



Report on the activities 2015

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 200, French 50, Italian 10, English 30

Picture credits: Cover © AlpTransit Gotthard AG, Pictures © Folia.com, Portraits © Dominique Nardon, Inxsuisse imagine



Contents

Foreword	2
Management Summary	3
Legal bases	4
Activities to ensure non-discriminatory access to the network	5
Market observation	5
The Swiss rail infrastructure	5
Development of passenger traffic	6
Development of freight transport	7
Further topics	8
Market monitoring	10
Monitoring the allocation of train paths	10
Network access conditions for infrastructure managers (IMs)	11
New operator model for marshalling yards	12
Complaints and ex officio investigations	13
Energy price (flat-rate tariff) in the list of services for infrastructure	13
Train path allocation by Trasse Schweiz AG for PostMail trains in the 2014 annual timetable	14
Line closure	15
Consultations	16
Organisation of rail infrastructure (OBI)	16
Rail Network Access Ordinance (new train path price system)	16
Ordinances relating to the Goods Carriage Act (GCarA); network use plan	16
International engagement	17
Freight corridors 1 (Rhine–Alpine) and 2 (North Sea–Mediterranean)	17
European Network of Rail Regulatory Bodies (ENRRB)	18
Independent Regulators’ Group-Rail (IRG-Rail)	18
Legal developments in the EU (4th railway package and Recast)	19
About RACO	20
Commission	20
Specialist secretariat	21
Looking ahead	22
Abbreviations	23



Foreword

The Swiss railway landscape is facing a very challenging period. Additional funding for maintaining the network, further growth in passenger transport, heightened competition between different modes of transport, investments to guarantee the high quality of service in the future, discussions about minimum wages for train drivers, and sites for maintenance depots are only a few of the topics tackled by the Swiss railway undertakings in 2015.

For the Swiss Railways Arbitration Commission (RACO), the year under review was marked by the reorganisation of its secretariat. Our team is now supplemented by new staff members for Market observation and Market monitoring. The linkage of legal expertise and rail-specific know-how allows RACO to focus more strongly on the processes at the interface between railway undertakings (RUs) and infrastructure managers (IMs).

In 2015, RACO also exercised its supervisory competences widely. The central issue was the creation of a favourable environment for a competitive rail system in Switzerland. This report considers the following activities:

- Investigations are carried out in a professional and timely manner. The decisions should provide reliable framework conditions for fair competition between RUs in economic and technical terms, and with regard to time.
- RACO's secretariat uses appropriate methods and tools to monitor the development of the relevant market sectors.
- Focused and continuous market monitoring sheds the appropriate light on topics that enable potentially discriminatory behaviour.
- Using the knowledge gained from market observation and monitoring, RACO initiates ex officio investigations in cases of suspected discrimination. These investigations are carried out fairly and transparently, in accordance with procedural regulations. Consensual resolutions are encouraged.



At this point I would like to thank the Commission and the secretariat staff for their efforts and their willingness to work together with me to ensure the success of the reorganisation process.

Patrizia Danioth Halter
Chair



Management Summary

The Railways Arbitration Commission (RACO) is an independent supervisory authority that ensures non-discriminatory access to the rail network, thus supporting the functioning of the rail market. It adjudicates on complaints from railway undertakings (RUs) and initiates ex officio investigations if there is suspicion of network access being prevented or awarded in a discriminatory fashion (Art. 40a^{bis} Railways Act (RailA); SR 742.101).

In 2015, RACO carried out the following investigations:

- In the energy price case, the flat-rate tariff for energy for long-distance freight trains in the list of services was examined. RACO was able to achieve partial agreement between infrastructure managers (IMs) and RUs. The IMs will introduce billing for the actual amount of power used for all RUs travelling on their network, by the end of 2015 at the latest. Furthermore, the flat-rate approach to energy prices will be adjusted, at least for train type 6 “Long-distance freight train” in the 2018 list of services (see page 13).
- In the train path allocation case concerning PostMail trains, RACO determined that Trasse Schweiz AG had not performed the train path allocation process for mail transport in conformity with the law. In order to ensure non-discriminatory train path allocation in future, RACO therefore issued instructions to Trasse Schweiz (see page 14). The case before the Federal Administrative Court is pending.
- An investigation was initiated into the distribution of costs between IMs and RUs when lines are closed. As part of the investigation, the FOT has already told RACO it is willing to revise its Guideline on line closures (see page 15).

RACO uses Market monitoring to supervise and examine topics that may directly influence network access. This includes the regular supervision of train path allocation, the IMs’ network access conditions, and the SBB’s new operator model for the Limmattal and Lausanne Triage marshalling yards.

The chapter on Market observation presents data on transport performance for the first time, and explains selected events that influence the competition situation in Switzerland in the longer term.

RACO focused its international cooperation on supervisory activities in the freight transport corridors 1 (Rhine-Alpine) and 2 (North Sea-Mediterranean), and on an exchange with the European regulatory bodies on developing best practices and a European railway market.

