport sector to the ARAF for its opinion. Within this framework, the ARAF was consulted by the Competition Authority on questions to do with service facilities in two proceedings that it had instigated before the ARAF was created, one on the former's own initiative and the other at the request of Euro Cargo Rail (ECR). The Competition Authority was also consulted by the ARAF within the context of approving the accounting separation rules for the Stations & Connections branch. And the two authorities also consulted when they were required to give their opinion regarding the draft order for passenger stations and service facilities.

French Railway Safety Authority

The French Railway Safety Authority ensures compliance with rules on safety and the interoperability of railway transport systems. It is responsible for granting railway operators the requisite permits before they start running services and for ensuring that various regulatory requirements are satisfied, guaranteeing the fair treatment of all operators. It also ensures that operational technical and safety conditions are standardised, thus contributing to the interoperability of European networks. Anyone who feels they have been unfairly treated, discriminated against or made the victim of practices restricting their right to railway-network access by the French Railway Safety Authority may be referred to the ARAF. On the basis of such a referral, the ARAF formulates an opinion that it then sends to the French Railway Safety Authority's director, who will then take any measures deemed necessary. Thus far, the ARAF has fielded no such requests.



Cooperation with other European rail regulatory authorities

ties so as to improve the way in which information on their activities and the guidelines that inform their decisions is exchanged. This group is open to the authorities of the 25 European Union countries that have railway networks as well as to observers, which include the Franco-British governmental commission charged with regulating the Channel Tunnel and the Swiss, Croatian, Macedonian and Norwegian regulatory authorities. The Regulators' Group meets every three months.

The Competition Authority

Article L.2135-13 of the Transport Code lays out the conditions under which the ARAF works with the Competition Authority.

- The ARAF's chairman refers any instances of a dominant position being abused to the Competition Authority, as well as any practices brought to his knowledge that may impede free competition in the railway transport sector. He may also refer any other issues that fall within his jurisdiction to the Competition Authority for its opinion.

The European Commission's Regulators' Group

Established and run by the European Commission, the Regulators' Group was designed to ensure better coordination among Europe's various regulatory authorities.

The IRG-Rail association

In addition to the work carried out within the European Commission-managed rail Regulators' Group, on 9 June 2011 the ARAF played a part in creating the Independent Regulators' Group - Rail (IRG-Rail), an association of 17 rail regulatory bodies that all meet strict independence requirements. The overall aim of the IRG-Rail is to boost exchanges among regulators so as to allow them to share best practices and regulate rail networks reliably and consistently across Europe. Matthias Kurth, chairman of the Bundesnetzagentur (Germany's rail regulatory authority), is IRG-Rail's current chairman, while Anna Walker, chairperson of the UK's Office of Rail Regulation (ORR), serves as its vice-chairperson.

Five working subjects have been selected for 2011 and 2012:

- The creation of international freight corridors.
- The economic equilibrium of public rail transport service agreements that are affected by navigation through coastal waters as part of international passenger services.
- Monitoring of the rail sector (statistical indicators); recasting of the first European directive package for the rail sector; and infrastructure pricing (a working group set up by the ARAF, which is responsible for running it).

At the plenary meeting held on 28-29 November 2011, members of the IRG-Rail association adopted several documents that provide an overview of the progress made by the various working groups involved and of the best practices that have emerged from this work. In particular, they issued an opinion on the discussions that are currently underway regarding the European Commission's proposal, published on 17 September 2010, to amend the first package of rail directives. A list of the IRG-Rail association's members, together with those documents and opinions that have been adopted, is available at www.irg-rail.eu.

Bilateral contacts

British regulatory authority

On 15 December 2010 in London, chairman Pierre Cardo and the other board members met with Anna Walker, chairperson of the ORR, and Bill Emery, its chief executive. The Office of Rail Regulation is the independent safety and economic regulator for Britain's railways. It currently has some 300 employees and an annual budget of more than €35 million. Since this first meeting, representatives of the two authorities have met a number of times in both Le Mans and London.

Belgian regulatory authority

The ARAF's chairman Pierre Cardo met with Luc de Ryck, director of the Belgian Regulatory Service for Rail Transport and for Brussels National Airport Operations. The Belgian regulator, working within the Federal Public Service for Mobility and Transport, has four main responsibilities, involving an advisory role, a monitoring role, administrative dispute resolution and the handling of complaints. This meeting served as an opportunity to carry out a comparative analysis of the ways in which the railway sectors are structured in each country, the powers enjoyed by each regulatory body and the content of documents relating to network use.

German regulatory authority

In addition to discussions held within the context of the IRG-Rail association, the ARAF's departments have had a number of bilateral working meetings with the German regulatory authority. In particular, they discussed freight corridors and pricing increases that are aimed at getting rail companies to bear the complete infrastructure costs.

Other international contacts

The ARAF also welcomed representatives from the Serbian Ministry of Transport and from the Gabonese regulatory body, who were interested in gaining greater understanding of the ARAF's responsibilities and operations.



2. REFORMS TO THE RAILWAY SYSTEM’S GOVERNANCE





Implementation of the law of 8 December 2009 on the organisation and regulation of France's rail-transport sector

On several occasions, the ARAF has had to rule on the way in which the law of 8 December 2009 has been applied. This law is a founding text that determines how the structures are to develop over time and is essential for opening up the railway sector to competition.

Adapting the governance system to face competition

The railway system is still structured in the same way as it was after the 1997 reform, which had two aims:

- The main goal, beyond doubt to contain the railway sector's debt, has been met, although it has not been possible to reabsorb this debt owing to the lack of sufficient resources.
- The second goal was to transcribe the principle of separation between infrastructure manager and railway operator into French law, a principle imposed by EU directives.

These aims resulted in a new public body being created: the RFF, which bears the debt and manages the infrastructure, leaving the day-to-day responsibility of maintaining the network

and planning its traffic to the SNCF. The gradual opening up to competition, first involving freight and then international passenger services, has led the public authorities to question the SNCF's delegated managerial role and its need to evolve in order to provide new operators with a transparent, non-discriminatory framework. The legislators' decision, formalised in the law of 8 December 2009, involves the gradual development of structures, starting with the automatisation of station and railway traffic management, the most sensitive roles played by the delegated infrastructure manager. The ARAF was required to rule on implementation of these developments through several opinions and decisions handed down in 2010-2011, involving:

- The appointment of Alain-Henri Bertrand as director of the traffic management department (DCF).
- A draft order involving the traffic management department (DCF), which also concerns a number of other measures to be implemented in the rail sector.
- A draft order on passenger stations and other railway-network service facilities.
- The maintenance of separate accounts for managing the SNCF's stations.

Creation of the traffic management department (DCF - *Direction de la Circulation Ferroviaire*)

The law of 8 December 2009 created a specialist department within the SNCF, which is responsible for managing traffic on France's national railway network on behalf of, and in accordance with the aims and principles defined by, the RFF. Its tasks range from creating train-path flow charts to day-to-day management of traffic and incidents. The law includes special measures designed to guarantee free and fair competition and to prevent all forms of discrimination:

- Hierarchical autonomy: the traffic management department's director is appointed for a period of five years by the government (following the ARAF's favourable opinion) and may only be removed from this position once the ARAF has given its recommendation. He receives no directives that might risk compromising or distorting his independence, and his department's staff members may only receive directives from him.

- Budgetary autonomy: the traffic management department (DCF) has its own budget, financed by the RFF.
- Duties of confidentiality relating to information under staff members' responsibility.

The SNCF decided to create the traffic management department (DCF) on 1 January 2010, without waiting for passage of the law determining how it should operate and be structured. At the request of the Ministry of Transport, the ARAF then approved Alain-Henri Bertrand's appointment as the DCF's director on 15 December 2010. The ARAF did, however, regret not having a choice of several candidates: only one name was submitted, and that person had already been in the role for several months.

Regarding its opinion on the draft decree for creating the DCF, the ARAF asked questions regarding the relevance and long-term existence of the current institutional traffic management system, responsibility for which had been passed to the SNCF's traffic management department (DCF).

In the very short term, the ARAF decided that it was urgent to support the RFF in its role as the contractor on behalf of which the DCF works and to provide it with proper autonomy from the SNCF.

Its comments regarding the draft decree were designed to reinforce:

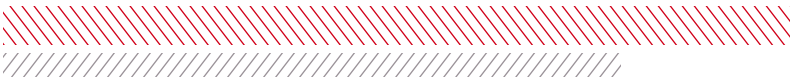
- The confidential nature of the information held by DCF staff, explicitly including "train-path requests and all information exchanged regarding such requests" and extending the duty of confidentiality to all departments that are sent such information, such as SNCF Infra and Stations & Connections (the government has partly taken these observations into account).
- The role played by the RFF, requesting that the DCF's internal regulations be approved by the RFF's chairman and that the DCF director's variable salary be set by the RFF's chairman, who will carry out an annual performance appraisal in order to determine it (the government has not taken these observations into account).
- The DCF's autonomy in relation to the SNCF, by requesting:
 - That regulations on accounting separation, in particular settlement rules, accounting perimeters and guidelines governing the nature of financial relationships between activities, be approved by the ARAF, as is already the case for the SNCF's other delegated management activities (the government has not granted this request);
 - That the agreement binding the SNCF, DCF and RFF clearly distinguish the work that the DCF carries out on behalf of the RFF from certain other tasks carried out by the SNCF, apart from traffic management (the government has partly taken this request into account).

The ARAF expressed its regret regarding the absence of several issues that would need to be tackled in order to clarify the responsibilities of the various stakeholders involved, such as defining the DCF's tasks and scope, addressing staff management issues and covering criminal risks. All in all, the ARAF noted that the draft decree it received did reveal the limits involved in how the railway system is currently structured.

The law on the traffic management department (DCF), which also concerns a number of measures to be implemented in the rail sector, was published on 28 July 2011 (law no . 2011-891 of 26 July 2011).

