



12th Florence Air Forum

ATM: How to make progress towards an economic regulator?

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Economic regulation of monopolies: What can we learn from others?

- **ART (French Transport Regulatory Authority) - Who we are:**
 - An independent multimodal transport regulatory authority :

2009

- Economic regulation of **rail** infrastructure managers (access conditions to network and services facilities)

2015

- Economic monitoring of **highways** concessions and control of procurement procedures
- Economic regulation of **intercity coach** stations and services (prevention of « intermodal cream-skimming »)

2019

- Economic regulation of **airport** access charges

2020

- Economic regulation of **Parisian rail** infrastructure manager (RATP)
- Control of **transport data** producers' compliance to the obligation to open data and control of multimodal info algorithms neutrality



⇒ Directive 2012/34 establishing a single European railway area (Recast 2016/2370):

« Directive 2012/34/EU establishes a single European railway area with common rules on the governance of railway undertakings and infrastructure managers, on infrastructure financing and charging, on conditions of access to railway infrastructure and services and on regulatory oversight of the rail market. The completion of the single European railway area should be achieved by extending the principle of open access to domestic rail markets and reforming the governance of infrastructure managers with the objective of ensuring equal access to the infrastructure. »



⇒ Directive 2012/34 establishing a single European railway area:

Article 55 – Regulatory body

- *Each Member state shall establish a single national regulatory body for the railway sector.*
- *This body shall be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity.*
- *It shall also be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body or applicant.*
- *It shall furthermore be functionally independent from any competent authority involved in the award of public service contract.*

(...)

- *Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence.*



⇒ Directive 2012/34 establishing a single European railway area:

Article 56 – Functions of the regulatory body

- *Ensure a fair and non discriminatory treatment of candidates (network statement, allocation process, traffic management, charging scheme, access to services)*
- *Monitor the competitive situation in the rail services markets*
- *Consider and decide on complaints, take action to remedy*

- **Recommandations or binding opinions on the ‘rules of the game’ :**
 - Draft legislation on rail infrastructure access conditions,
 - IMs’ (SNCF Réseau, Eurotunnel & Lisea) network statements (access conditions and charging schemes)
 - Conditions of access (including charging systems) to service facilities (passenger stations, freight terminal, maintenance facilities...)
 - Appointment of the infrastructure manager (Cf. Opinion 2016-021)
- Subject to judicial review (Council of State)

- **Approval of accounting separation rules and ex post control**
 - *btwn* rail infrastructure management and service operation,
 - *btwn* train station management and transport service operation,
 - *btwn* freight and passengers activities of SNCF or any other “multiproduct” operator,
 - *btwn* public service obligation activities and commercial activities
- **Assessment of the economic impact of commercial services on public services:**
 - Rail passenger services
 - Intercity coach services < 100 km

- **Dispute settlement:**

- Any applicant may appeal to ARAFER if she considers being a victim of unfair treatment, discrimination or any other action restraining the access to the rail network or service facilities or to bus stations.
 - ↳ Disputes btwn railway undertakings, coach operators, public authorities, infrastructure/SF managers
- ARAFER's decisions are binding but subject to judicial review (Paris Court of Appeal)

- **Investigation and sanctions :**

- Sworn staff → powers to conduct dawn raids, to have access to accounts of IM and RU, to collect data
- Compliance with ART's decisions can be enforced through sanction procedures
- Maximum fines : 5% of annual turnover

- **Monitoring of the IM financial trajectory through opinions on :**
 - IM's budget
 - IM's performance contract
 - Public funds granted to the IM for investments projects > 200M€
- **Markets monitoring**
 - Public consultations
 - Data collection and field surveys
 - Publications of reports, e.g.
 - Market monitoring reports
 - Case studies
 - Benchmarking reports
 - **Data-driven regulation** → requires skills and tools (transport data science unit / datathon)



Sunshine
regulation



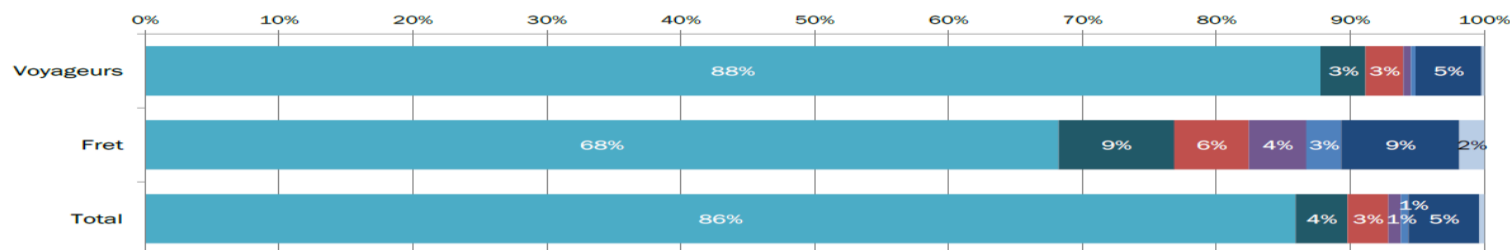
Economic regulation of monopolies: What can we learn from others?