RACO reorganised its secretariat and brought in more staff to put into practice the statutory tasks that have been added since mid-2013.

“The linkage of legal expertise and rail-specific know-how allows RACO to focus more strongly on the processes at the interface between RUs and IMs.”

Patrizia Danioth Halter, Chair of RACO



Legal bases

RACO is an independent extraparlimentary committee within the meaning of Article 8a para. 3 of the Government and Administration Organisation Ordinance (GAOO; SR 172.010.1). It ensures non-discriminatory access to the Swiss rail network, by adjudicating on complaints from railway undertakings and initiating ex officio proceedings where access is denied or discrimination is suspected (Art. 40a^{bis} of the Railways Act (RailA; 742.101)). As a “market-oriented committee”, it supervises and provides essential support for the functioning of the market (Art. 8m letter b GAOO).

RACO was appointed by the Federal Council; it has existed since 1 January 2000, and is headquartered in Bern.

RACO’s activity is based on Art. 40a^{bis} RailA and the Federal Council-approved RACO Regulations (SR 742.101.4).

Administratively, RACO has come under the General Secretariat of the Department of the Environment (GS DETEC) since 2012.

“RACO uses Market monitoring to supervise and examine topics that may directly influence network access.”

Yves Putallaz, Member of RACO



Activities to ensure non-discriminatory access to the network

As of 2015, as part of its new orientation and using its market observation competency, RACO has been striving to monitor developments in the rail market and to analyse competition-related events, using its own staff and appropriate methods. In addition, targeted statistical surveys will be used so that statements concerning competition in the Swiss rail market are based on facts and figures; these statements will be made public.

This Activity Report for the first time differentiates between market observation and monitoring. These supervisory activities, together with ex officio investigations and the handling of complaints, constitute RACO's statutory supervisory duties.

Market observation

Market observation draws up an overview of the Swiss rail landscape, focusing on the liberalised sectors.

The Swiss rail infrastructure

The Swiss railway landscape is marked by the diversity of different installations, which are used intensively. The total length of Swiss rail infrastructure comes to around 5,100 km ¹.

There is a narrow gauge network with around 1,400 km of track, as well as a normal gauge network of about 3,700 km. The longest of these by far is the approx. 3,100 km network owned by the Swiss Federal Railways (SBB AG), followed by that of the BLS Group, which is about 420 km long. Proportionate to the country's size, Switzerland has one of the densest and most intensively used rail networks in the world.

¹ Source: Swiss Federal Statistical Office 2016



Figure 1: Swiss normal and narrow gauge network



Development of passenger traffic

RACO's current activity concentrates on monitoring RUs' access to the IMs' normal gauge networks. At the end of 2015 about 50 public and private railway undertakings throughout Switzerland were making use of the free network access established through Railway Reform 1 in 1999. Despite the already heavier network load, in 2015 SBB Infrastructure sold 174.8 million train path kilometres, an increase of 0.9% in transport performance on its own network compared to the previous year.

In mid-December 2015, the largest annual timetable change in ten years took place, focusing on the commissioning of new infrastructures (DML Zürich) and increased services.

Some data on the infrastructure and its use:

Normal gauge network length	3,754 km
Narrow gauge network length	1,370 km
Number of stations	2,124
Number of level crossings	3,995
Number of normal gauge RUs	about 60
Number of narrow gauge RUs	about 40

Passenger volume (the number of passenger journeys²) stagnated in 2015³ at the level of the previous year: about 468 million passenger journeys. The only RU active in long-distance transport, SBB Passenger, was particularly challenged by competition from alternative mobility providers (long-distance buses and cheap flights), which had brought about a reduced demand for international passenger transport. Because of the continuously growing demand for transport within Switzerland, especially in regional transport, SBB Passenger's volume grew in 2015 by 1.8% over the previous year.

Transport volume⁴ has increased continuously since the 2012 slump, and this increase was maintained in 2015⁵. The transport volume grew by 1.2% compared to 2014. This growth is essentially due to increased demand in long-distance travel within Switzerland and in regional transport. Combined with the higher ticket prices, this increase in demand was essentially responsible for SBB Passenger's positive year-end result of CHF 131 million (2014: CHF 104 million).

² Definition of a journey: A journey is defined as the movement from the place of embarkation to the place of disembarkation, with or without transfers from one rail vehicle to another. If passengers use the services of more than one railway undertaking, they should not be counted more than once. (Source: Swiss Federal Statistical Office, 2016)

³ Source: Swiss Federal Statistical Office, 2016: Quarterly figures for rail.

⁴ Definition of transport volume: Transport volume is the sum of all kilometres travelled by persons, and forms the actual service provided by a mode of transport. (Source: Swiss Federal Statistical Office, 2016)



Development of freight transport

General development

2015 still did not bring the hoped-for quantum leap in the freight transport sector. The volume of goods transport stagnated in 2015 at the previous year's level of 60.5 million⁵ tonnes, which is a minimal increase of 0.2% compared to 2014.

