Railway Gazette
INTERNATIONAL

Regulators support market opening

Governance before kilometres: regulating a railway revival

Rail and metro investment is back on the agenda across a swathe of Central and South America. However, as legal specialist Elvira Palomino Alarcón explains, understanding how best to regulate these railways in the operational phase is as important as agreeing what is to be built.

Elvira Palomino Alarcón
Chief Executive Officer, TrAInsolutions

Railways are returning to the centre of the policy agenda in Latin America. Proposed bi-oceanic corridors linking Atlantic and Pacific ports, electrified urban and suburban networks, freight reactivation strategies, climate finance and logistics competitiveness are once again shaping national development plans. Investment announcements are ambitious and multilateral institutions are actively engaged.

Yet while there is much optimism about how many kilometres may ultimately be built or reactivated, there is much less discussion about how the sector in each country should be governed once trains start running.

Railways are not merely infrastructure projects. They are long-duration institutional systems combining infrastructure, rolling stock, network access rules, safety supervision, tariff methodologies and long-term financial commitments. Unlike roads, railway systems require high operational co-ordination. Unlike airports, they do not operate as isolated nodes but as interdependent networks.

Where governance architecture is misaligned, technical friction quickly becomes contractual friction. When contractual friction cannot be processed internally within the system, it often migrates to courts or arbitration. Experience from mature railway markets suggests a central principle: the type of conflict a railway system faces is closely related to its institutional design.

To understand Latin America's current 'railway moment', it is useful to begin with three mature governance models — the UK, France and Japan. These are not templates to replicate, but different institutional responses to the same structural challenge: organising railway complexity while maintaining operational coherence.

Photo: Tony Miles

The privatisation of Britain's railways in the 1990s was largely predicated on fragmentation of the sector, which the current government is now seeking to rectify.

***Elvira Palomino Alarcón** is Chief Executive Officer at TrAInsolutions, which provides legal advisory and governance support across the rail and logistics sectors. She is a lawyer qualified in France and Peru, advising project owners on complex industrial and railway infrastructure projects.*

Costa Rica's Incofer carried 1·7 million people on Tren Interurbano diesel services in the San Jose metropolitan area in the first half of 2025.

Railway governance models shape where institutional friction appears. Three broad configurations can be observed:

- Fragmented competitive systems, where multiple operators share infrastructure. Disputes often emerge horizontally between operators or between operators and the infrastructure manager.
- Integrated systems with independent regulation, where operational co-ordination remains centralised but regulatory oversight ensures neutrality.
- Vertically integrated systems, where infrastructure and operations are combined within single entities and potential disputes are internalised within organisational structures.

These models illustrate that railways do not eliminate conflict; rather, institutional design determines how that conflict is managed.

Institutionalised dispute

As has been well documented, the UK railway reform of the 1990s separated infrastructure from operations, introduced multiple service providers and strengthened economic regulation. The underlying logic was coherent: competition, governed by contracts and overseen by an independent regulator, would improve efficiency and service quality.

However, fragmentation inevitably multiplies interfaces. Infrastructure manager versus operator. Operator versus operator. Operator versus regulator. Each interface creates a potential site of disagreement — over capacity allocation, performance benchmarks, access charges, compensation events, or network changes.

The UK approach did not eliminate conflict. It engineered mechanisms to process it. The Network Code and the Access Dispute Resolution Rules provide structured, staged procedures for technical disputes. These mechanisms channel disagreement into sector-specific processes before escalation to courts, and conflict became internalised within regulatory governance. Yet the model revealed structural limits. Excessive fragmentation increased co-ordination costs, and strategic responsibility became blurred, leading to a weakening of public accountability. These weaknesses came to a head in the franchising crisis of 2018, which then triggered a sector-wide review and a reform programme that is only now starting to gain traction (RG 2.26 p21).

The ongoing creation of Great British Railways is an acknowledgement of a key lesson: even sophisticated competitive environments require a clear system integrator. The UK experience illustrates how fragmentation can function effectively, but only when supported by strong regulatory institutions, high data transparency and sustained administrative capacity.

