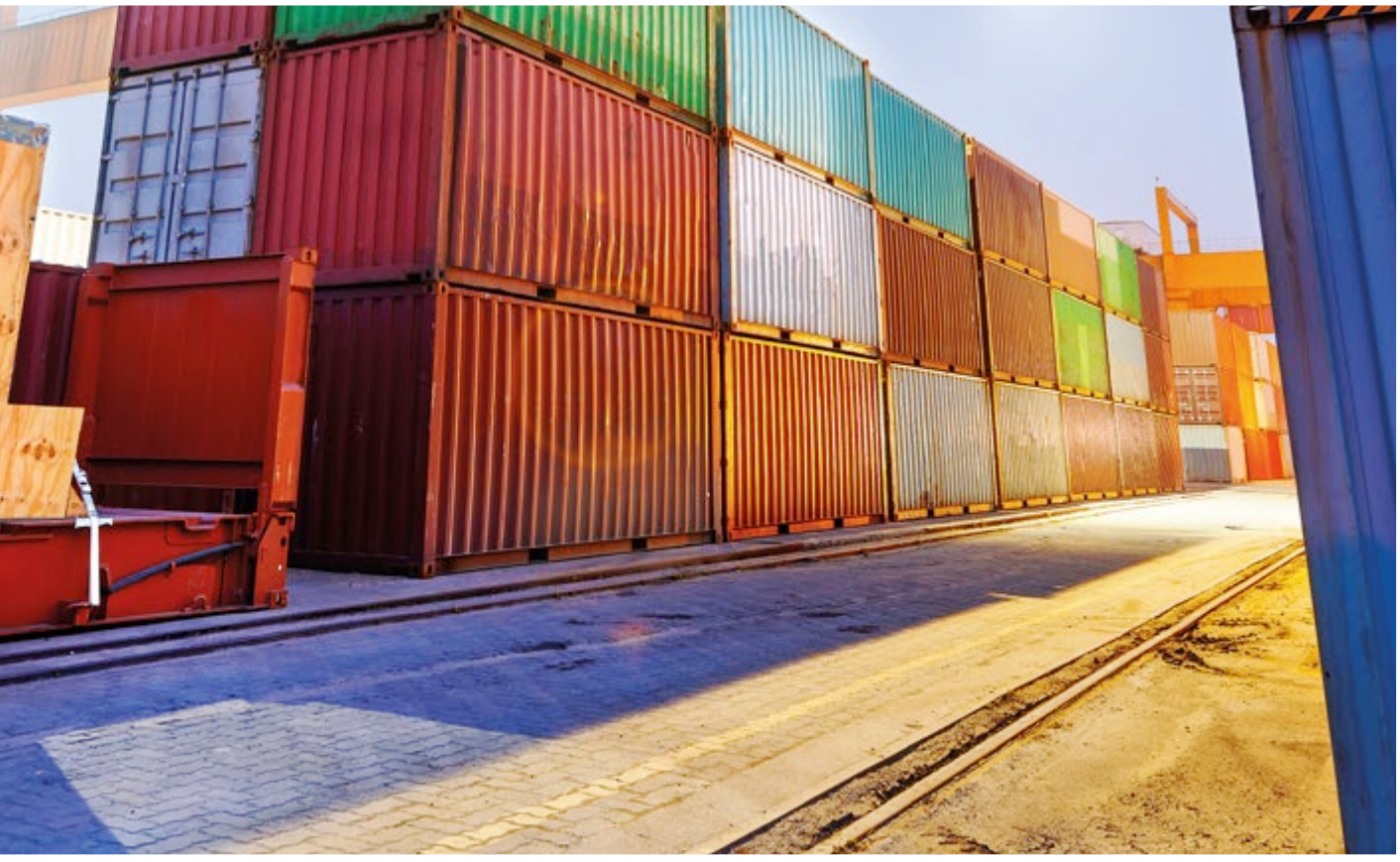
Report on the activities 2018

Railways Arbitration Commission (RACO)



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Railways Arbitration Commission

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Foreword from the Chair

Dear reader

In the 2018 Activities Report the Railways Arbitration Commission (RACO) looks back on an active and successful year. As an independent government commission, it has to establish effective supervision in order to strengthen competition on the rail market. It has to ensure transparent and fair access conditions to the rail network and to the intermodal freight terminals and sidings which are subsidised by the Swiss Confederation.