The commercial success of the two largest RUs varied in 2015. While BLS Cargo experienced close-to-zero growth with a profit of CHF 0.3 million, SBB Cargo made a loss of CHF 22 million after two years of profit. The whole rail sector suffered under the economic and political framework conditions of the euro/franc exchange rate, and the historically low diesel price. These circumstances, as well as the general economic downturn, led to a 3.5% reduction in transport volume compared to 2014. On the other hand, SBB Cargo International was able to increase its transport volume by 9.9% over the previous year.

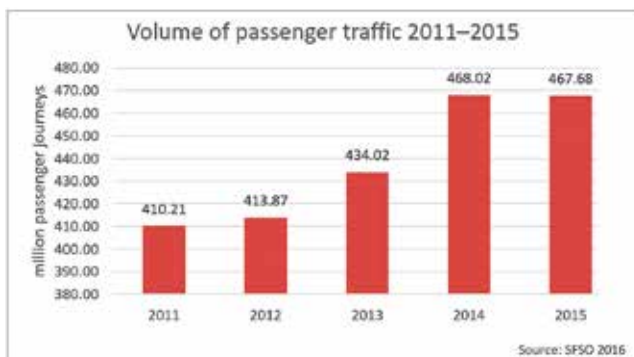


Figure 2: Passenger traffic volume – railways (normal gauge)



Figure 3: Freight traffic volume – railways (normal gauge)

⁵ Source: Swiss Federal Statistical Office, 2016 (Quarterly figures for rail, in German and French)



Further topics

There follows a selection of 2015 topics relevant to the development of competition in the Swiss railway system.

*Results of the Federal Council's report on the transfer of traffic*⁶

For the commissioning of the Gotthard Base Tunnel, the Federal Council implemented a package of measures that will bridge the period until the NRLA comes completely online, and which are intended to create incentives for a modal shift to take place with the Gotthard Base Tunnel if possible. In addition to various amendments to the LSVA, the package comprises amendments of the Rail Network Access Ordinance (RailNAO), with rebates on the train path price for transalpine goods transport, time-limited to 2021:

- For a limited period from 1 January 2017 to the end of 2021, an additional differentiation of the basic train path price will be created for transalpine goods transport (Art. 19 para. 3n letter g RailNAO; SR 742.122), in the form of a rebate of CHF 0.10 per axle and kilometre. The CHF 0.10 rebate will be guaranteed for the whole train path of a transalpine goods train on the Gotthard and Lötschberg-Simplon routes (e.g. from Basel to Chiasso), but only if the Brig-Iselle or Altdorf-Bellinzona sections are used.
- For the train paths of the Lötschberg and Gotthard Base Tunnel route, a higher quality factor was introduced in 2013. On the Lötschberg Base Tunnel route this has since been abolished. By contrast, the increased quality factor on the Gotthard Base Tunnel route will be applied only from 2022.

RACO has taken note of these adjustments and will support their non-discriminatory implementation.

Status of the infrastructure

From 2015, all railway undertakings are required to evaluate their network according to uniform regulations, criteria and indicators (RTE 29900 standard). This is to obtain a high-quality, comprehensive and easily readable overview of the status of rail infrastructure in Switzerland.

Preparing harmonised network status reports is a positive development. However, caution should be applied when drawing conclusions from them. Because this is the first time the system has been used, comparisons over time could not be made.

The SBB has a large number of track sections in need of maintenance, although none is acutely critical. This means that measures taken in the coming years to improve maintenance will lead to increased costs.⁷

Performance agreements (LV) between the Confederation and the SBB 2013–16/2017–20

The Federal Office of Transport (FOT) and the SBB agreed a payment framework for the LV on Infrastructure for the 2017–2020 period. This will be CHF 7.632 billion, 15% more than in the previous period, 2013–2016. This sum is a compromise between the vision of the FOT and that of the SBB. The SBB had previously tried to finance its increased expenditure on maintaining the network, in the framework of an additional credit worth CHF 100 m to CHF 130 million under the LV 2013–2016. The FOT rejected this application. The SBB itself is therefore carrying the additional costs for maintenance in 2015 and 2016.

⁶ Source: Federal Office of Transport, 2015: Verlagerungsbericht [Report on the transfer of traffic, in German] July 2013 – June 2015.

⁷ Source: Summary of the 2015 Annual Report on the LV 2013–2016, SBB Infrastructure



Minimum wages for Crossrail train drivers

At the beginning of 2015, the Rhenus Group took over a 50.1% majority stake in Crossrail, an RU specialising in transit of whole trains through Switzerland. Current shareholders LKW Walter (16.46%), Hupac (13.44%) and Le Jeune Capital (10%) reduced their holdings accordingly. Rhenus is a global logistics company headquartered close to Dortmund. Together with SBB Cargo and Hupac, Rhenus is one of the driving forces for creating the Basel Nord multimodal transshipment platform.

