

Operations start up
&
Obstacles to Access to special rail facilities

RAILTRANS LLC - CASE

SEETO working group railway and intermodality
Bar 10-11 /10 /2017

First trial train-Ferronickeli
video made by client



2

Operation start up

- ▶ **Planned during licensing process**
 - ❖ First train was planned to be launched on September 2014
 - ❖ We were on contract negotiations with more than 7 serious clients to close the commercial contracts
 - ❖ We were planning to operate with rented locomotives
 - ❖ We planned to hire 9 people initially
 - ❖ We planned to demonstrate better operational efficiency than incumbent RU
 - ❖ Contractual commitment based on the incumbent RU:
 - ❖ Timing- 8 hours per train-loading/driving/unloading/driving
 - ❖ Max load 17 wagons approx 800-850 net/tons per train or 1240 bruto/ton
- ▶ **Real situation as a result of delays**
 - ▶ First train was launched on 20.07.2017
 - ▶ We signed 1 contract so far , trying to recall other clients that we lost as a result of license revocation
 - ▶ We purchased two locomotives
 - ▶ We hired so far 14 people and we training additional 8
 - ▶ In three months operations so far we demonstrated better efficiency in timing of operations and hauled weight
 - ▶ Best case we reached:
 - ▶ Timing-5 hours 46 min per train-loading /driving/unloading/driving
 - ▶ Max load 22 wagons 1127 net/tons per train or 1633 bruto/ton

3

Operation start up

- ▶ **Yes we did it and it looks promising and beautiful too**



- ▶ **But the struggle is going on , you can not focus only in your operations , no way , we have to deal with new phase of institutional “clarification “ on Accessing to special rail facilities.**

4

Obstacles to Access to special rail facilities
lack of cooperation between RU-s

- ▶ **Legal framework requirements**
 - ❖ Article 51 Access to special rail facilities :
 - ❖ 1. Any applicant may request access to special rail facilities if such facility is:
 - ❖ 1.2. a rail track: a permission to use that track for the purpose of reaching a maintenance depot or energy supply facility, when the maintenance depot or the energy supply facility can only be reached via the access of the facility provider or providers;
 - ❖ 2. In the case that the applicant does not succeed in concluding an access agreement with the provider of a special rail facility, he may request the Railway Market Regulatory body to intervene.
 - ❖ 3. The Railway Market Regulatory body on the basis of a complaint by the applicant or by his own initiative may decide that a rail facility provider enters into an access contract with the applicant for the purpose of or in connection with the use of the special rail facilities, after duly examining if or to what extent exist.
 - ❖ 4. If the provider of special rail service facilities does not implement the decision, the Railway Market Regulatory body is entitled to use the judicial possibilities to enforce it.
- ▶ **Real situation faced**
 - ❖ On 07.07.2016 we made an official request to TRAINKOS CEO Mr.Shala, requesting to have an meeting and getting agreement for the following issues:
 - ❖ Usage of their technical capacities on servicing of our locomotives.
 - ❖ Usage of their capacities on garage-for our locomotives
 - ❖ Mutual agreement on hauling the locomotives when are in defect during operations and train
 - ❖ Other issues as per common interest
 - ❖ No reply received whatsoever from TRAINKOS
 - ❖ On 30.09.2016 we wrote to Railway Market Regulatory body as per Article 51 ,paragraph 2
 - ❖ After nearly 2 months of discussions on 24.11.2016 we received a letter that Railway Market Regulatory body sent to TRAINKOS officials on which they - Recommended to TRAINKOS to enter into agreement with Railtrans for usage of special rail facilities as required by the law
 - ❖ On 07.12.2016 we received an official letter from Trainkos on which they reply to our request on which basically they declare the following:
 - ❖ Because of their limited capacity they can not offer their services
 - ❖ As per them, Article 51 of the law is not referring to them but to Infrastructure Manager, so they don't see that is obligatory for them to offer these services

Obstacles to Access to special rail facilities
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- ▶ **Legal framework requirements**
 - ❖ Article 52 Access to services :
 - ❖ 5. If an applicant is denied the access to services which the service provider is obliged to supply, the applicant has a right of complain before the Railway Market Regulatory body.
 - ❖ 6. Where the operator of the service facility belongs to a body or firm which is also active and holds a dominant position in at least one of the railway transport service markets for which the facility is used, the operator shall be organized in such a way that it is independent, in legal, organizational and decision - making terms, of this body or firm.
 - ❖ Article 51, point 4. If the provider of special rail service facilities does not implement the decision, the Railway Market Regulatory body is entitled to use the judicial possibilities to enforce it.
 - ❖ Kosovo Competition Law CHAPTER IV ABUSE OF A DOMINANT POSITION AND RESTRICTIVE PRACTICES Article 10 Ascertainment Dominant Position
 - ❖ Article 11 Abuse of a Dominant Position :
 - ❖ 1. Abuse of a dominant position by one or more enterprises on the corresponding market is prohibited, in particular if:
 - ❖ 1.6. refusal of entrance of another enterprise, by giving an appropriate compensation, in the network or infrastructures of the enterprise with dominant position, if this refusal for usage of the network or infrastructures prevents the other enterprise to act as a competitor of the enterprise with dominant position.
- ▶ **Real situation faced**
 - ❖ On 16.12.2017 we wrote them back explaining the legal obligations since INFRAKOS as Infrastructure Manager doesn't poses such maintenance capacities, moreover TRAINKOS as a public company commercially oriented on their Business Plan have published their services that they offer and where are listed exactly all the services we were asking from them.
 - ❖ On 18.07.2016 after two meetings we had with Kosovo Competition Authority we have wrote another Official letter requesting from them to treat this case as per Kosovo Competition Law.
 - ❖ On 02.08.2017 we received an official email from Kosovo Competition Authority on which they explained that they are treating our request as per the law and as soon as they have an decision taken about our case , they will let us know.
 - ❖ On 03.08.2017 we wrote to Railway Market Regulatory body asking them to enforce their decision that they have taken toward TRAINKOS
 - ❖ On 14.08.2017 we got reply from them on which they state their position: We issued Recommendation as per the Law.
 - ❖ Presently we are at "waiting position" for institutions to act and implement the law requirements , Railway Law and Kosovo Competition Law
 - ❖ Next legal step is to handover the case to our lawyer to initiate the case for "Abusing official position or authority " , An official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not exercise his or her official duties.....

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► Crucial services to reach agreement for

- ◆ Hauling of locomotives /trains in case of the defects on open line
- ◆ Wheels flattening
- ◆ In case of derailment assistance with special derailment coach

◆ Other services for which we had to invest

- ◆ Because of the delay on "resolving" the matter of the services to be offered by TRANKOS , we had to invest with our capacity in resolving these matters ,
- ◆ We are building new garage/ depo facilities
- ◆ We rented from INFRAKOS private siding to park locomotives

7

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Thank you for your attention



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9