Report on the activities 2017

Railways Arbitration Commission (RACO)

Schweizerische Eidgenossenschaft
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Schiedskommission im Eisenbahnverkehr
Commission d'arbitrage dans le domaine des chemins de fer
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Railways Arbitration Commission

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Foreword from the Chair

Step by step, the Railways Arbitration Commission (RACO) has put into concrete terms the framework conditions for access to the rail infrastructure, as well as to private combined transport terminals and sidings that are co-funded by the Swiss Confederation.

The Confederation's complete overhaul of the Goods Carriage Act[1] supports combined transport terminals that lack economic viability, and so access should be open, not only to owners and operators themselves, but also to third parties in accordance with the rules of transparency and non-discrimination.

In a series of decisions on investigations, RACO also provided the impetus for developments in the rail market. First of all, this applies to the procedure examining the flat-rate energy tariff in the List of services. As part of the settlement negotiations, the rail sector introduced measurement of actual power at catenary, which was provided for by law but had not been implemented. In addition, the flat rate for power was significantly reduced for freight traffic.

At international level, in September 2017 RACO organised the 1st European Forum for Freight Corridors in Zurich. Overshadowed by the line closure in Rastatt, and in consultation with further regulators, RACO initiated a project on the Corridor in question, to examine and promote transfrontier cooperation between national Infrastructure managers (IM) during emergencies and operational interruptions as well as possession planning.

To strengthen competition in the rail market, coherent and effective market supervision and an efficient regulator will continue to be important. The fact that all of RACO's decisions in the reporting year were accepted by the undertakings in question, without recourse to appeal, bodes well for the future.

I would like to express my personal thanks to the members of the Commission and the staff of the Secretariat, the General Secretariat of DETEC and further authorities, as well as the market participants who provide active and constructive support for RACO in this challenging work.

Patrizia Danioth Halter
Chair

[1] GCarA; SR 742.41

Management Summary

The RACO is an independent supervisory authority that ensures non-discriminatory access to the rail network, as well as to the private terminals for combined transport and sidings that are co-funded by the Swiss Confederation. It thus supports the functioning of the rail market.

In 2017, RACO carried out the following **investigations and complaints proceedings**, which have all been legally settled:

- The complaints procedure investigated the surcharge for switching mainline locomotives in the Chiasso marshalling yard. Because both AC and DC are used, a locomotive has to be changed if it cannot run on both systems. RACO dismissed the complaint from a railway undertaking (RU) against the extra fee charged for this. According to the List of services, the surcharge was a contractual part of the Network access agreement between the applicant and the IM. Furthermore, the surcharge was calculated and charged on the basis of equality before the law.

- In the investigation of line closures for construction work, RACO defined the principles of who should bear the additional costs.

- In the energy price case, following systematic introduction of charging for the actual amount of power used, the IMs reduced the flat-rate tariff for train category 6, "Long-distance freight train", by about 25% from 22.6 to 16.8 Wh per gross tonne-kilometre. However, RACO determined that the flat-rate tariff for train category 6, "Long-distance freight train" was discriminatory. This category comprised all types of freight train except tractor-hauled freight trains. RACO therefore decreed that train category 6 should be further differentiated; the IMs have put this into practice in the 2019 List of services (see also Foreword and "Energy price" p. 7f).

Under **Market monitoring**, RACO's focus was on the implementation of the legal obligation to ensure transparent and equal access to private transhipment facilities for combined transport. Publishing the technical and operational conditions of use, capacity allocation procedure, services and prices is an essential prerequisite for non-discriminatory access to the facilities, including by third parties.

In the chapter on **Market surveillance**, RACO explains the data on transport services, giving international comparisons as well. For the first time, the shareholdings and shareholders of Swiss RUs are explained.

RACO's **international cooperation** was characterised by the initiative to promote cross-border cooperation between IMs along the Rail Freight Corridors (RFC) and thus also between their regulatory authorities. Together with the other regulators, RACO is investigating emergency and possession planning at national level as well as internationally on the RFC.

Legal bases

General

RACO is an independent committee within the meaning of Article 8a para. 3 of the Government and Administration Organisation Ordinance[2]. In accordance with Art. 40a^{bis} of the Railways Act, it ensures non-discriminatory access to the network, by ruling on claims from RUs and initiating ex officio investigations if there is suspicion that network access has been prevented, or granted in a discriminatory way[3]. As a market-oriented committee, it supervises and provides essential support for the functioning of the rail market (Art. 8m letter b GAOO).

RACO has been in action since 1 January 2000; its members are appointed by the Federal Council. RACO's seat is in Bern.

Administratively, RACO has come under the Federal Department of the Environment, Transport, Energy and Communications (DETEC) General Secretariat since the beginning of 2012.

[2] GAOO; SR 172.010.1
[3] RailA; SR 742.101

Activities to ensure non-discriminatory access to the network

Complaints and ex officio investigations[4]

In the year under review, one complaint was addressed and investigations were concluded.