Crossrail is also making headlines with employment law. For the route through Switzerland, Crossrail employs train drivers who are domiciled in Domodossola, Italy. The company pays its employees according to the lower Italian rates of pay rather than the Swiss industry regulations. Challenged by the unions, in the first instance the FOT declared Crossrail's wage policy to be lawful. However, the Federal Administrative Court upheld the unions' counterarguments in the second instance and returned the case to the FOT, for the Office to re-evaluate the requests for wages commonly paid in the industry⁸. The reassessment by the Federal Office is planned to take place in the first half of 2016.

Search for new BLS workshop site

In March 2015, BLS provided information on its preferred location for a new workshop in the Bern area. BLS was searching for a new workshop because the workshop it rents from the SBB is scheduled to close at the end of 2019, due to the expansion of Bern railway station. The site to which BLS is giving priority at Riedbach near Bern is currently being used primarily for agriculture. It is anticipated that land would have to be compulsorily purchased from its owners. In consultation with the cantonal authorities BLS reacted to public criticism by setting up an accompanying team under external leadership, to bring the necessary objective view of the project. The BLS Group is the sole provider of regional rail services, and as such it depends on a depot and maintenance facility in the Bern area. Construction of this facility is time-critical but politically sensitive.

“The chapter on Market observation presents data on transport performance for the first time, and explains selected events that influence the competition situation in Switzerland in the longer term.”

Patrizia Danioth Halter, Chair of RACO

⁸ Judgement of the Federal Administrative Court, 15 December 2015 (Ref. 3434/2015)



Cooperation of DB Schenker Rail and SBB Cargo

SBB Cargo secured the contract to produce about 8000 freight trains annually on the Swiss transit routes through the Gotthard and Lötschberg. This large-scale order, vital for international freight transport, thus remains with SBB Cargo, which was able to extend its contract with DB Schenker Rail, the largest freight RU in Europe, by five years to 2020. BLS Cargo, which had provided this service for DB Schenker Rail until the 2013/14 timetable change, lost the contract to SBB Cargo at that point.

DB Schenker Rail and SBB Cargo expanded their service in international wagonload transport. The two Xrail members now provide competitive freight connections between industrial centres in Germany and Switzerland, so that palletised consumer goods from Hamburg can be delivered to any region of Switzerland within 48 hours.

In parallel to their natural competition, SBB Cargo and DB Schenker Rail continue to exploit all possibilities to make existing synergies even more efficient and to minimise costs.

Market monitoring

This examines more deeply selected topics that RACO considers to have a significant impact on non-discriminatory access to the network.

Monitoring the allocation of train paths

In the reporting period, the train path capacities on the SBB, BLS and SOB networks for the 2016 annual timetable were allocated. This timetable came into force in mid-December 2015. Trasse.ch allocated a total of almost 14,000 train paths to 21 railway undertakings (RUs). The application files from the RUs generated a total of 167 conflicts, all of which the train path allocation body was able to solve together with the RUs concerned and the infrastructure managers' timetable planners. For the first time in five years, this meant that no train path applications had to be rejected.

Essentially, this was because the refurbishment of the Simplon tunnel planned for 2016 produced less severe restrictions on capacity than originally predicted. The rules agreed in winter 2014/15 between Trasse.ch and the freight RUs on train path ordering also had an effect: according to a statement from Trasse.ch, it meant that these RUs had applied for less "in case" capacity for traffic that had not yet been definitely secured from customers at the time the applications were made.



Compared to previous years, the timetable revision in mid-December 2015 brought major changes, especially for long-distance passenger traffic. The commissioning of the cross-city link in Zurich (“Durchmesserlinie”), new services on the Mittelland route, and the start of engineering work for the major “Léman 2030” project all greatly affected train path planning and timetabling. The fact that these programmes are being run in parallel, and the need to balance current priorities, mean that freight capacities had to be completely replanned.

At two meetings in 2015, RACO received information from Trasse.ch on the working of the ordering and allocation process. No breaches of the rules were identified, nor were any complaints or claims submitted to RACO by the market participants.

“At two meetings in 2015, RACO received information from Trasse.ch on the working of the ordering and allocation process. No breaches of the rules were identified.”

Werner Grossen, Member of RACO

Network access conditions for infrastructure managers (IMs)

The statutory obligation for IMs to disclose their network access conditions is limited to a few technical characteristics of a few networks (e.g. route profiles, curve radii, safety equipment etc.). The RUs SBB, BLS and SOB publish two documents giving the technical and operating characteristics of their networks, together with the prices for the services they provide, with a lead time of 12 months for each timetable period: Network Statement and List of Services. These documents use the common structure of RailNetEurope, the key alliance of association of European rail net operators.

In terms of content, the SBB, BLS and SOB already far exceed the statutory duty to publish. These infrastructure managers submitted their network access conditions for the 2017 timetable year to RACO in 2015. The network users have not indicated any instances of discriminatory conditions in the two documents.

