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Committee on Government Procurement

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RESPONSES FROM JAPAN TO QUESTIONS FROM THE EUROPEAN COMMUNITY RELATING TO ITS NOTIFICATION (GPA/W/144-146)

Communication from Japan

Please find below Japan's responses to questions from the European Community (GPA/W/205) regarding Japan's notification (GPA/W/144-146) relating to the East Japan Railway Company, the Central Japan Railway Company, and the West Japan Railway Company.

1. How many companies have a licence to use the infrastructure of each of the three Honshu companies? What are the respective market shares of any such companies?

(a) In Japan, it is possible for a railway company that does not own its infrastructure to operate a railway business by leasing infrastructure from other railway companies. Such arrangements are based on private leasing contracts, not on licensing from the Government.

(b) Railway companies using the infrastructure of the respective Honshu Companies are as follows:

- East Japan Railway Company: one lessee (Japan Freight Railway Company (JR Freight))
- Central Japan Railway Company: two lessees (JR Freight and Tokai Transport Service Company)
- West Japan Railway Company: four lessees (JR Freight; Sagano Scenic Railway Co., Ltd.; Ihara Railway Co., Ltd.; and Noto Railway Co., Ltd.)

(c) The market share of JR Freight is as follows. The market share of each of the other four passenger railway companies is less than 0.1 per cent in terms of passengers and passenger-kilometres.

(Shares in total cargo (by volume))

JR Freight	Other private railways	Coastal vessels	Airlines	Motor vehicles
0.6%	0.3%	8.1%	0.0%	91.0%

(FY1999)

(Shares in total cargo (by ton-kilometres))

JR Freight	Other private railways	Coastal vessels	Airlines	Motor vehicles
4.0%	0.0%	40.9%	0.2%	54.8%

(FY1999)

2. *For how long is it envisioned that the Guidelines will apply to the Honshu Companies?*

The Guidelines will remain applicable to the three Honshu Companies "for the time being", as stipulated in Article 2 of the Amendment to the Law Concerning Passenger Railway Companies and Japan Freight Railway Company (cf. GPA/W/152, p.2) and the last paragraph in Section I (Purposes) of the Guidelines (GPA/W/179, p.3). As less than a year has passed since the Law and the Guidelines became effective on 1 December 2001, Japan is not able to give a specific time, at this stage, when these provisions will be reviewed, taking into account further developments in the reform process of Japan National Railway.

3. *We understand that the Honshu companies and the remaining JR Companies will jointly procure railway-related infrastructure, such as rails, and services. Please explain what will be procured jointly and how this will be organized. Please also detail the involvement of the Government or Government bodies or officials in the procurement process.*

(a) The JR Passenger Companies jointly procure rails only. There are no plans for joint procurement of goods and services, except for rails.

(b) Joint procurement of rails proceeds as follows:

One of the JR Companies, acting as representative of the JR Companies with respect to the procurement, first inquires from each JR Company the volume of rails needed for the next procurement. Then, a purchase contract is concluded with a rail manufacturer that tenders for the entire lot of rails with the lowest price. The JR Company coordinating the procurement collects bills from the other JR Companies and completes the payment.

(c) Joint procurement of rails by the JR Companies is conducted on a purely voluntary basis in order to reduce the costs. In this procurement process there is no involvement of the government, government bodies, or officials.

(In this context, Japan wishes to note that the Government of Japan has never requested or advised JR East to coordinate common procurement of rails. Under the Amendment Law (cf. GPA/W/152) the Government of Japan has no right to control or influence the procurement conducted by the three Honshu Companies. Therefore, Japan sees no relevance of this issue to government control or influence over the entity under Article XXIV:6(b). With a view to expediting the consultations, Japan requests the EC to state specific concerns as well as the reasons why this issue is relevant under this Article if it wishes further clarification.)

4. *What changes have there been to the individual market shares of each of the three Honshu Companies since their privatization?*

See Appendix 1 below.

