

COFECE makes available to the public the preliminary version of the *Study of competition in the public service of rail freight transport*

- *The document identifies obstacles to the efficient operation of this service and proposes 25 recommendations to address them.*
- *The forthcoming expiration of some rail freight transport exclusivities and concessions is an opportunity to reconfigure the network in the medium term. For the short-term, COFECE proposes regulatory changes that favor its efficiency.*
- *The study is relevant in the context of the reform to the Railroad Service Regulatory Law, recently approved at the Senate and currently under discussion in the Chamber of Deputies, as it provides information on the operation of this sector*

Mexico City, May 24, 2021.- The Federal Economic Competition Commission (COFECE of Commission) makes available to the authorities, the Congress of the Union, users, concessionaires, academia, and the general public, the preliminary version of the document [Estudio de competencia en el servicio público de transporte ferroviario de carga](#) [*Study of competition in the public service of rail freight transport*] (*Study*) with the objective of receiving commentaries to enrich it, before publishing its final version¹. Those interested can send their suggestions from this date and until June 26, 2021, to the email ferrocarriles@cofece.mx or through the [form](#) available at COFECE's website, where the preliminary document can be also downloaded.

The preliminary conclusions of this work show that, while privatization of the railway sector increased the volume of products moved per kilometer, the rail network has practically not grown and the share of rail in total freight transport is low (25%) compared to other countries. The foregoing seems to be due to the following problems:

The original design of the network is not neutral to competition. The network presents asymmetries in the concessionaires' access to the country's most important nodes.

¹ For the development of this *Study* the Commission convened to answer the "Public Questionnaire on competition in the public service of rail freight transport", for which it received 56 answers from concessionaires, users of the service and those interested in this transport.



Ferromex and *Kansas City Southern Mexico (KSCM)* operate the two largest networks, concentrating 71% of the total network and the concessions of the most important nodes, with all border crossings in the north of the country and ports with the biggest volume of international trade (Altamira, Guaymas, Manzanillo and Veracruz, among others), with this they move up to 82% of the cargo in the system. A more symmetrical design of the network between concessionaires could allow more competition, by leveraging the negotiation power between competitors to access other networks.

Table 1. Access to different types of nodes per concessionaire

Concessionaire ^{1/}	Valley of Mexico	Industrial cities ^{2/}	Border crossings	Ports at the Gulf	Ports at the Pacific
Ferromex	Yes	Aguascalientes, Celaya, Chihuahua, Frontera, Guadalajara, Queretaro and Torreon	Ciudad Juárez, Mexicali, Nogales and Piedras Negras	Altamira	Guaymas and Manzanillo
KCSM	Yes	Celaya, Queretaro, Monterrey and San Luis Potosí	Nuevo Laredo and Matamoros	Tampico	Lazaro Cárdenas
Ferrosur	Yes	Coatzacoalcos and Puebla	None	Coatzacoalcos and Veracruz	Salina Cruz
LCD	No	Frontera and Torreón	None	None	None
FIT	No	Salina Cruz	None	None	Salina Cruz
Admicarga	No	Tijuana, Tecate and Ensenada	Tijuana	None	Ensenada

^{1/} Ferrovalle is not included in the table as it is a small network.

Source: COFECE with information from SCT (2019b), IMT (2020) and *OpenStreetMap* (2020).

The network operates in a fragmented manner. Trackage rights that allow trains from a concessionaire to transit in the rail tracks of another concessionaire through the collection of a compensation, have usage restrictions and its interpretation is in charge of the concessionaires themselves, who in some cases condition the use of the tracks. For example, establishing the number of wagons that can make use of it, specifying points of origin and destination or restricting them to certain final users. As a result, these are scarcely used: of 54 trackage rights feasible to use, only the use of 33 could be proved. On the other hand, freights that involve more than one concessionaire are between 7.4 and 1.7 times more expensive in the first or last miles than the fee per kilometer of the concessionaire that attends 95% of the rest of the route. This increase in costs hinders interconnection and decreases competition between railway companies.



Lack of clear criteria to extend concessions. The Railroad Service Regulatory Law and its Bylaw foresee extensions to the exclusivity under certain criteria; nonetheless, it is not specified how the analysis to grant them will be conducted. As a result, extensions with effects on the competitive development of the network are granted. For example, the 15-year extension granted to the exclusivity of the Tijuana-Tecate line to the Government of Baja California and of 36 years to the validity of the deed was granted without making the investments that will support it.²

Absence of regulation for the access to railways where exclusivities of concessionaires expire. After the expiration of the exclusivity for railways that with a concession for an economic agent to provide the service, this economic agent must provide access to said railways to other market participants in conditions that do not imply violations to the Federal Economic Competition Law (LFCE), that is to say, that are not unduly discriminatory, that do not entail unjustified advantages for any economic agent³. However, there is no regulation that specifies *ex ante* the terms in which said access must be provided. In the following years, the exclusivities of some concessionaires of the Public Service of Rail Freight Transport (SPTFC, per its initials in Spanish) will expire: *Ferromex* in 2038, *Ferrosur* in 2029, *Kansas City Southern de México* in 2027 and *Ferrocarril del Istmo de Tehuantepec* in 2033.

The Railway Transport Regulatory Agency (ARTF, or Agency) lacks sufficient information to exercise its regulatory task. The collection and analysis of information is essential to determine the operation efficiency of the railway system. The LRSF and its Bylaw do not consider sanctions for failure to comply with timely and complete delivery of information, despite the Agency is endowed with powers to request it. On the other hand, it has not issued guidelines with clear criteria on the level of disaggregation and periodicity on which information must be provided to it, nor a format for its collection exists.

To revert these competition problems and favor the efficiency of the service, the *Study* concludes that the network must be reconfigured as current concessions and exclusivities expire. Nevertheless, this measure cannot be carried out in the short term nor will it be sufficient to guarantee the efficient operation of the railway network. For it to function in

² Decree published in the Federal Official Gazette on April 9, 2018.

³ Denial of access or establishment of unduly anticompetitive conditions could imply violations to the LFCE. Moreover, COFECE could enforce Article 94 section VII subsection c) of the LFCE.

an articulated manner, for the short term, the Commission makes 25 recommendations on three aspects:

1. Eliminate obstacles that limit the use of existent trackage rights and hinder the creation of new ones;
2. Establish a more expedite procedure for tariff regulation for haulage rights in the first and last mile, when these increase the costs and/or hinder interlineal services;
3. Strengthen the institutional design of the ARTF so it has sufficient information and powers to exercise its regulatory task.

The analysis and recommendations presented in this preliminary document are relevant in the context of reform to the LRSF, which was approved at the Senate and is pending discussion at the Chamber of Deputies. Besides providing a x-ray of the current operation of this sector, it coincides on some aspects with the draft reform; for example, on the need to strengthen the Agency's powers to collect information and to sanction, as well on facilitating the establishment of new rights of trackage. On the other hand, some modifications found in the draft could require further analysis to determine their possible implications, such as the suitability that the LRSF is the instrument in which the criteria for the Agency to comment on the registered fees, is specified at a very detailed level.

Timely reform of the regulatory framework of the SPTFC could increase participation in the national rail freight transport from 25% to 31%, that is, an increase of 21 billion Mexican pesos, in terms of the value of the transported cargo.

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A BETTER MEXICO IS EVERYBODY'S COMPETENCE

The Federal Economic Competition Commission is responsible for ensuring competition and free market access. In this way, it contributes to consumer welfare and the efficient functioning of the markets. Through its work, COFECE seeks better conditions for consumers, greater output and better services and a "level playing field" for companies.