In the year under review, RACO carried out spot checks on the network access documents. The Monitoring Plan, which is currently being drawn up, includes a proposed methodology for the future examination of network access conditions and the associated publications by the IMs.



New operator model for marshalling yards

SBB Infrastructure currently manages the five marshalling yards in Basel, Buchs SG, Chiasso, Lausanne and Limmattal. Two further installations (Däniken, Zurich-Mülligen) will no longer be operated by SBB Infrastructure from 2015 onwards.

The Limmattal and Lausanne marshalling yards are the key hubs in Switzerland for securing domestic single wagonload traffic. Meanwhile, the three other marshalling yards are important pillars of international freight transport.

The volumes requested by SBB Cargo in the Limmattal and Lausanne marshalling yards for processing its freight trains amount to more than 98% of the entire annual volume in both facilities.

For reasons of efficiency, in 2015 SBB Infrastructure delegated responsibility for providing the additional services of shunting in the Limmattal and Lausanne marshalling yards. This delegation of tasks was based on an operating contract with SBB Cargo, obliging it to provide services in the marshalling yard without discrimination. SBB Cargo staff have signed the corresponding confidentiality agreements.

In the year under review, RACO clarified some aspects of this and made SBB Infrastructure aware of the following potentials for discrimination:

- In the non-discriminatory planning and management of SBB Cargo's production processes internal to the marshalling yards: the operator model now mandates an RU (SBB Cargo), which is in competition with other RUs, to allocate and provide shunting services. The RU also has access to all data belonging to competitors on the Swiss railway network.
- Through SBB Cargo's unlimited access to the transport data of competing RUs, when SBB Cargo carries out shunting services for another RU.

RACO has requested SBB Infrastructure to take all measures necessary to reduce any potential for discrimination as far as possible.



Complaints and ex officio investigations

No complaints were outstanding in the year under review.

RACO undertook the following investigations:

Energy price (flat-rate tariff) in the list of services for infrastructure

In 2013, BLS Cargo AG requested RACO to examine a case of possible discrimination in the application of a flat-rate tariff in the List of infrastructure services published by SBB Infrastructure, BLS Netz, SOB, Thurbo, Sensetalbahn (STB) and Hafenbahn Schweiz (HBS AG). In addition to train type 8, "Tractor-hauled freight train", the List of services contained only one other type of freight train for long distances. This train type 6, "Long-distance freight train", comprises types of freight transport – such as wagonload transport and block trains – that differ widely in terms of their energy consumption. Passenger traffic, on the other hand, is subdivided into five train types.

As a result, RACO examined the methods of calculating the energy price for each train type and the principles on which they were based. RACO commissioned the EPFL to draw up an expert opinion, which showed that there was a reasonable suspicion of discrimination in the energy invoicing for the train path price for freight transport. The EPFL experts concluded that heavy freight trains travelling long distances without a stop generally need less energy than invoiced under the flat rate for train type 6, "Long-distance freight train".

RACO accordingly initiated an ex officio investigation on 27 and 29 January 2014. In parallel, SBB Infrastructure launched a pilot project to introduce billing for the actual amount of power used. This pilot project resulted in the start of an agreement process. Two negotiations took place in summer 2015, resulting in a partial agreement which was signed by six of the nine parties by the end of the year. In this partial agreement, the IMs commit themselves to offering billing for the actual amount of power used by the end of 2015 at the latest for all RUs travelling on their network, to adjust the flat-rate energy tariff at least for train type 6, "Long-distance freight train", in the 2018 list of services, and by the end of 2015 to draw up a plan for adjusting the flat-rate energy approach and submit it to RACO for approval. SBB Infrastructure introduced billing for the actual amount of power, and the transitional phase therefore began at the start of 2016, thus fulfilling obligations of the partial agreement. Accordingly, RACO will confirm this agreement by decree in 2016.

SBB Infrastructure declared that it was not willing to compensate for the difference between the price for train type 6 in the list of services and the lower price requested by BLS Cargo and confirmed by the expert opinion. RACO will need to clarify this issue by decree. The investigation thus continues to be pending.



Train path allocation by Trasse Schweiz AG for PostMail trains in the 2014 annual timetable

In 2013, Swiss Post AG announced an open call to tender for transporting mail. SBB Cargo AG and BLS Cargo AG tendered to provide this service. At the same time, Swiss Post AG ordered train paths for the 2014 annual timetable. SBB Cargo also applied for train paths for its Swiss express network. Trasse Schweiz AG (Trasse.ch) determined that there was a conflict between Swiss Post AG and SBB Cargo, but was unable to resolve it, and as a result Swiss Post AG broke off the procurement procedure for awarding the order for transport. The train path conflict was subsequently resolved by mutual agreement without the involvement of Trasse.ch. Swiss Post AG was allocated the train paths, and signed over to SBB Cargo the train paths needed for PostMail trains. BLS Cargo AG contacted RACO requesting an ex officio investigation into the train path allocation process of Trasse.ch.

