RailCom – News No 10

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Editorial

Dear Reader

Rail transport in Switzerland is undergoing constant change. Currently, major modifications are being made particularly in the field of freight transport. Last June, it was announced that SBB Cargo would be reintegrated into the SBB Group as a wholly-owned SBB subsidiary. This circumstance adds weight to our recommendations for maintaining coherence with existing legislation, which we made in the context of the bill on the development of Swiss freight transport adopted by the Federal Council on 10 January 2024 (see RailCom News No 9, page 6). As single wagonload transport is to be promoted and subsidised, it is essential that bidders separate their own block train services from single wagonload transport in order to prevent distortions of competition and cross-subsidisation. Market-orientation and innovation can only thrive in a system of competitive neutrality. You can find more information on this topic on page 2 of this newsletter.

Loading yards are also undergoing radical change. Traffic flows have altered in recent years and these facilities are increasingly being used as intermodal freight terminals. On page 4 we explain how we review and support repurposing of these facilities to ensure non-discrimination.

Finally, changes need to be made to pricing in the additional service 'route-setting for shunting runs'. Costs have until now been calculated on the basis of reference surveys carried out a long time ago. On page 3, we explain how we are helping SBB Infrastructure to implement standardised invoicing methods on a user-pays basis.

I hope you enjoy reading this newsletter!

Patrizia Danioth Halter, President

Swiss freight transport bill – preventing discrimination, cross-subsidisation and distortion of competition

The Federal Council wishes to develop freight transport, taking account of energy and climate policy goals and the importance of rail transport to Switzerland's security of supply. It referred a bill on freight transport to Parliament at its meeting on 10 January 2024. On 7 June 2023, SBB announced that it would reintegrate SBB Cargo into the Group as a wholly-owned SBB subsidiary, meaning that it could prepare, as a network provider, to provide subsidised services for single wagonload transport.

RailCom supports the promotion of single wagonload transport and the development of multimodal transport chains; however, it has identifieds two critical issues in the proposed legislation.

1. State support for single wagonload transport must be competition-neutral and may not lead to cross-subsidisation.

If the new law is to be consistent with existing legislation in the rail sector, financial support for single wagonload transport must be competition-neutral and promote innovation. This means that network providers which provide subsidised services in single wagonload transport on behalf of the Confederation must separate this area from other services provided in a competitive environment, such as block train transport. A number of freight RUs are active on the market in block train transport, and the same rules should apply to them. Subsidised and self-sustaining sectors must be separated financially, legally and organisationally in order to ensure competitive neutrality, market orientation and innovation. This is the only way to ensure that the overall system is non-discriminatory and the rules of competition apply. This aspect is all the more important in the light of the complete reintegration of SBB Cargo into SBB AG.

The requirements on network providers in the bill are insufficient to effectively prevent cross-financing and distortion of competition that would harm the market (Art. 13 para. 6 new Goods Carriage Act, nGCarA).

2. If the state subsidises single wagonload transport, this service must also be accessible to third parties on a non-discriminatory basis.

The network provider in single wagonload transport should provide its federally subsidised transport services to all potential customers of single wagonload transport on an equal footing. The current legislation stipulates that where public funding is provided, non-discriminatory access to the subsidised transport service must be guaranteed. In order to ensure equal treatment, this must also be a requirement on the network provider, as it is on private intermodal freight terminals co-financed by the Confederation and on Cargo sous terra. Article 13 paragraph 5 of the new Goods Carriage Act must be made more specific.

Explanation of the terms single wagonload transport and block train transport

Single wagonload transport is a form of production in which individual wagons or groups of wagons are brought together at sidings and loading yards to form whole trains, which are then taken to marshalling yards. There new trains are composed according to destination.

Block train transport involves trains that do not have to be shunted at any time between their point of departure and their destination. Block trains run as a single unit.

(Source: Dispatch on the Goods Carriage Act (total revision of the Federal Act on the Carriage of Goods by Rail and Navigation Companies)

User-pays principle in invoicing of additional service 'route-setting for shunting runs'
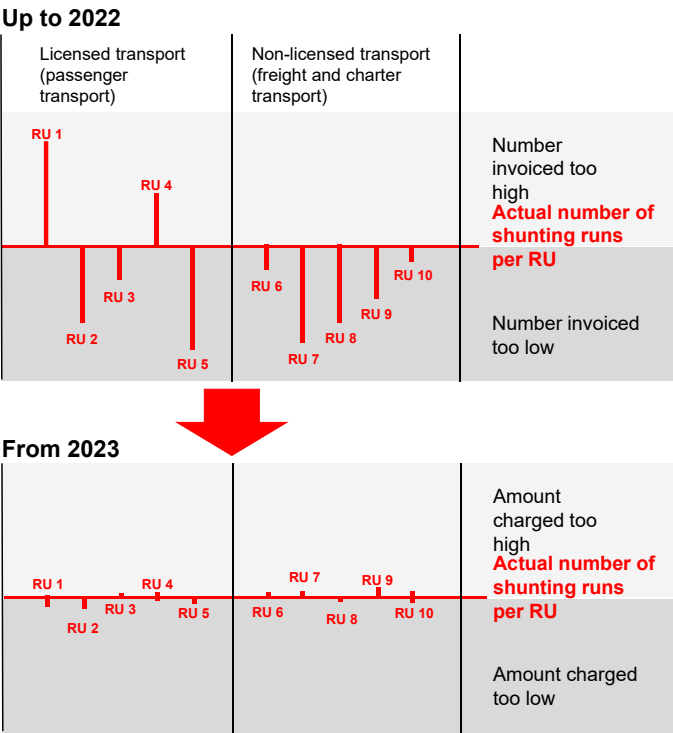
As part of its market monitoring, RailCom has agreed various measures with SBB Infrastructure for standardised and more user-friendly invoicing of the additional service 'route-setting for shunting runs'.