Follow-up to the ARAF’s opinion regarding the draft decree on the traffic management department (DCF)

Articles in the draft decree on which the ARAF has issued comments	The ARAF's comments	Order published
Article 1: confidential information	Amend the first paragraph	Text amended in order to take the ARAF’s comment into account
	Add to the list: “train-path requests and information exchanged regarding such requests”	Text amended in order to take the ARAF’s comment into account
	Systematically provide the RFF with access to all information	Article 2 of the text amended in order to take the ARAF’s comment into account
Article 2: information communicable by derogation	Better define derogation cases	Text not amended
	Extend the application of Article 226-13 of the Penal Code to include staff from third-party establishments	Text not amended
Article 4: the DCF’s code of good conduct	Secure RFF’s chairman’s approval of the code	Text not amended
Article 5: cost accounting for the DCF within the SNCF	The DCF’s account-separation rules within the SNCF approved by the ARAF	Text not amended
Article 6: the DCF director’s salary	Fixing of variable salary component by the RFF’s chairman	Text not amended
Article 8: Ethics Commission	Ensure that only cases “whose confidentiality must be maintained with regard to the new employer” are examined by the commission	Text amended in order to take the ARAF’s comment into account
	Delete the two last paragraphs	Text not amended
Article 10: RFF/DCF agreement (amendment to law no. 97-444 of 5 May 1997)	Separate the tasks carried out by the DCF on behalf of the RFF from the work carried out by the SNCF, apart from the DCF, in managing traffic	Text amended in order to take the ARAF’s comment partly into account
	Lack of performance incentive	Text not amended
Article 10: administrative track closure (amendment of fifth paragraph, Article 22, law of 5 May 1997)	Delete the limiting condition, “in order to preserve the option of later implementing a transport system”.	Text not amended



Creation of Stations & Connections

Transparent, non-discriminatory access to passenger stations is fundamental if passenger services (international at first, and then regional and national) are to be opened up to competition.

Although they are State property, stations are currently managed by the SNCF (the incumbent operator) through Stations & Connections, a branch created on 1 January 2010. This does not include the platforms, which the RFF owns and manages. The Transport Code has therefore specified the legal framework within which passenger stations are managed, by:

- Requiring the SNCF to manage the passenger stations that the State and other public entities have entrusted to it in a transparent, non-discriminatory fashion.
- Ensuring that a contract must be entered into with the station management company in order for a rail company to use its stations.
- Requiring that separate accounts be maintained for Stations & Connections' station management and the SNCF transport department's operation, the aim being to ensure that no public money for funding one of these activities can be allocated to the other.

The draft decree relating to stations and other service facilities, which was the subject of the ARAF's opinion no. 2011-014 of 15 June 2011, set out to specify the way in which Stations & Connections is structured, providing an overview of its autonomy within the SNCF, its governance, the relationships it has with railway undertakings and station pricing. In the absence of any specific legislative measures, this draft decree draws inspiration from the traffic management department (DCF) in order to define the way in which Stations & Connections is structured. In particular, it specifies that the station director is appointed by the SNCF's board of directors and not by the SNCF's chairman. In its opinion, the ARAF emphasised the fact that the Transport Code did not provide for the establishment of a station department, unlike the traffic management department (DCF). Creating a station department via the regulatory route therefore falls within an incomplete legislative framework, which does not create any real autonomy in station management.

Although the draft decree provides for the autonomous department to have specific governance rules within the SNCF (in addition to separate accounts), the ARAF considers this an unsatisfactory situation that should only be temporary. In addition to this general observation, the ARAF has formulated a number of remarks designed to:

- Increase cooperation between the station department, the RFF, the rail companies and the organising authorities in order to ensure that there is an appropriate match between investment and requirements in view of the size of future investment programmes, which will have a major impact on the fees paid by the rail companies.
- Include the station department's accounts in the SNCF's activity report once they have been certified by its statutory auditors (the government has partly taken this remark into account).
- Clarify the regional corporation forums' structure and responsibilities (the government has taken this remark into account).

The law on passenger stations and other railway-network service facilities was published on 22 January 2012 (law no. 2012-70 of 20 January 2012).

Follow-up to the ARAF’s opinion regarding the draft decree on passenger stations and other service facilities

Articles in the draft decree on which the ARAF has issued comments	The ARAF’s comments	Order published
Article 1: definition of regulated services	Distinguish access to service facilities via the network from access to the services offered by these facilities	Text amended in order to take the ARAF’s comment into account (new first article)
	Clarify the concept of “services,” which refers to the minimum access offered regarding service facilities	Text amended in order to take the ARAF’s comment into account
	Specify that it is up to the management company to demonstrate that an alternative option does exist	Text amended in order to take the ARAF’s comment into account
Article 2: pricing for regulated services	Define remuneration principles for regulated services within all service facilities	Text not amended
	Simplify the flexibility scheme in order to prevent any discrimination risk	Text amended in order to take the ARAF’s comment partially into account
Article 3: definition of service facilities	Consolidate the definition of service infrastructure with access via the network	Text amended in order to take the ARAF’s comment into account (new first article)
Article 4: passenger station services	Integrate assistance for the disabled and those with reduced mobility into the minimum access	Text amended in order to take the ARAF’s comment into account
	Specifically identify cross-channel services within additional services	Text not amended
	Clarify the issue of safety facility operation	Text amended in order to take the ARAF’s comment into account
	Extend access to premises and facilities to all railway undertaking service providers	Text amended in order to take the ARAF’s comment into account
Article 5: electrical traction services	Include conveyancing of electricity right up to the usage point	Text amended in order to take the ARAF’s comment into account
Article 9: essential light-maintenance services provided via service centres and other technical infrastructure	Replace “stations” with “service facilities” Text amended in order to take	Text amended in order to take the ARAF’s comment into account
Article 11: amendment of the SNCF’s statutes in order to create the passenger station department	Make it compulsory to consult the various stakeholders before suspending station investment programmes Text not amended	Text not amended
	Include separate accounts for the station department, certified by the SNCF’s statutory auditors, in the activity report	Text amended in order to take the ARAF’s comment partially into account
Article 13: methods for setting passenger station fees (new Article 13-1 of law no. 2003-14)	Request the ARAF’s prior opinion on the key points related to fee-setting, in particular return on capital	Text amended in order to take the ARAF’s comment partially into account
	Develop the selected “dual till” principle	Text amended in order to take the ARAF’s comment partially into account
	Remove the option to increase rents on areas and premises made available	Text not amended
	Implement a multi-year stability programme for station categories	Text amended in order to take the ARAF’s comment partially into account
	Modify the equalisation mechanism for resources that come from non-regulated services	Text not amended
Article 13: governance of passenger stations (new Article 14 of law no. 2003-14)	Clarify the article (composition, task, governing body’s operating mode)	Text amended in order to take the ARAF’s comment into account
Article 14-1: railway-station statement (new Article 13-1 of law no. 2003-14)	Provide for a reasoned opinion from the ARAF regarding the railway-station statement	Text amended in order to take the ARAF’s comment into account

In a regulated sector where the incumbent operator is still involved in infrastructure management as well as rail transport activities, maintaining separate accounts is a prerequisite for setting transparent, non-discriminatory access pricing. The aim is to prevent any kind of cross-subsidisation between monopolistic activities and activities subject to competition within the SNCF. Separate accounts must also ensure the availability of detailed, objective information, which is required for working out the access pricing associated with the costs actually borne. For this reason, the law requires the ARAF to ensure that the Stations & Connections accounts are completely separate from the SNCF's other activities. To do so, the ARAF must first approve the separate-accounting rules put forward by the SNCF. These rules were the focus of decision no. 2011-018 of 19 October 2011, following an opinion from the Competition Authority.

In its decision, the ARAF formulated a number of comments relating to:

- The way in which the separate-accounting rules are presented, such that a clear, standardised scheme can be guaranteed and its evolution can be clearly tracked.
- The opening of a 2010 balance sheet for Stations & Connections, the aim being to provide a faithful overview of its assets and a ratio between debts and capital that is consistent with the expected investment programme.
- The nature of the financial relationships among activities carried out within the SNCF, the aim being to prevent any possibility of cross-subsidisation.

The ARAF decided that an external auditor was required to track the separate Stations & Connections accounts on an annual basis, and therefore invited the SNCF to submit an amended separate-accounting rule proposal to it before 31 December 2011 which factored in its observations so that these new rules could be applied to 2011. However, the new proposal was not submitted to the ARAF by the specified deadline.

Incomplete reform: The rail sector at a crossroads

Although the *Assises du Ferroviaire* rail-sector conference, which concluded in December 2011, opened up a number of new avenues, the rail sector governance system's reforms, which serve as a guarantee of transparency in the opening up to competition, are far from complete.

The *Assises du Ferroviaire* rail-sector conference discussions

Regardless of all the progress made possible through the creation of the DCF and Stations & Connections, the ARAF believes, as expressed in various opinions, that the railway sector's current governance system's structure is still, in a manner of speaking, at a crossroads. Although the 1997 reform was a first, almost symbolic step, its implementation required others to adhere to it, but they did not, and so the 1997 reform remained - as the Audit Office put it - "an incomplete reform." However, the current

failings are evidence that the status quo can no longer continue. This analysis of the situation is shared by most railway-sector stakeholders. Inevitably, the way in which the railway sector's system of governance should evolve was the subject of a number of discussions at the government-organised *Assises du Ferroviaire* rail-sector conference held in the second half of 2011. During these discussions, the ARAF reiterated that, in spite of the RFF's limitations, its creation had had various positive consequences, and its contribution should not be called into question as the various structures continue to develop:

- The RFF has provided the rail sector with a broad range of expertise and a little more transparency, both vital to enable the various stakeholders involved (the State in particular), as well as regions and regulatory authorities, to make choices. For example, one wonders if issues of equilibrium between tolls, subsidies and investment choices would have been discussed as carefully if the RFF had not been created. This question clearly cannot be answered now, but highlighting it has enabled us to revitalise the essential drive to renew the network, which was neglected for too long when the system was integrated.
- It has given a boost to the productivity necessary for ensuring the rail sector's long-term survival and offers a suitable framework for incentive schemes, either through contractual undertakings or by allowing competition. This is a lever that is more or less essential in encouraging organisations to adopt reforms and increase their efficiency.

In order to succeed - and this is particularly true of the rail sector - reform must be progressive. So it is not a question of defining an ideal organisation, but rather of devising consistent phases and having the courage to implement them. What might the next phase be? Citing examples from other countries is not decisive, with the rail sectors in Germany, the UK and the Netherlands all developing in positive ways - and can we really be sure that we are adopting the same approach as those other countries? It is worth remembering that the aim of the German model was to privatise the whole sector; were we to apply it to France, it would result in the various activities of the RFF and SNCF being converted into a number of limited companies and transferred to subsidiaries.

In order to move forward, we now need to define the nature of the infrastructure manager, whose main aim must be to ensure that the network's capacity and quality are in line with the needs of railway operators. Its core business therefore involves infrastructure pricing and train-path allocation as well as managing traffic, including incident management. It must also serve as project owner and manage maintenance operations, as well as operations to renovate and further develop the network. This would not involve the tens of thousands of employees that people often say that it would (perhaps to put people off), but it would constitute the core that the RFF needs in order to have proper control over the work it carries out.