Integration and neutrality

France has adopted a different path from its neighbour across the English Channel. Rather than maximising fragmentation, it preserved systemic coherence through a public holding body (SNCF), combined with functional separation and oversight by an independent regulator (ART). The objective was not to dismantle integration, but to discipline it through regulation.

EU railway reform — particularly the Fourth Railway Package — has reinforced requirements for non-discriminatory network access and regulatory independence. Yet France retained its integrated 'system logic',

balancing competition with territorial cohesion under a strong state framework. This model demonstrates that integration is not the opposite of regulation. Integrated systems often require sophisticated regulatory oversight to ensure neutrality and transparency.

Several disputes illustrate how tensions are managed within this framework. Debates over track access charges have repeatedly led the French regulator to request revisions to SNCF Réseau's tariff methodologies, citing concerns about transparency and cost allocation. The recent arrival of open-access competitors such as Trenitalia on the Paris – Lyon corridor generated discussions regarding capacity allocation, station access and operational conditions. These disputes did not challenge the existence of an integrated holding structure; rather, they tested the regulator's ability to enforce non-discrimination.

At the European level, the European Commission's investigation into alleged state aid involving Fret SNCF raised further questions about financial transparency within integrated public groups. These cases demonstrate that the French system does not eliminate disputes, but instead, conflict is relocated to a regulatory arena where economic neutrality and transparency can be enforced.

Reducing interfaces

Japan's 1987 reform of Japanese National Railways is often described as a privatisation. In reality, it was a deep institutional restructuring designed to restore operational coherence and financial discipline.

Rather than introducing a highly fragmented competitive market, the reform divided the system into regional JR companies that largely combine infrastructure ownership and train operations within vertically integrated entities. This structure reduces the number of contractual interfaces that often generate disputes in more fragmented railway systems.

Operational co-ordination therefore takes place largely inside the organisation. Timetable planning, maintenance scheduling and capacity allocation are integrated functions. Decisions that might trigger contractual disagreements in other models — for example track access priorities, engineering possessions or timetable adjustments — are handled as internal operational management issues rather than disputes between separate infrastructure managers and train operators.

The French passenger market is being opened up to competition in line with European policy; this is a Trenitalia ETR400 trainset at Lyon Part-Dieu.

Japanese railways treat maintenance as core lifecycle management. Shinkansen operators integrate inspections, predictive technologies, and monitoring trains within unified infrastructure-operations organisations, enabling maintenance planning aligned with service operations and long-term investment strategies. Financial structure reinforces this model: JR companies rely not only on passenger revenues but also on diversified income streams, particularly station-area real estate development and commercial services. These revenues stabilise investment capacity and support long-term infrastructure renewal.

The result is not the absence of friction, but its internalisation. Operational problems remain operational, and they rarely evolve into contractual or legal disputes. This illustrates a broader institutional insight: dispute prevention often arises not from more complex contracts but from fewer contractual interfaces.

In summary, these three models function because each is aligned with its institutional culture and administrative capacity. Yet none is directly exportable.

Latin American models

The key lesson for Latin America is therefore not whether to fragment or integrate railway governance, but how to align the institutional architecture with the system's operational risks.

While mature railway systems provide useful analytical references, Latin America presents a distinct institutional context. Railway networks in the region generally operate through either exclusive concessions or PPP structures, or as integrated public operators. Network density remains lower than in Europe or eastern Asia. As a result, disputes rarely arise from open-access competition between multiple train operators.

Instead, governance friction typically emerges through vertical relationships between the state and operators. Three types of conflict are particularly common:

- Contractual disputes linked to financial equilibrium, compensation events or investment obligations in concession frameworks.
- Execution conflicts, often associated with land acquisition delays, construction sequencing or administrative approvals.
- Administrative or procurement disputes, emerging in public systems through oversight investigations or operational incidents.

Governance architecture therefore does not eliminate conflict; it determines whether conflict appears in arbitration panels, administrative investigations or regulatory processes.