In the past year, in view of complaints and notifications, RACO examined conditions of access, capacity allocation and payment for the use of the rail infrastructure and other installations.

RACO's supervisory activity included examining for potential discrimination the freight transport chain and the characteristics of the major intermodal freight terminals. In the process, RACO subjected the conditions of use to detailed inspection. A local inspection also revealed the interdependences between the individual parties involved, such as terminal operators, other logistic companies and marshalling companies on the last mile. RACO will also continue this surveillance activity for ensuring non-discriminatory access precisely in the case of the intermodal freight terminals and will support the terminal operators during this process. Private terminal operators whose installations are subsidised by the Swiss Confederation are under an obligation; they are obliged to also make their terminals available to third parties under fair conditions.

In its long-standing exchange with SBB Infrastructure, RACO examined the organisational and process-related adaptations of the marshalling yards. It has been possible, with the owner of the internal terminals, to find adequate basic conditions which appropriately ensure non-discriminatory access as well as optimisation of the process.

At the international level, after the route closure in Rastatt (Germany), RACO seized the initiative. Together with the regulatory authorities from the Netherlands, Germany and Belgium, it produced a comparative study on incident management by the national infrastructure managers (IMs). The objective was to create a common basis for trans-frontier cooperation by the responsible parties in such emergencies. The symposium on this problem demonstrated the requirements of clients and the concepts of the IMs. Approaches to solutions in the event of capacity restrictions on the major corridors for freight transport were presented in order to cope with the disruptions through trans-frontier cooperation of the IMs.

Finally, I would like to thank the Commission and the members of the specialist secretariat most sincerely for their dedicated and knowledgeable work.

Patrizia Danioth Halter
Chair

Management Summary

As an independent government commission, the Railways Arbitration Commission (RACO) ensures non-discriminatory access to the rail network and to the private intermodal freight terminals and sidings that are subsidised by the Swiss Confederation. In doing so it supports the functioning of the rail market. It is active in three areas:

- As a specialised tribunal it rules on claims from railway and other transport undertakings concerning access to the network and terminals.
- As a supervisory authority it initiates ex officio investigations and takes measures to ensure non-discrimination. To this end it operates market monitoring and market surveillance.
- It co-operates at the international level with other regulators and in particular initiates close cooperation on the rail freight corridors.

In 2018 **notifications** and **claims** were submitted. The respective procedures were not yet concluded by the end of 2018.

In relation to **market monitoring**, RACO focussed on the intermodal freight terminals. The commission examined specific questions regarding lawful use and inspected several terminals. The examinations revealed that potential discrimination exists, above all where participants cover either multiple parts of the transport chain in combined transport (horizontal integration) or are integrated vertically - via holdings. The examinations were still ongoing by the end of 2018.

In relation to **market surveillance**, RACO analysed the key figures on national traffic volumes and cooperated with the Independent Regulators' Group – Rail (IRG-Rail) on the 2018 Market Monitoring Report. It also actively monitors themes such as power supply ex catenary, in particular the status of conversion of vehicles for actual measurement as well as the development of the flat rate tariff.

In addition to the usual work inside committees, **international cooperation** included the management of a trans-frontier project on incident management by the national infrastructure managers (IMs).

Legal bases

General

RACO is an independent commission within the meaning of Art. 8a para. 3 of the Government and Administration Organisation Ordinance (GAOO)[1]. In accordance with Art. 40a[bis] of the Railways Act (RailA), it rules on claims by railway undertakings (RUs) and initiates ex officio investigations if there is suspicion that network access has been prevented or granted in a discriminatory way[2]. It also monitors access to intermodal freight terminals and sidings which are subsidised by the Swiss Confederation. As a market-oriented commission it supervises and provides essential support for the functioning of the rail market (Art. 8m letter b GAOO).