"Special shunting" complaint

On 27 February 2017, railway undertaking X made a complaint against infrastructure manager Y because of the extra special shunting services that were charged for switching L-Group mainline locomotives at Chiasso Smistamento. The complainant sought to establish that it was not liable to pay the surcharge for special shunting as per section 2.3.4 of the 2017 List of services for switching mainline locomotives at Chiasso Smistamento.

The Chiasso Smistamento marshalling yard has two power systems, AC and DC. RUs active in transit between north and south are able to traverse the marshalling yard independently using a locomotive that works on both systems. Other locomotives, such as those used by the complainant, have to be switched in the Chiasso Smistamento marshalling yard.

After the complainant had concluded a network access agreement with Y in December 2015, a surcharge of CHF 70 per shunting manoeuvre was made for this service "Switching mainline locomotive" in accordance with the 2017 List of services. The 2016 List of services, however, did not mention switching locomotives, and the IM had provided this service free of charge.

The dispute concerned, in particular, the legitimacy of the surcharge, and the correct information regarding the change in the 2017 List of services.

Complaint dismissed

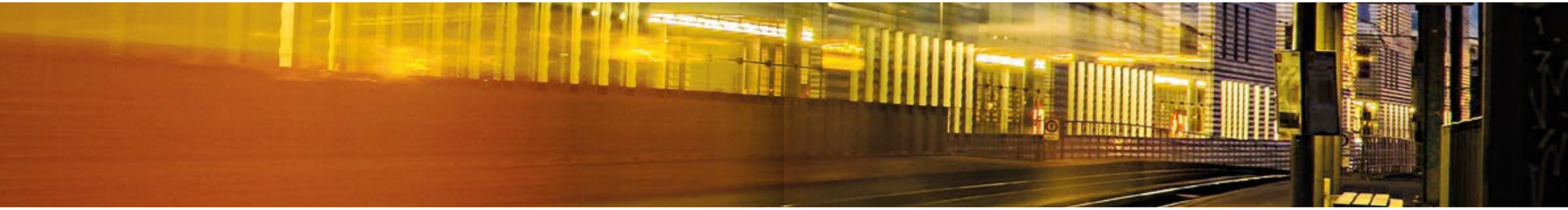
RACO dismissed this complaint by decree dated 11 December 2017, noting that infrastructure manager Y had legitimately charged complainant X a fee for special shunting from the 2017 timetable. The following reasons were given:

1. When the network access agreement was signed in December 2015, Y had informed X that the List of services was an integral part of this agreement, and that it was available online. The appellant was therefore able to consult the 2016 and 2017 List of services on the Internet, before signing the contract, and take note of the relevant information therein.

2. Substantively, RACO found in particular that the surcharge for special shunting in the 2017 List of services was lawful. The surcharge for changing locomotives is levied on the basis of equality before the law; freedom from discrimination is therefore ensured.

The decree is legally binding as of 31 January 2018.

[4] https://www.ske.admin.ch/en/topics/legal-mandate/



Ex officio investigations[5]

Line closure

Construction work on the infrastructure results in line closures for rail traffic. To maintain passenger traffic, there may be diversions or substitute transport, e.g. replacement buses. The increased costs these incur are divided between RUs and IMs in accordance with Art. 11b RailNAO[6] and the FOT Guideline "Line closures in accordance with Art. 11b RailNAO", as follows

- If the closure is announced in good time, the IM bears the additional costs that the RU incurs.
- If the closure is not announced in good time, the IM also covers the additional operating costs and any shortfalls.
- Minor expenses are not reimbursed (Art. 11b Abs. 2 RailNAO).

Since 2014, there has been disagreement between BLS Netz AG / SBB Infrastructure and BLS AG on the criteria for determining what constitute minor expenses.

In 2015, BLS AG requested RACO to initiate an ex officio investigation into the correct application of Art. 11b RailNAO and the FOT Guideline. The RU and IM disagreed, in particular, on the level to which additional costs are considered minor expenses, and must therefore be borne by the RU.

Definition of principles

In its decree of 12 May 2017, RACO defined the following principles:

- IMs fundamentally bear the additional costs that substitute transport and diversions incur for a railway undertaking.
- Minor expenses, operating costs and shortfalls are borne by the RU.
- In determining whether additional expenses, operating costs or shortfalls of any specific case are minor, the IM must bring supporting evidence such as a decline in profitability compared to the original tender. These criteria must be applied in an equal and non-discriminatory way.
- Only in exceptional cases can expenses be considered minor.
- The RU must provide evidence of the costs incurred and any shortfalls.
- This evidence must be re-examined accordingly.

As a consequence, RACO decreed that the IM's decision on costs, which BLS AG had appealed, should be re-evaluated based on these principles.

RACO's decision is legally binding and the investigation is thus concluded.

[5] https://www.ske.admin.ch/en/documentation/decisions/completed-procedures/
[6] RailNAO; SR 742.122

Energy price (relative consumption value) in the List of infrastructure services

In May 2013, BLS Cargo AG requested RACO to examine a case of possible discrimination in the application of relative consumption values for freight trains in the List of infrastructure services.