These clarifications are not intended to weaken the SNCF; on the contrary, their purpose is to enable it to face the competition from a strong position, improve productivity and avoid accusations of partiality.

Governance system reform is not an end in itself

At the end of the *Assises du Ferroviaire* rail-sector conference, the government decided to consider bringing the various infrastructure management activities back together, based on a model that should be defined during the first half of 2012. The ARAF has noted this and will publish its opinion regarding the proposed scheme in due course. The prospect of reintegrating these activities, however, should not prevent these vital changes from being implemented in the short term so as to bring about better coordination between the infrastructure manager and the delegated infrastructure manager.

The ARAF is therefore requesting that the last obstacles to the "convergence" project, which is designed to bring the RFF's and DCF's traffic management teams closer together in both physical and organisational terms, be finally removed. Similarly, the terms and conditions according to which the RFF and the SNCF's infrastructure branch (SNCF Infra) work together need to be reviewed in order to address several failings discovered by the ARAF in the course of resolving disputes within its remit:

- The RFF does not have enough information regarding the state of the network and its maintenance requirements to be able to manage it properly;

■ While the RFF lacks the necessary productivity observation facilities for infrastructure maintenance, let alone the significant resources required to bring about improvements. Furthermore, in an opinion published on 2 February 2011 regarding the 2012 network statement (DRR), the ARAF deemed it essential for the various railway-sector stakeholders to be able to base their actions on a multi-year vision of how the system was going to develop from an economic perspective (multi-year pricing systems in particular), as is required by the regulatory framework. The infrastructure manager must also be encouraged via incentive measures to reduce infrastructure costs and, in so doing, bring access fees down.

The ARAF therefore sees the situation's deterioration as lamentable:

- Although the performance contract that bound the RFF to the State for the 2008-2012 period was extended by a year, it is now expiring without a new contract being signed;
- The RFF and SNCF have not yet succeeded in reaching an agreement on a new multi-year delegated infrastructure management contract or even on the technical and financial conditions under which the network would be serviced and maintained for 2012;
- The indexing of railway tolls as introduced in the network statement goes against the principle of efficiency, since it sanctions a reduction in productivity.

This situation must be urgently addressed. For a period of approximately five years, the parties involved must define an industrial strategy that specifies how network costs and toll fees should develop, together with performance and productivity commitments. These commitments should figure both in the multi-year contract that binds the State and the RFF and in the infrastructure management agreement that binds the RFF and SNCF Infra. This agreement must be consistent with these commitments and should include adequate incentive and tracking measures. In fact, it is vital that all of the stakeholders involved in generating costs in the rail sector and concerned about the quality of train paths be made aware of their responsibilities.

More generally, restructuring the governance of the various entities tasked with managing railway infrastructure is not the only solution to the problems currently facing French rail transport. No restructuring can be fruitful unless it is supported by:

- The search for ways of increasing both work productivity and capital, particularly with regard to infrastructure servicing and maintenance;
- Major incentives aimed at the various stakeholders involved in infrastructure management, regardless of the organisational method chosen;
- Continued opening of the various rail transport departments to competition.



3. NETWORK ACCESS



At the start of December every year, the RFF (*Réseau Ferré de France* - French Rail Network) publishes a network statement (DRR) that is valid for the service timetable coming into force a year later. This document presents all of the rules that define the conditions under which a rail operator may access the national rail network and its various related facilities (including stations, marshalling, diesel and electricity), and includes both elements drawn up under the RFF's responsibility and those that fall to the SNCF. In its opinion of 2 February 2011 on the network statement (DRR) for the 2012 service timetable, the ARAF reacted to the most significant issues likely to prevent network access.



Allocation of train paths

Train paths, which are allocated in a complex manner, are vital for rail operators, and their management must now be improved, with new tools implemented.

Train-path management difficulties

The RFF has encountered problems in allocating high-quality train paths, leading to widespread difficulties in organising freight activities and uncertainties regarding certain passenger services. This is the main obstacle to competitive development on the open markets. Such difficulties are multi-layered. As the ARAF indicated in its opinion on the 2012 network statement (DRR), they are exacerbated by a number of decisions underway that are creating major constraints:

Train paths, which are allocated in a complex manner, are vital for rail operators, and their management must now be improved, with new tools implemented.

- The number of network renewal programmes has increased, and while these are essential for maintaining network quality, in the short term they have a negative impact on traffic by increasing engineering works.
- The construction of new high-speed lines involves engineering works to connect them up to the traditional network, causing delays in the process.
- The widespread introduction of phased scheduling, which should gradually result in better network use and a simplified allocation process, but which in the short term requires major revision of train-circulation flow charts.

Increases in demand contribute to these difficulties, such as a rise in the number of regional trains available, which saturate the main network nodes, and the build-up of freight traffic on major routes. Other causes are more temporary, such as the commissioning of the Rhine-Rhone high-speed line. These difficulties are exacerbated by the current organisational structure's shortcomings. Given that infrastructure management activities span three entities - the RFF, the traffic management department (DCF) and SNCF Infra - works requirements and operating constraints cannot be optimally managed.

Using provisional train paths

The various constraints currently affecting the network make it impossible to factor in all scheduled engineering works when timetables are being drawn up, so the RFF has introduced a procedure that uses provisional train paths, wherein a train-path request results in a conditional allocation. The request is granted via a train path that on certain days conflicts with one or more engineering works on the national rail network. For each day affected, the train path is classified as provisional.

In its opinion on the 2012 network statement (DRR), the ARAF deemed that the procedure involving provisional train paths went against regulations and was an obstacle to market access, and even a source of discrimination if it affected different rail companies in unequal ways. Such a procedure can only therefore be temporary. However, since addressing this situation involves a deadline, the ARAF’s opinion on the 2012 network statement (DRR) requested that this procedure be clearly described (which the RFF has already done) and supported by suitable contractual measures. In particular, these measures should be designed to give companies the greatest possible overview of the train paths actually available to them. For this reason, the ARAF has decided that the RFF should undertake to either confirm or delete any provisional train paths allocated to companies at least two months beforehand for freight trains and four months beforehand for passenger trains that require reservations. The RFF has admittedly transcribed this recommendation into the network statement (DRR), but does not appear to have actually applied it. Furthermore, an analysis of the responses given to companies requesting capacity for September 2011 compared with those given for September 2010 shows that, although the percentage of definite allocated train paths has increased for passenger services, it has decreased for freight services.

	Rate of train paths - days requested		Rate of train paths - firm days allocated	
	ST 2011	ST 2012	ST 2011	ST 2012
Freight train paths	5,252,697	5,364,648	78%	81%
Freight train paths	943.266	872.727	67%	62%
Of which SNCF freight	718.530	661.579	70%	67%
Of which other companies	224.736	211.148	55%	49%

Source: RFF data (Sept. 2010 and Sept. 2011) - ST: service timetable.

The ARAF therefore sees a lack of progress in the way that train paths were allocated in 2011, and feels that major organisational changes are needed, in addition to the major revision of the train-circulation flow charts required in December 2011 due to exceptional circumstances.

Necessary improvement in train-path management
Better coordination between engineering works and traffic

In order to improve network access and support traffic increases, the national rail network’s organisation of renewal and maintenance works must achieve a better balance between engineering-works requirements and operating constraints. Consequently, the RFF has decided to:

- Implement an industrial maintenance policy that defines each route’s desired performance levels, with the aim of increasing economic efficiency.
- Overhaul the engineering-works scheduling system implemented in 2007 to introduce “unavailability windows” in 2012 on the three major freight routes, which account for 35-40% of total freight traffic.

Although it supports this initiative in principle, by tracking the various disputes presented to it the ARAF will closely monitor its real impact, in particular given the uncertainties affecting the structuring of works windows. Such uncertainties involve, for example, a lack of information supplied by SNCF Infra, which makes it impossible for the RFF to have an accurate overview of the network's condition and its maintenance requirements. In this respect, in its opinion on the 2012 network statement (DRR) the ARAF considered the option of having major renovation work carried out on traditional lines (which, in the short-term, will have high-speed lines running alongside them) and recommended the unified management of maintenance engineering. There should be better coordination between operations and engineering works at each stage of the train-path allocation process: upstream, during the pre-construction flow chart phases, as well as downstream. The prospect of a unified infrastructure manager is a solution to this problem. In the meantime, however, only the introduction of major incentives (particularly in the contractual relations between the RFF and SNCF Infra) will make it possible to achieve the kinds of result that would be expected of a better-planned rail system, one more geared toward satisfying the needs of end beneficiaries.

Improving the train-path allocation process

The efficiency of the train-path allocation process is directly dependent on the quality of the pre-construction surveys, which are carried out as part of the upstream timetable planning phases. The latter involve tools and methods for structuring and optimising capacity, using the principle of sequenced, coordinated timetables. They are strategic, since they guide the responses to requests and herald network-access conditions for the various stakeholders. Timetable planning is used in particular to define a catalogue of train paths reserved for freight. The catalogue's low actual usage rate in rail companies' 2011 train-path requests and the latter's qualitative feedback raises questions regarding both the extent to which the catalogue meets shippers' requirements and the quality of the market studies that the infrastructure manager must conduct in order to offer a scheme that suits its customers. The poor ergonomic design of the train-path catalogue definitely discourages its use and thus deters network access: it lacks complete itineraries suited to requests; there is no choice but to join shorter train paths from the catalogue together; and there is no real-time information on each train path's availability. The ARAF recommends more detailed meetings with rail companies both upstream and downstream so that the RFF can offer solutions that better meet customer requirements.

Improving information systems

Improving information systems is an RFF priority, including:

- Deploying new high-performance systems for structuring train-circulation flow charts, which the ARAF wants to be as fast as possible according to its opinion on the 2012 network statement (DRR).
- Modernising the information systems available to the RFF's clients. The poor performance of the current systems, most of which are derived from the incumbent operator's IT systems and databases, is preventing traffic development and the network's opening up to competition. In particular, the information systems currently available to rail companies do not provide requestors with a complete, dynamic overview of the infrastructure's availability due to the fragmented information offered regarding capacity. The RFF must boost its efforts to modernise its information systems as quickly as possible if effective network access rights are to be implemented. In particular, this will involve "communicating and supplying information regarding train traffic as well as all other information needed to implement and operate the service for which they have been allocated capacity."