Before an RU carries out shunting movements with its trains, the IM must set up appropriate shunting routes, i.e. secure them technically and clear them for operation. This service, termed 'route-setting for shunting runs', is an additional service provided as part of network access. In passenger transport, trains are shunted before or after a train run, while in freight transport shunting is carried out mainly when forming or breaking up train sets.

Train drivers requiring a shunting route for a train put in a request to the IM operations centre via radio. This service is not ordered well in advance like other additional services (e.g. stabling a train). Nor are the runs carried out by the RU systematically recorded by the IM. In the past, invoicing was therefore not based on the actual services used but on planned values, calculated according to different methods depending on the type of transport and in some cases according to reference surveys carried out some time in the past.

Previous invoicing method created a uniform picture

In conducting its oversight duties, RailCom found that, under SBB Infrastructure's former accounting system, for many years RUs had not been charged with sufficient precision on the basis of the actual number of shunting operations. In all cases of non-licensed transport, too few shunting operations were invoiced (see chart below). In licensed transport, certain RUs were charged for too many shunting operations and other RUs for too few. However, there was no evidence of systematic unequal treatment of individual RUs or RU groups, i.e. the invoicing methods produced a uniform picture. RailCom therefore did not suspect that any discrimination had occured and so did not open an ex officio investigation. RailCom has now agreed various measures with SBB Infrastructure for a standardised and more user-friendly invoicing method for the additional service 'route-setting for shunting runs'.

Graphic: The values for the number of shunting runs per RU calculated using the new methods are closer to the actual number or runs carried out than the values calculated using the old methods.

New user-pays invoicing method for the 2023 annual timetable

As part of these measures, SBB Infrastructure has established new methods to estimate as accurately as possible the actual number of shunting operations per train for each type of transport. The new accounting methods are being used for the first time in the current timetable year. In freight transport, invoicing is now based on the number of stops that an RU specifies per train when ordering train paths, using so-called stop codes. In passenger transport, planned train turnaround times in the annual timetable are used as the basis for determining the number of shunting operations. The graphic above shows that the values for the number of shunting operations per RU calculated using the new methods are closer to the actual number of operations (horizontal red line). In the long term, SBB Infrastructure plans to automatically record the actual number of shunting operations using a system designed for this purpose and to invoice these accordingly.

Repurposing of loading yards

In our [last newsletter](#) we informed you that RailCom had agreed a package of measures with the operators of loading yards to ensure non-discriminatory management of these facilities. Here we explain how RailCom is monitoring their repurposing.

The use of certain loading yards is declining because the flow of goods is changing, meaning that freight companies are adapting their transport and business models. Meanwhile, the demand for intermodal freight terminals is increasing. As combined transport grows, loading yards, especially those in central, inner-city locations, are coming under increasing pressure to convert to intermodal freight terminals.

For this reason, the Federal Office of Transport and SBB Infrastructure have agreed to repurpose some loading yards. Some loading tracks and yards in various areas of Switzerland are to be withdrawn from free network access and transferred contractually as intermodal freight terminals to interested third-party companies, which may either operate or purchase them. This will create a clear spatial, organisational, structural and financial separation between the remaining loading yards and the newly created intermodal freight terminals. Facilities will only be repurposed in this way if the remaining loading tracks and yards have sufficient capacity and can be used without restriction. Where newly created intermodal freight terminals are co-financed by the federal government, they are subject to the provisions of the Goods Carriage Act (GCarA).

Critical aspects of repurposing

RailCom has considered the repurposing of loading facilities and discussed it with the Federal Office of Transport and SBB Infrastructure. Even though the pressure to repurpose is understandable, RailCom has pointed out the following critical aspects:

- The industry should be involved both in the planning of publicly financed freight transport facilities (see dispatch on the total revision of the GCarA, BBI 2014 3827, 3897) and in the repurposing of such facilities, in particular of individual loading tracks and yards. The decision-making process regarding repurposing (how and when) must be transparent.

- Partial repurposing of loading yards could significantly impair and impede non-discriminatory access to the loading yards and tracks remaining. For this reason, both the IM and the future owners and operators of the intermodal freight terminals must guarantee that the principle of non-discriminatory network access is complied with (see measure 1 below).