5. *Please detail any subsidies that each of the Honshu companies may receive, on what criteria they are awarded and how they are allocated to the companies.*

(a) Since the division and privatization of the Japan National Railway in 1987, there have been no subsidies exclusively granted to the three Honshu Companies. The Honshu Companies have benefited from two subsidy programmes for which all railway companies in Japan are eligible to apply. These are subsidies for the installation of railway crossing safety equipment, and subsidies for the installation of barrier-free equipment and facilities.

(b) The purpose of the subsidy programme for the installation of railway crossing safety equipment is to prevent railway-crossing accidents. Eligible for this subsidy programme are all railway business operators that meet certain criteria (e.g. the operation profit does not exceed 7 per cent of the total value of a company's fixed assets employed in its railway business). Under this programme, within the budgetary constraints, the central government may support up to half of the necessary construction costs per operator, and local governments may support up to one-third of the necessary construction costs per operator.

(c) The purpose of the subsidy programme for the installation of barrier-free equipment and facilities is to ensure better access to transportation systems for the aged and physically handicapped. Eligible for this programme are all railway business operators, with the exception of the Teito Rapid Transit Authority and local governments running underground railways. Central and local governments may provide subsidies under this programme within the budgetary constraints. No specific ceiling is set for the subsidy amount to be granted per operator by local governments. The amount of subsidy to be granted an operator by the central government may not exceed:

- (i) the total amount of subsidies that the operator receives from local governments; and
- (ii) one-third of the necessary construction costs for such equipment and facilities to be installed by the operator.

(d) See Appendix 2 for the allocation of the two subsidies to railway companies including the three Honshu companies.*

6. *Please give details of the leasing agreement between JRCPG and the Honshu Companies relating to the construction and subsequent running of the Shinkansen lines. Please explain the process by which the Honshu Companies will gain ownership of the Shinkansen infrastructure and whether this opportunity will be open to any other companies. During the term of the lease, who is responsible for the maintenance of the lines and how will the necessary resulting procurement be conducted?*

(a) As of September 2002, five Shinkansen systems are in operation in Japan. Four are owned and operated by one of the three Honshu Companies as follows:

- Tokaido Shinkansen (by JR Central), Sanyo Shinkansen (by JR West), Tohoku Shinkansen (by JR East), and Joetsu Shinkansen (by JR East).
- Hokuriku Shinkansen (117.4 kilometres between Takasaki and Nagano operated by JR East) is the only one of which infrastructure is leased from Japan Railway Construction Public Corporation (JRCPG). The leased portion is only 6 per cent of the total length of the five Shinkansen systems currently in operation.

(b) Details of the Hokuriku Shinkansen leasing agreement are as follows:

- [i] Duration of lease: 30 years from 1 October 1997 (Disposal of the facilities at the end of the term of the lease agreement is to be determined through consultation between JRCPG and JR East.)

* Since the three Honshu Companies operate their railway businesses in a vast area, the number of stations for whose construction, maintenance or management they are responsible is much larger than that of other railway companies. As a result, the total amount of subsidies granted to each Honshu Company is relatively large, but the share of the income from the subsidies in the total income of each Honshu Company is less than 0.1 per cent.

[ii] Leasing charge: ¥17.5 billion per year plus management costs (including fixed assets tax).
(For example, the average annual leasing charge actually paid from FY 1998 through FY 2002 is approximately ¥20.2 billion.)

[iii] Maintenance and repair clause:

- JR East is responsible for undertaking ordinary maintenance and repair work necessary for ensuring both stable operations and passenger safety and convenience.
- JRCPC is responsible for and defrays the costs beyond the scope of ordinary maintenance and repair.

(c) JRCPC may, with the approval of the Minister of Land, Infrastructure and Transport, transfer the ownership of a Shinkansen system to a railway business operator. The transfer of the ownership is not limited to the three Honshu Companies. Therefore, non-JR railway companies (including those owned by a foreign company) may purchase a Shinkansen system from JRCPC.

(d) As long as JR East and JRCPC are listed in Annex 3 of Japan's Appendix I, these entities conduct procurement related to the maintenance and repair work for Shinkansen systems in accordance with the Agreement on Government Procurement.

