



ROYAL NORWEGIAN
MINISTRY OF TRANSPORT

EFTA Surveillance Authority (ESA)
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Belgium

Your ref
90137 - 1425172

Our ref
23/17-

Date
23 February 2024

Supplementing information on the Direct Award of Rail PSO Contracts to Vygruppen AS

Dear Sir/Madam,

Reference is made to the letter from the Authority of 18 December 2023 and the digital meeting on 8 February 2024, your case No 90137.

The Norwegian Ministry of Transport will answer the Authority's questions 1 to 6 in sections 3 to 8 below. First, the Ministry would, in section 1 and 2 below, like to provide in writing some important background information, which is crucial when considering the questions raised, in addition to the information provided in the meeting and earlier submissions.

1. Introduction: Public transport policy targets

Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road (the PSO-regulation) lays down the legal framework within which member states can provide, commission and organise SGEIs in public transport.¹ Article 1 of the PSO regulation includes a non-exhaustive list of reasons for the establishment of such SGEIs including more numerous, safer, of higher quality or lower cost (for the passengers) than what the market forces alone would have allowed. According to Article 2.2.3 of the Commission Interpretative Guidelines, the national, regional and local authorities "have a wide discretion in providing, commissioning and organising SGEIs tailored as closely as possible to the needs of the users." Below, the Norwegian authorities will show that within this framework the public service obligations (PSOs) set out in the contracts Østlandet 1 and Østlandet 2 are

¹ See section 2.2.3 of the Commission notice on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road, 2023/C 222/01

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proportionate to better achieve the long held national transport policy objectives.² This includes the necessity of coordinating not only ticketing and fares, but also network structure, train schedules and stopping patterns.

The overarching national transport policy objectives are most comprehensively defined in the National Transport Plan (NTP). The overarching objective of the current NTP (for the period 2022-2033)³ is inspired by the global Sustainable Development Goals, and has been stated as: *An efficient, environmental-friendly and safe transport system in 2050*. This has been broken down into five policy objectives:

1. We will achieve better results from public spending (“value for money”)
2. We will use new technologies and research to obtain more efficient and safe transport with lower emissions
3. We will develop a transport sector that contributes to the achievement of Norway’s climate and environmental goals
4. We will invigorate efforts for transport safety and the vision of zero road fatalities and serious injuries
5. We will make travelling easier and increase the competitiveness of Norwegian business and industry

The PSOs included in Østlandet 1 and Østlandet 2 are defined to help achieve the policy objectives above, particularly number 1, 3 and 5. As part of both objective 3 and 5, above, the Government has defined a “zero growth” objective for passenger transport by car in the major urban areas.⁴ This is meant to reduce greenhouse gas emissions, air pollution and noise, as well as improving urban mobility through reducing congestion. Under this objective, all growth in passenger transport should be carried out by public transport, cycling and walking. This initiative will promote Sustainable Development Goal 11 regarding sustainable cities.

The zero growth objective is followed up through comprehensive, long-term Urban Growth Agreements (NW: Byvekstavtaler) that include road-, public transport-, bicycle-, walking- and land use-measures, as well as restrictive measures for car traffic, such as road tolls and parking restrictions. The urban growth agreements are concluded between the state government, the municipalities and the county council in major urban areas for a ten-year period. The purpose is better coordination between the state and local authorities that are responsible for various measures and instruments in urban areas, including significant government contributions and other policy instruments.

Both national, regional and local authorities must use combined measures in order to achieve this policy objective by making the public transport services more attractive to the users. Since rail passenger transport forms the backbone of the public transport system in

² Article 2a(1) of the PSO Regulation.

³ [National Transport Plan 2022–2033 - regjeringen.no](https://www.regjeringen.no)

⁴ See particular chapter 5.3 of the National Transport Plan 2022-2033

large parts of the larger urban areas, Jernbanedirektoratet, being the competent authority for rail PSO agreements on behalf of the state, is a party to the urban growth agreements.⁵

Local public transport is the responsibility of the regional level in Norway. In the greater Oslo area, Ruter AS is the PTA responsible for public transport on the regional level.⁶

The regional PTAs have the responsibility of setting fares for local public transport in their regions, while Jernbanedirektoratet is responsible for rail fares. To ensure that rail passenger services covered by PSOs are perceived by the passengers to be an integrated part of the local and regional public transport systems, Jernbanedirektoratet has entered into agreements on network planning, ticketing and fare cooperation (NW: Rute-, billett- og takstsamarbeidsavtaler) with certain regional PTAs. A key part of these agreements is that passengers can travel on rail passenger services with the same tickets as they use for local public transport. This often requires funding from both the Government and the regional PTAs. Both the Norwegian Parliament and the regional authorities in the Oslo region have decided to lower fares for season tickets several times over the last few years. This reduces travel costs for the general public, thereby increasing the attractiveness of public transport.⁷

In order to reach the transport policy targets, in particular the “zero growth” objective, the combined public transport services in a particular urban area need to be sufficiently attractive to the public, compared to the use of cars. Several different factors contribute to the attractiveness of the public transport services in question, such that the public transport network is seen as being of sufficiently high quality compared to passenger transport by car:

- Integrated and attractive fares
- High frequency services in the core sections
- High capacity (and related and relative comfort levels to travel time)
- Network frequency
- Local connections from hubs
- The geographical area covered
- Distribution of services through the day
- Total production costs

In the sections below, these combined measures and their network effects should be taken into consideration as background information for the specific answers to ESA’s questions.

2. Historical background and the development of the public transport system in the Østlandet region

The Norwegian authorities have since the 1970s had a policy aim of developing a coherent and integrated public transport network in the Oslo region to increase its attractiveness compared with car-based transport. Based on the recommendations from *The committee for*

⁵ See [instruks-jernbanedirektoratet-2021.pdf](#), in particular section 3.2.1 and 3.2.2.

