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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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## **Working Party No. 2 on Competition and Regulation**

### **INNOVATIONS AND COMPETITION IN LAND TRANSPORT**

**-- Note by Denmark --**

**28 November 2016**

*This document reproduces a written contribution from Denmark submitted for Item III of the 62nd meeting of the Working Part No. 2 on Competition and Regulation on 28 November 2016.*

*More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/competitionand-innovation-in-land-transport.htm>*

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-- DENMARK --

**1. Future developments in Danish rail and road transport**

1. This paper describes considerations from a competition viewpoint on the future organisation and regulation of commercial passenger rail and road transport in Denmark.

2. The first part of the paper focus on the rail sector and the ongoing Danish economic debate on how to increase the efficiency of commercial passenger railway services. The second part of the paper focus on challenges for Danish regulators on how to adapt to new developments of e.g. car sharing and other new services in the regulation of commercial road transportation.

**2. Future developments in Danish rail sector**

3. The following contains a short background description of the present organization of the Danish rail sector, followed by a more comprehensive review of The Danish Consumer and Competition Authority's considerations concerning the future organization of the rail sector.

**2.1 *The present organization of the Danish rail sector***

4. In Denmark the Ministry of Transportation is responsible for overall planning, coordination and regulation of public transport in Denmark. The infrastructure management of mainline rails and signals is carried out by the state owned company Banedanmark. The state owned incumbent DSB still conducts most of the rail traffic in the core network and main regional lines in Denmark and on the S-train-network in the Copenhagen Area. DSB has been awarded these contracts without competition.

5. The only competition has so far been tenders of the regional traffic in the mid-western part of Jutland (contracts have been carried out by the company Arriva since 2003) and in the eastern coast of Zealand (contracts have been carried out by a DSB subsidiary since 2009). In addition to core network and main regional lines there are also a few local railways in Denmark, which is governed by the regional authorities, and a public owned metro in the Copenhagen area, where traffic is carried out by Ansaldo STS.

6. In general, passenger traffic on the core network and of parts of the S-train-network is assessed to be commercially sustainable, in the sense that revenues from present tariffs and at present amount of traffic can cover operators total cost in the long run. This is not the case for regional rail traffic and for some lines of the S-train-network, which at present conditions needs to be subsidized.

7. A wide range of investments in the infrastructure are implemented towards 2023. The most significant decisions are investment in new signal and control systems (ERTMS), electrification and speed upgrade of core network and main regional lines, new light trails in the Aalborg, Odense, Aarhus and Copenhagen and expansions of the Copenhagen Metro.

8. As a way to utilise these investments focus are now on three topics:

- What are the possibilities of tendering all passenger rail traffic?
- How should DSB be organised to prepare DSB for competition?
- Access to train stations

9. The goal is to increase the efficiency of the passenger railway in Denmark, while quality with regard to travel time, punctuality and passenger satisfaction is maintained. Overall, there are different ways to try to achieve this. One way could be to try to make the incumbent more efficient through regulation. Another way is to try to achieve more efficiency through competition. And a third way could be a combination of these two possibilities.

10. Efficiency should be looked at in a total cost of ownership perspective, where all types of revenues and costs are included in the analysis. Quality of the services could be defined with regard to travel time, punctuality and passenger satisfaction. Other objectives that could be considered are innovation, consumer welfare and the reduction of negative climate effects.

#### 2.1.1 *Design elements*

11. In designing the future structure and organization of the rail sector in a small country like Denmark one of the important discussions is how to obtain both benefits of competition and economics of scale and scope at the same time.

12. Based on the experience with tendering and competition in i.e. UK, Sweden and Germany the Danish debate is focused on the following design elements:

13. What is the appropriate split between central and local authorities in planning, coordination, tendering and regulating tariffs and rail services? A split could e.g. be that central authorities are responsible for core network, overall planning and coordination of tariffs and ticket systems, while regional authorities are responsible for tendering, planning and development (and perhaps co-funding) regional and local services.

14. How should infrastructure and stock be owned and used in the future organization? Should rolling stocks, train stations, workshops or depots be own and operated by train service operators, by state owned infrastructure management company, by local authorities or in a combination of these possibilities? Especially the question about rolling stock is crucial for the design of tenders. State owned rolling stock lowers entry barriers and facilitate a competition between service providers, while tenders where operators are required to provide rolling stock transfer the risk of rolling stock from the state to the operators.