Prompted by the suspected discriminatory allocation of train paths by Trasse.ch, RACO initiated an ex officio investigation. As part of this investigation, RACO and Trasse.ch were in extensive correspondence, and in June 2014 RACO issued its judgement. SBB Cargo AG and Trasse.ch then appealed against RACO's decree. The appeal from SBB Cargo AG was rejected on the grounds of lack of legal interest. The appeal from Trasse.ch was upheld due to a formal irregularity on the part of RACO, and returned to RACO for reassessment. In December 2015, RACO issued a new decree, determining that Trasse.ch had not performed the train path allocation for mail transports in conformity with the law, and had thus endangered the guarantee of non-discriminatory access to the network. In particular, Trasse.ch had contravened Art. 9a RailA; Art. 12 para. 1 RailNAO; Sections

3.1 and 3.4 of the FOT Guideline on train path allocation and the bidding procedure; and Sections 4.2.2.2, 4.3.1 and 4.4.1.1 of the Network Statements. As a consequence, RACO required Trasse.ch to reasonably document the credibility of the actual or planned traffic, when there is a suspicion that multiple orders are being made for the same journeys, up to the date of the provisional train path allocation. If the multiple orders refer to different journeys, conflict settlement procedures should be carried out. These should offer clients alternative and reasonable train path proposals in a timely manner, so that train paths can be provisionally allocated on time. If allocation continues to be impossible, Trasse.ch must carry out a bidding procedure, before the date of the definitive train path allocation. The decree issued has not yet come into force, and RACO is presuming that the case will be appealed at the Federal Administrative Court.



Line closure

Construction work on the infrastructure results in line closures for rail traffic. To maintain train connections, replacement buses sometimes have to be used. The line closures thus lead to increased costs for the RUs. Art. 11b RailNAO and the FOT Guideline "Line closures in accordance with Art. 11b RailNAO" regulate the issue of when an RU must bear these additional costs, and when it is the IM's responsibility.

In 2014, BLS AG Passenger – now Operating – was affected by three line closures. As a consequence, disagreement arose between BLS AG, SBB Infrastructure and BLS Netz AG about which company was responsible for covering BLS AG's extra costs. BLS AG interpreted Art. 11b RailNAO and the FOT Guideline to mean that the infrastructure managers would have to pay these costs, as they were not inconsiderable. SBB Infrastructure and BLS Netz AG held the opposite opinion.

In consequence, BLS AG submitted a request to RACO for an ex officio investigation into whether Art. 11b RailNAO and the related Guideline had been applied correctly. RACO was asked to clarify the sum up to which costs are considered to be minor expenses, and whether these should be carried by the RU or the IM. RACO opened an ex officio investigation; meanwhile, the FOT explained that it would be revising its Guideline "Line closures in accordance with Art. 11b RailNAO" in 2016, and would set a limit of CHF 30,000 for minor expenses. The investigation procedure is still pending.

"RACO will further develop its market observation and monitoring, so that it can make regular statements about the Swiss rail market."

Peter Bösch, Member of RACO



Consultations

RACO submitted Statements on the following proposed legislation:

Organisation of rail infrastructure (OBI)

The Railways Arbitration Commission (RACO) supports the proposed Organisation of rail infrastructure legislation (OBI). RACO will transform into RailCom, and will acquire further supervisory and auditing tasks, and thus be strengthened as a regulator. The current, integrated railway system does, however, offer possibilities for discriminatory behaviour that is hidden and hard to prove from outside. The ERIO group of experts came to a similar conclusion in 2014. The discrimination potential lies not only in the allocation of train paths, but also in the development and planning of the network, the timetabling process, track maintenance, incident handling, access to railway stations, customer information, and the technology strategy. The more consistently infrastructure managers and railway undertakings are separated, the lower the potential for discrimination. If the segregation of infrastructure and operations is less stringent, the regulator should be given more powers and tasks in order to ensure effective non-discriminatory network access, and to strengthen competition in the railway market.

RACO welcomes the granting of participation rights to the RUs active in network access, and the possibility for the FOT to entrust individual RUs or IMs with prime-contractor status. The planned rules should however be written more precisely if they are to be enforced.

RACO expressly welcomes its extended competencies in data collection, market observation and monitoring; these have enabled it to implement the monitoring agreed under Railway Reform 2.2, which is essentially preventive market supervision. This is decisive in making competition possible and preventing discrimination.

Rail Network Access Ordinance (new train path price system)

RACO fundamentally supports the aim of the amendments to the RailNAO and broadly welcomes the continuation of the current train path price system. The proposed amendment primarily concerns the introduction of a wear factor. The increase in the basic price for a train path cannot be criticised in terms of non-discriminatory access to the network, as it does not result in any discrimination in network access. In general, RACO considers it important to design the provisions and tools for determining the wear factor in such a way that the smaller RUs are not exposed to disproportionate bureaucracy. Simple handling of the tools provided will have a decisive impact on non-discrimination.