Resolving the Novatrans - RFF/Combiwest dispute

The dispute that pitted Novatrans against the RFF and Combiwest involved a conflict over railway-network access via train-path allocation as well as access to a portion of service infrastructure in the form of combined rail/road transport facilities. On 19 April 2011, Novatrans submitted a request to the ARAF to resolve a dispute involving the transfer of a train path to Combiwest so the latter could provide a combined transport service between Lyon and Rennes, a connection wherein the two companies are competitors. According to Novatrans, the RFF breached provisions detailed in the network statement (DRR), as well as impartiality and non-discrimination rules, by giving Combiwest an unfair competitive advantage. Consequently, Novatrans requested that the train path granted to Combiwest be revoked. Novatrans also believed that Combiwest had failed to fulfil its obligations regarding free access and non-discrimination in its capacity as manager of the Rennes terminal, and that the facilities transferred to Novatrans by the RFF were insufficient for the former to operate the terminal efficiently.

Requests for protective measures

Without waiting for this request to be investigated in more detail, Novatrans asked the ARAF to implement protective measures in anticipation of a tender invitation for the supply of logistics services being issued by the Ecotrans association of major retail companies. In particular, Novatrans requested that the RFF:

- Provide the ARAF with all information regarding the allocation conditions for the train paths requested by Combiwest for the Vénissieux-Rennes route;
- Inform Ecotrans of the dispute-settlement proceedings underway and ask it to suspend the initiated bidding announcement.

At its hearing on 4 May 2011, the ARAF formally recorded Novatrans' withdrawal of its first request for protective measures.

Regarding the second request, the ARAF found that:

- Novatrans had known about the changes made to the arrival time for the train path that was transferred to Combiwest in January 2011;
- Novatrans had not established that the Ecotrans association's tender invitation had resulted in the combined transport market between Lyon and Rennes being closed to it;
- The information brought to the ARAF's attention did not suggest that there had been any serious, immediate breach of the network access rules, a necessary condition for granting protective measures; Novatrans and the RFF had informed Ecotrans of the proceedings initiated.

The ARAF thereupon ruled that there were no grounds for granting Novatrans' requests for protective measures.

Final ruling

On 8 July 2011, at the end of its investigation, the ARAF rejected Novatrans' requests, finding that the latter had given up its initial request to have the train path revoked from Combiwest and that it did not demonstrate that the current investigation into the two companies' train-path requests for the second half of 2011 had been carried out in a discriminatory fashion. The ARAF believed in particular that Novatrans' request for regular information regarding progress in allocating train paths to Combiwest was in breach of confidentiality rules. In this regard, it found a contradiction in French regulations that did not make it possible to guarantee compliance with confidentiality rules. In particular, the provisions of Article 21 of law no. 2003-194 of 17 March 2003, which require the RFF to pass on information to all train-path requestors regarding complaints received when finalising the service timetable, go against the RFF's obligation to comply with confidentiality rules, especially as specified in Article 14.3 of Directive 2001/14/EC. For the ARAF, the latter obligation is part of its mandate. This current contradiction needs to be addressed by modifying the regulations and the network statement (DRR) so as to strengthen the legal soundness of network access. Furthermore, it decided that it was neither reasonable nor proportionate to specify or set access conditions for a new train path requested by Novatrans, since the latter had not entered into meaningful discussions with the RFF regarding the requests it had submitted to the ARAF. The ARAF also reiterated that the procedures described in the network statement (DRR) needed to be more flexible in order to optimise the rail network's management while safeguarding their non-discriminatory nature.

Follow-up to the decision

Novatrans challenged ARAF's decision under annulment proceeding and reversal action before the Paris Court Appeal.







Contractual relations between the RFF and rail companies

Improvement in the relationships between the RFF and the rail companies, which involves clarifying the contractual conditions between them and facilitating a clear understanding of charging terms.

Contractual conditions

In its opinion on the 2012 network statement (DRR), the ARAF deemed the general conditions applicable to contracts governing use of the national network infrastructure and those on national rail network train-path allocation relatively inflexible for the rail companies. The imbalance in contractual relations between the RFF and the rail companies was, for example, illustrated by the extended definition of force majeure chosen by the RFF. In its opinion on the 2012 network statement (DRR), the ARAF asked the RFF to review this definition and

define it more clearly; this has been done, although the new definition of force majeure and other similar events is still somewhat broad. Railway undertaking criticisms mainly involve a strike on the part of the DCF's staff being deemed a case of force majeure. To justify this exception, the RFF emphasises the institutional framework (the RFF's lack of hierarchical authority over the DCF) and the absence of any appropriate contractual levers in the agreement binding the RFF and DCF. This situation will need to be reassessed in light of decisions taken regarding reorganisation of the infrastructure's management. In its opinion on the 2012 network statement (DRR), the ARAF also noted that the contracts' general conditions did not provide for any compensation to be paid to railway undertakings in the event that the train paths ultimately issued are not compliant with the paths initially allocated. The ARAF has requested that a transparent, standardised scheme be introduced to compensate them for delays and for train paths being withdrawn. The 2013 network statement (DRR) will introduce a scheme whereby a lump-sum payment will systematically be made in the event of a reserved train path being modified or withdrawn as a result of actions on the part of either the RFF or the rail company. This scheme, on which the various stakeholders have yet to agree, is being presented as optional: rail companies will be able to opt out of it for the service timetable and use the old system, whereby compensation is paid on a case-by-case basis. This new scheme may be tested in 2012 in order to adjust it as needed and to help companies understand the choices they will have to make at the beginning of the 2013 service timetable. The ARAF has recommended that the RFF continue talking to the rail companies and other transport organising authorities in this regard. More generally, the ARAF believes that exercising the right to access the network should come with a range of incentive measures, designed to make infrastructure managers and railway undertakings aware of their responsibilities and so improve the way in which the rail system operates. These incentives, in addition to the economic signals provided by pricing, should therefore encourage:

- The infrastructure manager to comply with obligations in allocating capacity;
- Optimum use of the network, for example by preventing train paths from being overbooked by railway undertakings;
- Improvements in service quality via joint efforts by all stakeholders.

Charging structures

In its opinion on the 2012 network statement (DRR), the ARAF noted that:

- It was difficult for railway undertakings to ascertain train-path prices (both definite and provisional paths) when they were reserving them. The railway undertakings need reliable information that is not likely to change so that they can meet the requirements imposed by their own sales offering and their customers' expectations.

- Anomalies and shortcomings in the price offering and payment terms show a lack of overall transparency, and the fragmentation of information involving the main document, appendices and web-only documents leads to confusion and even inconsistencies. For this reason, the ARAF has asked the RFF to improve its charging structures, so that definite prices can be given for train paths when they are allocated. the RFF has indicated that it will only be able to address this request once its information systems have been upgraded.



Safety issues

Although the ARAF does not rule on the technical relevance of safety regulations, it does, however, ensure that they are sufficiently precise and can be easily accessed so that new operators are not prevented from accessing the network.

Clarifying roles regarding safety

Several regulatory documents regarding safety have been submitted to the ARAF for its opinion, including:

- A draft decree regarding a survey on the dangers associated with infrastructures for dropping off, loading and unloading dangerous materials, implementing Articles L.551-2 et seq. of the Environmental Code.
- A draft law setting the national rail network's goals, indicators, safety methods and technical safety and interoperability regulations.
- A draft law amending the law of 23 June 2003 regarding safety regulations applicable to the national rail network.

The ARAF believes that it is not within its remit to look into the technical relevance of the safety rules presented in the regulatory documents. However, its opinion is justified with regard to the smooth operation of the various competitive activities carried out within the rail-transport context. Indeed, defining precise, exhaustive, easily accessible safety regulations that are comprehensible to all parties involved in the national rail network is vital to enabling rail companies (new ones in particular) to access the network. These regulations run the risk of acting as barriers and of causing discriminatory treatment of different rail companies if they are not proportionate to the end objective and clear enough to be applied by railway undertakings that do not have the same expertise levels as the incumbent operator.

In this regard, the draft law, which sets the goals, indicators, safety methods and technical safety and interoperability regulations applicable on the national rail network, is a useful addition to the regulatory framework that serves to clarify the roles played by all stakeholders with regard to safety.

This draft law completes law no. 2006-1279 of 19 October 2006 regarding rail traffic safety and system interoperability, which specifies the responsibilities of each stakeholder involved:

- The State is responsible for the safety of rail traffic, sets goals and indicators and defines safety methods.
- The RFF publishes documentation on the national rail network's operation.
- The infrastructure manager, delegated infrastructure manager and rail companies each draw up the operational rules and instructions for managing operational safety in the areas that concern them.

The ARAF sees this draft law as a step forward in clarifying and simplifying the regulatory framework:

- By equally dividing responsibilities among all stakeholders and providing rail operators with freedom of choice in defining the resources that they consider most suitable to enable them to meet the safety targets under their responsibility; the rail companies can, for example, base their choices on feedback from other European Union countries;
- By providing an alternative to rail companies that do not have the means to develop their own body of operational rules and instructions.

To this end, the draft law provides for the publication of French Railway Safety Authority documents, compliance with which confers upon rail companies a presumption of conformity with the safety requirements stipulated in the draft law. In order for these "acceptable means of compliance" to fully play their role, it is important for the rail companies to be involved throughout their development process. In its opinion on the draft law, the ARAF has therefore recommended replacing the consultation mechanism provided for in the said draft law with a requirement involving dialogue with all other direct stakeholders at the earliest juncture. This is also the case for documents published by the RFF.

Checking the compatibility of rolling stock

Before allowing new motorised rolling stock to run on its network, the RFF requires, in addition to the French Railway Safety Authority's authorisation to operate a commercial connection, that compatibility checks be carried out in order to ensure that the rolling stock's specifications are compatible with the sections on which the equipment will run. In its opinion on the 2012 network statement (DRR), the ARAF decided that this compatibility-checking procedure was not founded on any legal or regulatory base, and Recommendation 2011/217/EU of 15 April 2011 clearly supports this analysis. The ARAF feels that this procedure limits rail companies' right to access the network due to the length of time required to carry out such checks, which, in a great many cases, can take more than 12 months, resulting in delayed rail-service openings and immobilisation of costly assets for the rail companies, and can also end up discriminating against companies involved in the international transport of merchandise. The procedure should therefore be dropped.



The RFF has maintained this procedure in the 2013 network statement (DRR), but has amended it as follows:

- For rolling stock with the specifications of so-called standard vehicles, the RFF commits to compatibility checks within a one-month review period;
- The RFF makes no such review-period commitment for new rolling stock, whereas the 2012 network statement (DRR) specifies a maximum review period of three months, which was admittedly exceeded in most cases;
- The RFF makes no such commitment regarding deadlines for updating technical information or local operation instructions.