RACO was established on 1 January 2000. Its members are appointed by the Federal Council; the Commission's seat is in Bern. Administratively, RACO comes under the Federal Department of the Environment, Transport, Energy and Communications (DETEC). The commission receives professional support from a specialist secretariat.

New competencies

After the competencies of RACO were extended in the second step of Railway Reform 2 (1 July 2013) and as part of the total revision of the Federal Act on the Carriage of Goods by Rail and Navigation Companies[3] (1 July 2016) the regulatory authority is now being further strengthened. In September 2018 the National Council and the Council of States approved the Federal Act on Organisation of Railway Infrastructure (ORI); this leads to numerous changes[4], particularly in the RailA. The new regulations are expected to enter into force in mid-2020. Additional supervisory and decision-making competencies will be transferred to the newly named authority, RailCom[5].

As a complaints authority, RailCom reviews non-discriminatory fulfilment of the system tasks of the IMs as well as participatory rights. In the latter case, the RUs have the possibility of participating in the IMs' short- and medium-term investment planning. In the event of disputes concerning this participatory right, the RUs may turn to RailCom.

The transfer of overarching tasks in rail transport, i.e. system tasks, is regulated in a public-law contract between the Federal Office of Transport and agents. The assigned system leader must perform his tasks in a non-discriminatory manner in respect of the companies concerned. RailCom adjudicates on disputes between the system leader and the companies concerned.

RailCom also acquires monitoring tasks in the area of management processes and the application of priority rules. It can collect and process the necessary data for market monitoring in coordination with agencies of the Confederation.

In December 2018 the Federal Council adopted a consultation draft entitled "Multimodal Mobility". By so doing it wishes on the one hand to allow access by third-party providers to public transport ticket sales and on the other hand to facilitate access to the data and marketing systems of other mobility providers. RailCom will acquire investigative jurisdiction competency in regard to guaranteeing non-discriminatory access.

1 GAOO; SR 172.010.1.
2 RailA; SR 742.101.
3 GCarA; SR 742.41.
4 Federal Gazette 2018 6051.
5 In Italian the commission will be named Comferr (and not RailCom), by analogy with the Italian designation of the RailA "Lferr".

Market monitoring

General points

In terms of market monitoring, RACO concentrates on systematically following up interactions between IMs and RUs which are relevant to discrimination. It bases itself on the one hand on its legal competencies (Art. 40a[bis] para. 1 RailA):

- Surveillance of train path allocation in the annual timetable,
- Validation of the network access conditions applicable to the individual timetable period,
- Checking responsibilities and processes in the marshalling yards,
- Access to intermodal freight terminals.

On the other hand, RACO defines annual priorities for activities. These are based on statutory innovations, the completion of concluded investigation procedures or current events and issues within the industry.

Monitoring of train path allocation in the 2019 annual timetable

In the 2018 reporting year, Swiss train paths ltd (trasse.ch) informed RACO of the progress and substantial challenges of train path allocation for the 2019 annual timetable.

In the path allocation process a total of 275 train path conflicts had to be resolved; 14 path requests were rejected. The numerous construction sites on the railway network constituted a particular challenge for train path planning. In addition, the international freight traffic routes had to be agreed with the partner railways on the rail freight corridors.

In 2018 the path allocation procedure was implemented for the second time in accordance with the priority rules of the network utilisation concept (NUC) and the network utilisation plan (NUP). The NUP specifies in advance a secured minimum offering for the transport of freight and passenger traffic. Path allocation requests which go beyond this are allocated within the framework of the residual capacity regulations. However, planning challenges continue to exist even under the new regime. For example, capacity requests for customer needs which are not assured in the NUP (e.g. relief trains for passenger transport at peak times, empty rolling stock trips, construction trains and survey trains) have to be taken into account in the timetable. After examining the train path allocation process, and in particular conflict resolution on the part of trasse.ch, RACO finally came to the conclusion that path allocation was implemented in a non-discriminatory manner.

