

# 11<sup>TH</sup> CONFERENCE ON COMPETITION AND OWNERSHIP IN LAND PASSENGER TRANSPORT

Delft University of Technology (The Netherlands)  
20-25 September 2009

## **REVIEW OF PUBLIC TRANSPORT IN SWEDEN: IMPLEMENTATION ON THE PASSENGER RAIL MARKET AND PLANS FOR THE LOCAL PUBLIC TRANSPORT MARKET**

*Pär-Erik Westin*

*Div. for Transport Policy, Ministry of Enterprise, Energy and Communications Sweden  
par-erik.westin@enterprise.ministry.se*

### **ABSTRACT**

*Up until now competition in the Swedish passenger rail industry has been for rather than on the market. The Parliament has now decided to fully open the market for passenger rail services. This liberalisation means that rail operating companies will be allowed to provide passenger rail services on the entire domestic network. Competition will be gradually introduced. 2012 will be the first year when a complete capacity allocation procedure has taken place based on the new open market conditions.*

*Conditions surrounding local and regional public transportation have been investigated with a view to modernize the national legislation and strengthen passengers' rights. This process is pending and proposals concerning passengers' rights are yet to be submitted. It is envisaged that a bill be presented in the spring 2010 that will set out, inter alia, principles for entering the local and regional markets for public transportation and that the roles and objectives of the local authorities are redefined. One must look back some 30 years to find a revision of the same magnitude. Changes in the way that the market works and in society as a whole are the triggers behind this development.*

### **1. THE PASSENGER RAILWAY MARKET**

#### **Opening of the national market for passenger rail services**

Since April 2007 rail operating companies (ROCs) are free to operate and provide night-train and charter services on commercial basis. Recently this "small scale" opening has been expanded to include any commercial services during week-ends.

These small steps have been taken prior to the final steps in the market opening procedure on which Parliament has decided in June 2009. The decision means that the market for domestic passenger rail services be fully opened whereby any ROC based in the EEC or Switzerland can provide passenger rail services on the domestic rail network.

The market for international passenger cabotage will be opened from October 2009 thereby implementing Directive 2007/58/EC. At this stage ROCs will only be able to apply for spare capacity because the procedure for allocating capacity for 2009 and 2010 will have been finalized. In 2010 applying ROCs can participate from the start in the capacity allocation procedure that will terminate in December 2010 and set the scene for 2011. Then finally, from October 2010, the market will be opened for all rail services. Having regard to the capacity allocation procedure, this final step will allow ROCs to participate from start in the procedure that will terminate in December 2011.

Swedish incumbent passenger rail operator SJ has held a monopoly on domestic commercial passenger rail services; a monopoly that is now terminated. As part of its former special rights SJ has been able to define the market, i.e. to retain routes that are commercially viable and to abandon routes that are not, according to its own discretion. Routes abandoned by SJ have been labelled “non-profitable”. This has effectively meant that it is up to the public authorities on national or regional level to organize rail services on such routes, and to compensate a rail operator for the provision of adequate services based on public service obligations. Competitive tendering has been the tool for selecting that rail operator and SJ has been allowed to participate in those tenders.

### **Why open the rail market?**

This step is a milestone in a long lasting process to transform the rail market into a modern service industry. Special and exclusive rights are not seen to fit in this picture.

### **The expectations**

In the short to medium term we do not envisage head-on competition for track capacity between several ROCs providing similar services. There are physical constraints and barriers preventing this from happening, e.g. availability of rolling stock.

In urban areas and on frequent travelling routes expectations are that we will see a diversified supply of services, including a variety of tariff schemes, and generally higher prices applied by the Rail Administration for the use of attractive track capacity. Competitive tendering will remain the model for granting public service contracts where adequate services will not be provided on commercial basis.

In the longer perspective head-on competition between ROCs offering similar services may require new means of allocating track capacity, possibly auctioning, where a satisfying distinction between competing services cannot otherwise be

made. The principles surrounding track capacity allocation may raise additional disputes. There are some worries that the passenger rail system will not remain coherent and that new entrants may choose to operate outside such coordinated systems that have been developed to facilitate multiple carriers and modes of travel, e.g. timetables and journey planners.

## **2. LOCAL AND REGIONAL PUBLIC TRANSPORT**

### **Current organisation of local/regional public transport**

Sweden is divided into 21 counties, each with a public transport authority (PTA) responsible for local and regional public transport. These PTAs appear as both local authorities and public service operators. In the former capacity they decide on strategic long-term plans for public transport in their counties, including transport policy and socio-economic aims to be achieved. In the latter capacity they decide on fares, routes, networks, time-tables and vehicles and often sales and information as well.

PTAs do not hold a de jure monopoly but current legislation allows PTAs to prohibit competing services. Therefore one might say that PTAs hold a de facto monopoly position in their respective county.