⁶ See [About us | Ruter](#)

⁷ See e.g. [Byrådet i Oslo gjør månedskortet 150 kroner billigere – Stor-Oslo \(nrk.no\)](#)

local transport in the Oslo area in 1971 and the Official Norwegian Report 1974:19 *Public transport in Oslo and Akershus*, the Norwegian Government and the regional authorities started cooperating closely on how to develop the public transport network to reduce the region's dependency on car transport. This included the coordination of routes, services, and fares, as well as network development and infrastructure investments.⁸ At the time, public transport was losing market shares to car-transport.

One of the more immediate results, was the integration of an integrated fare system, where passengers could travel on multiple modes on the same ticket. This means that passengers can buy one ticket that covers their journey from the origin to the destination, without worrying about which operator operates the service or how many transfers they have to make. The competent authorities in the area (Jernbanedirektoratet and Ruter) holds that this, together with the ever more coordinated planning of the network, has been key to the success of the public transport network.

Since the 1970s, the local authorities and the central government have cooperated to coordinate the different modes into what is now coordinated as an integrated public transport network. This increases public transport attractiveness through increasing travel choices and reducing waiting times at public transport hubs. Further, it reduces total costs to society (both to different levels of government, and to road users), by using buses as feeder services to train stations, rather than running buses into central Oslo. Coordination means that not only routes and schedules for different modes should be specified by a competent authority, but that a competent authority should make sure that the passenger rail services actually serve the agreed upon public transport hubs.

In 2008 the then competent authorities for buses, trams, metro and boats; Oslo (AS Oslo Sporveier⁹) and Akershus (Stor-Oslo Lokaltrafikk AS), were merged into Ruter. In 2011, Ruter introduced a new fare and zone system, which substantially simplified the fare structure in the region. The new fare structure, along with the restructuring of both train and bus routes from 2012 (network frequency on the core corridors, and more buses feeding passengers into train services, rather than continuing into central Oslo), is regarded to have been very successful. The number of public transport journeys in the Ruter-area increased from 285 million in 2011 to 398 million journeys in 2019. The number of journeys by train in the Ruter-area increased from 26,5 million to 42,15 million in the same period. A purely commercial operator may not take this into account and choose stopping patterns based on commercial considerations rather than the benefit of the network.¹⁰

Based on the above, the Norwegian authorities consider that it is proportionate to specify PSOs as done in Østlandet 1 and Østlandet 2, to better achieve the long held aims in the

⁸ The recommendations from the Committee on local transport in the Oslo area originally envisioned an integrated competent authority for all public transport in the region (owned by the central government, Oslo and Akershus counties). However, this was replaced by agreements about cooperation instead.

⁹ Not to be confused with the current operator Sporveien, which operates tram- and metro-services in Oslo.

¹⁰ E.g. Flytoget AS has chosen not to stop in Lillestrøm for the three services per hour where this isn't required by the current PSO-contract.

transport policy. This includes the necessity of coordinating not only ticketing and fares, but also network structure, train schedules and stopping patterns to ensure, amongst other things, more numerous services, and that the integrated public transport network is of higher quality and lower cost public transport than what the market alone would have provided. In the sections below, the Norwegian authorities will elaborate further on the different aspects on this, in reply to ESA's questions.

3. Question 1: The national legal basis for the cancellation of Trafikpakke 4

The Ministry is invited to provide information on the national legal basis for the cancellation of the competitive tender as well as to elaborate on how the directly awarded bundles are more suitable for reaching the abovementioned aim in comparison to Trafikpakke 4 and Trafikpakke 5.

As known, the award of public service contracts for public passenger transport services by rail is governed solely by the PSO Regulation and excluded from the scope of the EU directives on public procurement.¹¹ The same is reflected in the national regulation on public procurement.¹² The PSO Regulation contains no provision on the cancellation of tendering procedures. Under EEA law, there is no obligation on contracting authorities to carry award procedures to their conclusion. However, decisions to cancel tenders must comply with the fundamental principles of EEA law, in particular the principle of non-discrimination on grounds of nationality.¹³

In the Norwegian authorities' view, the decision to cancel Trafikpakke 4 was in line with these principles of EEA law. The Norwegian authorities would like to point out that the press release referred to in footnote no 1 in the Authority's letter of 18 December 2023 did not mention better exploitation of congested infrastructure as a policy aim behind the cancellation of the tender for Trafikpakke 4, as the introduction to the first question seems to indicate. However, the policy targets of attaining attractive rail passenger services in order to make more people travel in an environmentally friendly way and to run the train services efficiently, were mentioned in that press-release. Additionally, it was underlined that national control over the train services was an important underlying policy aim for the Government.

In the later mandate for the direct award, the aim of exploiting the available rail infrastructure capacity in an effective way, was included.¹⁴ See also enclosed the notices to the bidders on the cancellation of the tender procedure (Annex 1-3), referring to the press release and letter from the Ministry "supplerende tildelingsbrev nr. 7/2021".¹⁵ The directly awarded bundles

¹¹ Article 10(i) of Directive 2014/24/EU, Article 21(g) of Directive 2014/25/EU and Article 10(3) of Directive 2014/23/EU.

¹² Forskrift 12. august 2016 nr. 974 om offentlige anskaffelser § 2-1 (2); forskrift 12. august 2018 nr. 975 om innkjøpsregler i forsyningssektorene § 2-1 (2); forskrift 12. august 2016 nr. 976 om konsesjonskontrakter § 2-1.

¹³ Compare, e.g., judgment in case C-92/00 *HI* paras. 42–47.

¹⁴ See section 1.2 of the annex to our letter of 28 April 2023.

¹⁵ [Supplerende tildelingsbrev nr. 7 - Stans i videre konkurranseutsetting av persontransport med tog \(regjeringen.no\)](https://www.regjeringen.no)

were considered more suitable for reaching the Government's aims than Trafikkkpakke 4 and 5. The Government considered the direct award procedure would ensure sufficient control for ensuring an *optimum use of the scarce infrastructure capacity*. This would also ensure *better rail passenger services* in the eastern part of Norway, as the backbone of the public transport system in the area.

