Schweizerische Eidgenossenschaft
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RACO – News No. 3

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Editorial

Dear reader,

A new commission member, a new name and new competences - 2020 has brought us some refreshing changes.

In January we welcomed Anna Ciaranfi Zanetta as a new member of our commission and look forward to working with her. You can find an introduction to Mrs Ciaranfi Zanetta on page 4 of this Newsletter.

On 1 July 2020, the new legislative package entitled "Organisation of Railway Infrastructure" (ORI) will enter into force, and the RACO will be renamed "RailCom" and be given new competences. In future, RailCom will decide on complaints by companies alleging discrimination in the operation of the rail system. It will also decide on disputes involving breaches of the rights of railway undertakings to be involved in the short- and medium-term investment planning by the infrastructure manager. RailCom will supervise the market in these areas. Other supervisory duties relate to the last mile of access to intermodal freight terminals and goods sidings, and to operational procedures and rules.

The main topic of this Newsletter is transalpine rail freight traffic. As part of our observation of the market, we investigated how the railway companies operate in this segment some 20 years after market liberalisation, and found that the market has consolidated and is dominated today by four major consortia.

Please note that we have published our 2019 Annual Report on our web site.

We hope you enjoy reading it.

Patrizia Danioth Halter, President

Transalpine freight traffic 20 years after market liberalisation

"After an initial burst of optimism with new entrants, the transalpine rail freight market among the freight companies has consolidated" observes RACO member Werner Grossen. 20 years after the liberalisation of freight traffic, four major consortia dominate the transalpine rail freight market, with SBB Cargo and BLS Cargo having a market share of over 90% between them.

Introduction of market liberalisation

The liberalisation of the rail freight market throughout Switzerland was introduced in 1999 with Rail Reform 1, when Switzerland and the EU granted reciprocal transit and access rights with open access for rail freight companies. Whereas previously each railway operated solely on its own network[1], today any railway undertaking can use the rail network against payment of a train path price if it complies with the operational and technical requirements. 20 years later the RACO has analysed how the market conditions in transalpine rail traffic have evolved over this period, based on surveys by the Federal Office of Transport[2], SBB Infrastructure[2] and information from various experts.

Increase in transport volumes

Transport volumes in transalpine rail freight increased by 23.9% between 2000 and 2008 following the economic upturn and Open Access, although the economic crisis of 2009 resulted in a marked reduction back to the level of 2000. Transport volumes increased again from 2010, and by 2018 were 10.2% higher than in 2008. In 2019, however, transport volumes decreased by 4.6% compared to 2018.

Main players in transalpine rail freight traffic

In the first years after the introduction of Open Access, various independent rail freight companies attempted to establish a foothold in the Swiss market. Using their own business models, they offered shuttle services on the central Lötschberg/Simplon and Gotthard transalpine axes. However, in the following years the number of these rail freight companies reduced. Today, four transborder consortia dominate the market (see Table 1 and Figure 1):
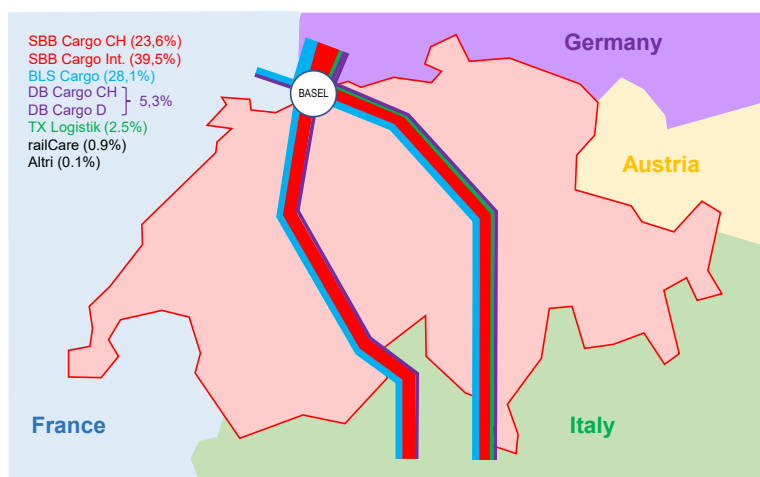

Figure 1:   *Summary of railway undertakings operating transalpine rail freight traffic in Switzerland. Companies belonging to the four consortia are shown in blue, violet, red and green. The market shares refer to 2019 (graphic: RACO original)*

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1 Apart from joint ventures

2 Federal Office of Transport, April 2020: Transalpine rail freight through Switzerland. Key figures for 2019 and interpretation of evolution ([link](#))

3 SBB Infrastruktur, November 2019: Internal survey on railway undertakings operating at the Basel and Chiasso marshalling yards

These four consortia were formed from the previous state railways SBB, SNCF, DB and FS. They have organised themselves so that they can provide rail freight services from a single supplier either on their own or on conjunction with subsidiaries or shareholders along the entire axis between ports in the Benelux countries and Italy. The Coop subsidiary railCare also operates domestic transalpine services within Switzerland between German-speaking Switzerland and the cantons of Tessin and Wallis as a rail freight company, with a market share of about 0.9%.