Network access conditions 2019 and 2020

In the reporting year, RACO also examined the network access conditions of the most important Swiss IMs for the subsequent timetable years 2019 and 2020. Since the 2017 annual timetable, measurement of power ex catenary as provided for in law has been technically implemented. Thus the RUs have the possibility of calculating the power consumption of their trains on the basis of actual measurements. From 2019 onwards, a "detailed calculation" should now also be possible for the energy requirement before and after a train journey. This concerns, for example, energy which is required for pre-cooling or pre-heating a train combination.

In this context RACO addressed specific questions in relation to overall values for energy consumption, crane use and short-term comments on requests, which the IMs were able to answer conclusively.

Marshalling yards

RACO monitors the provision of services in the marshalling yards. Within the framework of a regular exchange with SBB Infrastructure it checks the general conditions of the operator model as well as their implementation and the adaptation of processes and organisation. In past years SBB Infrastructure, as the sole operator of marshalling yards in Switzerland, undertook structural

changes to the operation of its installations. With the new operator model in Lausanne and in the Limmattal, SBB Cargo, which is the main user of the marshalling yards, was also entrusted with the planning and production of marshalling services. SBB Infrastructure remained responsible for ensuring non-discriminatory service provision. In Buchs (St. Gallen), however, SBB Infrastructure itself continues to operate the planning services. The operation of the installations close to the frontier in Chiasso and Basel remains the sole responsibility of SBB Infrastructure.

RACO examined the non-discriminatory planning and handling of internal marshalling yard production processes by SBB Cargo as a service provider, as well as its contractual arrangements. It concluded that statutory provisions are being complied with and that the parties involved were taking appropriate measures to avoid possible discrimination against third-party users.

Surveillance of the intermodal freight terminals

In order to promote intermodal freight transport, since the turn of the millennium the Confederation has financially supported the construction and expansion of terminals. These subsidies were made on condition that the owners and operators of the intermodal freight terminals guarantee non-discriminatory use for all interested parties. Since the revision of the Federal Act on the Carriage of Goods by Rail and Navigation Companies in mid-2016, RACO has again verified fair use of these intermodal freight terminals (Art. 40a^{bis} para. 1 RailA).

In 2017, in a first step, RACO informed operators of the obligation to publish the conditions of access and use and requested their compliance. Subsequently the intermodal freight terminals implemented publication of several conditions of use on their websites and compliance with the minimum standards contained therein. In 2019 the publication obligation remains subject to surveillance by RACO.

In 2018, in a subsequent step, RACO investigated lawful use of the terminals and fair application of the conditions of access and use. It carried out inspections in several terminals in northwestern Switzerland and conducted inquiries with the operators. During its visits, RACO also looked at the operational processes of the terminals and checked for possible evidence relating to discrimination.

The investigations were still in progress by the end of 2018. In 2019 RACO will decide whether to launch ex officio investigations. In RACO's view the confidential handling of customer data continues to be a challenge for terminal operators. Handling of customer-specific information may only be used for the purposes of transhipment. Any other use, for example for the acquisition of customers, is forbidden.

How are intermodal freight terminals integrated into the freight transport chain? Cargo handling - usually in containers - is a key element of the transport chain, as the following process illustrates.

The diagram shows the haul, i.e. the journey of an intermodal loading unit by rail between two intermodal freight terminals and the participants who are involved. The process begins with the provision of a loading unit at the location of the dispatcher, also known as the shipper. There the goods are stuffed, stripped and loaded into the individual loading units. A freight forwarder or road haulage company transports the loading unit by road as far as the first terminal (pre-haul). There the loading unit is loaded onto the train. After the loading unit has been conveyed by rail and has been transhipped at the second terminal, the end-haul takes place by road. The loading unit then arrives at the recipient, is unloaded and where applicable returned to the leasing company. In some cases, part of the transportation is by ship. In this case also, an intermodal freight terminal is needed when the mode of transport changes.

The figure shows the participants involved, below the respective stages of the process. Various participants cover several parts of the goods transport chain. These so-called combined traffic (CT) operators offer the main haul as well as the pre- and the end-haul by road. There are also logistics and transport service companies which provide their services throughout the entire freight transport chain (including the management of loading unit resources).