Although services are provided by PTAs under their brand names, the actual operation is carried out by independent service operators following competitive tendering. Competitive tendering is generally carried out by means of a multi-criteria award procedure where requested cost compensation as well as quality criteria are assessed by the PTAs.

The terms are stipulated in public service contracts between the PTAs and the public service operators. Because of the control exercised by the PTAs and the limited level of freedom for the operators, a passenger effectively travels with the PTA rather than with the public service operator.

Often the contracts are gross-cost contracts meaning that the revenue risk is not transferred to the public service operator but retained by the PTA. Though, in several counties, PTAs have begun to introduce various incentives into the contracts.

### **The remit**

The Government has commissioned an investigator to review the current legislation governing local and regional public transportation and to submit a proposal for a revised and modern legislation including passengers' rights.

A summary of the proposals is attached to this paper.

### **What are the drivers behind the need to review the current system?**

Several factors contribute to the need to review the legislation on public transport.

There has not been a major reform in the field of public transport since the 1970's and society has changed a great deal since then. People travel longer distances. Journeys that were once perceived as rare long-distance journeys are now carried out on a more frequent or even daily basis, and the current legislation has not been adapted to this development.

In terms of total passenger transport performance (measured in passenger-km produced) the share of public transportation has grown from around 15 % to little more than 20 % in this period. This rather modest increase can be fully attributed to efforts and investments made in the rail sector whereas bus services have retained virtually the same market share over the past three decades. It is perceived that efforts should be made to make public transport more attractive, user-friendly and service oriented. The acknowledgement of climate change is increasingly used as an argument to try and make public transportation a more attractive option.

There is a wide-spread belief that competition can vitalize the industry. Though, the freedom to provide bus services is hampered by the fact that PTAs can prevent bus operating companies to provide cabotage in their territories on commercial basis. The rationale for this is to protect local operations subject to public service obligations.

The old administrative county-borders have been circumvented by the development of larger regions and labour markets. This has led to conflicts and legal uncertainties as to where market initiatives shall apply and where public initiatives shall apply.

The model with PTAs providing services by means of competitive tendering has brought about cost efficient and integrated services, but many believe that the main benefits with this model have now been harvested and that public transport needs a vitalising injection to be able to grow.

### **The main proposals**

Preparatory legislation is pending. Please note that the proposals summarized here are the proposals from an independent investigator and they do not necessarily reflect the views of the Government!

A central element of the proposal is that free market initiatives be introduced on the local/regional markets and that contracting on the part of PTAs can take place only as a supplement to commercial services and only when a formal procedure has shown that adequate services cannot be provided on commercial basis.

The formal procedure proposed is similar to that applied on the aviation market where a Member State can embark on a tender procedure only if no air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in accordance with public service obligations imposed on that route.

The model proposed means that a “first-mover” initiative is transferred from PTAs to public service operators.

Furthermore PTAs shall appear solely as authorities meaning that in-house provision shall not be allowed. County-boundaries shall not limit the right for PTAs to intervene as long as the intervention benefits the home county.

A step-wise and formal procedure to invite the market shall be applied. First, PTAs shall publish a strategy for public transport in their territory (a “transport services statement” according to the summary enclosed). The strategy shall have the form of a semi-fixed long term plan and it shall express what the PTA regards as an adequate supply of public transportation.

Second, public service operators are to notify the relevant PTA of any services they intend to operate on commercial basis.

Third, the PTAs initiate tender procedures for services that have not been notified for commercial operations. Contracts awarded by PTAs shall normally be service concessions because the nature of such contracts is perceived to provide the necessary incentives for bringing the end-user interest at the forefront.

General rules shall be imposed as a consequence of the open market. This means that a new instrument of regulating public transport will be added to the long tradition in Sweden of having everything regulated in contracts between two parties.

A national authority shall monitor and evaluate the effects of the proposed model.

### **Reactions so far**

The proposals have been subject to consultation in the industry and the comments are being compiled at this stage.

There have been many concerns expressed over possible instability and lack of continuity as a result of a market model as proposed by the investigator.

PTAs have expressed that they are not keen on having to await the entrance of public service operators before they initiate tender procedures. They have further expressed that they perceive the process “for searching the market” as bureaucratic.

The removal of remaining entry barriers however, does not seem to raise the same concerns.



## **SUMMARY**

### **Remit**

My remit has been to review local and regional public transport from a clear passenger perspective and submit proposals for new regulations. The remit also included consideration of how legislation can be drawn up to facilitate flexible coordination between general and specialised public transport.

Moreover, my remit also included analysing what the public commitment in the area of public transport should include and how far it should extend.

Another task has been to analyse how more open market access can be designed to better utilise the driving forces within commercial transport services.

