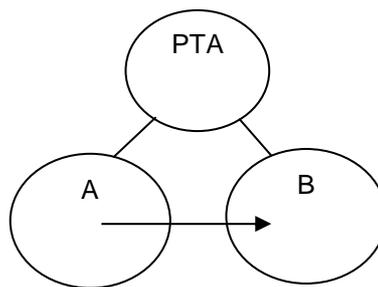


## Summary

# Competitive Tendering and Employment Relations in Local Public Transport

The report is about local public transport in Norway, how competitive tendering may affect employment relations and how to regulate them. We suggest giving the workers the same rights as in the events of transfer of undertakings. However, as franchising includes the following three entities and there is no direct transfer between the two companies, unwanted risks – thereby rising costs – may occur.

*Figure S.1.: Triangle of entities involved in a procurement process*



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The figure illustrates the public transport authority (PTA) which orders the service, company A which delivers the service, but loses the competition, and the new operator company B. The arrow shows that B may employ A's employees. National regulations do, however, not guarantee workers in A employment in B.

We suggest four ways of regulating employment relations when local public transport services are tendered out. (1) The first is to leave the regulation as it is today. (2) A second opportunity is to add the following regulations to national law: give old employees the right of first priority when the new company has a manpower shortage; decide on a minimum contract period; give the former company's employees a period of trial in the new company. (3) Going further the government may secure employment protection for bus drivers by transferring them to the new company. However, if the new company has excessive labour force the transferring company may dismiss the bus drivers. (4) Going even further the government may decide that employees' rights in the events of transfer of undertakings shall be adopted in franchising processes. Such a regulation will include bus drivers as well as other workers related to the procurement. The

winning company will have to carry out dismissals in case of excessive labour force.

Model two through four are meant to strengthen workers' employment protection when the operation of local public transport is transferred from one company to another. They may, however, imply undesirable risks, thereby rising costs and distorting competition. We expect the extent of such effects to increase with their order as represented with the numbers in brackets.

Three questions are central in this report. First, how does franchising affect employment relations in local public transport? Franchising is seen as a tool to lower production costs and used as an argument by the government for lowering the subsidies to local public transport. The counties are responsible for local public transport, and today eleven out of 19 apply competitive tendering in this sector. However, trade unions are of the opinion that the employees are paying for the increased cost efficiency gained through competitive tendering. Worsened working conditions are the result of competitive tendering, they argue.

Therefore, the aim of this project is to map the expected results of franchising on employment relations. Employment relations refer to employment protection, wages and pensions, working time, qualification requirements, and workers' participation. We argue that for employees who traditionally enjoyed, and in many places still enjoy, stable employment relations, competitive tendering does have its consequences. Employees may face economic uncertainty because of the limited contract period. We conclude that franchising affects employment protection most strongly. This is so, even if the employees have already been through a process of competitive tendering. If they have not, we argue that the consequences are larger and several other aspects of employment relations become important.

However, the regulations between trade unions and organisations are nationwide and the private agreements do not differ much from each other. We argue that "social dumping" is part of the history of how franchising has affected wages and pensions, but of little importance today.

Second, this problem may be solved by giving the workers the same rights when competitive tendering is carried out as they have in the event of transfer of undertakings. We discuss how may such a national regulation enhance employment relations in a situation of competitive tendering.

Third, competition is what makes franchising a valuable tool. An implication of adopting employees' rights in the events of transfer of undertakings will limit the parameters for companies to compete on. Moreover, companies will face increased risks of costs as they do not have access to the incumbent's information. The public transport authorities, which most commonly have established public corporations for planning, designing and buying public transport, may also experience increased administrative costs and risks. We therefore ask the question: How will the regulation affect other areas such as competition, production costs and administrative costs?

We argue that there are reasons to believe that the costs may increase if workers in a process of franchising are given employee's rights in the events of transfer of undertakings. We are of this opinion although feedback from the HUR- and

Storstockholm-area shows no sign of serious disadvantages. The public transport authorities in the HUR-area, which is Copenhagen and the area around the Danish capital, and of Storstockholm, which is the area of the Swedish capital have adopted employees' rights in the event of transfer of undertakings. In contrast to the regulation suggested in our project, however, these are "private" contracts and not national regulations. From a legal perspective this difference is crucial. In addition, there are some differences in the legal framework of these countries compared to the Norwegian regime. The legal differences may have consequences for the result of adopting a new regulation.