Ordinances relating to the Goods Carriage Act (GCarA); network use plan

RACO welcomes the approach of the ordinances relating to the Goods Carriage Act (GCarA). However, RACO considers it important to list the tasks, rights and duties of Trasse.ch explicitly. In addition, the criteria and standards of train path allocation must be provided with a sufficient legal basis.



International engagement

Freight corridors 1 (Rhine–Alpine) and 2 (North Sea–Mediterranean)

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 supports the Swiss mandate, anchored in the federal constitution, to transfer goods from road to rail.

Two freight corridors involve Switzerland:

- Freight corridor 1 (Rhine–Alpine): Zeebrugge/Antwerp/Rotterdam – Duisburg – Basel – Milan – Genoa
- Freight corridor 2 (North Sea–Mediterranean): Rotterdam/Antwerp – Luxembourg – Metz – Dijon – Lyon/Basel (Basel SBB marshalling yard)

For each freight corridor, a single point of contact, the Corridor One-Stop-Shop (C-OSS), allocates train paths for cross-border freight. This involves assigning pre-arranged train paths from the capacities offered by the national train path allocation bodies. C-OSS allocates pre-arranged train paths under an agreement between infrastructure managers and train path allocation bodies. This agreement regulates the remit, powers and responsibilities of C-OSS and the national IMs/train path allocation bodies. C-OSS is thereby granted authority to allocate the pre-arranged train paths in their name and on their behalf.

The C-OSS are overseen jointly by the relevant regulatory bodies in Belgium, Luxembourg, Germany, Italy, the Netherlands, France and Switzerland, with RACO in a supervisory role. Cooperation between the regulators is specified in the Cooperation Agreement and a Swiss Letter of Intent.

The new priorities in the 2016 timetable concerning freight corridors 1 and 2, i.e. Flex-PaP (flexible pre-arranged path) and Net-PaP (Network pre-arranged path), should give railway undertakings greater flexibility. These regulations were further discussed in the year under review, giving rise to the need to find a balance between the RUs’ requirement for greater flexibility and timetable stability for IMs.

The EU intends to revise RL 913/2010 (corridors) after only two years, to increase regulation of corridor activity. Together with the majority of European regulators, RACO has spoken out in several discussions against over-hasty actions. The corridors need to build up more operational experience. Apart from corridor 1, no corridor has been in operation long enough to gather sufficient experience of practical application. An amendment to the provisions, in particular to increase regulation, is therefore not yet advisable.



European Network of Rail Regulatory Bodies (ENRRB)

The ENRRB was created in 2013 through the review of the regulatory framework (Directive 2012/34 (EU); Recast). These European regulators, together with the European Commission, meet regularly to exchange information and ideas on cross-border issues concerning rail regulations. The ENRRB promotes cooperation between regulators.

RACO took part in the two plenary sessions as observers. The main item was implementation of the recast of the first railway package. RACO contributed the experience of European regulatory authorities, which have proved to be robust, in its statements on, e.g. the Swiss OBI legislation.

Independent Regulators' Group-Rail (IRG-Rail)

IRG-Rail is an association currently consisting of 26 regulatory bodies. Its aim is international cooperation towards developing a European single rail market: development of best practices primarily within network access and service facilities, and provision of a common approach to implementation of the European regulatory framework. In 2010, working together with regulatory bodies from Germany, the UK, the Netherlands and Austria, RACO seized the initiative to strengthen cooperation between independent rail regulatory bodies, which led to the founding of IRG-Rail in 2011.

RACO takes part in plenary sessions of the Access working group so that it can address the problems of access to the freight corridors and their operation.

“RACO takes part in plenary sessions of the Access working group so that it can address the problems of access to the freight corridors and their operation.”

Ursula Erb, Member of RACO



Legal developments in the EU (4th railway package and Recast)

The European rail network is currently quite fragmented. Different member states and associated partner states (Switzerland, Norway, Macedonia etc.) use different safety standards and technical systems. Cross-border train services, for example, have to obtain safety authorisation from several different signalling systems. This makes it complicated and expensive for new rail operators and new technical equipment to enter the rail market.

By removing the remaining barriers to the single European rail area, the 4th railway package will help create a more competitive rail sector, with better connections between the EU and its neighbouring countries.

The proposed legislation includes both technical aspects and issues of guidance and opening of markets (political aspects):

- Technical amendments are largely undisputed.
- Political issues, however, have been the subject of controversy since the end of 2015, first between Member States, and second between the European Commission and the Member States. To strengthen competition in the rail sector, the European Commission suggests opening up domestic rail passenger markets, together with a sharper distinction between infrastructure managers and railway undertakings. To do this, IMs and RUs need to be legally distinct from one another.