In addition to train type 8, "Tractor-hauled freight train", the List of services contained only one other type of freight train for long distances, comprising all other types of freight transport. Passenger traffic, on the other hand, is subdivided into five train types.

Methods and principles examined

Since 1 January 2013, actual power consumption must be measured using installations on the vehicles, in accordance with Art. 20a para. 3 RailNAO in conjunction with Art. 3 para. 3 RNAO-FOT. Most of the RUs, however, do not use this measurement, and continue to apply relative consumption values as a flat rate according to the List of services.

RACO commissioned the EPFL to examine the methods of calculating the energy price for each train type and the principles on which they were based. The EPFL's expert opinion concluded that heavy freight trains travelling long distances without a stop generally need less power than invoiced under the flat rate for train type 6, "Long-distance freight train".

During the ex officio investigation, RACO reached a partial agreement between the network operators and the freight companies involved, which was approved by decree dated 1 November 2016:

1. Based on the pilot project launched by SBB Infrastructure and BLS Cargo to introduce billing for the actual amount of power used ("Verbrauchsabhängige Verrechnung Bahnstrom (VVB)"), this form of billing was introduced at the end of 2015.
2. Starting with the 2017 List of services, SBB Infrastructure reduced the flat-rate energy tariff for train type 6, "Long-distance freight train" by about 25% to 0.0168 kWh per gross tonne-kilometre.

Evaluation of discriminatory effect

In a further step, RACO examined the discriminatory effect of the current flat-rate tariff for train type 6, "Long-distance freight train". A second study commissioned by RACO shows that specific factors such as weight, topology, number of stops, and traction have a significant effect on energy consumption. These factors should therefore be taken into account appropriately in setting the relative consumption values for train type 6, "Long-distance freight train".

In its decree of 8 June 2017, RACO:

1. Found that uniform, flat-rate approach to billing for power for all freight trains in category 6, "Long-distance freight train", which differentiates only according to whether a vehicle has regenerative braking, violates the non-discriminatory access to the network ensured under Art. 9a para. 1 RailA in conjunction with Art. 10 para. 1 RailNAO and Art. 18 para. 3 RailNAO.
2. Ordered additional differentiation of the flat-rate energy tariff for train type 6, "Long-distance freight train" in the 2019 List of services. SBB Infrastructure is required to implement this.

The decision is legally binding.

Energy tariff reduced

The investigation procedure has brought about the measurement at catenary provided for by law, and has led to a 25% reduction in the flat-rate energy tariff for freight traffic. The implementation of the decreed measures to ensure non-discriminatory flat-rate energy prices will be supervised and checked under Market monitoring.

Market monitoring

General points

Under Market monitoring, RACO concentrates on the systematised follow-up of discrimination-related interactions between IMs and RUs, thus complying with its legally defined duties. These are:

- To examine the network access conditions published annually by the IMs,
- To maintain oversight of train path allocation in the annual timetable,
- To observe interfaces between IMs and RUs in the marshalling yards.

In establishing its activity, RACO concentrates on three priorities:

- Amending the legal bases,
- Enforcing investigations which have been finally disposed of, and
- Current developments or issues arising within the rail sector.

In 2017 monitored equality of access to private combined transport terminals that are co-funded by the Swiss Confederation through investment subsidies. This duty of the operator has been laid down in the Goods Carriage Act[7] since 1 July 2016.

[7] Federal Act on the Carriage of Goods by Rail and Navigation Companies (GCarA); SR 742.41

Implementation of the decree on energy prices

The federal government aims future charging for traction power to be based no longer on a flat rate but largely on real measurements of consumption by individual trains, using financial incentives to motivate the RUs to equip their locomotives with measuring instruments. Since 2014 some RUs have already fitted such instruments onto part of their fleet. However, the migration has so far taken place not according to schedule, but with a marked delay.

Despite the federal funding available to equip locomotives with measuring apparatus, the IMs remain responsible for enabling traction power to be invoiced as flat rates based on experience for some train types. In contrast to passenger traffic, most IMs still differentiate energy consumption for freight traffic into only two categories: local freight trains ("Tractor-hauled" freight trains) and long-distance freight trains (see also details under "Special shunting complaint", page 5). In its decision dated 8 June 2017, RACO obliged the IMs to differentiate this flat rate for long-distance freight trains from 2019.

Billing for traction power

On 1 November 2016, RACO approved an agreement between network operators and freight transport companies. This specifies that network operators must submit a concept, drawn up together with the network users, on adapting the flat-rate energy approach at least for train type 6, "Long-distance freight train" in the 2018 List of services (point 1.5 relative consumption values by train type) to RACO for approval by 31 December 2015.

The SBB is drawing up such a concept. This can however be introduced only once the necessary legal bases have been created in the RailNAO and the RNAO-FOT. The FOT opened the relevant consultation procedure at the end of 2017.