15. Which type of contracts should be used – net contracts, where operators retain fare box revenue and receiving a contractually defined subsidy and where the revenue risk is borne by the operator, or gross contracts, where operators are paid a fix amount for supplying the service, while the authority retains the revenue?

16. What is the optimal number of contracts for all rail services? And what would be an optimal time table for awarding the contracts? If rail services are split into only a few contracts this could facilitate economies of scale, while at larger number of contracts maybe could lead to regional specialization. But it would also be possible to achieve economies of scale with a larger number of contracts, if the tendering process is organized in a way, where operators can bid for several contracts at the same time and offer rebates depending of the number of contracts awarded.

17. The above questions are relevant to consider in designing the future organization of the rail sector. At present the mentioned analysis is to be carried out to create a thorough foundation for the following political debates and decisions.

#### *2.1.2 The incumbent's future role*

18. There are different possibilities, when it comes to decisions about the future role for the incumbent DSB. There are several indications of a potential for efficiency improvements which may justify a different role for the incumbent in the future. Should the incumbent continue as an operator with responsibilities for planning the traffic, conducting train services and having ownership of rolling stock, train stations, workshop and depots, or would it be advantageous to split up the incumbent.

19. If the awarding of contracts through competition is continued, it must be considered to ensure efficiency through regulation. Regulation could be designed with the use of e.g. benchmarking and incentives as used in regulation of utility sectors.

20. Also a level playing field must be ensured. It's important to ensure that the incumbent is not able to finance deficits on contracts won in competition with other operators by cross subsidizing from other parts of the incumbents business. One of the possibilities could be to split up the incumbent and privatize the operating part.

#### *2.1.3 Competition for the market*

21. The only competition experiences so far have been the tenders of contracts on regional rail traffic in two areas of Denmark. The tenders included all passenger traffic on the concerned rails. These tenders were competition for the market, where the winner of the tender becomes the only operator on that specific area (or market).

22. Competition for the market could probably be the most appropriate approach in future tenders of non-commercial passenger rail traffic. In such tenders the bidding operators can compete on conducting the required rail service on required service levels at the lowest amount of subsidy. This model could be relevant to use in tenders of regional passenger traffic and perhaps also in tenders of parts of the traffic on the S-train-network, which at the present is assessed not to be commercially sustainable.

#### *2.1.4 Competition in the market*

23. Passenger traffic on the core network and on parts of the S-train-network is assessed to be commercially sustainable in the long run. When there are no need for public subsidies it will be relevant to assess whether market conditions could facilitate competition in the market. In this case it is crucial to ensure a level playing field for the competing operators. This could e.g. be done by auctions of time slots or by other means.

24. Historically there has not been a broad political consensus that massive competition and tendering is the best instrument to provide an efficient high performance passenger railway given limited geographical scope of Denmark.

25. Hopefully the present debate will create a solid basis for the coming decisions which e.g. combines the possible benefits of competition and economics of scale despite the small size of the country. Another vision is that the debate will pave the way for new thinking concerning e.g. the role and tasks of the incumbent operator and the state ownership to rolling stock.

### 3. Innovation and competition in road transport

26. The regulation of the commercial road transportation sector has been discussed in Denmark for years, but there no consensus on how to change the regulation. With the increase in digital companies that makes car sharing and other forms of transportation, like Uber, available, there has been an increase in the interest of finding a solution, where there's room for these new developments in the market. This will hopefully mean that the interested parties will be able to find a common ground and that deregulation of the area will become a reality.

#### 3.1 *The current Danish regulation of road transport*

27. In Denmark we currently have a complex regulation of commercial road transportation of passengers with vehicles with up to nine seats including the driver's. There are four different types of licences. The most regulated and hardest to obtain is the traditional taxi licence covering both hailing, the use of ranks and ordinary pre-booking. The other types of licences are covering different forms of other pre-booking services both delivered on behalf of private and public entities.

28. To obtain a taxi licence in Denmark you have to operate an owner-managed business. There are restrictions on the numbers of licenses, which make it hard to obtain a licence, and at the same time you cannot sell or transfer your licence. There are also geographic restrictions and a 24 hour service-obligation regardless of demand. Much of the taxi-regulation has its roots in century old regulation of horse-drawn carriages. The regulation eliminates price-competition, restricts entry, and severely restricts competition between holders of taxi-licenses. This makes it almost impossible for new and innovative companies to enter the market.