Measures proposed by RailCom

RailCom proposes the following measures to ensure non-discriminatory access to the loading yards and tracks remaining:

1. A non-discrimination clause is to be included in all contracts between SBB Infrastructure and the owners and operators of intermodal freight terminals. This will state that operation of the intermodal freight terminal must be organised in such a way that there is guaranteed secure, unrestricted, conflict-free and non-discriminatory use of the remaining parts of the facilities which are subject to public network access (remaining loading yards).

2. RailCom is to be informed of any contracts concluded between SBB Infrastructure and the owners and operators of intermodal freight terminals, namely about any loading tracks and yards withdrawn from free network access, and about the purpose and duration of the contract.

In accordance with its legal mandate, RailCom will monitor non-discriminatory access to the remaining loading tracks and yards and impose oversight measures in individual cases where necessary.

Other topics in brief

Non-discriminatory use of algorithms – supervision of the Traffic Management System (TMS)

In conjunction with other industry players, SBB Infrastructure is in the process of developing and gradually implementing a uniform Traffic Management System (TMS). The aim of this system is to automate capacity planning and operations management with a continuous IT-supported process. The TMS calculates planning and control decisions using algorithms, i.e. predefined criteria and instructions.
As all IMs in Switzerland are required to grant non-discriminatory network access to RUs, it must be ensured that the algorithms used in the TMS do not favour or discriminate against any RU or group of RUs without objective reason. In its role providing additional oversight for TMS, RailCom has been helping SBB to implement this requirement since 2020, particularly in the use of algorithms.

RailCom initally analysed the basic functioning of various TMS algorithms and then made recommendations to SBB Infrastructure on how to use and develop them. SBB Infrastructure has undertaken to comply with these recommendations.

In a second step, the following two TMS algorithms were analysed in depth:

- Capacity Planner: automates capacity planning
- Capacity Optimiser/RTO: automates capacity control

RailCom worked with TMS staff to define scenarios that were then used to simulate whether these algorithms might have a discriminatory effect. The simulations carried out to date do not provide any indication of this. However, this does not mean that discrimination can be completely ruled out. Nonetheless, the jointly developed simulation scenarios have created a tool that SBB Infrastructure can use in future to independently identify potential discrimination by means of algorithms and handle this complex issue. RailCom will continue to monitor the issue.

Slot and capacity management of intermodal freight terminals co-financed by the federal government

In **RailCom - News No 8** we explainedhow we are supporting intermodal freight terminals co-financed by the federal government in granting third parties non-discriminatory access to their facilities. We defined four standards to this end, which the industry has since adopted.

Allocation of capacities: a component of non-discriminatory access

Non-discriminatory access to intermodal freight terminals (Article 6 of the Goods Carriage Ordinance) means that operators must:

- *adhere to the rules that apply to third parties* when allocating capacity for their own needs;
- *treat third parties equally and under the same conditions* when allocating capacity regardless of whether they have access to the subsidised facility by road, rail or ship.

Intermodal freight terminal operators adopt RailCom standards

In order to support operators in implementing these legal obligations, RailCom has drawn up four stand-ards for slot and capacity allocation. In 2023, it reviewed whether operators* had adopted these standards, i.e. whether they had committed to them in their publicly published documents or in documents submitted to RailCom. The table below provides an overview of the current situation. Terminal operators are addressing the issue of non-discrimination in slot and capacity management and are mainly striving to find simple and intuitive solutions. RailCom can monitor whether the regulations and standards are being applied in individual cases.

	Standard 1: Template for publishing planning and slot allocation
✔	• For each terminal there is a publication on the operator's website containing key information on planning and slot allocation as well as on how conflicts and exceptional cases are handled. • Almost all operators use the RailCom template and largely meet the minimum content requirements.
	Standard 2: Documentation of requests for terminal use by track users
✔	• Terminal operators report annually to RailCom on the number of requests made to use their terminal and the reasons for any refusals. • In 2022, 14 of a total of 16 requests were met. Reasonable grounds were given for rejecting the other two requests.
	Standard 3: Re-evaluation and slot allocation
✔	• The majority of operators say they are open to new requests and are prepared to review slot allocation in general in order to optimise this in the interests of all those affected.
	Standard 4: Multiple roles and third-party data
✔	• Entities which, in addition to operating an intermodal freight terminal, also act as an operator or logistician usually declare this transparently on their website. • The operators guarantee the confidentiality of third-party data appropriately.

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* Bertschi AG, Contargo AG, EMS-Chemie AG, Galliker Transport AG, Giezendanner Transport AG, Hochrhein Terminal AG, Magazzini Generali con Punto Franco SA, railCare AG, Rhätische Bahn AG, SBB Cargo AG, Swissterminal AG, Terco Terminal Combiné SA

New commission members

Elections for the 2024–2027 term of office were held on 22 November 2023. The Federal Council confirmed Patrizia Danioth Halter as RailCom president. Vice president Prof. Markus Kern and commission member Anna Ciaranfi Zanetta were also re-elected. New members Dr Barbara Furrer, Cesare Brand and Manfred Haller join the committee in 2024. You can find further information in our [press release](#).