APPENDIX 1

MARKET SHARES OF THE THREE HONSHU JR COMPANIES

<Passengers>

Fiscal Year

	Railways	1987	1990	1995	1999
Three Honshu JR Companies	JR East	25.2%	26.1%	26.7%	27.0%
	JR Central	2.0%	2.2%	2.3%	2.3%
	JR West	7.4%	7.7%	8.3%	8.4%
	Subtotal	34.6%	35.9%	37.3%	37.7%
Other JR companies	JR Hokkaido	0.5%	0.5%	0.6%	0.6%
	JR Shikoku	0.3%	0.3%	0.3%	0.3%
	JR Kyushu	1.2%	1.3%	1.4%	1.4%
	Subtotal	2.0%	2.0%	2.3%	2.2%
Other private railways	Subtotal	63.4%	62.1%	60.4%	60.1%

<Passenger-Kilometres>

Fiscal Year

	Railways	1987	1990	1995	1999
Three Honshu JR Companies	JR East	30.3%	30.9%	32.1%	32.7%
	JR Central	11.9%	13.2%	12.4%	12.4%
	JR West	13.3%	13.5%	13.9%	13.7%
	Subtotal	55.5%	57.5%	58.4%	58.8%
Other JR companies	JR Hokkaido	1.1%	1.2%	1.2%	1.2%
	JR Shikoku	0.5%	0.5%	0.5%	0.5%
	JR Kyushu	2.2%	2.1%	2.2%	2.1%
	Subtotal	3.8%	3.8%	3.9%	3.7%
Other private railways	Subtotal	40.6%	38.7%	37.8%	37.5%

APPENDIX 2

ALLOCATION OF SUBSIDIES

SUBSIDY FOR INSTALLATION OF RAILWAY CROSSING SAFETY EQUIPMENT

(Unit: million yen)

			FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
JR	Three Honshu JR Companies	JR East	0	0	0	0	13	7
		JR Central	0	0	0	0	120	13
		JR West	0	0	0	0	0	0
		Subtotal	0	0	0	0	133	20
	Other JR companies	JR Hokkaido	0	12	8	4	0	26
		JR Shikoku	23	25	35	57	22	23
		JR Kyushu	58	92	35	28	51	32
		JR Freight	0	0	0	0	0	0
		Subtotal	81	130	78	89	73	81
	JR total		81	130	78	89	206	101
Other private railways	[1]*		30	35	28	15	11	13
	[2]		27	23	15	10	8	8
	[3]		23	21	15	10	7	7
	[4]		14	14	14	7	7	6
	[5]		11	8	13	6	6	6
	Total for others		22	34	64	30	23	10
	Total for private railways		127	134	149	78	62	50
	Grand total		208	264	228	166	268	151

* Numbers indicate order of annual subsidy amount received; actual company ranking varies from year to year. For example, [1] could indicate Company A for FY1996, but Company B for FY1997.

SUBSIDY FOR INSTALLATION OF BARRIER-FREE EQUIPMENT AND FACILITIES

(Unit: million yen)

			FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
JR	Three Honshu JR Companies	JR East	24	11	34	864	772	386
		JR Central	0	0	1	749	241	261
		JR West	8	3	16	203	554	862
		Subtotal	31	14	50	1,815	1,568	1,510
	Other JR companies	JR Hokkaido	0	1	16	353	71	23
		JR Shikoku	0	0	0	28	0	0
		JR Kyushu	6	8	0	240	123	18
		JR Freight	0	0	0	0	0	0
		Subtotal	6	9	16	621	194	41
	JR total		37	23	66	2,436	1,761	1,550
Other private railways	[1]*	14	35	18	331	249	441	
	[2]	10	16	14	330	248	369	
	[3]	9	11	14	245	190	365	
	[4]	8	8	12	167	167	302	
	[5]	7	6	9	158	131	296	
	Total for others	25	8	17	698	302	1,087	
	Total for private railways		72	83	86	1,929	1,286	2,860
	Grand total		109	107	151	4,365	3,048	4,410

* Numbers indicate order of annual subsidy amount received; actual company ranking varies from year to year. For example, [1] could indicate Company A for FY1996, but Company B for FY1997.