As mentioned in earlier submissions, the Norwegian authorities consider the later direct award of the two PSO contracts in question to be in accordance with the PSO Regulation. In the letter of 6 December 2023 in case No 91300, it is referred to the complainant's claim that the direct award of the PSO contracts Østlandet 1 and 2 was in breach of the principles of legal certainty and of the protection of legitimate expectations. It is also referred to the PSO Regulation in general and certain provisions of the EEA Agreement, namely Article 3, 3 (2) and 7(a) of the Agreement. These claims are referred to in such generic terms that it is difficult for the Norwegian authorities to provide specific information on the lawfulness of the award of the two PSO contracts in question. Nevertheless, the Norwegian authorities consider the cancellation and the subsequent direct award to be in line with both the PSO Regulation and the fundamental principles of EEA law.

4. Question 2: Market testing of Trafikkkpakke 4/Østlandet 1

With regard to the Østlandet 1 PSO, the Ministry argues that the evidence of bidders requiring a substantial compensation in the cancelled tender for Trafikkkpakke 4, which covers the same PSOs as Østlandet 1, indicates that the rail passenger services included in that PSO are not attractive to commercial operators.

The Ministry of Transport is invited to provide information whether it also tested the interest of the market to perform part of the Østlandet 1 PSO services (i.e. not only the entirety of the services, but also subparts) at commercial terms. If yes, the Ministry of Transport is invited to provide such evidence, while if not, please elaborate why the market test was limited to the previous tender procedure.

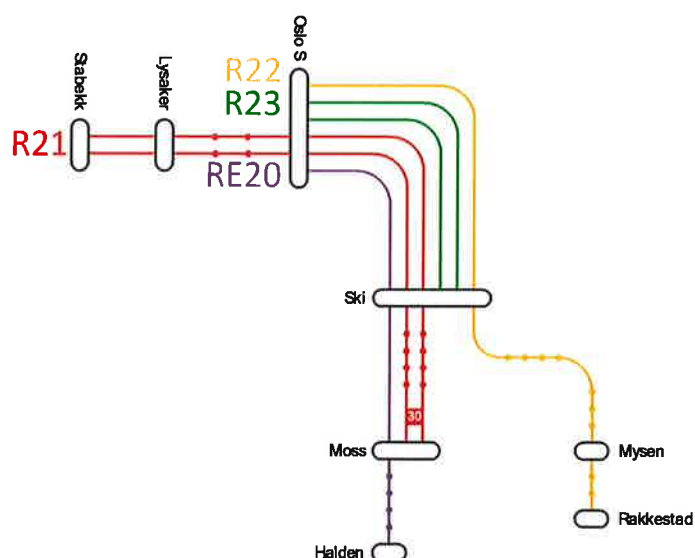
The invitation to tender for Trafikkkpakke 4 was structured in such a way that the bidders had to calculate expected income and costs per train service grouping. Jernbanedirektoratet therefore maintains that this previous tender procedure also market tested subparts of the requested service.

Based on the bids received in Trafikkkpakke 4, Jernbanedirektoratet has calculated the average required compensation per year for the different service groupings over the lifetime of the contract. Our view is that none of the service groupings would be deemed profitable enough at the required level of service for a purely commercial operator to take it on during the contract period.

Jernbanedirektoratet notes that figures in the table below benefit from significant economies of scale (geography) and density (train hours per km)¹⁶. Thus, it is not possible to assume that low or even negative figures suggest that a route or a bundle of routes is cost covering on its own, and thus interesting for a commercial operator. Further, the calculations behind these figures are sensitive to the assumptions by bidders on how income and costs are distributed between routes. Particularly where several routes serve the same markets.

Route	Average required compensation per year (million 2021-kroner)
R-tog Oslo S – Hakadal/Jaren and RE-tog Oslo S – Gjøvik	147.1
RE-tog Oslo S – Halden	35.2
R-tog Oslo S – Mysen/Rakkestad	66.0
R-tog Stabekk – Moss	127.3
R-tog Oslo S – Ski	- 1.7*
L-tog Stabekk/Oslo S – Ski	286.3
L-tog Spikkestad/Asker – Lillestrøm	315.7

*) The average compensation per year required for R-tog Oslo S – Ski is artificially lowered by one bidder having a substantially lower required compensation for this train service grouping. When excluding this bidder from the calculation, the average required yearly compensation is 15.3 million kroner. As this is a very small operation on its own (around 300 000 train km per year), Jernbanedirektoratet considers it unlikely that it could be run sufficiently profitable as a standalone service. In any case, this train service grouping is an infill operation to secure a combined service of six fast trains per direction per hour between Oslo S and Ski together with the other groupings that start with (R-tog or RE-tog):



¹⁶ Cost efficiency of rail passenger services increases considerably with density of operations (train hours per route km), while there are weaker returns to scale (geographical coverage). See Wheat, P. & Smith, A., 2015. Do the usual results of railway returns to scale and density hold in the case of heterogeneity in outputs: A hedonic cost function approach. *Journal of Transport Economics and Policy*, 49(1), pp. 35-57.

As explained in our letter of 31 August 2023, Jernbanedirektoratet does not consider it relevant to test individual services below the level of service level groupings. This is to secure an integrated offering throughout the day.

The Norwegian authorities note that there has not yet been made any notification in accordance to Article 38(4) of directive 2012/34/EU regarding rail passenger services that would cover parts or all of the socially desired service levels in Østlandet ¹⁷.

5. Question 3: Analyses of alternative use of the train paths currently used by Flytoget

With regard to the Østlandet 2 PSO, the Ministry of Transport mentioned that the analyses made on alternative use of the train paths currently used by Flytoget AS show that introducing the same fares for all rail journeys to the airport would reduce the profitability of passenger rail services to and from the airport considerably. Please indicate whether those analysis are theoretical (i.e. based on simulations of a transport model or similar) or consist in evidence from the market.

The Ministry of Transport is invited to provide information on whether Norway tested the interest of the market to perform all or part of the Østlandet 2 PSO services at commercial terms. If yes, please provide such evidence, while if not, please provide further information why interest was not assessed for that bundle.