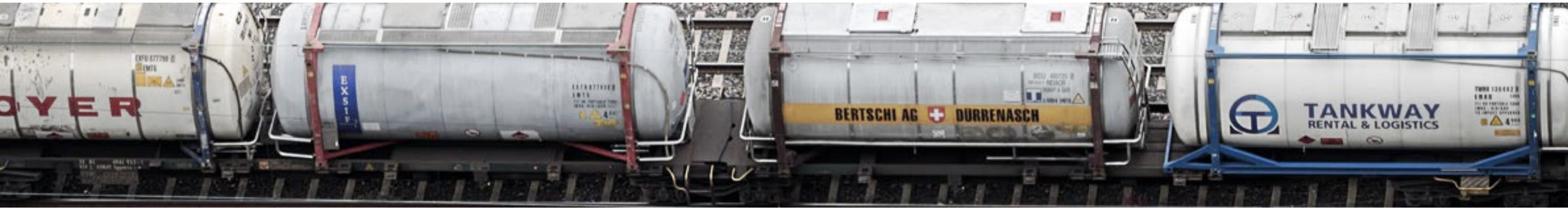
Implementation of the GCarA

In Switzerland there are a number of private terminals serving intermodal transhipment of goods. To promote combined transport, the federal government has, since the turn of the millennium, been providing targeted subsidies for the construction or extension of these facilities. Payment of the subsidies has regularly been linked to the condition that the operators must ensure use by third parties under the principle of non-discriminatory access. With the revision of the GCarA in mid-2016, the Confederation explicitly anchored this obligation in law and delegated supervision of this to RACO.

In the year under review, the operators of the facilities in question were made aware of their obligations. These essentially comprise publishing the main regulations for use, and the equal treatment of third parties alongside their own users. RACO first focused on the transparent publication of the necessary information and conditions for non-discriminatory use, such as

- A description of the facilities,
- Technical and operating regulations,
- Capacity allocation, and
- The range of services including their price and billing details.

RACO's next step will be to examine the substantive provisions of the terminal operators in terms of non-discrimination.



Monitoring of train path allocation in the 2018 annual timetable

In 2017 as well, RACO and Trasse Schweiz AG (Trasse.ch) exchanged information about the process and the key issues of capacity allocation for the 2018 timetable year.

The train path allocation process took place for the first time according to the priority rules of the Netznutzungsplan (NNP). The NNP specifies in advance a guaranteed minimum service for passenger and freight traffic. Any further train path requests are allocated in line with allocation of remaining capacity.

The intensive use of the Swiss railway network is reflected in the total of 15,200 train path requests. Alternatives were found for all of the more than 300 train path conflicts, and the conflicts resolved.

The train path allocation process was influenced by the renewal of concessions for long-distance passenger traffic from 2018. The FOT examined the tenders received as late as autumn 2017, after the definitive train path allocation had already been concluded. Two RUs had previously made competing requests for particular passenger routes. To avoid a stalemate, one of the two players withdrew its request. In the meantime, the FOT has received tenders from both the RUs, and has extended the existing concession by two years up to the end of 2019. A decision on the definitive new licence will be made in 2018.

Network access conditions 2018

In the year under review, RACO examined the network access conditions of the key Swiss IMs for the 2018 timetable year. Due to the partial agreement of 9 November 2015 in the energy price case, the publishers of the 2018 List of services reduced the relative energy consumption values for freight traffic by around 25% (see also chapter "Energy price (relative consumption value) in the List of infrastructure services", page 7). An intensive exchange took place on this between RACO and representatives of the large IM prior to publication.

The remaining changes in the conditions of use did not call for any material comments from RACO.

Marshalling yards

Since 2014, SBB Infrastructure, the only operator of marshalling yards, has made organisational and process optimisation of these facilities. It introduced a new operator model for the Limmattal and Lausanne marshalling yards. The main user, SBB Cargo, was tasked with responsibility for running the facilities and ensuring the operational services. These two marshalling yards form the backbone of facilities for processing domestic single wagonload traffic. SBB Infrastructure withdrew completely from operational shunting in the Buchs marshalling yard in 2017, and is now purchasing these services from SBB Cargo.

In the two facilities close to the frontier at Basel and Chiasso, the existing responsibilities remain for the present. SBB Infrastructure informed RACO in the year under review about developments in the marshalling yards. RACO also took part in a process audit of the Chiasso marshalling yard. This inspection was used to gather findings on charging and billing for services that SBB Infrastructure provides in the marshalling yard.

The well-established exchange with SBB Infrastructure will continue in a suitable form.

Outlook

In 2018, RACO will continue on the market monitoring path taken. This includes pursuing the current Dossiers on "Energy price" and "Ensuring network access to private combined transport terminals". In addition, RACO will develop a focus on cooperation on specific topics between the IMs along Freight Corridor 1.

Market surveillance

General

Market surveillance provides a general overview of the Swiss railway market and analyses competition-related events.

The Swiss rail infrastructure

The Swiss railway landscape is marked by its diversity of installations. The total length of the Swiss rail infrastructure is approximately 5200 km. The narrow gauge network makes up almost 1400 km of this, and the standard gauge network around 3800 km. The SBB owns by far the largest standard gauge network, at 3089 km, followed by the BLS Group, with about 420 km. The narrow gauge network is largely in the hands of the Rhätische Bahn, which owns almost 400 km. Figure 1 below shows the standard and narrow gauge networks in Switzerland.

