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Local Institutional Design in the Shadow of the Market

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1. Introduction

Since the early 1990s, the use of competitive tendering has increased in the European public transport sector (Gwilliam & van de Velde, 1990; D. M. Van de Velde, 2001). At the same time, the number of quasi-autonomous agencies for purchasing public transport services separated from the core local government administration has risen especially in Scandinavian countries.¹ This development has been controversial not only for ideological reasons, but also due to intrinsic characteristics of public transport and of public services in general. Whilst the advantages of competitive tendering such as cost efficiency and improved quality have been documented in several studies (Johnsen, Sletnes, & Vabo, 2004; Sørensen, Borge, & Hagen, 1999), concerns have been raised relating to downfalls such as reduced political steering (Longva & Osland, 2010), issues of service level compliance (Hensher & Wallis, 2005), lack of coordination (O'Sullivan & Patel, 2004), deficient democratic accountability (Flinders, 2004) and legitimacy issues (Prosser, 2010). Given such problems and the disputability of the issue, why do local politicians adhere to market-conforming principles when European legislation opens up for the possibility to reintegrate the provision of services? What explains the choice of institutional design at local level?²

The questions' background is the well-documented tendency that since the enforcement of the Single European Act EU decision-making contributes to increased deregulation and reregulation. However, deregulation of services has been much more difficult to enforce than of goods (Nicolaidis & Schmidt, 2007; Schmidt, 2009) and reregulation meets resistance due to the increased administrative burden for public authorities as well as private enterprises. In order to achieve a compromise in certain sectors, it has been necessary to introduce differentiation within EU legislation allowing for legal discretion, opt-out clauses and temporary derogations for named countries (Howarth & Sadeh, 2010).

This was the case for the Public Passenger Transport Services Regulation that was decided on the 23rd of October 2007 and set to be enforced by the 3rd of December 2009. It introduced competition as a main rule for operators to gain the right to provide public transport services on rail and roads. Yet the Commission had to give in to a great deal of “watering-down” of competitive elements to get its proposal through in the European Parliament and the Council. Opening up for substantial exemptions from the main rule, the Regulation contains a great deal of legal discretion.

¹ Didier van De Velde (1999) calls this the “Scandinavian” or “London model.”

² In this paper “local” includes the regional level.

At local level the controversial EU legislation spurred debates of reintegration and increased coordination. This is especially clear in the major Dutch cities: Amsterdam, The Hague and Rotterdam, where strikes against the planned competitive tendering regime, at the time of writing, are still going on. Debates of reregulation have also been vibrant in several Norwegian counties.³ Despite the general trend of “agencification” (Christensen & Læg Reid, 2006) and competitive tendering of local public transport services, there have been discussions of reintegrating production of such services in a number of counties, but none have chosen to do so. The most serious attempt of reintegration took place in Sør-Trøndelag. As a case study, Sør-Trøndelag is interesting due to the fact that there was a red-green coalition in power, favouring production of public services in public hands, both at the regional and the local level. Furthermore, unlike several other counties Sør-Trøndelag had at the time not established any public transport agency. As reversals of such establishments tend to be more costly than new beginnings, the likelihood of reintegration was larger than in other counties. Still however, the legislators decided to introduce competitive tendering and establish an independent agency to administer the services, instead of producing the services themselves. Therefore, Sør-Trøndelag provides an illustrative case of when even leftist politicians vote in favour of market-conforming principles.

I will explain why the initiative of reintegration failed in Sør-Trøndelag. I argue that within the constraints of the EU Regulation a combination of path dependency and diffusion has led the politicians to go against their ideologies and introduce competitive tendering and delegating public transport competence to an independent agency. The reason is that earlier decisions to privatise publicly owned local bus companies, endow private companies strong powers, given the strict concession rules. Hence, existing practices made it less costly and technically easier to go for a solution, in which operators have to compete for market access. At the same time, most Norwegian counties adopting competitive tendering had already established quasi-autonomous procurement bodies. This tendency, learning from other counties and the need to increase competence have made such a model seem like the most appropriate thing to do, a choice that was also supported by consultancy advice.

The findings highlight four interesting points. Firstly, they illustrate why a turn away from market-driven principles are difficult even in a situation where supranational legislation allows for reintegration. Secondly, they contribute to understanding how and to what extent European legislation affects member states not only in terms of transposition, but actual application of EU legislation (Kaeding, 2007; Sverdrup, 2007). Thirdly, although the literature on how EU policies are

³ The counties Buskerud, Hedmark, Rogaland, Telemark, Sør-Trøndelag and Vestfold have all carried out evaluations or investigations of their organisational models.

put into practice domestically has thrived over the last two decades (Treib, 2008, p. 5), the attention to such implementation at subnational level has been limited (Goldsmith, 1993; John, 2000). Finally, the findings illustrate how local issues drive local politics more than European legislation, which nevertheless crucially affects the options available to local authorities.