The Norwegian authorities would like to clarify that the fares envisioned for the future services using the train paths used by Flytoget today, are the same fares as for the general regional rail passenger services today. In effect, this means that all journeys within the Ruter travel area will be using Ruter's fares, while journeys to and from Drammen or further afield will be using the standard distance-based fares as other rail services¹⁸. Further, the public service obligations ensures that the routes in question services the necessary stations to integrate with the rest of the public transport network. This is to ensure that passengers in the Ruter travel area can use both passenger rail and other public transport services on the same ticket and perceive the public network as truly integrated. This is further described in section 6, below.

Tickets in the Ruter-area is sold on a time basis, with unlimited changes within the validity period¹⁹. When the ticket validity runs out, the passenger may stay in the current public transport vehicle until they reach their destination or next transfer. There are no barriers, nor any requirement to check in or check out when entering the system. This means that the

¹⁷ The regulatory body, Statens Jernbanetilsyn (SJT), received three notifications regarding new services according to article 38 of directive 2012/34 in 2023. These notifications concern a sightseeing service between Åndalsnes and Bjorli, a weekly tourist service between Bergen and Trondheim, and an increase in border crossing services between Oslo and Charlottenberg in Sweden. More information about these services are available on SJTs website: [Innmeldte tjenester \(sjt.no\)](https://www.sjt.no/innmeldte-tjenester)

¹⁸ The fare regulation for distance-based fares is explained on pages 5 and 6 of our letter of 31 August 2023.

¹⁹ Single tickets have a validity of between 1 and 3 hours depending on the number of zones the ticket is valid for.

income from a specific ticket cannot be directly allocated to a service, and that the ticket yield per km/mode varies greatly depending on whether the passenger has used one or more services as part of the journey. Thus, there is a need for a common ticketing system and a ticket income allocation model where ticket income is allocated to the correct operator based on usage statistics.

As of 2024, the agreement on network planning, ticketing and fare cooperation with Brakar (Buskerud county), Østfold kollektivtrafikk and Ruter (the BØR-agreement) is based on a model where the train operator is compensated per passenger km that is deemed to originate from a Ruter-ticket. The authority to set the fares rests entirely with the local authorities. However, this does not directly affect the train operators' income per ticket, as the compensation to the train operators only depends on the number of passenger km.

The Ruter area covers all stations between Asker and Oslo Lufthavn on Flytoget AS' current routes. In Jernbanedirektoratet's market analysis referred to below, less than 10 percent of the respondents stated that they were travelling to or from a station not encompassed by the Ruter-area (Drammen and Annen stasjon in the table below):

Tabell 3.3 Hvilken stasjon man benyttet (utenom Oslo Lufthavn), blant ulike trafikantgrupper som reiser med tog til/fra Oslo Lufthavn.

	Totalt	Flytoget	NSB	Forretnings-reise	Arbeidsreise	Fritidsreise
Lillestrøm	4 %	2 %	7 %	3 %	3 %	5 %
Oslo S	46 %	46 %	45 %	48 %	47 %	46 %
Nationaltheateret	12 %	12 %	12 %	12 %	12 %	12 %
Skøyen	4 %	5 %	4 %	3 %	6 %	5 %
Lysaker	6 %	8 %	4 %	7 %	5 %	6 %
Stabekk	0,3 %	0 %	0 %	0 %	0 %	1 %
Sandvika	7 %	9 %	4 %	7 %	7 %	6 %
Asker	7 %	9 %	5 %	7 %	9 %	6 %
Drammen	5 %	8 %	2 %	7 %	3 %	5 %
Annen stasjon	8 %	1 %	17 %	6 %	8 %	9 %
N	1 569	939	630	725	185	590

There would be very limited room for commercial fares on the rest of Flytoget's route to Drammen. Further, the BØR-agreement envisions an extension of the integrated travel area to encompass Drammen and other stations in the Brakar-area, if and when the local politicians prioritise this.

The analyses²⁰ made on alternative use of the train paths currently used by Flytoget AS was conducted using Jernbanedirektoratet's elasticity-based transport model, Trenklin. This model has been developed to assess the effects from changes in frequency, travel time, waiting time and fares, as well as crowding. The relations in the model are based on real

²⁰ Jernbanedirektoratet has updated its website, which has broken some of the links given for these analyses in previous correspondence. For the sake of completeness we include new links here:

<https://www.jernbanedirektoratet.no/content/uploads/2023/11/integrert-tilbringertjeneste-oslo-lufthavn-fase-2.pdf>
<https://www.jernbanedirektoratet.no/content/uploads/2023/11/tilleggsutredning-tilbringertjenester-til-oslo-lufthavn.pdf>

world observations. The model and documentation are available on Jernbanedirektoratet's website²¹.

For the analyses of these train paths, the model was calibrated using statistics on passenger flows and a market analysis for the different train services serving the airport.²² The market analysis surveyed passengers both on Flytoget's train services and on Vygruppen's regional train services about their valuation of different qualities of the train services, such as frequency, travel time, fares, luggage space, onward travel guarantees and competing services. This valuation was done using a stated preference survey, where respondents are asked to choose between two options based on their preferences. This makes it possible to estimate valuation of travel time for different journey purposes and different train service groupings.

The analyses showed that using the train paths currently used by Flytoget to expand the regional rail services instead, would provide for a better overall train service and a better distribution of passengers between individual services, particularly between Drammen and Lillestrøm. The analyses further showed that this increased the number of journeys by train in total, and lowered crowding. However, ticket income would fall substantially. Even considering the income effect from an increased number of journeys, the analyses estimated reduced profitability of up to 500 million 2019-kroner in 2030. On behalf of Flytoget, Vista Analyse AS estimated the costs to government from using Ruters fares on Flytoget to be more than 500 million kroner in 2019.²³ This would likely make the required service level unviable for a commercial operator.

As for the market testing of Østlandet 2, Jernbanedirektoratet estimated the expected income and costs for the contract as a whole. These calculations were based on the market prices observed in previous tender procedures, adjusted for the expected impact on income and costs from the pandemic and the Ukraine war. Due to the uncertainty, the results were presented as a band between an average yearly compensation of 617 million kroner and 678 million kroner.