In no way are these modifications an improvement; all they do is reflect the RFF’s inability to manage such deadlines, and do not include any type of incentive scheme designed to shorten them or ensure that they are met. The RFF justifies such a procedure by citing the lack of infrastructure registers, despite the fact that the latter are provided for by law no. 2006-1279 and already exist on certain major routes in other European countries. The RFF has indicated a plan to gradually introduce an infrastructure register between March 2015 and March 2017, in compliance with the deadlines set by the European Commission in its decision no. 2011/633/EU of 15 September 2011 on common specifications for railway infrastructure registers.





4. PRICING





Recommendation regarding minimum access

The ARAF's more binding recommendation procedure on pricing concerns charges for minimum access offered on the rail network.

Scope of recommendation

Within the scope of its opinion on the 2012 network statement (DRR), the ARAF issued:

- A recommendation regarding the fees for minimum access to the network, specifically:
 - Handling of requests for infrastructure capacity.
 - The right to use the granted capacity.
 - The use of running track points and junctions.
 - Train control, including signalling.
 - The provision and communication of information regarding train traffic as well as all other information needed to implement and operate the service for which they have been allocated capacity.

- Well-supported recommendations on the fees levied for service facilities.

The recommendation is binding, and the enforceability of pricing depends upon it. If need be, the RFF must amend the section of its network statement (DRR) related to pricing in order to comply with the ARAF's opinion. The RFF's amendments must then be submitted to the ARAF for its recommendation. Article L.2133-5 of the Transport Code states that the ARAF will issue a recommendation regarding pricing principles and rules applicable to the network.

Opinions issued by the ARAF during 2010-2011

In 2010-2011, the ARAF issued three opinions on minimum-access pricing. In its opinions, the ARAF set out to affirm respect for pricing rules and principles, including transparency in preparing and publishing fees, non-discrimination, the relationship to infrastructure costs and the market's ability to bear the fee levels. It specifically put forward the following items:

- Within a single market segment, the various undertakings are treated fairly to prevent any barriers to access.
- The pricing scheme must be based on identical principles throughout the entire network, according to the principle of territorial equity.
- Fees paid by railway undertakings performing similar services in a similar market must be equivalent.
- The infrastructure manager receives, at minimum, the cost directly attributable to train movement, calculated on average, with regard to minimum access.

Pricing aimed at better network usage

The ARAF believes that the infrastructure-access pricing system must lead stakeholders to make decisions that benefit rail transport services' users and customers in terms of the successful operation of a public service and the rail transport sector's competitive activities.

While developing new capacity is particularly costly, congestion is a major barrier to the rail system's successful operation and to rail network accessibility. Pricing must promote incentives for better use of available capacity and guide the investments of both the infrastructure manager and the railway undertakings. It is therefore imperative for train-path reservation fees to send an appropriate signal concerning usage levels.

A multi-year view of fees

It is essential for infrastructure managers to be able to offer railway undertakings multi-year pricing principles, as required by law and as applied in other countries that have seen sustained productivity growth. Railway undertakings require greater transparency regarding user charges. In its opinion on the 2012 network statement (DRR), the ARAF also viewed the negotiation of the next performance contract between the RFF and the government in 2013 as an opportunity to define pricing prospects associated with productivity growth. These will appear in the network statement (DRR).



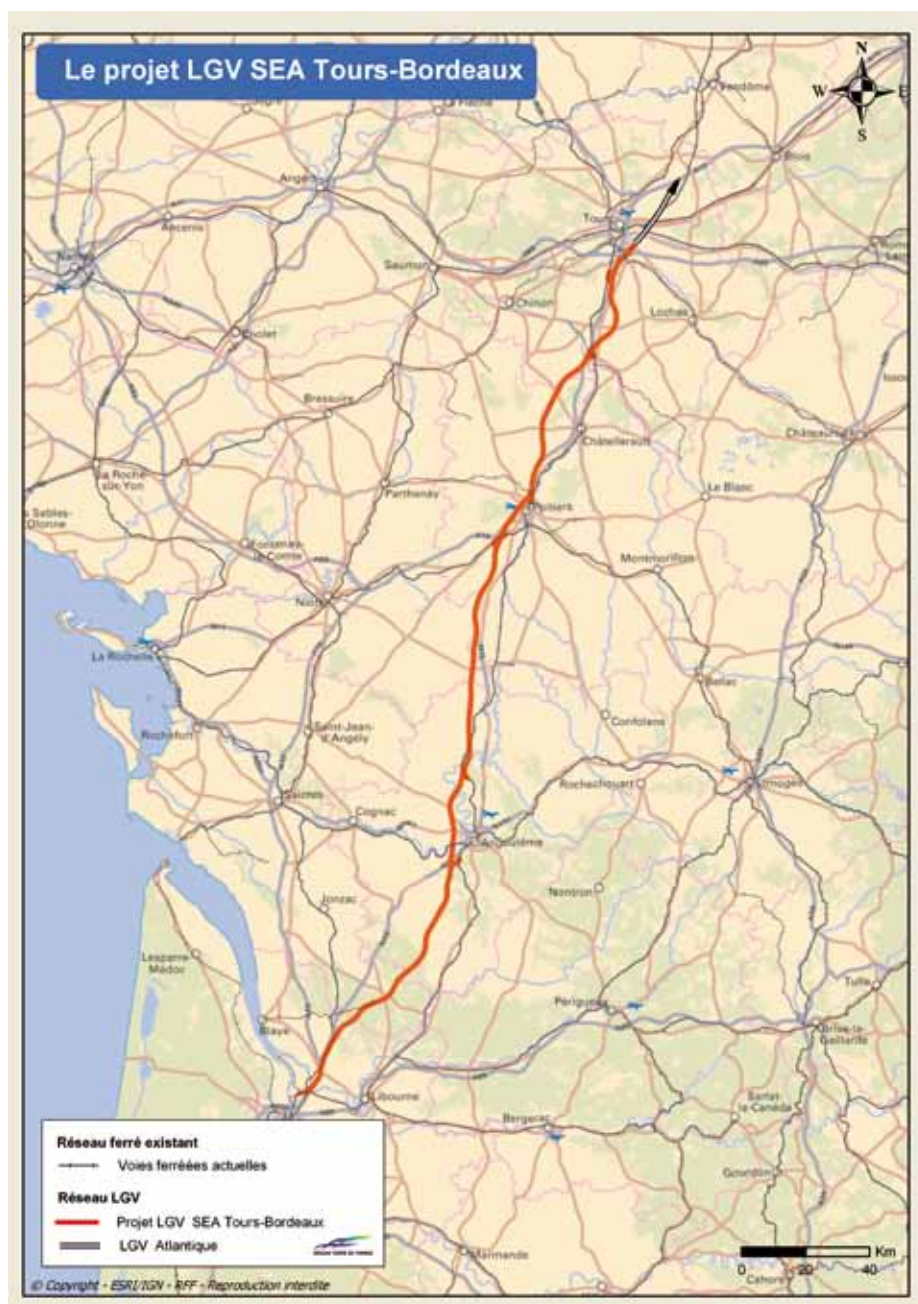
**Pricing regulations
on the *Sud Europe Atlantique* line
between Tours and Bordeaux**

In 2011, the ARAF ruled on pricing provisions related to one of the largest railway projects currently underway: the *Sud Europe Atlantique* high-speed line.

The project

The *Sud Europe Atlantique* (SEA) high-speed rail line project between Tours and Bordeaux involves the completion of approximately 340 km of new lines, including 302 km of double-track high-speed lines between Saint-Avertin, southwest of Tours, and Ambaré-et-Lagrave, north of Bordeaux, as well as 38 km of connecting lines to the conventional rail network. Its main objectives are to link Bordeaux to Paris in 2 hours, 5 minutes, compared to the current 3 hours, and to enhance the expansion of freight and TER links on the current line

between Tours and Bordeaux and pave the way for high-speed rail projects to Toulouse and Spain. The project is funded under a public-private partnership agreement in the form of a concession scheduled to end in 2060. The Lisea Group is the concession-holder, led by Vinci in partnership with *Caisse des Dépôts* and AXA.



Referral to the ARAF

On 21 October 2010, the RFF's board of directors adopted the draft concession agreement negotiated with the candidate selected to construct the *Sud Europe Atlantique* high-speed rail line between Tours and Bordeaux. This draft agreement includes pricing provisions that outline, for the duration of the delegation, the fees levied for use of the new line, which will be established and collected by the delegatee. It defines the pricing scale, the fee level for the year the line opens and, for subsequent years, methods for determining caps on fees levied, below which the delegatee can set the pricing level. The RFF petitioned the ARAF to allow the delegatee to benefit from the provisions of paragraph two of Article L.2133-5 of the Transport Code: as soon as the ARAF rules on the pricing provisions set forth in the management delegation agreement, the opinion issued shall have the characteristics of a recommendation enforceable against the delegatee and the RFF, which is responsible under the contract for approving the pricing proposal prepared by the delegatee.

The ARAF's analysis

It is difficult to assess the pricing provisions' compliance with respect to potential changes in law and regulations over such a long period (2016-2060). The draft contract and its pricing provisions result from a European competitive-tender procedure. The very fact that a candidate is prepared to bear the traffic risk by applying the pricing provisions of the draft contract shows that the market can bear the fee levels resulting from it. Therefore, the ARAF believes that there is no evidence allowing it to conclude that the pricing provisions in the draft contract will lead the delegatee to set fees that the national or international high-speed rail passenger market cannot bear.

The ARAF's decision

The ARAF issued a favourable opinion on the pricing provisions concerning minimum access and those related to the traction power distribution network's use by the high-speed line from Tours and Bordeaux for high-speed trains offering national or international passenger service. Nevertheless, the ARAF noted that various factors would likely modify the contract's operating conditions during the line's 2016-2060 operating period, requiring contract amendments.

Follow-up to the opinion

The concession agreement for the future *Sud Europe Atlantique* high-speed line between Tours and Bordeaux was signed on 16 June 2011 by the RFF and Lisea, the concession-holder.



The ARAF's observations regarding the RFF's proposed pricing for the 2012 service timetable

On 2 February 2011, the ARAF delivered its first opinion on the national network's pricing structure.

