



## RailCom – News No 12

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### Editorial

RailCom must act independently and competently in its role as a public authority.

Following the conclusion of the Overland Transport Agreement with the EU in 1999 and the opening up of cross-border rail freight transport, Switzerland needed to create an authority that would guarantee market participants fair access to the Swiss railway network. Since then, RailCom's powers as a market monitoring authority have been gradually extended so that it can effectively monitor non-discriminatory access to the monopolistic rail infrastructure and to federally subsidised intermodal freight terminals. RailCom also has oversight of last-mile rail freight services. Its role is not limited to taking action in response to complaints or applications: it is also responsible for competition oversight. This involves independently initiating investigations, making decisions and ordering measures. In order to ensure a fair environment for market access, it helps market participants to apply current regulations, mediates impartially in the event of conflict and makes decisions in a transparent process based on thoroughly conducted investigations.

In this, it does not receive any directives, nor may it be influenced by political developments. It is only bound by the law – the law that applies to all companies involved in network access, regardless of their size and economic weight on the market. Anyone who appeals to RailCom can rely on its independence, impartiality, and can be sure that the authority will consider all the complexities of the integrated Swiss railway system. Its staff are familiar with the technical, economic, operational and legal aspects of rail transport and intermodal freight terminals. This means it can meet the multiple challenges facing the industry, such as digitalisation in capacity management and planning (TMS), construction during operation (interval planning) and the development of rail freight transport in Switzerland, with forward-looking solutions that adhere to the regulations in place.

Over the past few years, RailCom has been able to help shape some of these developments, cooperating with the industry to further its interests in an appropriate and targeted manner. As a result, existing rules and regulations could be clarified and outdated practical applications reviewed and updated to reflect the times.

I would like to thank the authorities, the Federal Administration and all market participants and interested parties who have contributed suggestions, advice and even demands in the process of establishing and

ensuring fair conditions in the Swiss railway system. Special thanks go to the members of RailCom and the staff of the RailCom secretariat, who have tackled the exciting challenges and helped shape developments. Now, after twelve years as chair of RailCom, I hand the baton over to Dr Barbara Furrer and wish her, the Commission and the secretariat all the best and every success in their work.



Patrizia Danioth Halter, Chair

## Interview: RailCom: Changes over the years

In a few weeks' time, the twelve-year term of office of RailCom chair Patrizia Danioth Halter comes to an end. In the light of this, we talk with Markus Kern and Dirk Stahl about the changes that have taken place at RailCom over the past years and about the developments that lie ahead.

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**In 1999 the Federal Council and Parliament launched the reform of the railways and founded RailCom, known back then as the Railways Arbitrations Commission, RACO. What role has RailCom played since – or rather, what role does it now play in the Swiss railway and transport sector?**

*Dirk Stahl: RailCom is an important neutral body when there are differences of opinion between us, a railway undertaking, and the infrastructure managers. What is more, it's useful that RailCom was given the authority to proactively conduct market monitoring and official investigations later on, in the Rail Reform 2.*

*Markus Kern: RailCom was established as a public authority that is independent of both market players and the government and Parliament. This has allowed it to act not only as arbitrator but also as a point of contact providing information and advice to companies and other authorities. Alongside the Federal Department of the Environment, Transport, Energy and Communications DETEC, the Federal Office of Transport FOT and the Swiss Capacity Allocation Body TVS, RailCom plays an important role as a public authority.*

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### **How has RailCom's role in the Swiss rail and transport sector developed over the past 12 years?**

*Markus Kern: RACO was originally created in response to the requirements of EU legislation. It was a reflection of the institutional changes involved in the Rail Reform and the concurrent liberalisation of the market. Yet the new authority was a foreign body in the Swiss railway system. Over the past 12 years we have managed to incorporate the regulatory authority into the Swiss system and to fulfil the role expected of it. The additional competences that RACO and then RailCom assumed over the years are evidence of this process of integration. RailCom's regulatory role has developed as a result of the legislative changes. It has become broader, but also more differentiated, tuned to the specific requirements of each specialist area.*

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### **What are some of RailCom's specific achievements in the few past years?**

*Dirk Stahl: RailCom has helped to increase transparency, for example in construction site and interval planning. It has also played a role in eliminating discriminatory calculation models, e.g. for energy consumption, ensuring that modern, energy-efficient locomotives are no longer charged per vehicle but rather according to their actual consumption.*

