



## **Report on the activities 2013**

### **Railways Arbitration Commission (RACO)**



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

**Schiedskommission im Eisenbahnverkehr**  
**Commission d'arbitrage dans le domaine des chemins de fer**  
**Commissione d'arbitrato in materia ferroviaria**  
**Railways Arbitration Commission**

## **Imprint**

Publisher: Railways Arbitration Commission

Design: Comm.pact AG, 360° Konzeption seit 1991, Basel

Printing: Druckerei Bloch AG, Arlesheim

Circulation: German 260, French 50, Italian 10, English 30

Picture credits: cover, p. 1, 2, 12/13: Djama; p. 3: Anselm Baumgart; p. 4/5, 10/11: Lightpoet; p. 6/7: Scubaluna; p. 8/9 h368k742; p. 14/15 Voxxphotography; all ©Fotolia.com. p. 2, 8 (portraits) Kurt Schorrer. p. 16/17 ©AlpTransit Gotthard AG



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## Foreword



The Railways Arbitration Commission (RACO) is an independent and active supervisory authority for rail transport. Since conclusion of the Land Transport Agreement between Switzerland and the European Union it has been supervising non-discriminatory access to the rail network. This gives the regulatory body a function in terms of competition: all railway undertakings (RUs) are entitled to non-discriminatory access to the rail network and thus to the rail transport market under equivalent technical and economic conditions. RACO therefore arbitrates on disputes concerning access to the rail network. Since mid-2013, competition monitoring no longer requires a legal complaint to have been made. Under Railway Reform 2.2, RACO can investigate the behaviour of infrastructure managers (IM) and train path allocation body towards the RUs if discrimination is suspected. The link to market surveillance serves to strengthen competition in the rail transport market and should permit discrimination to be identified and countered at an early stage. This promotes an efficient use of public resources, optimised performance of the RUs and IM, and customer friendly services.

Our report, published in this form for the first time, offers readers a glimpse of the work of this authority. It also explains the reasons why RACO has to reorient itself towards implementing new tasks and effective competition monitoring. This first milestone has already been reached. The priority has been to realise Railway Reform 2.2, in order to ensure a hands-on approach by the authority regarding suspicion of discrimination by IMs or the train path allocation body. The development of our own monitoring system concentrating on specific relevant potentials for discrimination, as well as investigative actions and measures to respond to claims by third parties, have been undertaken without delay. Based on such preliminary information, RACO has ini-

tiated its first investigative procedures. We have thus determined that within the integrated Swiss rail system, this new potential has been used proactively to regulate competition in the liberalised freight sector.

To strengthen competition on the rail transport market, and bearing in mind the continuing liberalisation here, coherent and effective competition monitoring is thus important for the future.

My personal thanks goes to all – Commission members, secretariat and authorities – who have supported RACO in these challenging tasks, and have affirmed the new direction of our activities.

Patrizia Danioth Halter  
Chair



## **Free access to the rail network requires market supervision**

### **Railway Reforms 1 and 2**

The first stage of the Railway Reform in Switzerland came into force in 1999. Its three essential aims were to separate political and entrepreneurial functions better, to increase the cost-benefit ratio, and to bring elements of competition into the railway system. It pursued these aims by implementing the following measures:

- Separation of infrastructure and transport
- Non-discriminatory access to the rail network as a basis for liberalising freight transport
- Funding of public transport
- Debt reduction and transformation of the SBB into a public limited company under special legislation.

With the introduction of free access to the network came the creation of the Railways Arbitration Commission as a specialist agency. It supervises non-discriminatory access to the rail network.

Railway Reform 2 aimed to improve efficiency in public transport, secure an efficient railway system, and regulate the deployment of security services in public transport. Further topics were the restructuring of the security service, ensuring non-discriminatory access to the rail network and equality of transport companies, and harmonisation of earlier reforms. In 2005, Parliament rejected Railway Reform 2; it then called for the reform to be submitted again in packages.