Market share [a]	Railway undertakings of this consortium operating in Switzerland	Consortium	Railway undertakings of this consortium operating in France [b]	Railway undertakings of this consortium operating in Germany [b]	Railway undertakings of this consortium operating in Italy [c]
approx. 63%	• SBB Cargo • SBB Cargo Int.	Schweizerische Bundesbahnen (SBB) [Swiss Federal Railways]		• SBB Cargo Deutschland • SBB Cargo Int.	• SBB Cargo Italia • SBB Cargo Int.
approx. 28%	• BLS Cargo [d]	Société nationale des chemins de fer français (SNCF) [French National Railway Company]	• SNCF Fret [SNCF Freight] • Railtraxx • Crossrail Benelux	• Crossrail Benelux • Captrain Deutschland	• BLS Cargo Italia • Captrain Italia
approx. 5.3%	• DB Cargo Schweiz • DB Cargo Deutschland	Deutsche Bahn (DB) [German Rail]	• Euro Cargo Rail ECR	• DB Cargo Deutschland • RBH Logistics	• DB Cargo Italia
approx. 2.5%	• TX-Logistik • (part of Mercitalia Group)	Ferrovie dello Stato Italiane (FS) [Italian State Railways]		• TX-Logistik (part of Mercitalia Group)	• Mercitalia Rail

Table 1:   Four consortia dominate transalpine rail freight traffic. [a] Transalpine rail freight market share in Switzerland in 2019. [b] Operates as far as Basel RB. [c] Operates as far as Chiasso SM or Domodossola. d) Minority shareholding SNCF of 45%. (Table: SKE original).

Reasons for the market consolidation

"In intermodal freight transport, the freight companies are dependent on the major operators who manage the contracts with the end customers and place corresponding freight orders with the rail freight companies", says Commission member Werner Grossen. He has in-depth knowledge of the industry from his time at BLS Cargo, SBB Infrastructure and Trasse Schweiz, and has been observing its evolution over many years. The requirement of the major logistics companies (e.g. DHL) and the intermodal freight operators (e.g. Hupac) for bundled transport services with as few interfaces as possible has stimulated market consolidation in recent years, as this requirement can be better met by large consortia than by independent specialist rail freight companies.
Viable transalpine freight transport operations require certain minimum transport volumes. Since the four consortia account for a large part of the market volume, it is very difficult for small rail freight companies to acquire the minimum volume levels necessary for viable business operations. Moreover, the initial high financial and technical investment when setting up a company and the small profit margins are additional barriers to entering the market. The initial investment includes, for example, the procurement and approval of rolling stock, licences for locomotive drivers and specific Swiss features for rail operations, such as language requirements or the use of a second locomotive on steep track sections.

Players in import/export traffic

Unlike the consolidated market conditions in transit traffic, in import and export traffic with neighbouring countries numerous rail freight companies with German, French, Dutch, Belgian or Italian licences are active up to the Swiss border (see the last three columns in Table 1). Swiss railway undertakings are then engaged for the remaining rail transport to the final destinations in Switzerland. Smaller independent railway undertakings such as Rheinland Cargo Schweiz and Widmer Rail Services have specialised in this sector in addition to the large consortia.

Other topics in brief

New member of the commission

Since January 2020, Anna Ciaranfi Zanetta from Dalpe (TI) is member of the RACO. She has long experience in the field of railway law, obtained through her work as a legal expert at AlpTransit Gotthard AG, the constructor of the New Rail Link through the Alps with base tunnels at the Gotthard and Ceneri.