To understand why institutional design at local level adheres to competitive tendering and agency solutions, I will firstly present useful theoretical perspectives, including hypotheses that guide this explorative analysis. Secondly, I will explain what happened in the selected case, Sør-Trøndelag. A final session will provide concluding thoughts as to why it is difficult to break away from market-conforming principles.

2. Theoretical Approaches

Aiming at explaining the paradox as to why left-oriented politicians vote in favour of market-conforming principles, theories that account for political outcomes that are not only a response to the legislators' will are useful. Historical institutionalism and diffusion theories provide such perspectives.

Emphasising the structuralism implicit in institutions (Sanders, 2006), historical institutionalists focus on how institutions develop over time and affect the position of actors in ways that may have been unintended or undesired by their creators (Hall & Taylor, 1996). As institutions reinforce themselves, create path dependencies and lock-ins over time, it may be difficult to alter certain institutions as reversals are costly or difficult (Pierson, 2004). For example, if public authorities have already delegated responsibilities to market actors or separate agencies, path dependency is a likely explanation why legislators do not retract the responsibility, even if their aim is to do so. Also for cases where this is not the case, there may be certain structures that benefit a path towards agencification and competitive tendering rather than internal production and planning. Therefore, *a path dependent hypothesis expects certain structures to benefit market-conforming principles.*

Diffusion theories also offer explanations as to why adoption of policies do not always follow political aims. Diffusion refers to the process, by which a policy spreads and this policy is new to the jurisdictions adopting it, no matter how old the policy actually is (Walker, 1969, p. 881). It is the communication of an innovation in a social system over time (Gray, 1973, p. 1175). The approach suggests that adoption of a policy is interdependent – the behaviour of one government influences the behaviour of another. Yet researchers disagree about when a pattern of diffusion is actually driven by diffusion. Whilst several researchers include coercion as a diffusion mechanism, others

(Elkins & Simmons, 2005, p. 39) argue that diffusion happens without coercion and cooperation among the adopters. Another matter of dispute concerns functional pressures and whether adoption of similar policies is a result of independent reactions to such pressures and, hence, not influenced by the behaviour of others (Braun & Gilardi, 2006, p. 305). Such differences of opinion highlight the importance of studying the mechanisms behind diffusion patterns.

Beth Simmons, Frank Dobbin and Geoffrey Garrett (2008) distinguish between four mechanisms of diffusion: coercion, competition, learning and emulation. Coercion refers to the ability of powerful actors to use carrots and sticks to encourage others to change their policy. Although opening for different organisational solutions within public transport, the European Commission may, for instance, make competition procedures easier or less risky to carry out than production through an internal operator. Furthermore, in literature on Europeanisation a common proposition is the misfit hypothesis that postulates that member states' adoption of EU policies and structures is a function of incompatibility between the European Union and the national level, since this misfit translates into pressure of the EU on member states (Börzel & Risse, 2003). An underlying mechanism is "institutional compliance," whereby European legislation prescribes certain requirements, with which affected states have to comply (Knill & Lehmkuhl, 2002). Deeming existing practices of negotiations illegal, when granting exclusive rights or compensating public service operators for costs incurred, pressure to comply is likely to have been present in the Norwegian local public transport sector. Hence, *a coercive hypothesis predicts that market-conforming decisions are caused by institutional compliance.*

On the other hand, as the Public Passenger Transport Services Regulation allows for discretion, such compliance pressure does not account for why politicians adhere to market-conforming principles and not internal operators, which is the traditional way of producing public transport services in most European cities (Gwilliam & van de Velde, 1990).⁴ The Regulation leaves it up to the local public transport authorities to choose between a model similar to that of the traditional state (i.e. internal operator) and a model of the regulatory state (i.e. competition).⁵ The following continuum between the traditional and the regulatory state provides a useful illustration of the alternatives that acquiescent European public transport authorities currently face.

⁴ The Regulation defines "internal operators" as legally distinct entities over which a competent local authority exercises control similar to that exercised over its own departments.

⁵ There are substantial exemptions from the main rule of competition. The competent authorities can award contracts directly for the railway sector, contracts below a certain threshold (e.g. 1 million Euros annually or, if the enterprise is small or medium-sized, 2 million Euros) and to an internal operator.