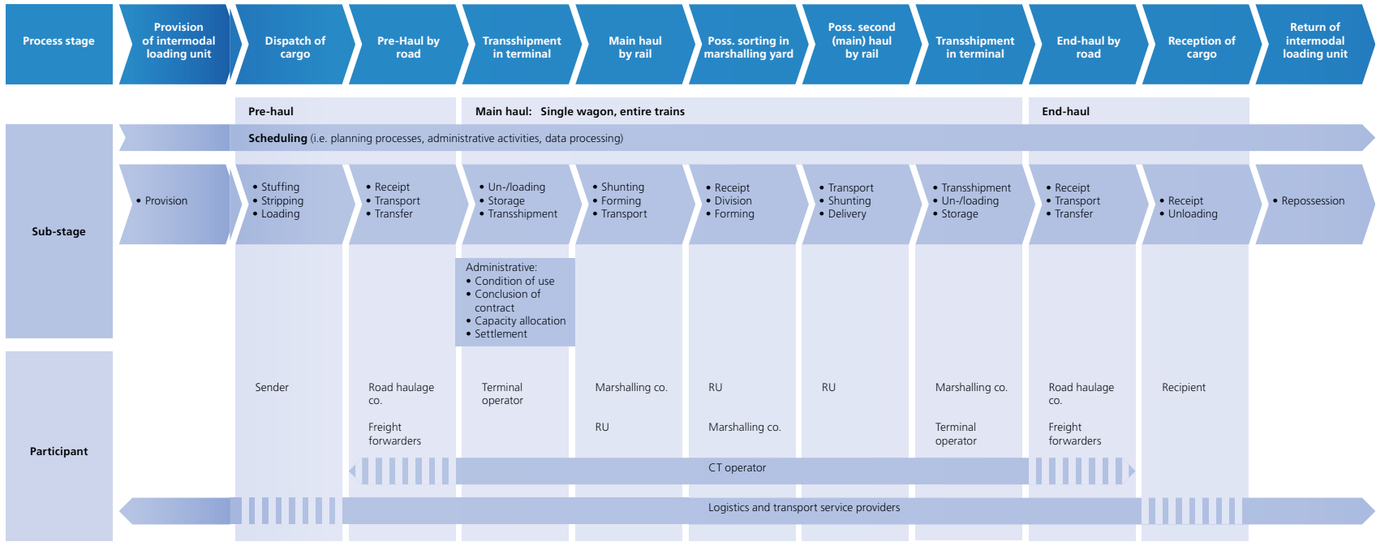


Figure 1: Overview of processes and participants in the freight transport chain (Source: in-house representation)

RACO identifies potential discrimination in particular where participants either cover multiple parts of the transportation process in combined freight (horizontal integration) or are integrated vertically via holdings.

Outlook

In 2019 too, RACO will monitor train path allocation and timetable generation, conditions of use and the marshalling yards. In the area of IMs' operational management processes, it will focus on the intermodal freight terminals and on the Gateway Basel North (GBN) Project.

Market surveillance

General

Market surveillance provides a general overview of the Swiss railway market and analyses competition-related events. It is an important tool for tracking developments on the railway network.

The Swiss railway network

The map gives a general overview of the railway network. Its total length is 5323 kilometres[6]. More than two thirds is standard gauge and the remainder is narrow gauge. Forty-eight infrastructure operators are responsible for it; they must grant non-discriminatory access to their network.

Passenger and freight transport on the Swiss railway network

How has transport capacity developed on the railway? Looking at passenger traffic, in particular the total for regional and long-distance transport, the virtually continuous growth is striking. The transport capacity in passenger-kilometres[7] increased in a five-year period by approximately 7% - driven by the expansion of offerings and continuous growth in demand. The stagnation in 2017 is attributable to a slight fall in kilometres travelled on long-distance transport.

Figure 2: The Swiss railway network (source: www.ske.admin.ch)

[6] Source: FSO.