### **First step: Railway Reform 2.1**

In 2007 the Federal Council submitted the first package to Parliament, containing the least controversial elements of Railway Reform 2. This contained the restructuring of the security service, the equality of transport companies, and the further development of earlier reforms. At the same time, decrees on public transport were organised more systematically into the areas of infrastructure, freight transport and passenger transport.

The Federal Act of 18 June 2010 on the Security Units of Public Transport Companies superseded the Federal Act of 18 February 1878 on the Administration of the Railways Police. It provides transport companies with up-to-date instruments to fulfil their safety-related functions. Among other provisions, it allows them to arm transport police officers if necessary.



## Second step: Railway Reform 2.2

The second package followed in 2009. It improved the conditions for the shift of goods transport from road to rail, and for efficient passenger transport. Taking on important elements from the European Directives on Interoperability and Safety should simplify the internationally continuous rail freight transport between Switzerland and the surrounding countries. The tendering procedure in the bus sector should lead to further increases in efficiency in regional passenger transport. Calls to tender are also possible, in principle, for regional transport by rail.

The draft bill rejected by Parliament also planned to simplify funding. The division into a basic network funded by the Confederation and a supplementary network funded by the Cantons was dropped. Financing and extending the rail infrastructure will now be regulated through the draft bill on Financing and expansion of rail infrastructure (FABI), which the Swiss electorate approved in 2014.

Railway Reform 2.2 accorded RACO more competencies, so that it can monitor competition actively and identify and avert any discriminatory practices at an early stage.

## Looking forward

Even after completion of Railway Reform 2.2, the rail landscape is still a dynamic one. The EU is also driving forward further reforms. Topics for the future might include the issue of how rail infrastructure should be organised, or how to approach the liberalisation of passenger transport.



## The Swiss rail network

With a track length of 5,121 km (as of 2010, source SFSO) over an area of 41,285 km<sup>2</sup>, Switzerland has one of the densest rail networks in the world. Rail transport forms the backbone of public transport and is vital for national and international freight transport.

An overview of the key figures:

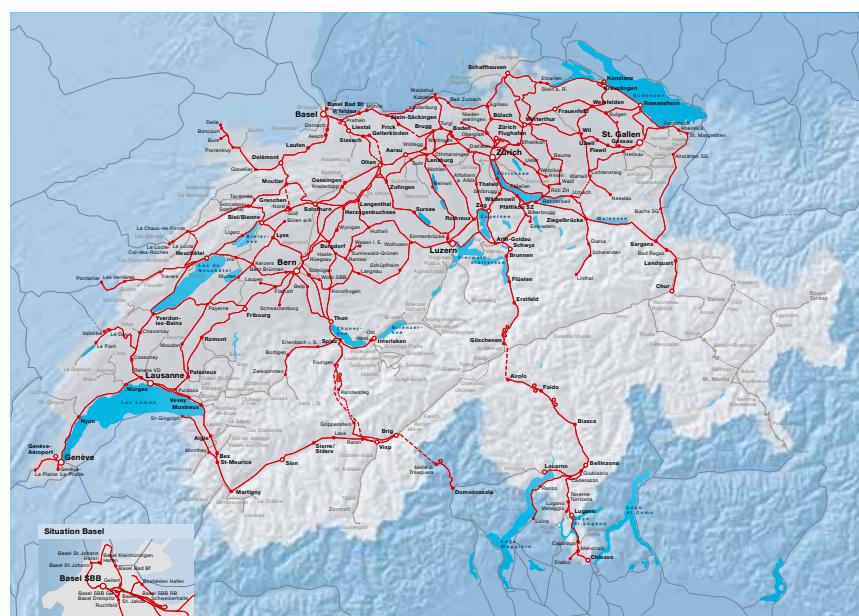
Person kilometres	19,3 billion <sup>1</sup>
Net transalpine tonne-km	23,6 million <sup>1</sup>
Net non-transalpine tonne-km	9,7 billion <sup>1</sup>
Number of train paths per year	14 606 <sup>2</sup>
Number of normal-gauge railways	189 <sup>3</sup>
Number of RUs involved in transit	5 <sup>4</sup>