Demand for transparency for the benefit of railway undertakings

The ARAF's observations regarding Railway undertakings need adequate information on charges related to the railway infrastructure's use and development, which guide the pricing scheme. The ARAF noted that, in the 2012 network statement (DRR), the level of cost substantiation for minimum access fees was insufficient, both for informing the companies and enabling it to fully carry out its control functions. Therefore, it asked the RFF to provide,

no later than 30 September 2011, all items needed to review the relationship between costs and pricing, looking ahead to the 2013 network statement (DRR). While awaiting this, the ARAF nonetheless presented a number of comments on the RFF's pricing proposals for the 2012 timetable.

Railway network fees

	Activities covered by agreements	Competitive activities	Amounts 2012 (Source: the RFF)
Access fees	“Fixed operating and maintenance charges” of non-high-speed lines (Decree 97-446, Article 5)	-	€1,893 M
Train movement fees	“Cost directly incurred” (Directive 2001/14, Article 7.3) “Variable operation and maintenance costs” (Decree 97-446, Article 7)		€1,591 M
Reservation fees	“Some or all of the cost of invested capital” and possible flexibility (time period, train-path quality, scarcity of capacity etc.) [Decree 97-446, Article 6] “Scarcity of capacity on the identifiable infrastructure segment during periods of congestion” (Directive 2001/14, Article 7.4)		€1,779 M
	-	Increases “when the market can bear it” (Decree 97-446, Article 6 and Directive 2001/14, Article 8.1)	

Train movement fees

Under the RFF-proposed pricing scheme for 2012, the ARAF noted a significant discrepancy between national and international passenger trains “able to run at high speeds” and those “unable to run at high speeds,” of roughly similar weight, with respect to the train movement fees owed on conventional rail lines. This difference does not appear to be consistent with their respective operating and maintenance charges. Accordingly, the ARAF asked the RFF to prepare a new scale for train movement fees for these two types of train on conventional rail lines, so that the fee amount is the same for passenger trains “able to run at high speeds” and those “unable to run at high speeds.” The RFF corrected its pricing scheme to take these comments into account.

Reservation fees for high-speed trains

Directive 2001/14/EC anticipates that infrastructure pricing may go beyond the exclusive consideration of marginal social costs with the goal of “full recovery of the costs incurred by the infrastructure manager.” The government decided to apply this option to high-speed rail lines by increasing reservation fees. In view of the proposed increases, the ARAF found no evidence enabling it to conclude that the pricing rates planned for 2012 could not be borne by the market.

However, it questioned the medium- and long-term consequences of increasing the level of fees paid by high-speed trains (TGVs) and undertook work to evaluate them, especially for market segments open to competition. In its opinion on the 2012 network statement (DRR), the ARAF questioned the objectives pursued under the flexibility permitted within the current pricing scheme. Moreover, it noted the failure to evaluate the impact of such flexibility. For the ARAF, reservation-fee capacity flexibility as provided under the 2012 network statement (DRR), which takes into account train characteristics rather than the scarcity of train paths, is inconsistent with the objective of improved network use. In addition, this flexibility does not address the need for transparency and non-discrimination and presents practical invoicing problems. Therefore, the ARAF asked the RFF to eliminate this reservation-fee capacity flexibility for high-speed rail lines in favour of establishing new fixed pricing at equivalent revenue for the RFF. The RFF eliminated this flexibility and amended the amount of the reservation fees for high-speed rail lines to offset lost revenue associated with elimination of capacity flexibility. The RFF estimated this loss at €12.5 million and submitted supporting evidence on this point. The SNCF disputed this amount, but the ARAF found that no corroborating evidence had been submitted in support of this challenge. With regard to reservation-fee flexibility involving “radial” or “intersecting” train paths, the ARAF noted that there are special tools to encourage the offering of certain rail services, such as start-up assistance specifically permitted under EU law. In the ARAF’s view, these tools must be given priority.

Access fees paid by contracted transport services

On 13 December 2010, the government and the SNCF signed an agreement concerning the operation of territorial equilibrium trains (TET) for 2011-2013. However, access to the national railway network by public passenger transport services provided under a contract entered into by a transport authority is subject to payment of an access fee. The ARAF asked the RFF to include this fee in the network statement’s scale of charges, which the RFF did, in the amount of €380 million. In addition, to be effective it is important for infrastructure charges to actually be borne by the stakeholders responsible for the decision. This is especially the case for train movements that are the subject of public service agreements. In its opinion on the 2012 network statement (DRR), the ARAF also found that the transport authorities should bear the entire cost of the train movements they plan. This concerns the government (the authority governing territorial equilibrium trains) along with the regions and regional transport authorities. Accordingly, the ARAF recommended that the access fee be financed by the regions, and be fully offset in their budget in accordance with law.





Future work

Improving these cost models demands significant work, which must be undertaken without delay.

Infrastructure-fee determination is based on the combination of various tools implemented by the RFF, specifically the 2008 cost model, reservation-fee flexibility and the rail index which determines overall changes in fees. Analysis of these tools has revealed inadequacies that justify their improvement. The RFF is currently revising the outdated 2008 cost model. Prepared by the RFF in 2007-2008 based on data from 2004, it enabled the estimation and distribution of network-management

costs' various aspects according to cost items, line subsets and train types. Running costs taken into account cover the costs of operation, maintenance and renewals. Aware of this model's inadequacy, in the spring of 2010 the RFF began to prepare a new cost model based on a more detailed database (from 2007-2009) and more rigorous econometric analysis. It is currently being finalised and will be approved by an RFF-established scientific committee.

Reservation fees do not provide sufficiently clear signals

The RFF targets a wide range of objectives through reservation fees, including:

- Coverage of all or part of the capital costs;
- Effective use of the network through timetable flexibility for all types of traffic, according to pricing segmentation for the lines;
- For high-speed trains, harnessing resources to improve coverage of the full network cost through increases under the terms set forth in regulations (i.e. "when the market can bear it")
- For freight, coverage of costs directly incurred (excluding government compensation).

For the ARAF, the overlapping of several objectives within a single fee sends mixed economic signals to market stakeholders. Therefore, it is essential that the RFF review the valuation of congestion and the networks' pricing segmentation.

The current rail index formula is not supported by the evidence and does not provide incentives

The pricing-schedule update has resulted from the application of a composite index since the 2010 pricing-scheme overhaul. Use of an index may be permitted when it helps to achieve more predictable pricing. However, the RFF's supporting documentation on the index's composition is inadequate to ensure that the formula currently in use accurately reflects the increased costs borne by the RFF. In addition, this index includes a fixed-term 1.1% corresponding to lost productivity that it assumed would remain constant. The ARAF believes that the formula currently used, which is based on observed changes in external costs and takes into account an ongoing loss of productivity, reveals insufficient control of infrastructure costs. This situation is related to the lack of productivity objectives and to industrial choices relating to maintenance and renewals. Thus, the current index formula must be abandoned in favour of the use of price caps, along with performance incentives within the scope of multi-year contracts. Improvements in these various tools will require significant work that must occur without delay, and the ARAF emphasises the need to involve railway undertakings and transport authorities in such work.



5. SERVICE FACILITIES





Service-facility access

For new operators, access to service facilities depends, in large part, on their ability to position themselves on both the freight and passenger transport markets.

An incomplete regulatory framework

Access to service facilities is a key issue in railway undertakings' ability to access the network, especially for new entrants, to which it may constitute a barrier to market entry. The current situation is characterised by:

- An irrational distribution of allocation or ownership involving the various facilities needed to implement the right to access services;
- Service facilities' lack of autonomy vis-à-vis the incumbent operator SNCF in a large number of cases;
- The lack of clear, predictable rules in the relationship between railway undertakings and service-facility managers, especially with regard to pricing.

The ARAF considers it necessary to conduct an in-depth review of the management framework for these service facilities. Their management would be more efficient and transparent if it were not entrusted to a company engaged in rail-transport operations. For the ARAF, the current legal framework does not ensure full implementation of Article L.2122-9 of the Transport Code, which stipulates that "railway undertakings authorised to operate transport services have the right to access the entire railway network on equitable terms and without discrimination, including access to service facilities through the network, as well as, where there is no other possibility for access on reasonable economic terms, the services that these facilities can provide." Terms of service-facility access must be framed and outlined with the same concern for transparency, accuracy and full explanation as the terms of network access.

A situation challenged by railway undertakings

The current situation is actively challenged by railway undertakings, leading them to initiate multiple proceedings over the past several years.

Proceedings before the Competition Authority

In 2008, the Competition Authority opened an inquiry into certain freight-transport sector practices. In October 2009 (before the ARAF was established), it received a complaint from Euro Cargo Rail (ECR), which disputed the SNCF's anti-competitive practices in that sector. The Competition Authority joined the two cases.

In its complaint filed with the Competition Authority on 19 October 2009, ECR objected to the SNCF's practices:

- As a railway undertaking involved in the competitive freight-transport market (Fret SNCF);
- As a delegated infrastructure manager (SNCF Infra) specifically involved in capacity allocation and rolling-stock compatibility verification;
- As a service-facility manager (Fret SNCF) specifically involved in access to freight yards, diesel-supply facilities and railroad yards.

Resolution of the Cerbère dispute

The movement of freight trains between Spain and France requires that the freight cars' axles be changed in order to adapt to the different track gauges on either side of the border. This change is performed at the Cerbère rail yard (Eastern Pyrenees region). Limitations imposed by the terrain require complex shunting operations. Since the beginning of 2011, Euro Cargo Rail (ECR) has developed a cross-border business at this site, leading it to ask the ARAF to resolve a dispute with the RFF and SNCF. Euro Cargo Rail complains of malicious acts and obstructions that have occurred during shunting and train coupling. The ARAF noted that changes in the Cerbère site's railway activities may have resulted in tensions and that neither the parties nor the investigation presented evidence that assigns blame for ECR's allegations. However, the ARAF asked the SNCF to continue the preventive measures already undertaken, and believes that, as things currently stand, it is not useful to order additional measures that fall under the local courts' jurisdiction. In addition, ECR requested that shunting operations not be managed by a Fret SNCF agent. The ARAF found in favour of ECR on this issue, and asked the RFF to change the Cerbère site's organisation so that the DCF would take over responsibility for the two s as of 1 July 2011.

Follow-up to the decision

Concurrent management of shunting operations at the Cerbère site has been provided by the DCF since the summer of 2011. Verification of compliance with the decision and its effects will be carried out onsite in early 2012.



The ARAF was consulted by the Competition Authority concerning these two proceedings, and issued its opinion on 23 March 2011. These proceedings have not yet concluded.

Investigations carried out by the ARAF

At the same time, the ARAF initiated a detailed investigation into management and pricing methods for rail-line and freight rates, combined transport projects and diesel supply facilities.