A few figures on the infrastructure and its use:

Standard gauge	
Network length	3930 km
Number of IMs	15
Train-kilometres	195 million
Gross tonne-km	80 billion
Narrow gauge	
Network length	1332 km
Number of IMs	43

Figure 1: Standard and narrow gauge network in Switzerland

The rail infrastructure is used increasingly intensively in Switzerland. Between 2013 and 2016, the use of the rail network by passenger and freight RUs (measured in train kilometres on the standard gauge network)[8] increased by 5% for traffic as a whole. More specifically, regional passenger traffic experienced higher growth (8.2%) than long-distance traffic (2.1%) and freight traffic (1.5%).

Development of traffic in Switzerland between 2013 and 2016

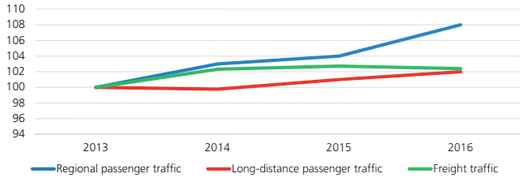


Figure 2: Development of traffic in Switzerland

An IRG-Rail analysis[9] shows that Switzerland has the second most intensively used rail networks among 28 European countries, after the Netherlands. This intensity of use is measured in train kilometres per route kilometre per day. The graph also shows the proportions of passenger and freight traffic.

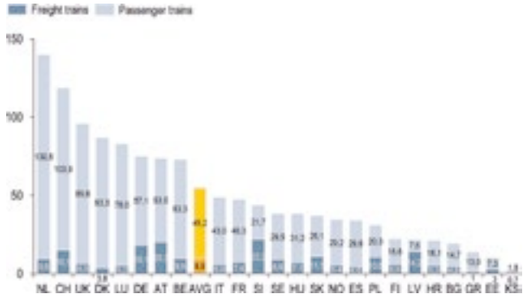


Figure 3: Network usage intensity 2015 in train-km per route km and day (Source: IRG-Rail Market Monitoring report 2016)

[8] Data on approx. 95% of the standard gauge network. The RUs concerned are SBB Infrastructure, BLS Netz AG, SOB Infrastructure, Thurbo, Sensetalbahn AG and Hafenbahn Schweiz AG

[9] 2015 - Fifth IRG-Rail Market Monitoring report, https://irg-rail.eu/irg/documents/market-monitoring/135,2017.html

Passenger and freight traffic in Switzerland

The Swiss rail transport scene is characterised by diversity. In 2017, 88 RUs held a FOT safety certificate[10] and were thus entitled to perform transport on the network.

According to an internal evaluation, there were 56 RUs with regular passenger traffic (licensed transport), 5 of them with a presence on both the standard and narrow gauge networks, and 16 RUs that were active in the non-regular passenger sector (charter).

Essentially, the primary shareholders of these RUs are representatives of the Confederation, the cantons, the communes and a few Swiss transport enterprises, and have remained relatively stable over recent years. The majority of the shares are held by Swiss enterprises.

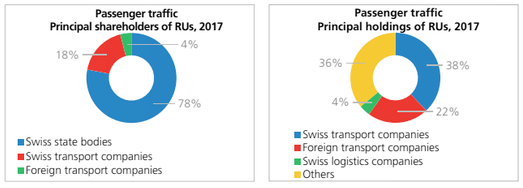


Figure 4: Primary shareholders and shareholdings of passenger RUs

Services relating to passenger transport[11] have been characterised by an upward trend since 2013. The number of trips grew by 14%, from 571 million in 2013 to 655 million in 2016, despite strong competition from other modes of transport.

	Billion person-km	Million journeys	Million train-km
2013	19	571	181
2014	20	581	188
2015	20	592	190
2016	21	655	200

Figure 5: Volume of passenger traffic

In the standard gauge freight sector, 17 RUs carry freight internationally, 5 only to frontier stations, and 8 perform service and test runs. There are also 3 RUs carrying freight on the narrow gauge network.

[10] Source: FOT, Approvals and Rules Section

[11] Data from Appenzeller Bahnen AG, BDWM Transport AG, Bergbahn Lauterbrunnen-Mürren AG, BLS AG, Baselland Transport AG, Berner Oberland-Bahnen AG, Compagnie des Chemins de fer du Jura (C.J.) SA, DB Fernverkehr AG, Deutsche Bahn Regio AG, Società per le Ferrovie Autolinee Regionali Ticinesi (FART), Società Anonima, Frauenfeld-Wil-Bahn AG, Transports de la région Morges - Bière - Cossonay SA, Compagnie du Chemin de fer Montreux Oberland bernois SA, Transports Montreux-Vevey-Riviera SA, Compagnie du Chemin de fer Nyon - St-Cergue - Morez SA, Oensingen - Balsthal-Bahn AG, Regionalverkehr Bern - Solothurn AG, Rhätische Bahn AG (RhB), SBB GmbH, Schweizerische Südostbahn AG, Transports publics fribourgeois Trafic (TPF TRAFIC) SA, TRAVYS - Transports Vallée-de-Joux - Yverdon-les-Bains - Sainte-Croix SA, Transports Publics Neuchâtelois SA (transN), Wynental- und Suhrentalbahn AG (WSB), SBB AG, RegionAlps, Zentralbahn, Thurbo, Tilo and SBB GmbH.