<sup>1</sup> As of 2012, source: SFSO

<sup>2</sup> As of 2013, source: Trasse Schweiz annual report

<sup>3</sup> As of 2014, source: FOT TU Directory

<sup>4</sup> As of 2012, source: VÖV



The railway network supervised by RACO

(Source: Trasse Schweiz AG; ©SBB Relief:  
©DHM25/SRTM-DTED® swisstopo/NASA,  
NGA (JA062250))



# The Railways Arbitration Commission (RACO)

The Railways Arbitration Commission (RACO) has been in existence since 1 January 2000 as an extraparliamentary committee. It was set up as part of Railway Reform 1 to monitor non-discriminatory access to the Swiss rail network and to adjudicate in cases where this is disputed. Administratively it comes under the General Secretariat of the Department of the Environment, Transport, Energy and Communications (DETEC).

## Essentially, RACO has three functions:

- 1As a tribunal for adjudicating in disputes over non-discriminatory access to the rail network. Since Railway Reform 2.2 came into force on 1 July 2013 it has been able to initiate ex officio proceedings where discrimination is suspected.
- 2As a market supervisory authority (ex ante) it actively monitors the market, in order to ensure non-discrimination.
- 3Within the scope of international cooperations it monitors the decisions of infrastructure managers along the European freight Corridors 1 (Rotterdam/Antwerp – Genoa) and 2 (Rotterdam/Antwerp – Basel); it is also a member of the Independent Regulators Group (IRG-Rail) and an observer in the European Network of Rail Regulatory Bodies (ENRRB).

RACO sees itself as the qualified, competent, effective and proactive supervisory authority for non-discriminatory access to the rail network. In this function it makes a substantial contribution to the high quality of the Swiss rail system. It ensures that the conditions for fair competition on the rail network are adhered to and not circumvented.

## Core tasks

RACO's tasks are laid down in Art. 40a<sup>bis</sup> of the Railways Act (RailA) and Art. 5 of the Railways Arbitration Commission Regulations. Essentially there are three tasks:

- Monitoring and ensuring non-discriminatory access to the rail network, through appeals, legal complaints and ex officio investigations;
- Market and discrimination monitoring;
- International cooperations: coordination of regulatory bodies along freight Corridors 1 and 2, ENRRB and IRG-Rail.

**«Important things were set in motion for RACO in 2013. Our Commission was restructured in terms of personnel, and we also gave the go-ahead for discrimination monitoring.»**

Patrizia Danoith Halter, Chair



Task	Content
1. Ensuring non-discriminatory access to the rail network	<p>Monitoring or ruling on disputes concerning</p> <ul style="list-style-type: none"><li>• network access conditions in accordance with the Network Statement</li><li>• train path and infrastructure prices</li><li>• network access agreements between infrastructure managers and railway undertakings</li><li>• bidding procedures in accordance with Art. 12a of the Rail Network Access Ordinance (RailNAO)</li><li>• international decisions by infrastructure managers and C-OSS (One-Stop-Shop of the European freight corridors)</li></ul> <p>RACO monitors non-discriminatory train path allocation by the infrastructure managers SBB, BLS and SOB, and by Trasse Schweiz AG since it was founded in 2006.</p>
2. Market and discrimination monitoring	<p>Market monitoring of network access will concentrate in future on potential for discrimination, developing an appropriate new discrimination monitoring procedure.</p>
3. International cooperations	<ul style="list-style-type: none"><li>• Coordination with the regulatory bodies along Corridors 1 and 2</li><li>• Maintaining active contact with the European regulatory authorities as part of ENRRB and IRG-Rail</li></ul>

## Composition of the Commission

The seven members of RACO were appointed by the Federal Council for a term from 2012 to 2015. They undertake this work in a part-time capacity.