### **Starting points**

The basic starting point for my work was that the new public transport act should be formulated to put the passenger to a greater extent at the centre. New public transport products and services are needed to attract more passengers. There must be more scope for individual choice, allowing passengers to influence the public transport system more through their own active choices. Passengers must to a greater extent be able to choose their journey on the basis of quality, service and price levels. Consequently, public transport companies must be given more opportunities to develop public transport services in line with passenger needs. At the same time a long-term approach, stability and ease of use for passengers must be assured.

### **The proposal**

My proposal for more open market access is based on my assessment that public transport companies are better able than public sector actors to rapidly notice and adapt to passenger needs. The authorities responsible for public transport are given a more general and strategic responsibility in relation to the current responsibility of regional transport authorities.

To enable passengers to influence the system to a greater extent than at present through active choices, the local and regional public transport market will be opened to competition. The basic principle will be that the market is open to public transport companies and that public intervention in the market will only take place when more frequent services or better quality services are required than the market can offer.

A local public transport authority in each county will be authorised to intervene in the market to guarantee a given level of transport services. Such intervention in the market may only take place after applying a procedure that first examines the ability of the market to offer the service on a commercial basis. Market intervention will follow the principles of proportionality, transparency and non-discrimination. The procedure will be open and fair and be exposed to competition.

To facilitate flexible coordination of all forms of public transport, regulations governing special transport services, national special transport services, school transport services and patient transport services will be included in the same act of legislation. The responsibility for coordination will rest with the local public transport authority.

### **Local public transport authority**

There is to be a local public transport authority in each county that is ultimately responsible for ensuring a satisfactory standard of public transport for the inhabitants of the municipalities in that county, even if the market cannot offer such a service. The county council and municipalities in the county are jointly responsible for public transport if they agree to allow a coordinating body, under the Act on County Coordinating Bodies (2002:34), to be the public transport authority.

If the county council and municipalities in the county cannot agree to allow a coordinating body to be the public transport authority, the county council in each county and the municipality in Gotland County will have that responsibility. In that case a tax shift will take place between the municipalities and county council. The local government financial equalisation system must also be adjusted. The Act on certain Municipal Powers (2009:47) will also stipulate that municipalities may contribute financially to public transport.

On the basis of the transport policy goals the local public transport authorities must define and clarify the public commitment for public transport in the county. The authority must thereafter ensure that the goals for public transport provision set by the authority are achieved. This implies a responsibility for ensuring that sufficient services are provided and that there is an efficient public transport infrastructure. The authority must be responsible for the process of searching the market to find out what services the public transport companies can operate commercially. The authority will also enter into transport service agreements with public transport companies where services cannot be maintained on a commercial basis.

The authority can provide financial support for services on condition that no public transport company is prepared to operate services on a commercial basis and that public benefit is clearly demonstrated in relation to the loss that could affect commercial companies. Moreover municipalities and county councils can facilitate public transport travel for financially weak groups in society by means of direct subsidies to individuals. Public transport to and from airports will not be a compulsory commitment.

Unlike today, the public sector is given a more strategic role and less of a directly operative role in public transport. Instead, the transport companies are given greater



responsibility for the operative work and direct responsibility for the passenger. An important task for public authorities is to guarantee a seamless public transport system, characterised by stability and a long-term perspective, which is necessary to enable passengers to make long-term decisions regarding where to live, education and investments. Finally, the authority must express the physical planning requirements of the public transport system. As a consequence of this a number of amendments to the Planning and Building Act (1987:10) are proposed.

### **County boundaries**

The local public transport authorities responsibility covers the municipal inhabitants in the county, but the commitment may also extend far beyond county boundaries as long as this is for the benefit of the inhabitants of the municipalities in the county.

Better access to the local and regional public transport market and a clear commitment even beyond county boundaries, plus clearer regional responsibility for public transport will, I believe, lead to more of the routes or services that are subsidised by the National Public Transport Agency, either alone or together with the regional transport authorities, falling under the responsibility of the region. I therefore believe that the funds currently provided to public transport by the Government, via the National Public Transport Agency, should be distributed via the local government financial equalisation system, or alternatively in the form of government grants for specific purposes. Public transport authorities may assess the need for these transport services.

### **Process for searching the market**

The public transport authority must submit an annual transport services statement outlining public transport service needs. These should be expressed in the form of accessibility to various target points. After publication of the transport services statement, public transport companies can submit an application for the services they intend to operate on a commercial basis. In this application the companies must specify which services they intend to operate, including the timetable. The application is binding on the company. The authority then decides whether the services applied for are sufficient in relation to the public targets and needs expressed in the transport services statement. In cases where services applied for are considered to be insufficient the authority can initiate a tender procedure for supplementary services.

### **Tender procedure for supplementary services**

The public transport authority may decide to introduce a public service obligation for services where commercial providers cannot maintain public transport needs. In an annual public transport plan the authority must express clear requirements regarding

frequency and any price ceilings or quality systems that are to apply to routes subject to a public service obligation. In this way passengers' transport needs can be guaranteed even on routes with a weak passenger base.