Execution risk in Peru

Peru has developed one of the more formalised regulatory frameworks in the region. OSITRAN supervises

infrastructure concessions across sectors. The General Tariff Regulation of 2021 establishes structured methodologies for tariff review, while the draft National Railway Regulation (2024) strengthens technical and safety standards. However, that remains primarily operational in scope and does not resolve the deeper institutional fragmentation affecting governance of the Peruvian railway system.

The railway system remains largely corridor-based. Concessions are structured around individual assets rather than integrated network governance.

The arbitration between the Metro de Lima Línea 2 consortium and the national government illustrates the region's typical dispute profile. The conflict did not stem from engineering failure but from execution friction: delays in land acquisition, third-party interferences and milestone dependencies affecting availability-based payment flows. In long-term PPP structures supported by project finance, administrative delay is not neutral. It directly affects financial equilibrium and compensation mechanisms.

Peru therefore exemplifies the contractual dispute model, where execution risks translate into arbitration between the state and concessionaire. The OECD has repeatedly highlighted the need for stronger inter-institutional co-ordination and systematic ex-ante project evaluation in Peru.

The challenge is not the absence of regulation, but the need for integrated governance across ministries, municipalities and supervisory bodies.

Integrated governance in Chile

Chile presents a different configuration. Railway operations are led by Empresa de los Ferrocarriles del Estado under ministerial oversight. Recent expansion initiatives under the Trenes Para Chile programme (RG. 8.23. p24) aim to strengthen suburban and regional rail services. Unlike concession-heavy systems, Chile has not experienced major international railway arbitration disputes comparable to those observed in Peru or other PPP-driven markets. Institutional stability and integrated public ownership reduce contractual fragmentation.

However, governance tensions still emerge through other channels, particularly procurement oversight and operational compliance. In 2024, the Contraloría General de la República audit body identified irregularities in the procurement and testing of passenger rolling stock acquired by EFE, noting that some required technical verification procedures had not been completed prior to delivery. The oversight regime led to a formal observation process and corrective measures being taken.

This incident illustrates a different form of governance friction. Disputes emerge not through arbitration but through public accountability, including safety investigations and procurement oversight. The OECD analyses highlight that Chile's fiscal space is limited and emphasise the importance of long-term investment planning, spending efficiency and strong procurement governance.

Developing metros: the Peruvian capital has a developing urban and suburban rail network, including two metro lines.

PPP transition in Colombia

Colombia's railway sector has evolved within the broader infrastructure PPP framework led by state infrastructure agency ANI, which over the past decade has strengthened contract structuring, risk allocation and financial modelling across the various transport modes.

However, the legacy of earlier railway concessions illustrates the challenges of implementing PPP models in a sector with limited institutional capacity and deteriorated infrastructure. The concession of the Red Férrea del Pacífico, awarded in the 1990s to rehabilitate and operate the Buenaventura – Cali corridor, faced persistent operational and financial difficulties. Infrastructure deterioration, limited freight demand and disagreements over investment obligations led to repeated renegotiations between the concessionaire and the state. By 2020, ANI declared the *caducidad* (termination) of the concession due to serious breaches of contractual obligations related to maintenance, service continuity and investment commitments. The decision triggered domestic litigation processes between the concessionaire and the government.

This episode illustrates a broader transition in Colombia's infrastructure

Photo: Akihiro Nakamura

An East Japan Railway commuter train in Tokyo. In Japan, contractual conflicts are generally internalised within the industry structure.

governance. Early concessions were often negotiated under weaker institutional frameworks, generating renegotiation cycles and legal disputes. Newer PPP models now emphasise stronger project preparation, clearer risk allocation and more rigorous oversight mechanisms.

Recent efforts to reactivate the Pacific railway corridor through new maintenance and administration contracts reflect this shift toward rebuilding operational capacity while addressing the governance gaps inherited from earlier concession models. OECD economic surveys of Colombia similarly stress the importance of strengthening infrastructure governance, project preparation and institutional capacity across the transport sector.