Because of the statutory time limit for members of extraparliamentary commissions, the Chair Andreas Herzog and member Monika Tschanen-Süss stepped down at the end of 2012. The new Chair from 1 January 2013 is Patrizia Danioth Halter, lic.iur., lawyer and notary, LL.M. Ursula Erb, Dr. oec. publ., was appointed as a new member.

The five remaining members had already been elected in November 2011 for the term running up to the end of 2015.

As a federal extraparliamentary commission, RACO must declare the interests of its members. They can be seen via this link: [http://www.admin.ch/ch/d/cf/ko/index\\_10046\\_ib.html](http://www.admin.ch/ch/d/cf/ko/index_10046_ib.html)



RACO (left to right): Dr Yves Putallaz, Santina Bevington (head of secretariat), Ursula Erb, Prof. Matthias Finger (Vice-Chair), Patrizia Danioth Halter (Chair), Peter Bösch, Barbara Klett, Werner Grossen



Function	Name	Year of birth	Background
Chair since 2013	Patrizia Danioth Halter	1964	lic.iur., lawyer and notary, LL.M., Altdorf
Vice-Chair since 2004	Matthias Finger	1955	Professor EPFL, Croix-de-Rozon
Member since 2012	Peter Bösch	1956	logistics expert, Binningen
Member since 2013	Ursula Erb	1967	Dr. oec. publ., Uhwiesen
Member since 2012	Werner Grossen	1961	Business economist, NDS HF, Thierachern
Member since 2012	Barbara Klett	1962	Lawyer, LL.M. and mediator, Lucerne
Member since 2012	Yves Putallaz	1971	Dr. Ing. Civil engineer EPFL, Vevey

The Commission is supported by a three-person specialist secretariat. This is headed by Santina Bevington, lic.iur., and staffed by Natalia Kulesza and Erika Gut.

## Finances

Administratively, RACO comes under the DETEC General Secretariat, and has its own secretariat.

In the reporting year, RACO had a budget of CHF 602,600. Actual expenditure was CHF 461,138. This sum covered RACO's entire staff and operating costs.



## **Activities in the reporting year**

Railway Reform 2.2 came into force on 1 July 2013 and brought with it fundamental changes to RACO's mandate and activities. Its new competencies – to monitor the market actively and to initiate investigations where discrimination is suspected – increasingly raise the profile of the Commission in business, politics and with the general public.

No claims were made in 2013. However, two legal complaints for possible discrimination were filed.

**«Since mid-2013 we have  
also been able to initiate ex  
officio investigations. This  
opens up new possibilities  
for us.»**

Matthias Finger, Vice-Chair



## Ex officio investigations

Where it is suspected that there has been discrimination concerning access to the rail network, RACO is obliged to carry out administrative procedures. It performs preliminary investigations and, if these provide sufficient and justified evidence of discrimination, initiates an ex officio investigation. The procedure concludes with a ruling, which may be appealed (Art. 40a<sup>bis</sup> para. 2 and 3 RailA). Progressive liberalisation has meant that competition has intensified, and so have RACO's regulatory tasks. RACO has focused its monitoring activity on its priority of train path organisation and path allocation.

## Statements on draft bills

In the reporting year RACO published Statements on the draft EOBI (Expert group Organisation Bahninfrastruktur) and on the total overhaul of the Federal Act on the Carriage of Goods by Rail. In addition, it took part in consultations on network use plans and on amendments to the FOT'S Directive on Allocation of Train Paths and Bidding Procedure.

## RACO

To involve all members actively in the Commission's work, four areas (Law, Monitoring of non-discrimination and Trasse Schweiz, Market monitoring, and International Affairs) were formed. Each area develops decision-making bases for the topics in question and reports regularly to the Commission.