The ARAF's opinion on the draft decree concerning service facilities

The decree concerning passenger stations and other service facilities should have provided an opportunity to clarify the regulatory framework. In its opinion on the draft decree, the ARAF deplored the document's inadequacy. In fact, except for passenger stations, it merely listed the services offered by other service facilities and did not establish methods to guarantee the non-discriminatory management of such facilities or further specify pricing principles. Therefore, the ARAF appreciates the opportunity to specify rules in this regard under Article L.2131-7 of the Transport Code, especially for facilities essential to freight operators. Nevertheless, it reviewed the draft decree with regard to the successful operation of the rail sector and competition within the sector in order to offer improved clarity and greater legal certainty.

The ARAF specifically recommended that the following be more clearly distinguished:

- The right of the railway undertaking to access service facilities from the railway network, as set forth in Directive 2001/14/EC, regardless of the network's owner, be it the RFF for the national railway network, ports for port rail lines, the SNCF and so forth. This access is priced at the cost directly resulting from operation of the rail service. With regard to the national railway network, this access is already taken into account in the fees collected by the RFF. With regard to other railway networks, this access may be subject to a special fee.
- Access to regulated services, which covers:
 - The minimum access that must be provided to railway undertakings when they access service facilities, and where there is no other viable option under market conditions;
 - The additional services that the service facility manager must provide to all railway undertakings without discrimination when it already provides them to a given railway undertaking.

These definitions have raised certain questions, though they are consistent with the categories presented in the directive. They should be more accurately drafted to eliminate any ambiguity and to specify that minimum access is an indivisible package paid for via a single fee. For the ARAF, the condition concerning the lack of viable options under market conditions is likely to create a barrier to accessing service facilities so long as the language used in the draft law seems to reverse the burden of proof: the service facility manager must prove that a viable alternative option exists. The government took these comments into consideration.



Service-facility pricing

Although pricing principles were defined for passenger stations, this work must still be carried out for other facilities.

General framework

Directive 2001/14/EC does not establish a binding framework for setting service-facility service fees. Nevertheless, it requires the competitive situation of railways to be taken into consideration, which the draft law cannot disregard. In the absence of specific pricing principles imposed by the directive, the draft law introduces a fee related to the cost of service calculated according to the actual extent of use.

This principle applies to both minimum and

additional services, as prescribed by the directive on pricing for additional services supplied to the network. The draft decree does not specify the nature of the link between costs and the interpretation of the “extent of use” concept. The ARAF found that, for each service-facility category, the regulation must specify the payment principle for services and its rules of application. It regrets that the draft decree only specifies this principle for passenger stations and not for other service facilities, demonstrating the current regulatory framework’s incompleteness. As did the Competition Authority in its rail-network pricing opinion, the ARAF emphasized that the increase in potential flexibility leads to excessive complexity, a lack of transparency and the risk of discrimination. The decree sets forth six criteria:

Although pricing principles were defined for passenger stations, this work must still be carried out for other facilities.

- The type of train, especially its capacity or length;
- The type of transport service it provides;
- The number of travellers likely to benefit from the service;
- The time period for use;
- The period between the request and the planned service-provision date;
- The quantity of freight, expressed in intermodal transport units or in tonnes.

The ARAF will take particular care to see that application of these six criteria does not create the situations described above. Beyond the decree’s incomplete nature, the ARAF noted that the network statement (DRR) only in exceptional cases specifies the cost bases used to calculate fees for service facilities managed by the RFF or SNCF and the methods used to migrate from the principles set forth in the regulatory pricing framework. In the end, this leads to unpredictable pricing that lacks transparency for railway undertakings, especially new entrants.

Passenger-station pricing

Pricing principles adopted in the decree on passenger stations

The decree on passenger stations adopts the principle of station management remuneration based on compensation for costs plus remuneration for invested capital, corresponding to borrowing costs and related financial costs and to the capital costs of the self-financed portion. This type of remuneration presents drawbacks that should be outlined, including:

- A lack of strong incentives to minimize costs and boost innovation;
- A risk of over-investment;
- Cumbersome control procedures, especially through regular accounting audits.

For the ARAF, creation of the Stations & Connections branch and the implementation of passenger-station service pricing must not result in an unwarranted increase in costs invoiced to railway undertakings or organising authorities, especially the regions. It will pay particular attention to this aspect while the decree is being implemented by station managers. As things currently stand, these methods could combine with spiralling railway costs and impede its development. At this time, it is prudent to prepare for implementation of a multi-year regulation with an improved incentive structure involving price caps. In any case, significant pricing elements are derived from the station manager's decisions. It is therefore important for station users and the ARAF to provide an opinion on these elements within their respective areas of expertise. This specifically concerns:

- Aspects of remuneration for capital invested in regulated and unregulated areas;
- Traffic predictions, which are used to set unit pricing;
- Performance and productivity objectives for passenger station management;
- The method used to justify cost estimates compared with costs recorded on the books and with performance and productivity objectives;
- The allocation keys selected, and their justification for allocating shared charges between regulated and unregulated activities.

Even if the ARAF issued an opinion on the railway-station statement, specifically under Article L.2131-7 (3 and 4) of the Transport Code, its opinion should be sought prior to a decision on certain issues, especially those concerning remuneration of invested capital.

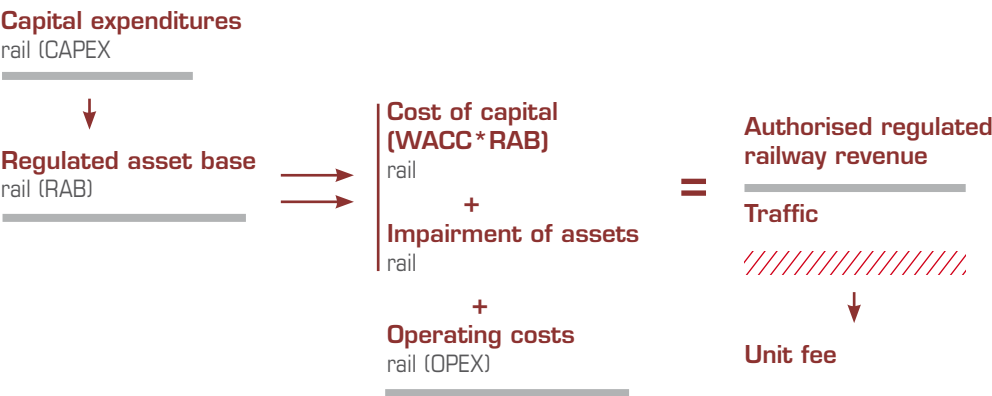
Unregulated services and the “dual till” principle

The draft decree submitted for the ARAF's opinion sets forth the principle of determining fees based on a “dual till” approach: only the share of charges relating to regulated services' performance is taken into account when determining fees collected in exchange for these services; revenue from the commercial value of the stations does not benefit railway development in any way. It provided that income from unregulated activities would be allocated to investment in the regulated activity. In its opinion, the ARAF found that this reversion did not change the separate “dual till” principle. Although it impacted the SNCF's cash and equity, it had no impact in terms of lowering fees. Indeed, this reversion is likely to involve a slight increase in fees, since the cost of equity is generally higher than the cost of debt.

The “single till” approach involves pooling charges related to all station activities (regulated and unregulated) to determine the level of track-access fees collected by the station manager. Income from commercial activities reverts back to the railway undertakings.



The “dual till” approach: when determining the level of charges, this only takes into account regulated activities and the fees they generate. Railway undertakings do not benefit from commercial revenue.



In its opinion, the ARAF questioned this extreme regulatory decision, since proper station management requires a more fair and balanced incentive system. At a time of expanding competition and rising traffic, railway undertakings, which generate business for the unregulated sector, should be direct beneficiaries of the income from commercial activities through reduced fees. For this reason, in its opinion the ARAF proposed a genuine reversion mechanism that permits fees to be reduced by authorising partial funding of the regulated sector by the unregulated sector, while maintaining incentives for a dynamic investment environment. In any case, for the ARAF the separate-tills principle requires the decree to more specifically define the scope of unregulated activities by setting forth the types of facility (parking areas, shops etc.) and service involved, in the same way as the decree sets forth the regulated services. The government amended the draft decree to take the ARAF’s recommendations into consideration. Thus, although the decree concerning passenger stations and other service facilities published on 22 January 2012 retains the “dual till” principle, it provides for 50% of the positive earnings from unregulated services in large stations to be deducted from the costs used to establish the fees for regulated services.



APPENDICES

GLOSSARY

MAIN OPINIONS AND DECISIONS

REFERRAL TO THE ARAF: CONDITIONS AND PROCEDURE



GLOSSARY

The ARAF: *Autorité de Régulation des Activités Ferroviaires* (the French rail regulatory authority).

RAB: Regulated asset base.

Cabotage: The ability to take passengers within a country on a domestic journey during international rail service.

Clockface timetabling: Repetition of the same service plan (departure time, stops en route, arrival time) at regular intervals. This organisation is determined by incorporating train paths, from fastest to slowest, according to a symmetrical plan (organisation is identical in both directions and trains connect in all directions).

Authorised candidate: An entity (railway undertaking, organising transport authority, shipper) recognised by law as being authorised to order train paths from the infrastructure manager.

CAPEX: Capital expenditure.

Combined transport project: All fixed installations (including both railway installations, such as specialised tracks and transshipment facilities, and storage facilities, such as gantry cranes and yards) that allow the transfer of freight from rail to road and vice versa.

Total cost: Sum of fixed and variable costs.

Marginal cost: Reflects the increase in variable cost of an additional transport unit using the infrastructure. Marginal cost is referred to as “social” when it includes external costs (pollution, accidents etc.).

Average cost: Total cost divided by amount of traffic.

Weighted average cost of capital: The weighted average cost of capital (WACC) is the average annual rate of return expected by shareholders and creditors in return for their investment.

Variable cost: Component of total cost that varies according to the traffic level.

Network statement (*Document de Référence du Réseau - DRR*): A document detailing the network’s general rules, time frames, procedures and capacities. It also includes other information needed to submit requests for infrastructure capacity.

ECR: Euro Cargo Rail.

Essential facilities: Designation of infrastructure and related services required by railway undertakings that must be made available to them so as to allow them to conduct their business when there are no economically reasonable alternative solutions.

Window of unavailability: Restricted capacity to allow work to be performed on a given network section. It is characterised by pathing and a standard duration (for example, from 2:00 am to 6:00 am) and is established for a period covering all working days, a specific number of days in a year or a more limited period. Such windows are marked with a trapezoid on train-circulation flow charts, and are finalised in April of year Y-2, with year Y corresponding to the timetable.