Broadly speaking, their shareholding structure is primarily composed of Swiss and foreign transport enterprises. The majority of the shares are held by foreign enterprises. Two major changes have taken place in recent years. In 2010, SBB Cargo separated from its activity in transit on the north-south axis, setting up the subsidiary SBB Cargo International AG. The principal activity of this company resides in providing traction services for combined transport and block trains on the corridor across the Swiss Alps, with links between combined transport terminals and ports to the north and south of the Alps. SBB Cargo International manages two subsidiaries, one in Italy and the other in Germany. A second important change consists in the acquisition in February 2017 by SNCF Logistics of 45% of the shares of BLS Cargo AG, with the aim of reinforcing cross-frontier freight traffic.

Table 7 below shows freight transport services between 2013 and 2016[12]. Domestic freight traffic, as well as import and export, remained relatively stable due in particular to passenger traffic, which prevented any further transfer. Transit traffic on the north-south axis has developed more strongly over several years. The strong Swiss franc (following the SNB's abandonment of the exchange rate cap in January 2015) has also hampered an increase in volumes in the different markets.

	Billion net tonne-km				Million train-km
	Domestic	Import	Export	Transit	
2013	2.93	1.10	0.32	6.46	27.66
2014	3.15	0.98	0.27	8.27	28.09
2015	2.80	1.15	0.33	8.63	28.32
2016	3.07	0.92	0.35	8.14	28.26

Figure 7: Volume of freight traffic

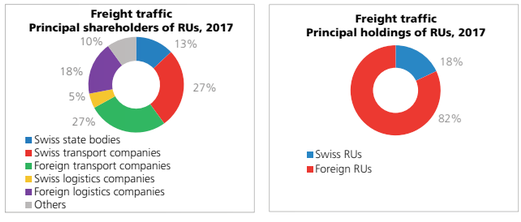


Figure 6: Primary shareholders and shareholdings of freight RUs

[12] Data from SBB Cargo International, BLS Cargo AG, SBB Cargo AG, Crossrail AG, DB Cargo Schweiz GmbH, DB Cargo Deutschland AG, railCare AG, Rhätische Bahn AG (RhB), Transalpin Eisenbahn AG and TX Logistik GmbH.

Other topics

The concession process for long-distance traffic in Switzerland

RACO notes that the renewal of concessions for long-distance traffic is not in line with the process of train path ordering (which was allowed a deadline of 10 April 2017). In fact, Trasse Schweiz AG received train path orders from both SBB and BLS for a particular long-distance line. Because of the deadline for renewing the concession, which was after that for allocating train paths (conflict between the two procedures), and in view of the fact that is impossible to take into account more than one order at a time, SBB and BLS agreed that one of them would cancel its train path orders. The train path applicant that did not obtain a concession for these lines would have to cancel its order so that the paths concerned would be available for the RU that did obtain the concession.

Outlook

RACO will continue to observe the market in 2018 on the basis of the concept defined over previous years. Fact sheets (on infrastructure, passenger and freight transport) will be enhanced and a general report on the market will be submitted to RACO. In addition, one or two specific topics will be address in synergy with market surveillance.

International engagement

European Network of Rail Regulatory Bodies (ENRRB)

The ENRRB was created in 2013 through the review of the EU regulatory framework[13]. The European regulators represented in this body, together with the European Commission, meet regularly to exchange information and ideas on cross-border issues concerning rail regulations. The ENRRB promotes cooperation between regulators.

RACO is invited to take part as an observer, and attends plenary meetings.

In 2017, meetings focused on the following topics with relevance to RACO:

- The European Commission wants a Directive on regarding cooperation between the national regulators, who in turn consider this unnecessary, as the low level of competition and the sector's performance are not dependent on cooperation between regulatory authorities.

- The European Commission complains that European IMs have published only about 40% of the clearance gauges for their lines in the infrastructure register. From a freight perspective this situation is particularly troublesome, as in some instances transport is being performed without clarifying the clearance requirements. In its Implementing Act the EU seeks to make IMs publish their clearance gauges, thereby introducing a transparent and rapid procedure for checking train path allocation for unusual transports. Among other things, it should be possible in the future for the RUs to carry out individual clearance measurements for stretches of track the IM has forbidden them to use for clearance reasons. The regulators should validate the RUs' measurement data before they are published by an IM. The substantive competence of the regulatory authority is in dispute.

- The performance of the nine freight corridors is unsatisfactory, from a European Commission perspective. The European Commission expects increased monitoring by the regulators to find out the reasons why. RACO is engaged in this task and has initiated a project which allows for in-depth insight into the processes and incident management of individual issues (see chapter "Rail Freight Corridors", page 17).