When introducing a public service obligation a proportionality assessment must be made between the public benefit that can be achieved with the service in relation to the loss that commercial services may suffer. The public transport companies must be able to appeal decisions to allow a public service obligation to apply to a service.

A tender procedure is initiated on the basis of the public service obligation decision. After completing the tender procedure the authority, in most cases, must enter into a service concession agreement on public transport with public service operators in accordance with the provisions of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No:s 1191/69 and 1107/70. The service concession agreement implies that the public service operator takes direct responsibility for passengers in the same way as in purely commercial services.

In concession agreements the public transport authority may determine financial remuneration. Moreover the authority is also able to grant exclusive rights, which should be done restrictively. Exclusive rights may not be granted for railways.

The public transport plan must show the purely commercial services as well as routes with current public service obligation agreements. In that way passengers can obtain a coherent picture of the transport services in their region.

### **Requirements of public transport companies**

More open access to the market means that the individual passenger will have more interactions with various public transport companies. The network gains that exist when only one public transport company handles a network must not be lost for passengers when the market is opened to more public transport companies. Consequently, more open market access requires coordination of public transport companies so that the public transport system functions as an integrated system. The following requirements must be imposed on public transport companies to guarantee passengers' needs for simplicity, security and efficiency:

- Basic requirements for the types of transport. Operating authorisation for passenger services by road must be supplemented by a safety management system requirement.
- Stops to allow passengers to get on or off at interchanges with full accessibility for the disabled to assure a complete journey.
- Join an open and coordinated information, payment and booking system to make it easy to find travel options and to travel in the system.
- Participate in cooperation to manage traffic disruptions.

- Only stop at places that are specially set up for picking up and dropping off passengers.
- At least one month before the end of each quarter any withdrawal of services in a timetable must be reported to the public transport authority to create predictability for passengers.
- New commercial routes must be reported to the public transport authority at least one month before service starts.
- When a commercial service is discontinued the company must report this to the public transport authority at least three months before the service is discontinued. This is to guarantee a certain measure of stability for the passengers and give the authority the opportunity to act.
- Environmental requirements and vehicle adaptation requirements for accessibility.

### **Necessary infrastructure**

In its public transport statement the public transport authority must define which interchanges must be fully accessible and at which interchanges the public transport companies must coordinate connections so that passengers do not have to wait too long when changing. The public transport authority is obliged to guarantee that there is infrastructure for public transport. The infrastructure can, however, be operated by other companies or authorities, such as the municipality, the Swedish Road Administration or the Swedish National Rail Administration, and be financed through fees imposed on the public transport companies. Regardless of whether infrastructure is publicly or privately owned it must be organised on non-discriminatory and competitively neutral terms. Where there is limited capacity there may be reason for the public authorities, by means of a clear and transparent process, to distribute capacity on the basis of the principle of greatest public benefit. Passengers are thereby guaranteed equal treatment regardless of whether the public transport company operates commercial services or if it concerns services arranged by the public authorities on the basis of a tender procedure.

### **Tasks for a national authority**

A national authority will be tasked with monitoring and evaluating the effects of more open market access; in particular the effects for passengers. The national authority must also provide support and advice to local public transport authorities in their work on public transport statements and public transport plans. Moreover the authority must prescribe standards for operatively compatible information, booking and payment systems. The authority must also be responsible for following up transport policy goals and development of a coordinated information system. Finally, the authority must publish each county public transport statement and public transport plan as well as each county's comprehensive report on the public service obligation.

### **Timetable for implementation of more open market access**

The act will enter into force on 1 January 2012. A transition to more open market access must be made successively. As current contracts expire the model for more open market access will be applied. At the same time it will be possible during the transition period for public transport companies to start new services in competition with existing procured services. The information and statistics collected by the regional transport authorities concerning such things as the number of passengers and level of subsidy of different routes and services will be handed over to the public transport authority at the latest by 1 January 2012. Public transport companies must have access to the information to be able to better assess the possibilities of running commercial services.

### **Coordination of general and specialised public transport**

In my opinion, current legislation does not prevent advanced coordination of general and specialised public transport, nor does it facilitate it. The present voluntary coordination has not been fully effective. To facilitate more advanced coordination I therefore believe that it must be stipulated in law that provision of general and specialised public transport must be dealt with by a single authority. This implies the following:

- The responsibility for special transport services and national special transport services will be transferred from the municipality to the local public transport authority.
- Public transport authorities must be responsible for providing school transport. The municipalities must continue to ensure provision of school transport for compulsory school pupils. Further, the municipalities must notify the public transport authority concerning the need for school transport free of charge.
- The public transport authority will be responsible for arranging patient transport services that require adapted vehicles.