Based on these calculations, as well as the analysis presented in our response to question four below, Jernbanedirektoratet considered it unlikely that a purely commercial operator would be interested in providing the required service levels as a bundle. In the Norwegian authorities' view, this is sufficient evidence that Østlandet 2 would not have been of interest to a purely commercial operator.

In the final contract, Vygruppen's average required compensation per year came in at a marginally larger total of 697,7 million 2022-kroner. Thus, the compensation per train service grouping in the contract with Vygruppen, as shown in the table below, is similar to the results

²¹ [Trenklin - Jernbanedirektoratet](#)

²² [Preferanser for tog til og fra Oslo Lufthavn - Asplan Viak](#)

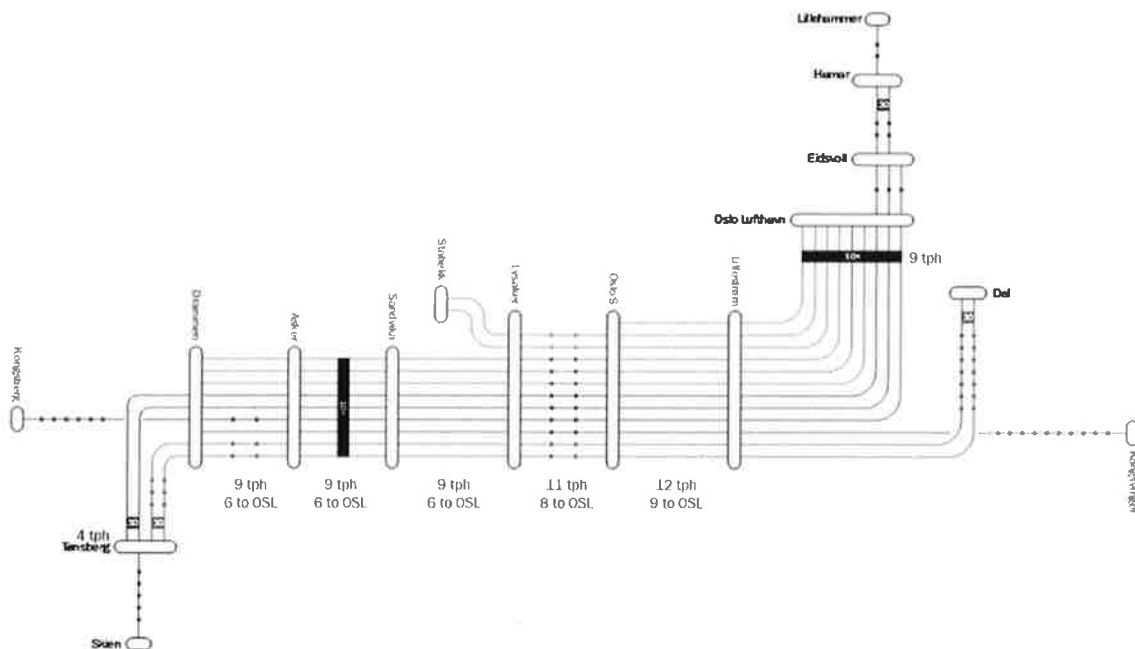
²³ [va-rapport 2019-49 hvem betaler provenyvirknninger av endringer i tilbringertilbudet til oslo lufthavn.pdf \(vista-analyse.no\)](#)

of a competitive tender (the sum of the table below is not the same as the average total compensation given above due to how the averages have been calculated).

As for Trafikpakke 4/Østlandet 1, the figures in the table below benefits from significant economies of scale (geography) and density (train hours per km). Thus, it is not possible to assume that low or even negative figures suggest that a route or a bundle of routes is cost covering on its own, and thus interesting for a commercial operator. Further, the calculations behind these figures are sensitive to the assumptions that Vygruppen made on how income and costs are distributed between routes. Particularly where several routes serve the same markets:

Train service grouping	Average required compensation per year (million 2022-kroner)
RE-tog Skien – Eidsvoll	24.1
RE-tog Drammen – Lillehammer	70.5
R-tog Kongsberg – Eidsvoll	63.1
R-tog Drammen – Dal	297.6
R-tog Asker – Kongsvinger	206.0
R-tog Notodden – Porsgrunn	43.5
R-tog Drammen – Oslo lufthavn (2028-2033)	- 5.4*
R-tog Stabekk/Oslo S – Oslo lufthavn (2028-2033)	-1.8*

*) Although the average compensation of both R-tog Drammen – Oslo Lufthavn and R-tog Stabekk/Oslo S – Oslo Lufthavn have been calculated as negative above, it does in Jernbanedirektoratets view not show that the services would be profitable to a purely commercial operator at the required service levels. E.g. Flytogets required compensation for the same routes was substantially larger (i.e. a net cost to the state).



In the Norwegian authorities' view, this is sufficient evidence that the relevant subparts of Østlandet 2 would not have been of interest to a purely commercial operator.

As explained in our letter of 31 August 2023, Jernbanedirektoratet does not consider it relevant to test individual services below the level of service level groupings. This is to secure an integrated offering throughout the day.

The Norwegian authorities note that there has not yet been made any notification in accordance to Article 38(4) of Directive 2012/34/EU regarding rail passenger services that would cover parts or all of the socially desired service levels in Østlandet 2.

6. Question 4: Assumption about commercial interest for the train paths currently used by Flytoget AS

From pages 7 and 8 of "Information regarding the direct award of the public service contracts Østlandet 2", the Authorities understanding is that Norway is planning to include in the Østlandet 2 PSO bundle the capacity that is currently used to perform a PSO currently operated by Flytoget AS, which expires in 2028. At page 8, Norway states that "Jernbanedirektoratet considers it highly unlikely that there will be sufficient interest for an operator to use the train paths currently used by the airport express rail service on purely commercial terms".

The Ministry of Transport is invited to provide the justification for this assumption, also considering that one of the criteria to justify the need for a PSO is the lack of operators willing to provide the service at market conditions.