[7] Passenger kilometres are the product of the total number of passengers carried and the distance covered in kilometres.

Development of transport capacity in regional and long-distance traffic

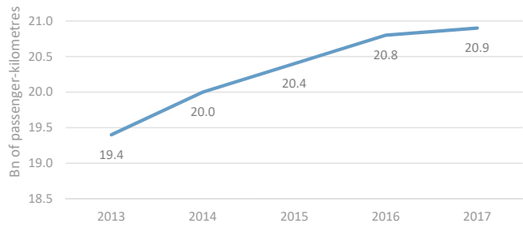


Figure 3: Transport capacity in regional and long-distance transport 2013-17 (source: FSO)

The next diagram shows freight transport, consisting of the sum of internal traffic, import/export traffic and transit traffic. In the period between 2013 and 2017 there was a moderate upward trend. The decline in tonne-kilometres[8] in 2017 of approximately 6% is primarily attributable to the disruption in the German Rhine Valley near Rastatt. In 2017 rail carried a total of 11.7 billion tonne-kilometres; 17.2 billion tonne-kilometres were carried by road.

Development of transport capacity in rail freight traffic

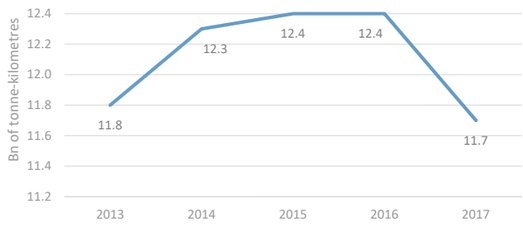


Figure 4: Transport performance in freight traffic (internal, import/export and transit traffic) 2013-17 (source: FSO)

Looking back

The first stage of the Railway Reforms in Switzerland began in 1999 with the aim of making Swiss railways more competitive and more efficient, thereby bringing more traffic onto rail. RACO was established one year later. It supervises non-discriminatory access to the network, including the associated services, prices and access conditions.

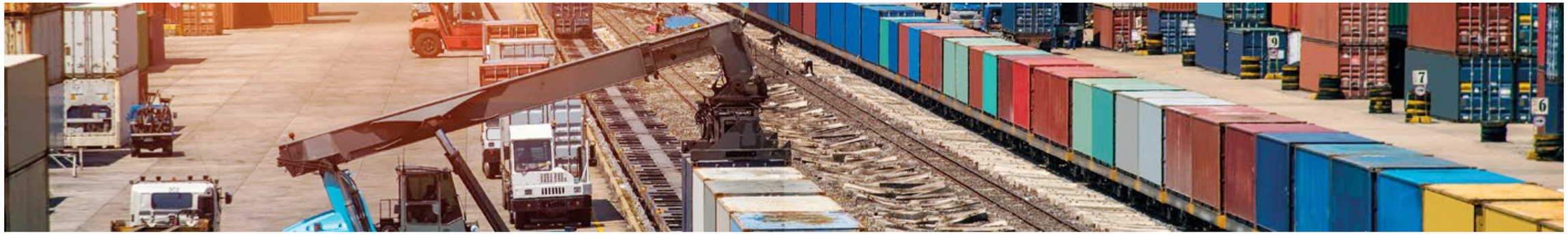
The development of rail freight transport, extensively liberalised since 1999 as part of the Railway Reform, in comparison to road freight transport is interesting. Looking back, between 1999 and 2017 there was a substantial increase in total transport capacity, the growth on the road (+32%) is more than twice as great as on rail (+15%).

Outlook

Market monitoring does not only look to the past, but also to the future. In this context, various themes are on RACO's radar. One example is the subject of the energy price, where we are actively monitoring the status of vehicle conversion and the evolution of the flat rate tariff in particular. Another example is the subject of long-distance transport, where a degree of competitive dynamic is apparent as the result of the renewed award of licences to BLS and to SBB as of December 2019[9].

[8] Tonne-kilometres are the product of the weight of the freight in tonnes and the distance covered in kilometres.

[9] The decision has been appealed and is not yet final.