- Focus on ART's actions regarding rail path allocation and traffic management
 - Essential functions of infrastructure management means decision-making concerning
 - train path allocation, including both the definition and assessment of availability and the allocation of individual paths,
 - decision making concerning infrastructure charging, including determination and collection of charges.
 - Independence of the essential functions : MS must ensure that the IM has organisational and decision making independence as regards the essential function (in particular in cases of VIU)
 - MS shall ensure that the functions of traffic management and maintenance planning are exercised in a transparent and non discriminatory manner and that the persons in charge of taking decisions in respect of those functions are not affected by any conflict of interest.

Economic regulation of monopolies: What can we learn from others?

- Focus on ART's actions regarding rail path allocation and traffic management
 - Data collection (compulsory) and monitoring of path allocation (volume, quality and motives of refusal)

	Nombre des sillons-jour demandés (milliers)					Taux de sillons-jour attribués fermes				
	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017
Sillons voyageurs	5 369	5 236	5 234	5 294	5 225	90%	93%	95%	96%	94%
Sillons fret	923	807	786	732	677	70,2%	75,5%	79,1%	77,3%	81,9%



Nature de l'attribution à la publication de l'HDS :

- Attribués
 - A l'étude
 - Refus d'attribution
 - Sans fiche de tracé, mise en réserve, non qualité de l'outil de suivi de production, ou non traité
 - Irrecevable
 - Commandés en DS mais touchés par DTS dans la même VDS
 - Commandés deux fois
- « Causes GI »
- « Causes EF »

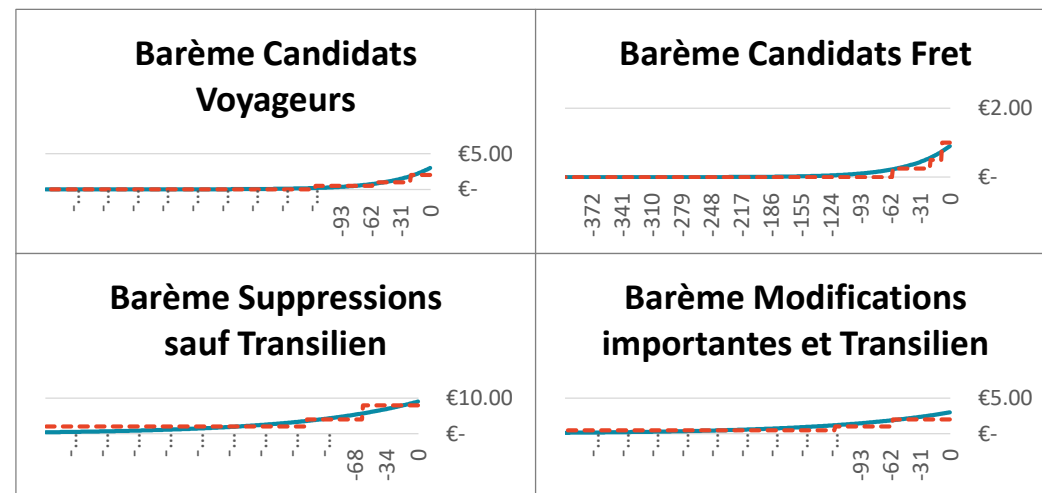
Economic regulation of monopolies: What can we learn from others?

- Focus on ART's actions regarding rail path allocation and traffic management
 - Opinion on network statement (access conditions)
⇒ **Infringement procedure** if non transparent or discriminatory access conditions and potential sanction
 - Ex: Decision 2018-074 (administrative fees, inadmissibility rules)
 - Ex: Decision 2019-060 (path allocation process, priority rules)

- **Dispute settlements**

- Ex: Decisions 2013-016; 017; 018; 019

⇒ Introduction of penalty regime to limit overbooking (by RUs) and improve paths stability (IM)



Economic regulation of monopolies: What can we learn from others?