The Norwegian authorities understand the legal test to be whether a purely commercially operated service sufficiently covers the transport needs of the travellers and society in a larger geographical area, not whether there is interest from a commercial operator in using infrastructure capacity for any passenger service on any line segment. Our response of 28 April, and the letter of 31 August and the current letter must be read with this in mind. The Norwegian authorities refer to our letter of 31 August 2023, where we explain our assessment of the need for SGEIs on the routes covered by Østlandet 1 and 2, as well as our answer to question 3 above. Member states have a wide discretion in providing, commissioning and organising SGEIs. In this case, the user demand has been assessed such that the socio-economic analysis show that the best use of the train paths in question, is as part of an expanded regional rail service rather than the current airport express service. The Norwegian authorities view this as reason enough to prioritise SGEIs above alternative commercial use of the same limited capacity.

For the passengers in general, and commuters in specific, to perceive the different rail passenger services as part of an integrated offering, they should all share the same fare system. As soon as one service is unavailable to travellers using commuter tickets (daily, weekly or monthly travel cards or fare capping system such as Vygruppens Smartpris, where

total ticket spend per month is limited by a cap), the service will not be perceived as part of an integrated offering, and an important network effect would be lost.

As explained in question 3, the fare reductions for journeys that today use Flytoget's services would be so large that it would make these services unprofitable, even when accounting for the increase in journeys from a better overall train service. Thus, it would be unlikely for an operator to provide the socially desired level of service on a purely commercial basis.

The Norwegian authorities further refer to our answer on question four above, in which it is noted that Flytogets required compensation for R-tog Drammen – Oslo Lufthavn and R-tog Stabekk/Oslo S – Oslo Lufthavn was substantial. This indicates that Flytoget shares Jernbanedirektoratets view that providing these services given the above conditions would be unprofitable.

Further, the Norwegian authorities refer to our answer in section 6 regarding the need to control route structure and stopping patterns to ensure that the routes serve their required function as part of the integrated public transport network.

7. Question 5: Market testing of subparts

With regard to the Østlandet 1 and 2 PSOs, The Ministry of Transport states in its reply to the Authority that "there may, at least in theory, be individual services (or possibly even train service groupings if run more cost-efficiently) that a purely commercial operator may assess to have a positive margin due to high demand during parts of the day or year, or on certain route sections".

The Ministry of Transport is invited to provide further information if it has tested this theoretical possibility in the market, i.e. whether it has gathered evidence that the market is not willing to provide part of the PSO services at commercial terms. If not, please explain why that was not done.

Regarding Østlandet 1, the Norwegian authorities refer to our answer to question 2 above.

For Østlandet 2, the Norwegian authorities refer to the second part of our answer to question 3 above.

8. Question 6: Network effects

With regard to the Østlandet 1 and 2 PSOs, the Ministry of Transport states that, "to ensure an integrated offering throughout the day and the year, as well as reaping the benefits of positive network effects, Jernbanedirektoratet has concluded that these services must be grouped with other PSOs. According to Jernbanedirektoratet, there is little to no relevance in testing individual services or lines for whether a purely commercial operator can provide these services, as this would reduce the positive network effects of an integrated service

offering. The Norwegian authorities therefore consider the possibility to achieve the transport policy targets related to having an integrated offering to the rail passengers and thereby reaping the network effects, to justify the inclusion of services with positive margins within the bundles. This is in particular related to the need for an optimum use of the scarce capacity in the Oslo area as mentioned above. Oslo central station and the line section Oslo- Lysaker is the core of the Norwegian rail network, and even minor changes in this area affect rail services in other parts of the rail network."

The Ministry of Transport is invited to provide further information on the type of network effects (e.g. ticketing, higher consumer utility, higher demand for the service etc.) justifying the bundling of cost covering and noncost covering routes. (Please also elaborate on how the scarce capacity in the Oslo area is related to the network effects and the need to bundle cost covering and non-cost covering routes); Furthermore, the Ministry of Transport is invited to elaborate further on the conclusion that bundling cost covering routes and non-cost covering routes into a PSO is the optimal solution, also vis-à-vis the option of having part of the routes covered by the Østlandet 1 and 2 PSOs operated at commercial terms; The Ministry of Transport is also invited to elaborate on whether and how Norway assessed the possibility to achieve the alleged network effects through other measures (possibly less disruptive of competition) than bundling.

As explained above, the rail passenger services in Østlandet 1 and Østlandet 2 form the backbone of the public transport network in the Oslo area. To this end, Jernbanedirektoratet and the local public transport authorities cooperate on network planning, ticketing and fares to ensure that the different public transport modes are perceived as an integrated network. These combined network effects increase the attractiveness of the passenger rail services and the public transport network as a whole.

To ensure that the rail passenger services are perceived as a part of the integrated public transport network, Jernbanedirektoratet must be able to specify not only ticketing and fares, but also network structure, train schedules and stopping patterns. Thus, Jernbanedirektoratet must enter into PSO contracts, rather than just regulating prices for the rail services in the region.

High frequency in the core sections

Departure frequency is one of the main drivers for public transport demand, as it lowers waiting time by reducing the time between departures. In the market analysis undertaken in connection with the analyses of alternative use to the capacity currently used by Flytoget, this is represented as the passengers valuing waiting time at 1.9-2.5 times the value of in-vehicle travel time when being seated²⁴. Thus, increasing frequency reduces travel costs to travellers, and increases the attractiveness of the rail passenger services to the general public.

²⁴ Preferanser for tog til og fra Oslo Lufthavn - Asplan Viak, page 27

Waiting time is generally counted as half of the interval between services. This is assuming that passengers are not timing their arrival to the station according to departure times, which is a fair assumption for high frequency services. E.g. an increase from six to nine effective departures per hour will therefore decrease the average waiting time by approximately 33 %, from five to 3.3 minutes. An increase from three to nine effective departures per hour will decrease the average waiting time by approximately 66 % from 10 to 3.3 minutes.