- Law  
Members: Barbara Klett, Matthias Finger
- Monitoring of non-discrimination and Trasse Schweiz  
Members: Werner Grossen, Peter Bösch
- Competition regulation (Market monitoring)  
Members: Yves Putallaz, Ursula Erb, Werner Grossen, Barbara Klett
- International Affairs  
Members: Matthias Finger, Peter Bösch, Yves Putallaz

RACO Chair Patrizia Danioth participates in all four areas, which are supported by the RACO secretariat.



## Projects and activities

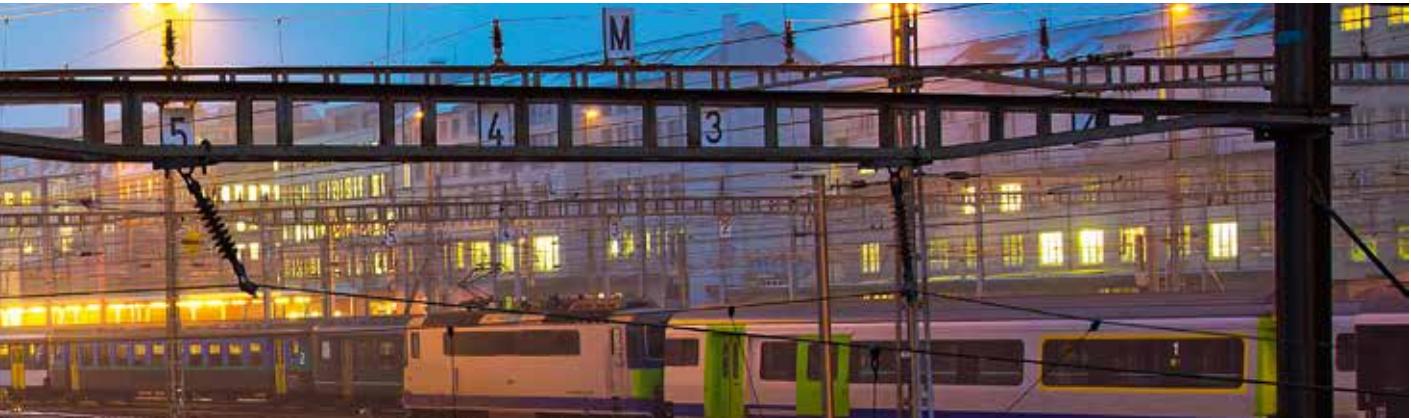
Some examples of RACO's activities in the reporting year are given below:

## Code of conduct for members of the Commission

The Code of Conduct is an important contribution to ensuring RACO's constitutionally guaranteed independence. As an authority, its credibility and its good reputation depend on public trust. Any appearance of bias must be avoided. In accordance with Art. 40a para. 2 RailA, RACO does not make its rulings on instructions from the Federal Council or DETEC. It is independent of the administrative authorities. This independence must be safeguarded and any conflicts of interest must be avoided. For this reason, RACO decided to draw up a Code of Conduct, which lists the basic obligations and ensures that they are complied with.

## Non-discriminatory train path allocation in the annual timetable

RACO monitors the task of Trasse Schweiz AG, which is to apply non-discriminatory train path allocation in the annual timetable. To do this, it carried out spot checks on the allocation of the approx. 14,500 train path applications in the 2014 annual timetable – looking particularly at the rejected applications and the declaration that the Brig-Iselle line was congested. It detected no irregularities. RACO has direct access to the train path ordering tool "Avis".