Force majeure: Unforeseeable or inevitable circumstances that relieve an entity of its responsibilities or obligations.

Train-circulation flow chart: A space-time document that graphically depicts the movement of each train on a given section of track.

Timetable: A one-year period running from December to December, at the start of which train schedules are defined for the entire period.

Independent Regulators’ Group-Rail (IRG-Rail): A group of 17 independent rail regulatory authorities whose countries are members of the European Economic Area (Germany, Austria, Croatia, Denmark, Estonia, Finland, France, Hungary, Latvia, Luxembourg, Macedonia, Norway, the Netherlands, the United Kingdom, Slovenia, Sweden and Switzerland).

Rail index: Fee indexing based on a composite index (CI) that reflects changes in the network’s operating, maintenance and renewal costs.

Service facilities: Comprises passenger stations open to the public (including platforms and stops); power supply systems and traction power distribution on the high-speed lines open to public traffic; railroad yards and train coupling; storage tracks; freight terminals (including combined transport projects) and facilities other than the terminals' railways; supply infrastructure for combustibles and sand, and train-roof access platforms; and maintenance facilities and other technical installations needed to perform light maintenance.

Industrial sidings (ITE): Connections to the national railway network's activity centres.

Interoperability: Ability of rolling stock to travel on rail networks with different technical characteristics.

OPEX: Operational expenditure.

Railway package: Refers to regulatory reform driven by the European Union, comprising regulations and directives whose primary objective is to open railway transport to competition and improve interoperability and safety.

Minimum access: Includes requests for infrastructure capacity; the right to use the capacity granted; the use of running track points and junctions; the regulation of train movement, including signalling, regulation, dispatching and the communication and provision of information on train movement; and all other information required to implement or operate the service for which capacity has been granted (source: Directive 2001/14/EC).

Access fee: Applies only to passenger trains running pursuant to a public service agreement, including regional passenger trains (TER), regional passenger trains in the Ile-de-France (Greater Paris) region (Transilien) and territorial equilibrium trains (TET). The access fee covers their fixed operating expenses and railway network maintenance (Article 5 of law no. 97-446 of 5 May 1997, as amended with regard to fees for use of the national railway network).

Train movement fee: Intended to cover the variable portion of operating and maintenance charges for the rail network (Article 7 of law no. 97-446 of 5 May 1997, as amended with regard to fees for use of the national railway network).

Reservation fee: Intended to cover some or all of the cost of invested capital and to promote effective use of the network by conveying the cost of infrastructure congestion; this can be increased for certain types of train to the extent that the market permits (Article 6 of law no. 97-446 of 5 May 1997, as amended with regard to fees for use of the national railway network).

The RFF: *Réseau Ferré de France* (the French rail network).

SEA: *Sud Europe Atlantique* (South Europe Atlantic).

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

Provisional train path: Conditional allocation of a train path that is in conflict with one or more transport projects allocated on the national railway network.

Last-minute train path: Train path built between day D-7 and day D of train movement.

SNCF: *Société Nationale des Chemins de Fer Français* (French National Railways).

Railway infrastructure pricing: Composed of access, train-movement and reservation fees.

TER: *Train Express Régional* (regional express train).

TET: territorial equilibrium trains, which are medium- and long-distance trains that operate nationally.

Combined transport: Conveyance of freight using swap bodies, which rely on several transport methods during a single journey (rail, road and/or water).

Train-km: A train moving over one kilometre = one train-km.



PRINCIPAL OPINIONS AND DECISIONS 2010-2011

Opinion no. 2011-019 of 23 November 2011 on the draft order amending the order of 23 June 2003 concerning safety regulations applicable to the national railway network.	Opinion no. 2011-002 of 2 February 2011 concerning the 2012 national railway network statement (DRR).
Decision no. 2011-018 of 19 October 2011 concerning the maintenance of separate accounts for the SNCF's station-management activities.	Opinion no. 2011-001 of 19 January 2011 on the draft decree concerning the study of parking-facility works risks and the loading and unloading of hazardous materials, implementing Article L.551-2 et seq. of the Environmental Code.
Opinion no. 2011-017 of 7 September 2011 on the draft decree concerning access to information on the rail network and its facilities, and on the draft order implementing paragraph two of Article L.1211-5 of the Transport Code.	Opinion no. 2010-010 of 8 December 2010 concerning the pricing provisions proposed in the draft public-service delegation agreement for the <i>Sud Europe Atlantique</i> high-speed rail line between Tours and Bordeaux.
Decision no. 2011-016 of 8 July 2011 concerning the petition submitted by Novatrans in the context of a dispute against the RFF and Combiwest relating to train-path amendment procedures.	Decision no. 2010-009 of 1 December 2010 concerning amendment of the ARAF board's bylaws.
Opinion no. 2011-015 of 29 June 2011 on the draft order setting objectives, indicators, safety methods and technical regulations for interoperability and safety applicable to the national railway network.	Opinion no. 2010-007 of 15 September 2010 concerning the appointment of Alain-Henri Bertrand to the position of director of the traffic management department (DCF - <i>Direction de la Circulation Ferroviaire</i>).
Opinion no. 2011-014 of 15 June 2011 on the draft decree relating to passenger stations and other service facilities on the railway network.	Decision no. 2010-003 of 28 July 2010 concerning the proposed amount of duties established under Article 21 of the law of 8 December 2009.
Decision no. 2011-012 of 25 May 2011 concerning the amendment of the ARAF board's bylaws.	Decision no. 2010-002 of 28 July 2010 concerning adoption of the ARAF board's bylaws.
Decision no. 2011-011 of 4 May 2011 concerning the petition for protective measures submitted by Novatrans in the context of a dispute against the RFF and Combiwest relating to train-path amendment procedures.	Deliberation no. 2010-001 concerning ARAF board members' terms of office.
Decision no. 2011-010 of 3 May 2011 ruled upon an application for dispute resolution by Euro Cargo Rail against the SNCF and the RFF concerning freight activities at the Cerbère station.	<hr/> <div>All opinions and decisions are available on the ARAF website: www.regulation-ferroviaire.fr.</div> <hr/>
Opinion no. 2011-006 of 23 March 2011 on the draft decree relating to the traffic management department and concerning various railway provisions.	
Decision no. 2011-004 of 9 March 2011 involving petitions for protective measures submitted by Euro Cargo Rail in the context of a dispute with the SNCF and the RFF concerning freight activities at the Cerbère station.	
Opinion no. 2011-003 of 9 March 2011 related to changes in minimum access pricing for 2012 in accordance with the ARAF's opinion no. 2011-002.	

DISPUTE RESOLUTION - INSTRUCTIONS

The bylaws of the ARAF’s board, which can be reviewed on its website, set forth its investigatory and procedural arrangements and working methods.

REFERRAL

Any person authorised to request railway infrastructure capacity (railway undertakings, organising authorities, combined transport operators etc.) or any infrastructure manager may bring matters before the ARAF when it believes it has suffered inequitable treatment, discrimination or any other harm related to railway-network access. The referral describes the facts underlying the dispute, the grounds raised and the specific content of its claims, as well as the capacity of the petitioner and the defendants. Within a maximum eight-day period, the ARAF’s services will verify whether the referral meets the rules set forth in the bylaws. If this is not the case, the secretary general will ask the petitioner to supplement the referral or risk rejection. Once the referral is complete, it is recorded by the ARAF’s clerk. From among the ARAF’s agents, the secretary general appoints a rapporteur and a deputy rapporteur (who will perform the rapporteur’s duties if the latter is absent or hindered) and informs the parties thereof. The secretary general sets the deadline by which the parties involved must respond to the comments and exhibits filed by the other parties, especially where the parties do not reach agreement on a provisional timetable, as well as the date on which the investigation will close. The ARAF will rule within two months from submission of the defendant’s comments, except if an extension, not to exceed one month, is needed to bring together all of the exhibits required to resolve the dispute.

INVESTIGATION

The ARAF’s departments investigate disputes independent of its board. The rapporteur carries out all investigative measures deemed useful while respecting adversarial principles, and invites the parties to submit the verbal or written arguments necessary to resolve the dispute. Acting on a proposal by the rapporteur, the secretary general may instruct the ARAF’s agents or experts to carry out the necessary fact-finding, particularly by travelling to a given site. Fact-finding leads to preparation of a report by the rapporteur or the authorised agents. This report is signed by the parties, which receive a copy so that they can submit comments. Duly authorised for this purpose by the secretary general, the rapporteur carries out technical, economic or legal consultations or obtain expert opinions while respecting the confidentiality of the investigation.

If the rapporteur determines that all of the relevant documents within the meaning of Article L.2134-3 cannot be obtained or reviewed before the close of the investigation, the secretary general may, after consulting with the chairman, decide to extend the investigation for a period not to exceed one month. The rapporteur submits the investigation file to the secretary general, who will ask the chairman to include it on the agenda of the next board meeting.

HEARING BEFORE THE BOARD

The chairman calls the parties to a hearing before the board, including when it rules on an application for protective measures. The notice of hearing is sent to the parties at least seven clear days before the hearing date. For protective measures, the notice of hearing is sent to the parties at least four clear days before the hearing date. The hearing is public, unless otherwise jointly requested by the parties. If the request is not made by all parties, the ARAF’s board will decide on the matter. During the hearing, the rapporteur presents the parties’ claims and pleadings verbally. The parties, who may be assisted during the hearing, respond to questions from board members and present their verbal comments.

DELIBERATIONS

The board deliberates in camera. From among those of the ARAF’s agents who did not take part in the dispute’s investigation, the chairman will appoint two to serve as secretary of the deliberations. These two agents do not take part in the discussions. The board’s decision sets forth the technical and financial terms for resolving the dispute. When necessary to resolve a dispute, it will establish railway-network access procedures and terms of use in an objective, transparent, non-discriminatory and proportional manner. Notice of the decision is sent to the parties and published in the *Journal Officiel*, subject to rules on confidential matters protected by law. This notice will state the form and period for appeal before the Paris Court of Appeal.

PROTECTIVE MEASURES

In the case of serious, immediate harm to the rules governing access to the network or its use, the ARAF may, after having heard the parties, order necessary protective measures, under penalty if applicable. These measures may include suspension of practices that harm the rules governing access to or use of the applicable network.





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Tel.: 02 43 20 64 30
Antenna: 3 square Desaix - 75015 PARIS
Tel.: 01 58 01 01 10

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