



RailCom – News No. 4

Bern, November 2020

Editorial

Dear reader,

Our commission has been called RailCom since 1 July 2020. The entry into force of the new “Organisation of Railway Infrastructure” (ORI) legislative package gave us not just a new name but also new competences, including responsibility for preventing discrimination in the execution of railway system tasks, and the enforcement of rights of participation in the infrastructure operators’ investment planning. Further information on this can be found on Page 4 of this Newsletter and in our [fact sheets](#).

The main topic of this Newsletter is what we call RailCom’s “continuous monitoring and supervision”. As part of our activities as the supervisory authority, we introduced this instrument progressively over recent years. Its objective is to identify and eliminate any discrimination at an early stage in co-operation with the rail industry, and draw up and implement measures in conjunction with the affected parties. Page 2 of this Newsletter carries an interview on RailCom’s continuous monitoring role.

Our symposium this year will take place on 20 November 2020 in Ittigen. The theme will be non-discriminatory access to intermodal freight terminals and local delivery services, with particular emphasis on prices and discounts for transshipment services. In addition, we would like to discuss with the industry possible consequences arising from the legal requirements on local delivery. Further information can be found in the [invitation](#). You can register for the symposium by e-mail at info@railcom.admin.ch until 9 November.



We hope you enjoy this Newsletter.

Patrizia Danioth Halter, Chair

RailCom's continuous monitoring role: Interview with Patrizia Danioth Halter

Ms. Danioth, what exactly do you understand under "continuous monitoring and supervision"?

RailCom exercises its supervision over non-discriminatory access to the railway network and intermodal freight terminals co-funded by the Swiss Confederation in accordance with Article 40^{ater} of the Railways Act (RailA). This supervisory function is exercised by RailCom not only subsequent to events, but also preventively in that RailCom has the power to lay down measures that take effect in the future. These measures should be ordered at an early stage, with the involvement of the affected parties if at all possible.

It is important to mention here that RailCom has a broad discretion in exercising its supervisory function. On the one hand we carry out *ex officio* investigations, which result in an order, and on the other, RailCom has the instrument of continuous monitoring and supervision at its disposal. At this point, I should go into somewhat greater detail. Recent developments, for example in relation to IT or in projects such as the changed operator model for marshalling yards, have presented the potential for new or more acute discrimination in the railway industry. Consequently, preventive measures against such discrimination must be drawn up at the earliest possible stage with the involvement of the affected parties. The aim is to for the affected undertaking to find an acceptable solution at an early stage that complies with the law. If this objective is not reached using continuous monitoring and supervision, RailCom can initiate an *ex officio* investigation at any time, and impose the necessary measures.

As a supervisory authority RailCom is not simply a specialist panel for adjudicating complaints, but can also initiate investigations *ex officio*.

It has progressively introduced the instrument of "continuous monitoring and supervision" over recent years as part of its activities as a supervisory authority. This instrument is designed to identify and eliminate any discrimination at an early stage in conjunction with the rail industry, with measures drawn up and implemented with the participation and consultation of the affected parties.

The primary objective is to implement non-discriminatory market access to the railway network and intermodal freight terminals co-funded by the Swiss Confederation from the outset.

Why did RailCom create continuous monitoring and supervision?

Our guiding principle: RailCom will not simply wait until complaints or information are received before acting. We are always proactive, and take care to maintain contact and co-operation with the railway industry so that we can perform our duties efficiently and in a way best suited to the market.

An *ex officio* investigation is not always necessary to ensure freedom from discrimination. RailCom has established the tool of continuous monitoring and supervision precisely in order to establish practicable solutions that comply with the law and take account of developments in digitalisation and new forms of co-operation within companies (e.g. agile working). It allows RailCom to monitor these developments and lay down principles for ensuring freedom from discrimination at an early stage. All the parties involved benefit from this.

Where else is RailCom active in terms of continuous monitoring and supervision?

I can give you two examples: the operator model for marshalling yards and the “Integrated Rail Operations” project.

