



Obstacles during operations  
for new entrant railway undertaking

RAILTRANS LLC - CASE

Technical Committee on Railways under the Transport  
Community  
Belgrade 04-05 /03 /2020

## Obstacles from TRAINKOS - state RU

### Refusing to offer the services

#### ► Legal framework requirements

- ❖ Law on Railway Article 25, paragraph 3.2, Article 51, paragraph 1.2 and Article 52 ,paragraph 4.2.8.
- ❖ Trainkos web page Category : Offered Services  
<http://www.trainkos.com/sherbimet/sherbimet-shtes/?lang=en>
- ❖ Trainkos Business Plan 2020 Charter IV: Offered Services .
- ❖ 2. The mission of TRAINKOS : commercial practices shall be compliant with the Laws of Kosovo.
- ❖ Abuse of a Dominant Position
- ❖ 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

- ❖ Since 2017 we have been writing lot of official letters/emails to TRAINKOS asking from them to offer us services of maintenance for locomotives.
- ❖ No replies, no communication up to 2018.
- ❖ The first & last official letter we received in 2018 from Trainkos was that \*they don't consider as obligation by law to offer to us this service\*.
- ❖ On 2019 we had a case when Greek wagon during transportation damaged the wheel and it needed wheel carving but again NO SERVICE provided ,so we had to send to Macedonian Railways in Macedonia to perform the service.

## Obstacles from TRAINKOS - state RU

### Abuse of dominant position on the market

#### ► Legal framework requirements

- ❖ Law no.03/I –229 on Protection of Competition
- ❖ **Article 10 Ascertaining Dominant Position.**
- ❖ 1. An enterprise has a dominant position if, as a supplier or purchaser of several certain types of goods or services:
- ❖ 1.2.3. his approach towards supplies or markets;.
- ❖ **Article 11 Abuse of a Dominant Position**
- ❖ 1.3. implementation of different conditions for similar duties with other enterprises thereby placing them in a disadvantageous competitive position;
- ❖ 1.4. agreeing on contracts under condition that other contracting parties accept additional obligations;

#### ► Real situation faced

- ❖ Since we started our operations we are facing with this situation of discriminatory treatment in the **payment terms** vis a vis our competitor which is state owned company.
- ❖ This affects both the supplying power and selling power to handle the credit period.
- ❖ Since Trainkos (RU) is state owned company and also Infracos (IM) as Infrastructure Manager is same , the credit line or period of not paying their debts is far different or higher then ours.
- ❖ This affects directly the market since then Trainkos is passing the same attitude with crediting the customers with long period and higher value which is far then acceptable market terms.

## Obstacles from TRAINKOS - state RU

### Abuse of dominant position on the market

#### ► Legal framework requirements

- ❖ Law no.03/I –229 on Protection of Competition
- ❖ **Article 10 Ascertainig Dominant Position.**
- ❖ 1. An enterprise has a dominant position if, as a supplier or purchaser of several certain types of goods or services:
- ❖ 1.2.3. his approach towards supplies or markets;
- ❖ **Article 11 Abuse of a Dominant Position**
- ❖ 1.3. implementation of different conditions for similar duties with other enterprises thereby placing them in a disadvantageous competitive position;
- ❖ 1.4. agreeing on contracts under condition that other contracting parties accept additional obligations;

#### ► Real situation faced

- ❖ We as private RU have limited credit from Infracos and in case of delay of payment , we are immediately warned that we are not going to get services and getting sued for the debt.
- ❖ Just to put in numbers as per Trainkos 2019 Annual Report they credited the market in value of **1.4 mil** while they were credited by suppliers in value of **1.1mil** (around 90% is IM)
- ❖ What is surprising ,is when you check their total income for 2019 from their services was **1.2 mil** and **1.75 mil** they got subsidized from government.
- ❖ So here we are on the market competing with a state owned company that is receiving subsidy from the state and also is getting crediting it's debt's from the other state owned company that is Infrastructure Manager and they pass this “power of selling” to the market.

## ISSUES COMING FROM INFRAKOS- state IM

### Charging additional services as mandatory

#### ► Legal framework requirements

- The minimum package of services offered includes all minimum package elements according to article 52 of the Law on Railways:
  - □ Elaboration of request for capacities;
  - □ Right for use of allocated capacities;
  - □ Use of infrastructure in the accepting-dispatching tracks;
  - □ **Management, regulation and inspection of train movement including signaling, regulation of trains, operational system, communication and provide of information for train movement;** etc
- ❖ 6.4.2 Track access services according to Chapter 5.3 Charges for track access services are free of charge
- ❖ 5.3.6 INFRAKOS offers access and placement of wagons in industrial track to all railway undertakings and clients in non-discriminatory manner upon request.

#### ► Real situation faced

- ❖ We have this ongoing dispute between us since we started our operations, because INFRAKOS is charging us for this service of placement of wagons in industrial track without having a request from us for doing so.
- ❖ Moreover they consider this service as mandatory to be bought by us if we want to have access to the Industrial Track of the private company that owns that track.
- ❖ So basically they consider that switching the rail direction from the station toward the industrial track is mandatory to be paid otherwise they will not make the switch and we shall not manage to enter to the industrial track.
- ❖ We refused to pay the same and the matter is sent to RRA –Market Regulatory Body to resolve the same.
- ❖ At same time with Infrakos this year we agreed to use the example of neighboring countries how they treat this matter.
- ❖ Still not resolved

## Issues sent to RRA - Railway Regulatory Body

- ▶ **Claim for not getting services from Trainkos ,state RU**
- ▶ Even thou RRA has issued official RECOMEENDATION to Trainkos that they shall offer the services to us, still no services offered and no penalties or sanctions imposed by RRA.
  
- ▶ **Claim for charging the services that we haven't asked from Infrakos ,state IM**
- ▶ RRA has held several consultative meetings with us and Infrakos but still no decision from them at this matter.

## Overall outcome

### ► Now on March 2020

- ❖ With above mentioned obstacles from Trainkos as state RU .
- ❖ With ongoing issues with Infrakos as state IM.
- ❖ Waiting for actions from RRA to settle these matters as per law.
- ❖ WE are operating with only 30% of our capacity in the market and we gained the share of nearly 20% of the market.
- ❖ This because market is very small and difficult to recover with all ongoing issues within players.

## Recommendations

### ► Change Management

- ❖ Clarification of common goal to all stakeholders (Ministries/Agencies/RU/IM, Consultants etc) to the level of having common understanding for the Change.
- ❖ Setting up a dynamic Change Management Plan incorporated all stakeholders.
- ❖ Milestones with small winning to be acknowledged and rewarded .
- ❖ Continual follow-up



Thank you for your attention



Besim Asllani - CFO/Rail Executive Director  
[www.railtrans.biz](http://www.railtrans.biz) / Facebook : RailtransKosove