The Directive on Implementation of the Recast (amendments and final implementation of the 1st railway package) included mandatory introduction by EU member states by the middle of May 2015. This has only partially happened, as large member states such as Germany and France do not accept all the implementation measures.

RACO is closely monitoring these developments. It supports a gradual adaptation of Swiss legislation to the European standards, as long as they are proved to be reasonable and stable.

Frankfurt	Hamburg Kiel	16		S 12	7.48	Sta
Flughafen →			Zug fällt aus	S 7	7.50	Oer
Thun	Visp Brig	14		S 24	7.51	Wied
Biel	Genève	Genève-Aéroport	18		S 15	Har
Zug	Luzern	9		S 5	7.55	Sta
ausen		11		S 8	7.55	Oer
Brugg	Aarau Olten	Bern	15		S 10	Sel
n →	Winterthur	Romanshorn	10		S 9	Sta

About RACO

Commission

RACO met in full six times during the year under review. Commission members were also active in the four areas of "Law", "Market access", "Competition monitoring" and "International affairs".

The Commission is made up as follows:



RACO (left to right): Prof. Dr Matthias Finger, Dr Ursula Erb, Dr Yves Putallaz, Barbara Klett, Patrizia Danioth Halter, Werner Grossen, Peter Bösch, Sibylle Burger-Bono

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

delhofen	Winterthur	Seen	44		S3	8
likon	Kloten	Winterthur	41		S9	8
ikon Enge	Thalwil	Zug	4		S5	8
dbrücke	Affoltern a/A		41/42		S8	8
delhofen	Uster Wetzikon	Pfäffikon SZ	43/44		S 15	8
likon	Wallisellen	Weinfelden	33		S7	8
nau Triemli	Uitikon Waldegg	Uetliberg	22		S 14	8
delhofen	Stettbach	Uster	43/44		S2	8

Specialist secretariat

The secretariat provides professional and technical support to the Commission, and carries out its instructions. Administratively it falls under the GS DETEC.

In 2015, RACO comprehensively reorganised its secretariat. The team was extended by four people in order to cover the new tasks in force since 2013. The process of developing a formal strategy was initiated, and a Monitoring Plan drawn up. This will allow quantitative statements to be made about the intensity of competition in the Swiss rail market from 2015.

The staff of the secretariat in the year under review was composed of:

Function	Name	Background
Head	Sibylle Burger-Bono	lawyer
Staff member	Sandra Dorasamy	executive assistant
Staff member	Andreas Oppliger	research assistant (lic. phil. nat.)
Staff member	Gabriela Weber	lawyer, MLaw



Looking ahead

2016 looks forward to more essential legislation:

- On 1.7.2016 the GCarA will come into force. This will mean an extension of RACO's responsibilities to include ensuring non-discriminatory access to the sidings and loading terminals belonging to private companies. This will be conditional on a substantial financial involvement by the Swiss Confederation in creating the facilities. The operators will now have to publish details of access to their facilities and establish conditions of equal opportunity.
- In the second half of 2016 the Federal Council is expected to approve its Message on the Organisation of Rail Infrastructure (OBI) for the attention of Parliament. This programme aims to strengthen RACO, turning it into RailCom, and to create an independent train path allocation body. It will give Parliament a further important step of Railway Reform to discuss.

RACO will further develop its market observation and monitoring, so that it can make regular statements about the Swiss rail market.



Abbreviations

Abbreviation	Meaning
BLS	Bern-Lötschberg-Simplon Bahn
C-OSS	Corridor One-Stop-Shop
DB	Deutsche Bahn
DETEC	Federal Department of the Environment, Transport, Energy and Communications
DML Zürich	Zurich cross-city link (Durchmesserlinie Zürich)
ENRRB	European Network of Rail Regulatory Bodies
EPFL	École polytechnique fédérale de Lausanne
ERIO	Expert group for railway infrastructure organisation
FOT	Federal Office of Transport
GAOO	Government and Administration Organisation Ordinance
GCarA	Federal Act on the Carriage of Goods by Rail and Navigation Companies
GS DETEC	DETEC General Secretariat
IM	Infrastructure manager
IRG-Rail	Independent Regulators' Group-Rail
LV	Performance agreement (Leistungsvereinbarung)
NRLA	New Rail Link through the Alps
OBI	Federal Act on Organisation of Railway Infrastructure
RACO	Railways Arbitration Commission



Abbreviation	Meaning
RailA	Railways Act
RailNAO	Rail Network Access Ordinance
RTE	Regelwerk Technik Eisenbahn – industry standard
RU	Railway undertaking
SBB	Swiss Federal Railways
SFSSO	Swiss Federal Statistical Office
SOB	Südostbahn
SR	Classified compilation of Swiss Federal law (Systematische Rechtssammlung)



Railways Arbitration Commission

Monbijoustrasse 51 A
3003 Bern

Tel. +41 (0)58 463 24 60

info@ske.admin.ch
www.ske.admin.ch