## **Systematic support for the train path allocation process**

RACO put intensive thought into how the process of train path allocation could be more closely and systematically supported in future. The main focus is on

- Identification of conflicting train path applications
- Pursuing the process of coordination
- Compliance with the FOT's deadlines for the individual steps of the process

## **International train path allocation monitoring**

RACO is heavily involved in the representation of interests in supervising and monitoring train path allocation on the two international freight corridors that concern Switzerland. Since April 2014, the Corridor One-Stop-Shop (C-OSS) has allocated train paths along the entire Corridor. RACO is now the official tribunal for appeals against allocations by the C-OSS, if access to the Swiss rail network is affected. In the remaining cases, RACO is constrained to participating in the decision making process, where it defends Swiss interests in the optimum functioning of the Corridors. RACO's jurisdiction, tasks and procedures had to be determined.

## **Discrimination monitoring and market supervision**

Since 2010 RACO has been involved in the proactive monitoring of the rail market. Its annual Monitoring Report focused at first on economic factors and described the competition-related events of the year in question. A document about this was prepared by the Institute for Transport Planning and Systems (IVT) at the ETH Zurich.

The Railway Reform 2.2 of last year was taken as an opportunity to develop this monitoring further. Instead of concentrating on general events, RACO will in future target discriminatory events. A RACO researcher was tasked with developing a suitable monitoring methodology, which aims first to identify the potentials for discrimination most relevant for Switzerland. After this, a monitoring system can be put in place to detect this systematically.



## International engagement

### Freight transport Corridors 1 and 2

In its Regulation 913/2010 "concerning a European Rail Network for Competitive Freight", the EU created nine European freight transport corridors. These serve the international transport of freight by rail and, where it concerns Switzerland, supports the mandate, anchored in the Federal Constitution, to transfer goods from road to rail.

Switzerland is affected by two of these Corridors:

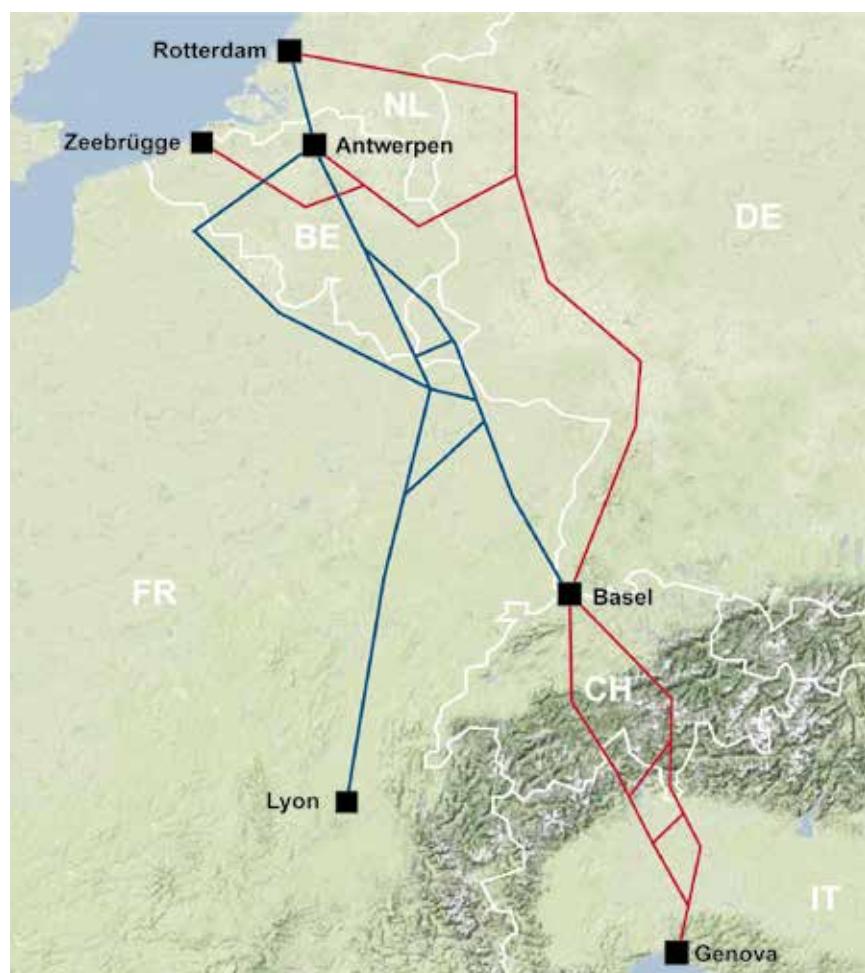
- Corridor 1: Rhine-Alpine (Zeebrugge/Antwerp/Rotterdam – Gotthard /Lötschberg – Genoa);
- Corridor 2: North Sea-Mediterranean (Rotterdam/Antwerp – Luxembourg – Metz – Dijon – Lyon/Basel).