International engagement

Independent Regulators' Group – Rail (IRG-Rail)

IRG-Rail is the umbrella group of the European rail regulatory bodies. It was founded in 2011; RACO was a founder member. IRG-Rail pursues the goal of advancing harmonisation in the European railways market and by this means promoting the efficiency and quality of the railway network. Under the IRG-Rail umbrella, the regulators regularly work in working groups dealing with specific themes. The focus is on an exchange of experience and trans-frontier alignment in relation to the implementation of European rail legislation. In addition, the members also take a position on legislative proposals concerning the future European regulatory framework.

RACO safeguards interests in the plenary assemblies of IRG-Rail and in the meetings of the Working Group Access. In 2018 this working group dealt mainly with the following topics: key performance figures for the rail freight corridors, maintenance planning by the IMs, rolling stock approval and crisis and incident management (contingency planning).

Rail Freight Corridors (RFC)

In order to promote rail freight transport, the EU has created eleven trans-frontier corridors throughout Europe. On these, the IMs concerned are obliged to offer track capacities which are harmonised across national borders. In each case a joint organisation of the IMs, the so-called Corridor One-Stop-Shop (C-OSS), is responsible for the development and marketing of these routes.

Switzerland is part of RFC 1 (Rhine-Alpine) and RFC 2 (North Sea-Mediterranean).

In 2017 RFC 1 was completely closed near Rastatt for several weeks. This revealed shortcomings in the co-operation between the IMs in the event of incidents with transnational impacts. The IMs concerned used the incident as an opportunity to define co-operation with the various stakeholders and potential measures for future incidents in a handbook[10]. This handbook was adopted as an industry standard by Rail Net Europe (RNE, the IMs' umbrella organisation) in the spring of 2018 and has been applied since the 2019 timetable.

With the handbook, IMs affected by a disruption on a corridor commit to examining and introducing pre-defined measures, for example specifying bypass routes, designating a central coordination agency of IMs and conducting communication centrally.

RACO welcomes the handbook as an important step towards professional transnational incident management.

In 2018 RACO, as the project manager, together with the Netherlands, German and Belgian regulatory authorities drew up a comparative study on incident management by the national IMs on RFC 1. The study analyses the national statutory standards and examines IMs' precautions with regard to incidents and restrictions in operative network operation. Swiss IMs are characterised by a precise and integral methodology. One key factor in this context is that the IMs are solely responsible for incident management and conduct communication centrally with all stakeholders. SBB, BLS and SOB have defined fall-back concepts for numerous lines and nodes on their networks; these were produced in advance with the RUs concerned. These specify incident procedures in detail for handling the various train categories and the guidance of passengers affected by a disruption. The study concludes that the various IMs should carry out analyses on the corridor and also implement these good practices.

In May 2018 RACO held a symposium with identified experts on the subject of "Unplanned closures on freight transport corridors - identifying challenges and strengthening cooperation".

European Network of Rail Regulatory Bodies (ENRRB)

The EU Commission regularly exchanges experiences with the rail regulatory authorities within the ENRRB, on the following main points in particular: supervision of the market-relevant activities of the national regulatory bodies, promotion of networking between the rail regulators and other authorities and institutions such as the ERA, PRIME and the EU Competition Commission, and consultation on current revision of or amendments to legislation.

RACO has observer status, but participates on an equal basis in the meetings. It uses this platform to provide information on the results of its investigatory and complaints procedures, as well as general developments in Swiss transport policy, and to defend interests in relation to the EU Commission and regulatory authorities.

[10] "Handbook for International Contingency Management".