However, this frequency improvement only results in network effects for the passengers (and society at large) if all the train services are perceived as available for use. For short and medium distance services, where a large percentage of the travellers buy their tickets before choosing which service to travel on, this is only the case when the services can be accessed on the same ticket. E.g. even if there are 9 services between Oslo and Oslo Airport today, customers only perceive a frequency of either 3 (Vy) or 6 (Flytoget) when they have chosen an operator. For services to other destinations, Flytoget's services are not available as these only serve passengers to or from the airport.

High capacity in the core sections

Another key network effect for increasing the attractiveness of train services, and reducing travel costs to passengers, is to ensure sufficient capacity in relation to demand. In the market analysis, this is represented as the passengers valuing in-vehicle travel time spent standing at approximately 2 times of in-vehicle spent seated. This is if there is standing room available onboard on the preferred service. If there is no standing room available, passengers must wait for the next available service or choose not to travel at all.

Jernbanedirektoratet has additionally defined criteria for what is the acceptable comfort level for train journeys of different durations. For journeys shorter than 15 minutes, standing is acceptable. For journeys between 15 and 30 minutes, the passenger should be able to get a seat, and for journeys that last more than 30 minutes the passenger should be able to choose between seats.

Capacity can be increased in two ways, either by increasing the capacity per service or by increasing the number of available services. The infrastructure (platforms) in the Oslo area generally limits capacity per service to that of a 220-metre-long train (two five-car Type 74 or 75). Most, if not all, rush hour services going into the general regional services today, and which are part of the high frequency core sections are already timetabled with trains of this capacity. Thus, the only option left is to increase the number of available services.

As the infrastructure capacity in the critical sections between Drammen/Asker, Oslo and Lillestrøm is fully utilised, an increase in the number of services for the general regional rail service is only possible by using capacity allocated to other services today.

Jernbanedirektoratet's analyses shows that the socio economically most advantageous option is to expand the general regional rail services by using the capacity that today is used by Flytoget. This helps alleviating capacity issues, so that costly infrastructure investments may be delayed.

Network frequency

As explained in our letter of 31 August 2023, the rail passenger services covered by Østlandet 1 and Østlandet 2 are the backbone of the public transport system, particularly in the greater Oslo area. To this end, a leading principle behind both the current timetable and the strategic timetable R2027 has been to establish network frequency (nettverksfrekvens) on the core sections. This entails a high frequency service pattern with set intervals between departures²⁵. Where passengers transfer from other modes of public transport to such a system, they are much more likely to perceive the journey as seamless and much less affected by delays from the prior journey leg(s). If a passenger misses a connection, the next departure will be there shortly. Network frequency is thus a network effect that reduces the barriers to public transport use, and reduces costs to passengers from e.g. delays.

Other network effects from combining routes and services

As explained in our letter of 31 August 2023, the timetable concepts chosen for the Oslo area combines routes (in that letter: service groups) to outlying areas into high frequency/high capacity services in core sections. This results in several other network effects:

- Increased geographical coverage for rail passenger services without reducing frequency in the core sections as there is no need to separate the systems.
- Lower total production costs through both reduced need for train kms and increased returns to density.

Network effects from higher service levels throughout the day and week

A purely commercial operator will seek to optimise revenues and costs. This can be done by reducing service levels or even stopping services altogether at times of low demand or low yield per passenger km. This may in particular affect early morning or late night services, as these have low demand and high production costs. However, these services give rise to network effects, in addition to serving commuters that otherwise might not have a viable public transport option. These network effects include the increased attractiveness of the passenger rail services in general from passengers having the option of selecting an earlier or later train when need be. E.g. in case a regular commuter would like to stay in the city centre for a while after work to socialise, enjoy cultural activities og go shopping. The transport costs to the passenger is much less if this can be undertaken using the same rail passenger service and season ticket as their regular commuting journey. This also reduces the need for households to own a (second) car, thus increasing public transport use in general.

As mentioned in section 1 above, ticket prices are a major factor regarding the attractiveness of the public transport services, including rail passenger services. For the competent authorities, this may affect whether different services are cost-covering or not. Since most passengers during rush hour uses seasonal tickets for a certain period, or tickets which derive their pricing from these, yields are lower during peak hours than in the off-peak. Combined with high costs from providing higher capacity, this means that peak hour services

²⁵ [Ruters veileder for planlegging av linjenettet](#), s 25

often are not cost covering. These observations contribute to the understanding of the level of the bids received under Trafikkpakke 4.

In summary, the Norwegian authorities consider that the above-mentioned network effects may not be achieved by an alternative way of organising the passenger transport services in question, including by having part of the routes covered by the two rail PSO contracts Østlandet 1 and 2 operated at commercial terms. Other available measures which potentially could be less disruptive to the market are not considered suitable for achieving the policy targets as effectively as the two PSO contracts in question. General rules on ticket prices/tariffs as referred to in Article 3(2) of the PSO Regulation, would impose additional burdens on the operators, and the combined network effects of the different services would be difficult both to establish and to coordinate effectively in the same way as under the PSO contracts Østlandet 1 and 2.

9. Further information

The Norwegian authorities stand ready to provide any additional information that the Authority may consider necessary.

Yours sincerely

Cecilie Taule Fjordbakk
Deputy Director General

Erik Syvertsen
Assistant Director General

This document is signed electronically and has therefore no handwritten signature

Enclosures:

- Annex 1 – The first notice
- Annex 2 – The second notice
- Annex 3 – Addendum to the second notice

Melding

Veiledning

Herfra kan du besvare eller videresende meldingen, alternativt videresende hele meldingen som e-post. For å videresende meldingen som e-post må en e-postklient (MS Outlook, Eutora etc.) være installert på din lokale PC.

Når du videresender en melding som e-post finns det noen restriksjoner det kan være bra å kjenne til.

"Videresend som e-post" bruker html som kun tillater et maksimum av 2046 html tegn. Det betyr at hvis du inkluderer Skandinaviske tegn som æ, ø, å, ö, ä eller spesialtegn som %, & osv, kan hvert av disse tegnene genere 3-4 tegn.