A new operator model was introduced at the RB Limmattal marshalling yard in 2015, and at Lausanne Triage in 2016. Since then, marshalling operations have been planned and executed there by SBB Cargo on behalf of SBB Infrastructure, and around 170 employees were transferred from SBB Infrastructure to SBB Cargo. In 2017 the model was also applied to Buchs SG marshalling yard; in this case, however, SBB Cargo only took over the delivery but not the planning of the marshalling operations. In this operator model, SBB Cargo employees have access to customer-specific information and consequently to the operations of other cargo RUs (their competitors). They were therefore made subject to, and trained in, the “Freedom from Discrimination” concept, and RailCom has taken care to maintain regular exchanges of information with SBB Infrastructure about the marshalling yards over the past five years. As before, SBB Infrastructure remains responsible for the freedom from discrimination in the provision of marshalling services at all locations – including Limmattal, Lausanne and Buchs.

Another example of continuous monitoring and supervision is the SBB’s Integrated Railway Production project. This had the goal of transferring customer information employees from the Passenger Traffic Division into the operations centres of the Infrastructure Division. RailCom has agreed a package of measures with SBB to reduce the associated risk of discrimination.

What does RailCom expect to gain from continuous monitoring and supervision, what are its benefits?

I see three main points:

1. Anticipatory monitoring over an extended period for issues where the potential for discrimination could develop.
2. Developing and implementing practice-oriented lawful solutions in negotiations with the affected undertakings.
3. Preventive effect: recognising, identifying, discussing and preventing discriminatory behaviour as early as possible.

Where are the limits of continuous monitoring and supervision?

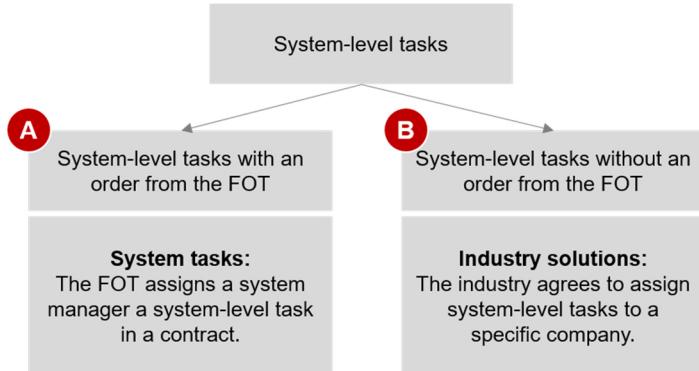
Continuous monitoring and supervision is a targeted instrument for proactive measures. However, it does have its limits: RailCom does not issue any orders in relation to continuous monitoring and supervision, but instead implements practicable and lawful solutions in discussion with the affected undertakings. If there is an unwillingness to co-operate or if the agreed measures do not result in a lawful situation, RailCom can open formal supervisory proceedings, and order and implement measures.

This means that the continuous monitoring and supervision is not a “toothless procedure” for the those being supervised. If necessary, RailCom can carry out an *ex officio* investigation at any time.

Railway infrastructure system tasks and industry solutions

In order to improve efficiency and interoperability and to achieve uniform solutions for customers, system-level railway infrastructure tasks are entrusted to selected companies. RailCom is responsible for ensuring that no discrimination occurs in the performance of these tasks and that all the affected companies are properly involved.

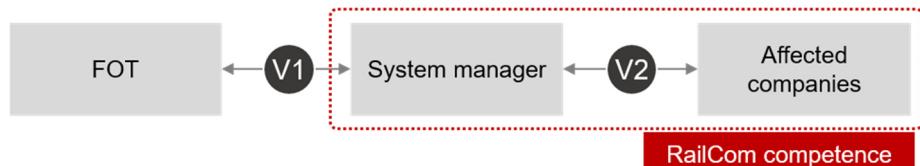
There are two kinds of system-level tasks in railway infrastructure operations: **A** If the Federal Office of Transport (FOT) gives an order to a system manager, this is known as a system task. **B** If the industry agrees to assign a task to a specific company without a mandate from the FOT, this is known as an industry-wide solution.