RACO

Commission

In 2018 the Railways Arbitration Commission was made up as follows:

RACO (left to right): Werner Grossen, Peter Bösch, Dr. Yves Putallaz, Patrizia Danioth Halter, Dr. Ursula Erb, Prof. Dr. Markus Kern, Sibylle Burger-Bono

Function	Name	Background
Chair	Patrizia Danioth Halter	lic. iur., lawyer and notary, LL.M., Altdorf
Vice-Chair	Yves Putallaz	Dr. Ing. civil engineer EPFL, Corsier-sur-Vevey
Member	Peter Bösch	Logistics expert, Binningen
Member	Ursula Erb	Dr. oec. publ, Uhwiesen (until 31.8.2018)
Member	Werner Grossen	Business economist NDS HF, Thierachern
Member	Markus Kern	Prof. Dr. iur., LL.M., Assistant Professor of Constitutional and Administrative Law, Institute of Public Law, University of Bern, Bern

Yves Putallaz left the commission at the end of 2018. His successor is Giuliano Montanaro. Mr. Montanaro is a civil engineer specialising in transport systems and an acknowledged rail expert.

Specialist secretariat

The specialist secretariat supports the Commission with the tasks of the specialist tribunal, carries out supervisory activity – consisting of market monitoring and market surveillance – and represents RACO internationally in working groups. The personnel composition of the specialist secretariat in the reporting is as follows:

Function	Name	Background
Manager	Sibylle Burger-Bono	Lawyer (until 31.8.2018)
Manager	Christof Böhler	Master in International Affairs HSG (from 1.9.2018)
Deputy	Andreas Oppliger	lic. phil. nat.
Staff member	Ursula Erb	Dr. oec. publ. (from 1.9.2018)
Staff member	Fabia Portmann	lic. iur., lawyer (from 1.5.2018)
Staff member	Sven Erni	MSc ECO (until 30.6.2018)

Outlook

The integrated rail system and the associated potential discrimination require coherent and effective supervision of competition and an efficient regulator. In RACO's opinion, therefore, the following challenges are posed:

Infrastructure

The Federal Act on Organisation of Railway Infrastructure, which transfers additional surveillance and decision-making competencies to the regulator, must be implemented in such a way that competition on the rail market is strengthened. The future RailCom will focus on monitoring the tasks of system's leader.

Freight traffic

Market monitoring includes the task of implementing non-discriminatory access to the intermodal freight terminals. This concerns access conditions which are equal under law as well as transparent and fair pricing, including in particular the project Gateway Basel North.

At the international level, the practical commitment to improving the trans-frontier cooperation between the IMs and rail freight corridor authorities will continue to be developed in a targeted manner.

Passenger traffic

The FOT is drawing up proposed legislation to liberalise the public transport ticketing system and to also offer non-railway undertakings the possibility of providing multimodal mobility services in Switzerland. Monitoring access to the public transport ticketing system which is fair and equal under the law and to mobility and transport data will be incumbent on the future RailCom. It will also deal with the practical opening-up of the data interfaces and implementation, so that it is actually possible to assure non-discriminatory access to the marketing system.

Glossary

Abbreviation	Meaning
BLS	Bern-Lötschberg-Simplon-Bahn
C-OSS	Corridor One-Stop-Shop
DETEC	Federal Department of the Environment, Transport, Energy and Communications
ENRRB	European Network of Rail Regulatory Bodies
ERA	European Union Agency for Railways
FAC	Federal Administrative Court
FOT	Federal Office of Transport
FSC	Federal Supreme Court
FSO	Federal Statistical Office
GAOO	Government and Administration Organisation Ordinance
GBN	Gateway Basel Nord
GCarA	Federal Act on the Carriage of Goods by Rail and Navigation Companies
IM	Infrastructure Manager
IRG-Rail	Independent Regulators' Group – Rail
NDP	Network Development Plan
NUC	Network Utilisation Concept
ORI	Federal Act on Organisation of Railway Infrastructure [Organisation der Bahninfrastruktur OBI]
PRIME	Platform of Rail Infrastructure Managers in Europe
RACO	Railways Arbitration Commission

Abbreviation	Meaning
RailA	Railways Act
RFC	Rail Freight Corridor
RNE	Rail Net Europe
RU	Railway Undertaking
SBB	Schweizerische Bundesbahnen [Swiss Federal Railways]
SOB	Schweizerische Südostbahn
SR	Systematische Rechtssammlung [Classified compilation of Swiss Federal law]
trasse.ch	Swiss train paths ltd.

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