Melding 7729427	
Fra:	Jernbanedirektoratet - Rikard Waag
Sendt:	19/11/21 18:08
Til:	Go-Ahead Norge AS - Cathrine Elgin Lest: 19/11/21 18:48 Vy Tog AS - Kenneth Aschehoug Lest: 19/11/21 18:26 Vy Tog AS - Kenneth Kvalvik Lest: 19/11/21 18:13 Vy Tog AS - Arne Vidar Hesjedal Lest: 19/11/21 18:14 SJ Norge AS - Sverre Sletten Lest: 19/11/21 18:09 Flytoget AS - Johannes Larsen Lest: 19/11/21 20:24 Go-Ahead Norge AS - Marit Hansen Flytoget AS - Ali Syed Lest: 19/11/21 18:24 Flytoget AS - Jarle Røssland Lest: 22/11/21 08:46 Stagecoach Group PLC - Anthony Hyde Lest: 19/11/21 21:30 VR-Yhtymä Oy - Jan Vetle Moen Lest: 19/11/21 18:09
Lest av:	Flytoget AS - Annen bruker Lest: 19/11/21 18:24 Go-Ahead Norge AS - Annen bruker Lest: 19/11/21 18:48 Vy Tog AS - Annen bruker Lest: 19/11/21 18:13 SJ Norge AS - Annen bruker Lest: 19/11/21 18:09 VR-Yhtymä Oy - Annen bruker Lest: 19/11/21 18:09 Stagecoach Group PLC - Annen bruker Lest: 19/11/21 21:30
Referanse:	Konkurransen 263354 : 2 Trafikkpakke 4
Emne:	Informasjon om fremdrift i Trafikkpakke 4

Hei.

Jernbanedirektoratet informerer med dette om at konkurransen om trafikpakke 4 er avlyst, ref dagens pressemelding og supplerende tildelingsbrev fra Samferdselsdepartementet: Togtilbudet på Østlandet: Regjeringen avlyser konkurransene om trafikkpakkene 4 og 5 - regjeringen.no
(<https://www.regjeringen.no/no/aktuelt/togtilbudet-pa-ostlandet-regjeringen-avlyser-konkurransene-om-trafikkpakkene-4-og-5/id2888667/>)

Jernbanedirektoratet vil gi ytterligere informasjon i uke 47.

Mvh

Rikard Waag

Seniorrådgiver
Jernbanedirektoratet

Melding

Veiledning

Herfra kan du besvare eller videresende meldingen, alternativt videresende hele meldingen som e-post. For å videresende meldingen som e-post må en e-postklient (MS Outlook, Eutorator etc.) være installert på din lokale PC.

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Melding 7739267

Fra: Jernbanedirektoratet - Thea Ringstad
Sendt: 24/11/21 12:21
Til: Flytoget AS - Johannes Larsen **Lest:** 24/11/21 12:21
Lest av: Flytoget AS - Annen bruker **Lest:** 24/11/21 12:21
Referanse: Konkurransen 263354 : 2 Trafikklpakke 4
Emne: Avlysning av konkurranse om Trafikklpakke 4

Hei,


Vi viser til melding i KGV av 19. november 2021 og sender som varslet nærmere informasjon om avlysning av konkurranse om Trafikklpakke 4 (vedlagt).

Med vennlig hilsen

Thea Ringstad

Prosjektleder Trafikklpakke 4

Lagt til dokumenter

Navn	Størrelse	Oppdatert
 Avlysning av konkurranse om Trafikklpakke 4 - Tilbyder B.pdf (Avlysning av konkurranse om Trafikklpakke 4 - Tilbyder B.pdf)	71	24/11/21 12:20

Flytoget AS

Dato: 24.11.2021
Saksref.: 202100258
Konkurranseref. KGV: 263354
Sider: 1

Att: Thomas Berntsen

Avlysning av konkurranse om Trafikpakke 4

Jernbanedirektoratet viser til Flytoget AS sin deltakelse i konkurranse om Trafikpakke 4. Som meddelt i melding i KGV 19. november 2021 avlyses konkurransen om Trafikpakke 4. Vi viser i denne sammenheng til «Supplerende tildelingsbrev nr. 7 Stans i videre konkurranseutsetting av persontransport med tog fra Samferdselsdepartementet».

Direktoratet viser også til «Tilbudsforespørsel for konkurranse om Trafikpakke 4» punkt 3.10 der oppdragsgiver forbeholder seg retten til å avlyse konkurransen på et hvert trinn i prosessen.

Jernbanedirektoratet takker for Flytoget AS sin deltakelse og innsats i konkurransen om Trafikpakke 4.

Vedrørende innsyn i tilbud

Lov om rett til innsyn i dokument i offentlig verksemd av 19.mai 2006 nr. 16 gjelder for allmennhetens innsyn i tilbud og anskaffelsesprotokoller. Ved eventuelle innsynsbegjæringer plikter Jernbanedirektoratet å foreta en selvstendig vurdering av hvilke opplysninger i tilbudet som vil være omfattet av hjemler for unntak fra offentlighet og som derav kan sladdes. Direktoratet vil i denne sammenheng bl.a. se hen til tilbyders opplysning av de forhold tilbyder mener skal unntas offentlighet, jf. «Bilag 1-3 Taushetspliktige opplysninger og egenerklæring om bortfall av taushetsplikt 2.0».

Vedrørende oppfølgingssamtaler

Jernbanedirektoratet ønsker å invitere samtlige tilbydere i konkurransen til en oppfølgingssamtale, jf. «Tilbudsforespørsel for konkurranse om Trafikpakke 4» punkt 5.6. Vi ønsker å ivareta et godt samspill med aktuelle togoperatører og ta lærdom av denne prosessen for å oppfylle vårt sektoransvar og utføre våre arbeidsoppgaver på best mulig måte. Dersom det er ønskelig med en slik samtale, ber vi om at en anmodning sendes som melding i KGV.

Med vennlig hilsen

Thea Ringstad

Prosjektleder Trafikpakke 4

Dokumentet er godkjent elektronisk og sendes uten signatur