*Simply by having the powers to intervene, RailCom is a disciplinary presence in the rail sector and so protects small market players in particular against discrimination.*

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**Apart from the advantages mentioned, do you see any disadvantages to the current structures for regulating the market?**

*Dirk Stahl: RailCom's current powers are limited e.g. when there is conflict regarding the allocation of train paths and very short-term decisions need to be made and applied. Processes are such that it may take several months before a decision can be made, and in the meantime the situation on the ground has already become firmly established and in some cases the damage may already have been done.*

*Markus Kern: The successive reforms in railway legislation have created considerable complexity in the regulatory landscape. There are a number of issues regarding the boundaries between powers and responsibilities. These challenges can be overcome through discussion and in a spirit of cooperation. Nonetheless, over the medium term it must be decided who should have which powers and how the public authorities' powers can be suitably apportioned. For example, the division of competences between RailCom and the TVS could be made clearer, and the authority to monitor the ban on cross-subsidising clearly assigned.*

*Regulation of the players in the rail sector is actually a real challenge, since it involves finding a balance between firm and effective oversight, and maintaining streamlined structures in order to keep bureaucracy to a minimum for everyone. I believe that we have managed to do this here in Switzerland in recent years.*

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**How has RailCom and the way it operates evolved in recent years?**

*Markus Kern: RailCom has intensified and consolidated its dialogue with external players in the sector and relevant authorities. It has continued to raise its profile, for example by holding an annual symposium, something it has done since 2018. It regularly gives inputs for the further development of rail legislation and maintains close contacts among representatives of the market. In its accompanying supervision, it can exert a direct and proactive influence on the market players' activities, while at the same time exercising its legal core duties: oversight, arbitration and market observation. Finally, RailCom is also increasingly involved internationally, in particular cooperating with other European regulatory authorities.*

*Internally that is to say, within the secretariat it has considerably improved its own interdisciplinarity and professionalism over time. The interchange and mutual support between the Commission and its secretariat are exemplary.*

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**What key developments can we expect in the railway sector over the coming years?**

*Dirk Stahl: The political moves to promote rail freight transport will have a huge impact on single wagon-load traffic in Switzerland. We would like to see the money earmarked for single wagonload transport allocated specifically in this segment to the system provider SBB Cargo, rather than being used to cross-subsidise block train transport. In the block train transport sector there is healthy competition between the various players, and we don't want to any distortion to this.*

*There will continue to be a focus on the overall issue of state support for rail; in the EU, this is currently under scrutiny, with the Directorate-General for Competition investigating the SNCF and DB Cargo. Switzerland would do well to review the financing mechanisms between the state railway on the one hand and its business units and subsidiaries operating in the liberalised market on the other.*

*Movements in train path pricing will have a marked impact on whether rail freight transport can maintain its competitiveness over road transport. Recent political discussions and decisions suggest that train path prices are soon to increase. Clear rules and policy guidelines are required to which infrastructure managers must adhere when making changes to train path prices.*

*And finally, infrastructure availability remains a core issue. It is important to have clear rules regarding the allocation of remaining capacity when interruptions occur. The EU could learn a lot from Switzerland in this regard.*

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### **What lies ahead for RailCom?**

*Markus Kern: Because track is so heavily used, it is important that we have a fair and non-discriminatory system of allocating capacity among the RUs, in particular when there are interruptions and maintenance or new works. Supervising this allocation is one of RailCom's key tasks. To do this, we need to work with the capacity allocation body TVS, but we also need clear rules and consistent application of the existing regulatory framework. RailCom will continue to work to ensure this.*

*The risk of cross-subsidising between the state-funded and private sector is a big concern for our authority at the moment, as mentioned above. Insofar as network access is affected, RailCom must work to ensure that there is no financial distortion in the market. This is particularly important given the scepticism in Europe surrounding state subsidies in some parts of the market. Besides the issue of ensuring network access, while rail freight continues to be subsidised there is also the question of how cross-subsidies can be avoided and fair competition ensured in the rail market. This is a question for Parliament, and the legislators. By ensuring the statutory requirements are met, RailCom will help to make sure that there is fair competition financially.*

Prof. Markus Kern has been a member of RailCom since 2016. He is a lecturer in Constitutional, Administrative and European Law at the University of Bern.