A System tasks

At present there are six system tasks: Customer information, ETCS, ZBMS, rail radio, TSI and railway power. ZBMS is carried out by the RhB as system manager, the other five by the SBB.

The system tasks are governed by two contracts. In contract 1 (V1), the FOT lays down the content and scope of the system task together with the system manager. In contract 2 (V2), the system manager agrees the system task, co-determination and distribution of costs together with the affected companies.



The system leader is under an obligation to perform the system task without discrimination, i.e. to treat its own business and other involved undertakings equally under the same conditions (e.g. regarding consultation and distribution of costs). The system manager is under a further obligation to inform the affected parties in good time and to involve them in development work. The affected companies for their part are under a duty to co-operate.

RailCom adjudicates on disputes between system managers and the affected companies. It decides on complaints, receives information and in particular can, as part of its supervisory activities, initiate an *ex officio* investigation into whether the system manager is performing its system tasks without any discrimination. RailCom always endeavours, together with the industry, to identify any potential source of discrimination as early as possible and to implement solutions that comply with the law. This is ideally done as part of the negotiations for contract 2 between the system manager and the companies involved.

B Industry solutions

In the case of industry solutions, RailCom monitors these to ensure that if railway companies need to be included in development work, the industry leader includes *all* the affected companies without any discrimination. RailCom will adjudicate any complaints. One example of an industry solution is the [Allianz Fahrweg](#).

➤ Further information can be found in this fact sheet on the RailCom website.

Other topics in brief

Symposium

Topic: Non-discriminatory access to intermodal freight terminals and local delivery services.
When: Friday, 20th November 2020, 2 to 4 p.m.
Where: Mühlestrasse 2, 3063 Ittigen, [FOCA main hall](#) or virtual via live streaming
Registration: by e-mail at info@railcom.admin.ch before 09/11/2020 (please state whether you wish to attend in person or virtually)

Further information can be found in our [invitation](#).

Programme	
Welcome, and introduction to the topics	Christof Böhler, RailCom
RailCom introductory paper – intermodal freight terminals RailCom responsibilities and competences regarding intermodal freight terminals, focusing on prices and discounts	Patrizia Danioth Halter, RailCom
Short FOT paper – local delivery services Non-discriminatory provision of local delivery services	Arnold Berndt, FOT
Short SBB Cargo paper – local delivery services Implementation of legal requirements	Daniel Lützelschwab, SBB Cargo
Panel discussion – local delivery services	Various representatives from the industry and authorities
Summary and outlook	Patrizia Danioth Halter, RailCom

Forwarding data to RailCom

The “Public Transport” statistics include annual statistical data on all transport undertakings operating in Switzerland with concessions or licences. Transport undertakings have been obliged since 1 July 2020 to submit the necessary information for official transport statistics and other documents to RailCom as well as to the FOT.

To prevent the transport companies from having to collect information already gathered, if they submit a “Declaration of consent” they can allow the Federal Statistical Office to pass on the data to RailCom as well as the FOT in performance of their legal supervisory functions.

The Swiss Federal Statistics Act (Bundesstatistikgesetz) restricts the use of this data. It may only be used for statistical purposes unless a Federal Act expressly orders otherwise, or the affected party consents in writing to another use, although deviations from this may exist.

Participatory rights fact sheet

A new fact sheet about participatory rights of railway undertakings in short- and medium-term investment planning by infrastructure operators can be found on our web site [here](#).

Annual check of network access conditions

Operators of rail infrastructure are bound by law to publish the access and use conditions for their rail networks and keep these updated. In its annual examination of these conditions, in 2020 RailCom focused on the operators of medium and smaller networks. The commission checked whether the publication obligation had been observed and the contents presented in a way as prescribed by law. A need for action was identified in the case of a number of infrastructure operators. RailCom agreed with the affected network operators on how existing gaps could be closed.