Switzerland establishes, maintains and operates the stretch that is decisive for the functioning of Corridors 1 and 2. In both Corridors, connection to important transhipment facilities such as seaports, inland ports, intermodal terminals and large marshalling yards, must be ensured. This is particularly relevant to the Rhine port at Basel and the Muttenz marshalling yard.

### Corridor One-Stop-Shop

Instead of a national allocation of train paths, a single body now allocates train paths internationally on the entire freight corridor, Corridor One-Stop-Shop (C-OSS). However, it only allocates train paths offered by the national train path allocation bodies, referred to as pre-arranged train paths. C-OSS decisions can be legally appealed. The regulatory body of the country in which the C-OSS has its headquarters has the authority to decide. For Corridor 1 this is the Bundesnetzagentur in Bonn, and for Corridor 2 the Institut Luxembourgeois de Régulation in Luxembourg. Appeals to the national regulatory body can only be made if they apply to a single national territory. On the basis of EU Regulation 913/2010, the regulatory authorities of Corridors 1 and 2 – those of Belgium, Luxembourg, Germany, Italy, the Netherlands and France – have produced cooperation agreements regulating jurisdiction and cooperation in cases of appeals, as well as supervisory duties. For constitutional reasons RACO was not able to sign these agreements, but assured cooperation in appeals procedures in a Letter of Intent. This ensures the non-discriminatory functioning of the freight corridors, provided they lie within national jurisdiction.

RACO participates in the coordinatory meetings of the regulatory bodies along freight corridors 1 and 2.



Corridors 1 and 2, which include the Swiss infrastructure networks

(© 2009 Google Maps TM – Kartendaten © 2009 Tele Atlas)



## Looking ahead

In an integrated rail system like Switzerland's, coherent and effective competition monitoring is an essential condition for achieving the objectives of Railway Reform 2.2. If access to a monopolistic and intensively used infrastructure is to take place as equitably as possible, future reforms and liberalisations of the Swiss rail market must therefore be accompanied by an extension of the regulator's area of competence. In its report, the Expert Group Organisation Bahninfrastruktur (EOBI) proposed extending RACO's competencies and tasks, in particular in the implementation of the planned maintenance and renovation of infrastructure, and of access to the essential facilities such as marshalling yards and transhipment facilities. This is indispensable for strengthening competition, which will also intensify for freight transport in the future. The consultation draft of the Federal Act on the Carriage of Goods by Rail also aims to ensure the future non-discriminatory access to federal funded freight transport facilities. As competition regulator, RACO will therefore supervise the fair and equitable access to these connecting tracks and transhipment facilities.

In 2014 the first experience of the functioning of the European freight corridors, the creation of which involved essential participation by the Swiss authorities and railway undertakings, will become available. RACO is obliged to cooperate with the European regulators, aiming to coordinate supervision and monitoring of train path allocation on these corridors and thus to promote the functioning of the international freight corridors.

RACO faces diverse but also exciting challenges, which it meets with commitment and competence.

**«Rail infrastructure is being used ever more intensively. RACO is a coherent and effective supervisory authority that monitors fair and equitable access to the limited resources.»**

Patrizia Danioth Halter, Chair



**Railways Arbitration Commission**

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