Costa Rica's climate ambition

The railway revival in Costa Rica is primarily driven by climate and urban mobility policy rather than market liberalisation. Law No 9366 passed in 2016 strengthened state railway INCOFER and authorised financing mechanisms to advance plans for more urban rail routes to be developed in the San José area, embedding rail within the National Decarbonisation Plan.

The project has attracted engagement from international financiers, including the European Investment Bank, reflecting alignment with climate-finance and environmental governance standards. Costa Rica has not experienced the concession-driven disputes observed elsewhere in the region, but the central governance challenge lies in administrative capacity and inter-institutional co-ordination. Project delivery depends on managing corridor prioritisation, land acquisition, environmental permitting and effective coordination between national authorities, municipalities and transport agencies.

The OECD Environmental Performance Review: Costa Rica carried out in 2023 highlighted similar governance priorities, emphasising the need to strengthen public investment efficiency, improve regulatory enforcement and mobilise sustainable financing to meet the country's decarbonisation and infrastructure objectives.

Structural governance patterns

The country cases above suggest that, despite institutional differences, several structural patterns are shaping railway governance across Latin America. These patterns help to explain why disputes tend to emerge in similar ways across the region.

> 'Latin America does not need to replicate the full regulatory complexity of European open access markets. Most networks in the region are not yet congested enough'
>
> *Elvira Palomino Alarcón, CEO, TrAInsolutions*

Most railway systems across the continent operate through exclusive concessions or integrated public operators. Open access competition between train operators remains limited. As a result, disputes rarely arise between operators over network capacity; instead, they typically occur vertically between the state and concessionaires around financial equilibrium, investment obligations or service performance.

Regulatory oversight is often shared between transport ministries, PPP units and infrastructure agencies. While each plays a legitimate role, this fragmentation can weaken early technical dispute resolution and increase the likelihood that disagreements will escalate to the courts or to arbitration. Equally, railway development frequently focuses on individual projects rather than integrated network management. This can limit interoperability standards, data governance and co-ordinated asset maintenance across the system.

Availability payments, subsidies and multilateral financing mean administrative performance directly affects financial stability. At the same time, performance indicators are only effective where monitoring systems and data transparency are robust. Together, these structural features illustrate that railway disputes often reflect governance design as much as contractual complexity.

Governance before kilometres

Latin America does not need to replicate the full regulatory complexity of European open access railway markets. Most networks in the region are not yet congested enough to require such an architecture. The decisive variable is not formal regulatory sophistication but institutional capacity to absorb operational friction. The central governance question is therefore simple: can the system process disagreements internally, or does it export them to courts and arbitration?

Experience across the region shows that disputes rarely originate from engineering failures. They arise from predictable institutional tensions: land acquisition delays, tariff adjustments, maintenance obligations, financial rebalancing, or coordination failures between public authorities. Where governance structures are coherent, these tensions remain manageable. Where institutional architecture is fragmented, contracts become the arena where structural weaknesses surface.

For investors and operators, assessing railway opportunities in the region therefore requires analysing the governance conditions as closely as the technical feasibility. Key indicators include:

- administrative and technical capacity of the granting authority;
- clarity of financial rebalancing and compensation mechanisms;
- institutional safeguards for long-term maintenance funding;
- strength of inter-agency co-ordination frameworks;
- availability of staged technical dispute resolution mechanisms prior to arbitration.

Railways are not short-cycle infrastructure assets. They are multi-decade institutional systems combining infrastructure, regulation and long-term financial commitments. Latin America's renewed interest in rail — driven by logistics competitiveness, urban decarbonisation and climate finance — opens an important policy window. Yet durable railway systems are not created at the groundbreaking ceremony. They are built earlier, through institutional architecture capable of managing complexity over time.

Ultimately, building a successful railway system is not only a matter of engineering or investment. It requires states to understand the commercial, technical and economic implications of rail and, above all, to design and implement the governance institutions capable of managing the sector over the long term.