[13] Directive 2012/34 (EU); Recast

Independent Regulators' Group – Rail (IRG-Rail)[14]

IRG-Rail is an association currently consisting of 31 regulatory bodies. In 2011 RACO was one of the founder members together with four other national regulatory authorities.

International cooperation between the rail regulators seeks to develop a single European rail market. The regulatory authorities exchange information regarding national implementation of European legislation within thematically structured working groups. IRG-Rail is additionally developing joint submissions with regard to the further development of European rail regulations.

At IRG-Rail's plenary meetings, RACO represents the interests of the Swiss regulator so as to develop in advance optimum joint solutions for network access and service facilities. RACO remains active in the Access Working Group, which analyses issues regarding network access and develops suggestions for solutions. This committee is also responsible, content-wise, for questions regarding the expansion and operation of the European freight corridors. In 2017 the Access WG defined Key Performance Indicators (KPIs). These KPIs should make it possible to compare supply and use of the train paths offered as well as the performance of the Corridor One-Stop-Shop Organisation between the nine corridors in terms of benchmarking.

The KPIs relate mainly to the supply, ordering, allocation and use of train paths.

Rail Freight Corridors (RFC)

Based on Regulation (EU) 913/2010, the EU defined a total of nine corridors to be specifically promoted for the transport of rail freight. The Regulation requires national IMs for each corridor to construct and make available to the open market pre-arranged train paths (PaP), harmonised across national boundaries. To do this it established a joint organisation for all corridors, the Corridor One-Stop-Shop (C-OSS). On the part of IMs it functions as an interface for all customer requirements.

Generally speaking, the EU is aiming to strengthen cooperation within the industry, i.e. among IMs as well as between IMs and the various stakeholders such as RUs, terminal and harbour operators, or combined transport operators.

Two freight corridors involve Switzerland:

- RFC 1 (Rhine-Alpine)

Zeebrugge/Antwerp/Rotterdam – Duisburg – Basel – Gotthard/Lötschberg-Simplon – Milan – Genoa

- RFC 2 (North Sea – Mediterranean)

Rotterdam/Antwerp – Luxembourg – Metz – Dijon – Lyon/Basel marshalling yard

[14] https://www.irg-rail.eu/

Rastatt and its consequences

In 2017 the discussion was largely shaped by the Corridor 1 line closure south of Karlsruhe. Following sudden track subsidence at Rastatt, the line had to be completely closed for the best part of two months between August and October 2017. This resulted, in particular, in a far-reaching negative impact on freight traffic. A number of detour lines in Germany were either unavailable or only partly available due to ongoing construction. Technical and operational restrictions on alternative routes through France were further factors limiting capacity.

In September 2017, in Zurich, RACO set up the RACO organised the 1st European Forum for Freight Corridors, in accordance with the Rotterdam Declaration of 2016. The Forum served as a workshop between the rail regulators and the various interest groups along the corridors. Stakeholders who were severely affected by the Rastatt restrictions were able to examine the difficulties and hitches in overcoming the line closure, together with C-OSS, regulators and the EU Commission.

One consequence of this out-of-the-ordinary event has been securing knowledge and deriving potential measures on a variety of fronts. The German Federal Network Agency initiated an investigation on Rastatt. RACO instigated a review at international level of cooperation amongst national IMs, with a focus on emergency and possession planning. The regulators concerned with RFC 1 and 2 should therefore learn the lessons from Rastatt, not just in a national context, but also within the context of a European alliance, and make a practical contribution towards the better functioning of the freight corridors.

Implementing Act (IA) on Access to Service Facilities

The IA on Access to Service Facilities implements Art. 13 para. 9 of Directive 2013/34/EU (Recast). This means that operators of service facilities and providers of additional services such as combined transport terminals, feeder tracks etc. must ensure freedom of access.

Swiss railway law does not use the term "Service Facilities" in the same sense as EU legislation. Some types of facility, such as marshalling yards, sidings or transhipment facilities, are part of the rail infrastructure under Art. 62 para. 1 RailA, which has enshrined non-discriminatory access in law for some time. On the other hand, access to other types of facility is not liberalised in Switzerland, such as service facilities for maintenance of passenger vehicles or third-party ticket outlets at railway stations. In accordance with Art. 62 para. 2 RailA these facilities may be part of the infrastructure, but are not subject to free network access. Freight transhipment facilities are subject to free access under the GCarA.

The IA, which regulates access conditions, is significant for the Swiss situation, particularly in connection with RACO's new competence in monitoring free access and the use of services in combined transport terminals and sidings. Numerous topics covered by the Directive are also under discussion in Switzerland.

The minimum access package under the IA largely corresponds to the core services under Art. 21 RailNAO. Access to combined transport terminals has been subject to non-discriminatory access in Switzerland since 1999[15]. Switzerland thus already basically fulfils the proposed regulations.