At the moment, RACO is composed as follows:

- Chair: Patrizia Danioth Halter, lic. iur., lawyer and notary, LL.M., Altdorf
- Vice Chair: Markus Kern, Dr. iur., Assistant Professor of Constitutional and Administrative Law, Institute of Public Law, University of Bern, Bern
- Peter Bösch, logistics expert, Binningen
- Anna Ciaranfi Zanetta, lic. iur., lawyer, Dalpe
- Werner Grossen, business economist, head of waste management and recycling Berne, Thierachern
- Giuliano Montanaro, Ing. civil dipl. EPF/SIA, CEO of alius consulting GmbH, Zurich

2019 Annual Report published

Our latest Annual Report can be found using this link. It describes how the RACO uses proactive market supervision to pursue its goal of ensuring non-discriminatory access to the railway network for all railway undertakings. It also covers other aspects of our market monitoring, our activities as part of market observation, our international cooperation, the final binding resolution of a legal case, and one notification.

Complaint regarding the liability arrangement in the event of operational disruption due to technical faults in railway infrastructure

By way of a decision dated 6 December 2019, RACO rejected a complaint by a railway undertaking which offers charter trips with historic rolling stock. A technical fault of the railway infrastructure had prevented a charter train operated by the complainant from proceeding for several hours, and incurred costs for the replacement transport of the passengers, as well as the recovery of the rolling stock. The railway undertaking concerned was demanding that the infrastructure manager should meet these costs.

RACO investigated the rulings regarding the meeting of costs in the event of operational disruption in the track access agreement for concordance with the principle of non-discrimination. Also examined was equality of treatment of licensed and unlicensed railway undertakings.

Licensed railway undertakings are obliged by law to compensate passengers in the event of disruption to a connection. Under the track access agreement, this compensation is in turn to be reimbursed by the infrastructure manager to the railway undertaking. The charter railway undertaking making the complaint does not undertake the regular conveyance of persons on a large-scale commercial basis, and does not therefore hold a license. Consequently, in the event of a connection disruption, there is no legal obligation of the railway undertaking to compensate passengers either. No claim for reimbursement pertains in respect of the infrastructure manager.

The track access agreement does not make any provision for the liability of the infrastructure manager to pay compensation for further damages suffered by the railway undertakings themselves, such as e.g. the recovery of the rolling stock. Both licensed and unlicensed railway undertakings are free, however, to settle the liability with the infrastructure manager in a separate agreement. This was not done in the present case. RACO came to the conclusion that the contractual liability arrangement is compatible with the principle of non-discrimination, and is therefore lawful. The complaint was therefore rejected. The decision is legally binding.

Strengthening SBB's integrated railway production

With the "Traffic Control Center" project, "SBB Passenger Traffic" plans to centralise the often decentralised units of customer information, and transfer them to the locations of the operations centres. Nowadays, "SBB Infrastructure" controls transport services on its network from the operations centres. For this purpose it maintains a close exchange of information with the railway undertakings. Communication is maintained by way of IT systems and by telephone. At a number of operation centre locations, in particular Lausanne and Pollegio, staff are today already working from the operational guidance and customer information units of the "SBB Passenger Traffic". The SBB is hoping, by way of this organizational development, to achieve faster reaction times in resolving faults and an improvement in customer relations and understanding. SBB Infrastructure intends to enable all interested RUs to take a seat in the command room of an operations centre.
Due to the forthcoming proximity of staff from "SBB Passenger Traffic" and "SBB Infrastructure", there may be potential for discrimination. RACO has analysed and assessed this. Within the framework of ongoing supervision, RACO has agreed with "SBB Infrastructure" on a package of measures to reduce the risk of discrimination.

Symposium

On 22 November 2019 RACO hosted a symposium on the topic of the effects of increasing digitalization, and in particular of the smartrail 4.0 programme, on network access. The smartrail 4.0 innovation programme, commissioned by the FOT, is intended to achieve optimum utilization of digitalization and of the new technologies in the service of rail traffic. At the RACO symposium, which was organized in co-operation with key representatives of smartrail 4.0, the participants had the opportunity to exchange information in workshops. At these, main potential for discrimination risks was detected and discussed, such as an increasing knowhow shortfall between small companies with a right to consultation and the system leader with regard to complex technical issues. In addition, the risks of potential cost increases for railway companies by moving infrastructure functions to the vehicles is discussed. The papers and results of the specialist meeting can be found here.

Dealing with overloaded rail infrastructures in Europe

The members of IRG Rail (a grouping of railway regulators in Europe) carried out a survey in European countries on how national infrastructure managers deal with overloaded infrastructures. In Switzerland, Article 12a of the Rail Network Access Ordinance (RailA) provides that in the event of insufficient route capacity, the line in question is declared as overloaded and the railway undertakings must offer alternatives. The infrastructure managers must then conduct a capacity analysis to ascertain the reasons for the line overload, specify remedial measures, and implement these in consultation with the FOT. IRG's Access Working Group has published the survey results here.