29. On the other hand private car sharing is not regulated and does not require a licence. In Denmark e.g. the GoMore-platform is a very popular online platform which connects private drivers going from A to B with private persons which need to be transported from A to B. Given that only the expenses of that specific ride is shared between the driver and the passenger it is not seen as commercial transportation and is thereby a legal form of car sharing according to the Danish regulations without any kind of passenger transport licence.

30. Contrary to online portals that connect private persons doing car sharing, are the online portals (e.g. Uber) that connect drivers with passengers *and* charge more than the expenses of that specific ride. Ubers activity is seen as commercial transportation of passengers according to Danish regulation. The Danish regulation does not allow any other form of commercial transportation of passengers than the four types that are specifically mentioned in the regulations and that require licenses. Hence the drivers using online platforms like Uber would be considered to perform unauthorized taxi driving regarding to the current Danish regulations. The Danish courts have recently confirmed this in four verdicts against Uber drivers.

31. Historically there have been two major political concerns that have legitimised the strict regulation of taxi-services. There has been a concern to protect consumers from "hold-up" situations, where the costumer does not know what price she will pay and what service she will get when hailing a taxi. Politically there has also been a desire to secure taxi-services for every part of Denmark at any time of the year.

32. The established taxi providers in Denmark have lobbied for existing regulations to be applied to the new providers, to lessen the new providers' competitive advantages, and claiming that this competitive advantage arises from an "unfair" exclusion from regulatory rules, to the disadvantage of society.

33. The biggest challenges in the current Danish regulations regarding traditional taxi drivers are the restriction on the numbers of licences/restriction on entry, the geographic restrictions and the obligation to be available which result in limited flexibility especially when the demand is extraordinary high e.g. at New Year's eve, or extraordinary low. In addition the difficulties with obtaining a taxi licence limit the entries of new innovative initiatives to an unnecessary extend. Further the regulation limits established taxi providers' competitiveness since they are subject to a complex, expensive, and old fashion regulation.

### 3.2 *Future possibilities of deregulation in Denmark*

34. The arrival of Uber has pushed the demand for change in the regulation of passenger transport. Both from new operators which cannot perform their innovative services legally under the current regulation even though – according to them – there is not the same need for regulation for the services they provide compared to the traditional taxis which can be hailed and use ranks, and from established taxi providers which see the new services as “unfair” competitors since the established taxi drivers are subject to a complex, expensive, and old fashion regulation. According to the new operators there is not the same need for regulation because the customer will not be in the same kind of “hold up” situation as when a taxi is hailed. The prize can and will often be agreed on in advance.

35. There is a need for a simplification and a modernization of the entire taxi regulation like the modernization that has been implemented in the regulation of bus services and freight services in Denmark in the past decades. The taxi sector needs better regulatory framework to be able to innovate the sector and solve the challenges. There are different models of deregulating the market, which leaves more or less room for new and innovative measures. In Denmark the main priorities are that the regulation is made to ensure availability in the entire country and to ensure consumer rights.

36. An expert-group set up by the government has suggested substituting the present system where you have four different types of licences with a simpler system with only one (*universal*) licence for driving with passengers that gives you access to the market of commercial transportation of passengers. A universal licence could be designed in many ways, but common is that it would be possible to abolish the restrictions on the numbers of licences, the geographic restrictions and remove the obligation to be available. The idea is that everyone can obtain a licence to do passenger transport by satisfying certain criteria regarding code of conduct, no criminal record etc. The universal personal transport license is considered to function in combination with some kind a regulation of access to the different transport markets.

37. One idea is to create at least two different markets by regulation:

- The market for hailing transport services in the street. There could be a need for regulated maximum rates to protect customers where the taxis can be hailed or use ranks or where the customer pre-books a taxi but does not make a written agreement on price before the ride.
- A lesser regulated market where persons and companies with a universal license can operate more or less without restrictions, given that the ride is pre-booked and the customer has agreed on the price in advance. In this situation the determination of the price should be liberated, and thereby make it possible to innovate new services.

38. This two-tiered market would be much more open to competition than the present markets and consumer protection could be upheld. There would be room for innovative and disruptive business models.

39. The Danish political debate is focused on a concern for the incumbents (the taxi licensees) but also a concern about the continuation of service-obligations in the lesser populated parts of Denmark. It remains to be seen if the latter concern can be addressed in a way that creates the necessary political momentum for a reform in Denmark.