[15] Art. 3 para. 4 Combined Transport Ordinance (CombTransO, SR 742.149), replaced by GCarO as of 1.7.2016

About RACO

Commission

The Railways Arbitration Commission is made up as follows:

RACO (left to right): Werner Grossen, Peter Bösch, Dr Yves Putallaz, Patrizia Danioth Halter, Dr Ursula Erb, 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
Member	Werner Grossen	Business economist NDS HF, Thierachern
Member	Markus Kern	Dr. iur., Assistant Professor of Constitutional and Administrative Law, Institute of Public Law, University of Bern

Specialist secretariat

The staff of the secretariat in the year under review was composed of:

Function	Name	Background
Head	Sibylle Burger-Bono	Lawyer
Deputy	Andreas Oppliger	Research assistant, lic. phil. nat.
Staff member	Sandra Dorasamy	Executive assistant
Staff member	Gabriela Weber	Lawyer, MLaw
Staff member	Sven Erni	MSc ECO (from 1.5.2017)
Staff member	Silvan Dermont	Intern (to 31.3.2017)

Outlook

In 2018 and beyond, RACO will face significant challenges:

- Market monitoring will continue to focus on non-discriminatory access to terminals for combined transport, ensuring that access conditions are equal under the law and that the pricing system is designed transparently and fairly.

- At international level, efforts will be made to significantly enhance the commitment, taken last autumn, to improve transfrontier cooperation between IMs and official bodies along the Freight Corridor. In consultation with further regulators along the RFC, RACO has launched a project to examine the standards and the implementation of emergency planning and management of operational breakdowns on the Corridor.

- The Swiss Parliament will strengthen the regulator, giving it further supervisory and decision-making powers, through its Message on the Organisation of Railway Infrastructure (OBI). Increased transparency will reduce the potential for discrimination, support the authority in its supervisory capacity – in its renamed form as RailCom – and strengthen competition in the rail market. RACO supports this thrust of the OBI revision.

Glossary

Abbreviation	Meaning
BLS	Bern-Lötschberg-Simplon Bahn
C-OSS	Corridor One-Stop-Shop
DB	Deutsche Bahn
DETEC	Federal Department of the Environment, Transport, Energy and Communications
DML Zürich	Durchmesserlinie Zürich [Zurich cross-city link]
ENRRB	European Network of Rail Regulatory Bodies
EPFL	École polytechnique fédérale de Lausanne
ERIO	Expert group for railway infrastructure organisation
FOT	Federal Office of Transport
GAOO	Government and Administration Organisation Ordinance
GCarA	Federal Act on the Carriage of Goods by Rail and Navigation Companies
GS DETEC	DETEC General Secretariat
IM	Infrastructure manager
IRG-Rail	Independent Regulators' Group-Rail
KPI	Key performance indicators
LV	Leistungsvereinbarung [Performance agreement]
NNP	Netznutzungsplan [Network use plan]
NRLA	New Rail Link through the Alps
NWS	Network Statement

Abbreviation	Meaning
OBI	Federal Act on Organisation of Railway Infrastructure
RACO	Railways Arbitration Commission
RailA	Railways Act
RailNAO	Rail network access ordinance
RTE	Regelwerk Technik Eisenbahn – industry standard
RU	Railway undertaking
SBB	Schweizerische Bundesbahnen [Swiss Federal Railways]
SFSO	Swiss Federal Statistical Office
SOB	Südostbahn
SR	Systematische Rechtssammlung [Classified compilation of Swiss Federal law]
Trasse.ch	Trasse Schweiz AG
VVB	Verbrauchsabhängige Verrechnung Bahnstrom [Billing based on traction power used]

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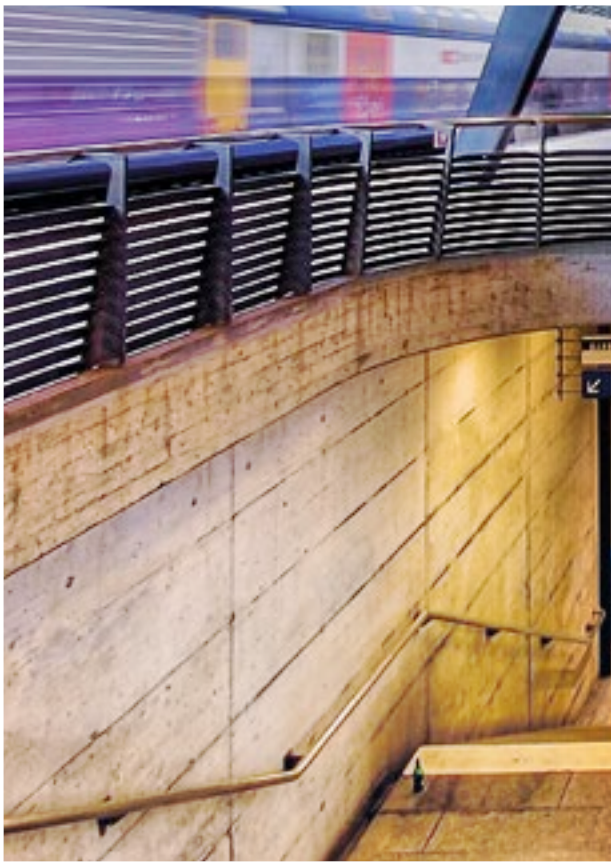
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