Dr Dirk Stahl has been CEO of BLS Cargo AG since 2000. He is also chair of the ERFA-European Rail Freight Association, a position he has held since 2019.

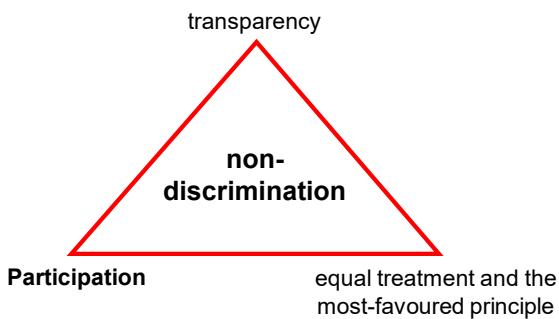


## Participation in the rail sector

Participation is a key element in access to the rail network, helping to prevent discrimination. Participation results in balanced, viable results. RailCom is committed to ensuring that the companies and stakeholders concerned can participate appropriately in relevant topics. Representatives of the rail industry discussed the issue at the RailCom symposium held at the end of October.

### Participation a key element in non-discrimination

Participation is a key element in non-discrimination, besides transparency, equal treatment and the most-favoured principle (see diagram). The risk of discrimination occurring can be reduced by giving companies and stakeholders the opportunity to participate in processes and decision-making that apply to them.



*Diagram: Participation is a key element in non-discrimination*

### Examples in network access

The principle of participation is established in many areas of the law, for example when sector solutions are developed (superordinate tasks in accordance with Art. 36 RailA) or with regard to system tasks (in accordance with Art. 37 RailA). Article 37a of the Railways Act accords specific participation rights in short- and medium-term investment planning to the RUs concerned and owners of private siding (see [RailCom News No 11](#)).

There are a number of examples from RailCom's oversight activities:

- Traffic Management System (TMS): Within their own representative body (RU Board), RUs are informed about any planned developments, can give their input and are able to submit proposals to the superordinate body, Clusterboard.
- Annual timetable (including train path catalogue): Those concerned are closely involved in a clearly defined process.
- Construction site planning: RUs and other parties entitled to order train paths can give their input on replacement plans, primarily within the framework of the capacity management steering meeting.

### How participation works

Participation is a process in which the players work together to achieve a result. They require sufficient scope to do this. Participation in the field of network access needs to be designed for each individual topic, firstly because of the statutory requirements and secondly because of the specific circumstances. RailCom therefore decides on a case-by-case basis which processes should be participative. In participation, the companies and stakeholders involved (i.e. RUs and cantons) have the right to be consulted in the decision-making process. The body with decision-making powers, usually the infrastructure manager, must provide transparent information to those involved and consider their inputs in the decision-making process. This leads to balanced and appropriate results.

## Participation has a positive effect on results

Besides being an aspect of non-discrimination, participation has a further important benefit: by involving the affected parties, there is a broader knowledge base, which has a positive effect on the result. Parties with less expertise can nonetheless give their opinion and thus make a valuable contribution. Different views of an issue help to expose blind spots, and lead to simpler or more balanced solutions. A further benefit of successful participation is that all parties are more likely to accept the solution, since their concerns and needs have been taken into account.



*SBB Infrastructure drew up 276 replacement timetables in its medium-term planning for the 2024 timetable and agreed them with the RUs affected.*

## RailCom symposium

At its symposium on 25 October, RailCom came together with others from the railway sector and discussed the issue of participation. The presentations, a summary of the talks and podium discussion, and a checklist on participation can be found on the RailCom website.

## Other topics in brief

### New RailCom chair

The Federal Council has appointed Dr Barbara Furrer as the new chair of RailCom from 2025 ([Press release](#)). Ms Furrer holds a doctorate in law and is currently head of Legal Services at DHL Express (Switzerland) AG for all companies in the German post office's DHL Group in Switzerland. She has been member of RailCom since early 2024. The Commission and the RailCom secretariat wish Barbara Furrer all the very best in her new position and look forward to continuing to work with her, now under her lead.

The Commission and the secretariat would like to take this opportunity to express their sincere thanks to the previous chair, Ms Patrizia Danioth Halter, for her outstanding and far-sighted commitment over the past twelve years. Under her extremely competent and prudent leadership, RailCom has developed sustainably and positioned itself successfully in the industry. We wish Ms Danioth Halter all the best for the future.