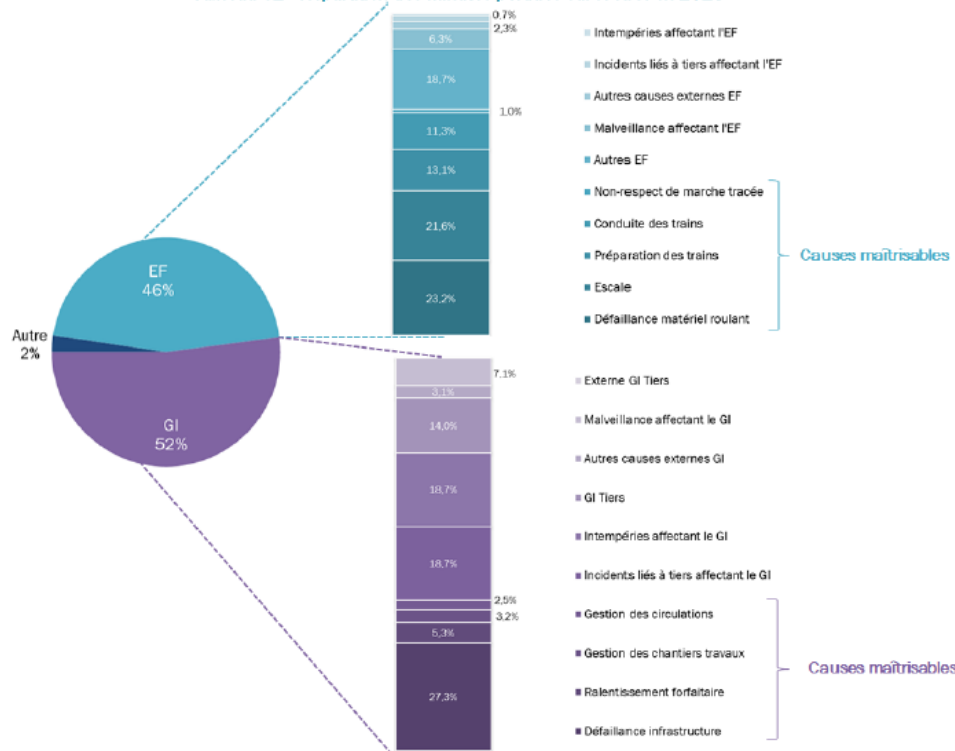
- Focus on ART's actions regarding rail path allocation and traffic management
 - **Performance scheme:** Infrastructure charging scheme shall encourage railway undertakings and the IM to minimise disruption and improve the performance of the rail network through a performance scheme.
 - This scheme may include penalties for actions which disrupt the operation of network, compensation for undertakings which suffer from disruption and bonuses that reward better-than-planned performance.
 - Performance scheme: neither designed nor monitored by the RB in France (\neq ORR in the UK)
 - Ex post revision of targets...
 - Low levels of penalties (0,5% of turnover)
 - Missing indicators (benchmark with private IM Lisea)

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- Focus on ART's actions regarding rail path allocation and traffic management

Performance scheme:

Tableau 52 – Répartition des minutes perdues sur le RFN en 2018



Source : Arafer, SNCF Réseau


BILAN 2018 (CONSOLIDATION TOUTES ENTREPRISES FERROVIAIRES)

MINUTES PERDUES AUX 100 KM	OBJECTIFS HDS 2018		RATIO SAP À FIN HDS 2018		MALUS ANNUELS FACTURABLES ⁽¹⁾ (en millions d'euros)		POUR MÉMOIRE : RATIO SAP À FIN HDS 2017	
	RATIO SAP EF	RATIO SAP GI	RATIO SAP EF	RATIO SAP GI	EF → GI	GI → EF	RATIO SAP EF	RATIO SAP GI
SEGMENT D'ACTIVITÉ								
TRAINS À GRANDE VITESSE	0,45	0,77	0,66	0,80	+ 0,03 M€	+ 0,26 M€	0,54	0,78
TRAINS VOYAGEURS LONGUS DISTANCES	1,00	1,28	1,24	1,48	-	+ 0,40 M€	1,07	1,34
TRAINS RÉGIONAUX HORS ÎLE-DE-FRANCE	1,32	1,27	1,33	1,46	+ 0,004 M€	+ 1,29 M€	1,32	1,27
TRAINS RÉGIONAUX ÎLE-DE-FRANCE	1,57	1,69	1,67	2,06	-	+ 1,27 M€	1,67	1,83
TRAINS DE FRET	7,97	2,16	8,25	2,22	+ 0,31 M€	+ 0,10 M€	8,35	2,20
TOTAL TOUS SEGMENTS	2,02	1,30	2,13	1,46	+ 0,34 M€	+ 3,32 M€	2,12	1,34

Economic regulation of monopolies: What can we learn from others?

- **Conclusion**

- Economic regulation of rail capacity allocation process and traffic management through various tools
- Dispute settlement powers combined with independence and expertise → essential especially when weak incentive scheme and vertical integration of infra & services + public subsidies
 - Replicability at supranational level??? (Cf. RFCs)
- Data-driven regulation crucial
 - Informational asymmetries (esp. when downstream market not open)
 - Sunshine regulation at least (reputational incentives)
 - Requires data collection power + experts (transport data science unit)



**Thank you for your
attention**