

Fragmentation of Norwegian railways and impacts of direct contracts on personal rail transport

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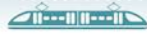
Through the EEA Agreement, Norway must implement various legislation to contribute to the free movement of goods, services, people and capital. This has contributed to the liberalisation of various sectors, such as aviation and railways. Here, competition is the main rule and direct awarding of services is the exception. This report discusses whether Norway can use one of the exemption rules and directly assign responsibility for future traffic agreements for passenger transport by rail. We find that the legal status is not established yet. It may be that the railways in Norway fulfill one criterion in the exception rule, i.e. special features. The conditions for a well-functioning tender competition in the passenger market in the railway sector are only partially met. For example, the passenger transport should be carried out in a robust system with few interruptions, which is not the case today. Therefore, it should be investigated in more detail whether direct awarding of contracts can provide increased quality of services, cost-effectiveness or both. There is a strong need for more research on the railway sector.

In this report, we discuss whether the exemption provision in EU legislation can make it possible for Norway to directly award services for passenger transport by rail when the current tender contracts (traffic packages South, North and West) expire. The exemption provision discussed here requires that there are special features, such as structural and geographical characteristics of the market and network in a country's railway sector, and that a direct award will result in better service quality, higher cost-efficiency or both.

The discussions are based on relevant documents, statistics, directives and guidelines from the EU, as well as interviews with 30 key informants.

We set out five conditions that should be satisfied in order for tendering for traffic agreements to have the desired effects and discuss these in relation to the situation in Norway as of 2024:

1. Passenger transport by rail should take place in a robust system with few operational interruptions. This condition is not met. On the contrary, the number of service interruptions has increased in recent years. Norway, for example, has a low proportion of double tracks, both in absolute and relative terms. Furthermore, the Norwegian railway network has very few options for driving alternative routes when there are for example closed lines in one part of it. In addition, the capacity of the infrastructure is



- undersized in relation to demand, especially in the densely populated areas of Eastern Norway.
2. There should be a sufficient number of bidders participating in the tender competitions. We find that this condition has been met.
 3. There should be shortcomings in the pre-regime that competition can remedy. This condition is met to a significant extent. The tender competition seems to have made the companies more efficient and customer-oriented. At the same time, they are also less robust now than before because they need smaller margins in all parts of the organization to be able to win the tenders. This directly affects, for example, the train companies' access to and disposition of material and personnel.
 4. The train companies should have considerable control over input factors and other important conditions for their production. This condition is not met to a great extent.
 5. The reorganisation should not entail new and significant management challenges. This condition is also not met to a great extent.

An overall assessment is that the conditions are only met to a small to moderate extent in Norwegian railways as of 2024, and that the conditions are therefore not particularly suitable for tendering for passenger transport by rail in Norway.

If the Norwegian authorities wish to award direct awards, they must justify and document that the railways in Norway have special features that justify this. *Structural characteristics of the network* are probably what distinguishes the railways in Norway the most from the railways in other European countries. There is a very low proportion of double tracks; there are few, and often no options for detours; And the railway is relatively geographically isolated. Decade-long underinvestment in infrastructure makes the situation worse. This also has a major impact on railway operations. Hence the Norwegian railways are a fragile system with significant capacity and stability challenges.

The exemption provision also stipulates as a criterion that direct award will result in better service quality and/or cost-effectiveness. It is difficult to isolate the effect of purchasing schemes on indicators of service quality and cost-effectiveness. The choice of purchasing scheme – tendering or direct award – is likely to have several effects. Quantifying each of these is very demanding, and arriving at an expected net future effect on service quality and cost-effectiveness is even more challenging.

Common indicators of service quality are punctuality, frequency, quality of rolling stock, customer satisfaction, cleanliness and passenger freight. All of these can be quantified and measured in different ways, which is done today and followed up in the contracts between the Norwegian Railway Directorate and the train companies. We therefore believe that these conditions should be thoroughly investigated. In particular, it may be relevant to investigate the possible economies of scale and economies of scale of reducing the number of traffic agreements from the current situation. Possible economies of scale include better allocation of personnel and rolling stock, better non-conformance management and better coordination than is the case today. Another important topic to investigate further is what can be done about the management challenges in the railway sector, and in what way liberalisation has affected the employees' pay and working conditions.

Since case law has not yet been established in this area (2024), and all cases will be assessed individually anyway, it is difficult to know whether direct award of future traffic agreements in Norway will be considered acceptable or not, if someone were to appeal such an award to the EFTA Court. Regardless of which solution is chosen, it should be investigated, justified and well documented.