

# **Between Sector Specific and Competition Regulation**

# **Swiss Federal Railways**

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## 1. Current Situation in Switzerland: Two Regulatory Regimes...

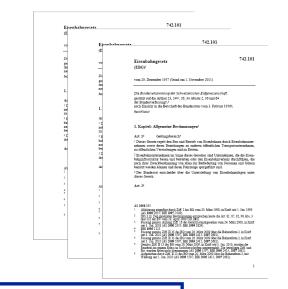
#### **Competition Regime**

 Federal Act on Cartels and other Restraints of Competition

Bundesgesetz 251 über Kartelle und andere Wettbewerbsbeschränkungen
(Kartellgesetz, KG)
vom 6. Oktober 1995 (Stand am 1. Januar 2011)
Die Bondenversennlung der Schweitzehen Eidgewaszenschaft, genitter und die Antheil 7 Aberta 1 (46, 97) Aberta 2 und 1223 der Bundenverbrausen, die Bundenverbrausen, der Schweitzehlt dasse Beitmanungen kommunisten Absonnte Absonnte die Benchaft des Bundenstess vom 23. November 1994, berchlatzt:
1. Kapitel: Allgemeine Bettimmungen
Art.1 Zweck
Dieses Gesetz bezweckt, volkrwitrischaftlich oder sozial schädliche Auswirkungen von Kartellen und auderen Wettwerebibeschränkungen zu verhindern und damit den Wettwereb im Interesse einer freiheitlichen marktwirtschaftlichen Ordnung zu fordern.
Art. 2 Gehungsbereich
<sup>1</sup> Das Gesetz gilt für Unternehmen des privaten und des öffentlichen Rechts, die Kartell- oder nadere Wettbewerbssbreden treffen, Matkmacht ausüben oder sich an Unternehmenstmammenschlitsten beselligen.
$^{10m}$ Als Unternehmen gelten sämtliche Nachfrager oder Anbieter von Güttern und Diessbeistungen im Wirtschaftsprozess, unsbäßugig von ihrer Rechts- oder Organisationsform. $^6$
$^2{\rm Das}$ Gesetz ist auf Sachverhalte anwendbar, die sich in der Schweiz auswirken, auch wenn sie im Ansland vermässet werden.
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#### Sector Specific Regulatory Regime

- Railway Act
- Federal Act on Passenger Transport
- Federal Act on the Transport of Goods



Art. 3 Relationship to other statutory provisions

<sup>1</sup> Statutory provisions that do not allow for competition in a market for certain goods or services take precedence over the provisions of this Act. Such statutory provisions include in particular:

- a. provisions that establish an official market or price system; and
- b. provisions that grant special rights to specific undertakings to enable them to fulfil public duties.



# 1. Current Situation in Switzerland: ...and Numerous Actors with Diverse Powers

#### **Federal Office of Transport**

- general oversight of construction and management of railways
- disputes arising from granting access in railway stations
- Issues regarding passenger transport concessions

#### **Competition Commission**

- general market oversight (railways e.g. real estate or advertisement)
- disputes arising between railway undertakings and between infrastructure managers (e.g. freight transport)
- control mergers and acquisitions
- general policy recommendations
- current railway reform had considered a new role of general market oversight

#### **Railway Arbitration Commission**

- Granting non-discriminatory access to the railway infrastructure
- oversight of the track allocation body (based on a voluntary, private law agreement between the entities)
- disputes regarding the calculation of track access charges
- decision on access agreements based on network statement
- current railway reform will add ex officio competence to commence inquiries

#### **Federal Administrative Court**

- Appellate body for decisions by the Railway Arbitrations Commission

#### **Price Supervisor**

- Pricecontrol in non-competitive markets, preventing abusive pricing



#### 2. The Case of "Rail Related Services"

?

Under which circumstances to depart from the general competition framework?

Granting competitors access to Rail Related Services, such as maintenance facilities, freight terminals, marshalling yards or storage sidings

Facilitate competition on the principal market



Facilitate competition on downstream/upstream markets
Property rights
Maintain incentives for investment and innovation in the respective markets



### 2. The Case of "Rail Related Services"

#### **Competition Regime**

#### **Essential facilities doctrine:**

- obligation to grant access to facilities which are not duplicable
- lack of rentability is not sufficient
- usually requires factual or legal impossibility to establish such facilities and
- if there are spare capacities and granting access is economically viable for the facility-operator

#### Recast

- Granting third parties access to Rail Related Services if the operator cannot establish viable alternatives
- including not only marshalling yards, passenger stations, but also freight terminals, maintenance facilities, relief facilities such as towing and even ticketing facilities

Regulatory framework proposed in the Recast departs from the essential facilities doctrine as established by the general competition law



### 3. Elements of an Adequate Regulatory Framework?

- Clearly defined and delimitated scope of application of both sector specific and competition regulation
- Clear and non-overlapping powers of the bodies entrusted with the application of the respective regulatory frameworks
- Institutional setting avoiding conflicts of interests within these entities (entangling conflicting roles)
- Degree of regulatory density adapted to structure and functioning of the market



#### 4. Some Concluding Thoughts



Rather well-functioning relationship between sector specific and competition regulation in spite of institutional deficiencies because of a pragmatic approach of public authorities

Further development of the system:

Establishment of an independent regulatory body with sufficient competencies and resources



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Preliminary question: Which market regime is adequate?

Example: Direct traffic (unitary ticket, common tariff, close cooperation between the market actors with regard to timetables, offers etc.) generates considerable benefits for the customer.



# Thank you for your interest !