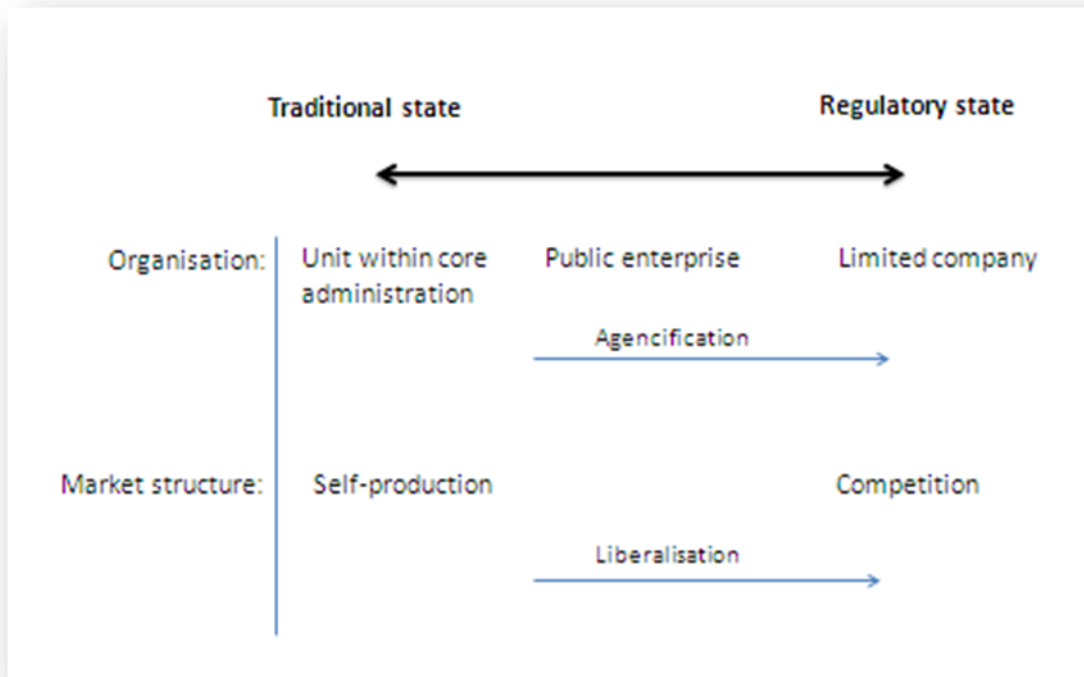


Figure 1. Continuum of organisation of public transport services

Different to coercion, competition implies the belief in certain solutions as boosting quality and efficiency, thereby making a jurisdiction more popular than others. Thus, a government adopts a policy as it perceives that the effect will give its own jurisdiction an advantage. Accordingly, politicians choose to pass responsibility on to specialised agencies and introduce competitive tendering due to the capacity of competition to achieve cost efficiency and improved quality (Domberger & Rimmer, 1994) and the aptitude of agencies to combine professionalism, operational autonomy and flexibility to adapt to changing circumstances (Yeung, 2010, p. 76f). Given the need for expertise and knowledge due to internationalisation and increased complexity, agencies have become popular. Another reason is the credible commitment ensured through delegation, thereby keeping politicians on a certain distance (Majone, 1996). The hypothesis conveying this mechanism suggests that *market-conforming decisions are a matter of improving the services*. Whether this really is a matter of diffusion is disputed. R. Daniel Kelemen and Eric C. Sibbitt (2004) view such functional responses as independent of other jurisdictions' actions – i.e. that every county would itself find similar solutions as they all face the same challenges. Given the tendency of increased competitive tendering and agencification, such a position would be difficult to defend (Braun & Gilardi, 2006), but if evidence suggests that actions are basically rational acts, not being induced through competition with others, diffusion is not likely to have been a dominant cause.

At times, diffusion occurs via real life learning. This happens when a government draws lessons from the experience of others and then apply these lessons when designing their own policies. As an example, hybrid solutions may cater for different local contexts and may ease resistance against market principles by representing watered-down solutions. In Figure 1 hybrids are located between the traditional and the regulatory structures. They include among others agencies that are public enterprises or limited companies with political rather than professional management. That way there is a direct link between the legislators and the agency. Other characteristics are the extent of delegation as set down in contracts between the core administration and the agency. In other words, there are plenty solutions of how to organise local public transport services, implying different degrees of separation of policy-making, operating and regulatory functions. Therefore, in-between solutions may ease resistance against controversial liberalisation and agencification. *A learning hypothesis suggests that the legislators apply lessons from other counties adjusted to their own local conditions.*

Finally, viewing policy-making in the light of diffusion theory also includes non-rational explanations for policy change (Radaelli, 2005). As such, emulation means imitation of legitimate and successful practice from other jurisdictions. It occurs when a policy is perceived to be the appropriate thing to do (DiMaggio & Powell, 1983) or “epistemic communities” theorise a new solution (Haas, 1992). Accordingly, public transport agencies and competitive tendering emerge because it is taken for granted that they are the most appropriate forms of organising public transport. *An emulation hypothesis proposes that legislators copy policies from other counties.* Different to learning, which includes a motive to improve, this latter form of diffusion may *not* be suited to the adopter’s needs.

3. Data and Research Techniques

There are different observable implications of these theories: Path dependency calls for an enquiry of the possible organisational solutions as well as existing legal frameworks and market structures. Diffusion through coercion requires a mapping of incentives in the EU Public Passenger Transport Services Regulation itself and actors’ perceptions of whether it is beneficial or there is a need to comply to such rules. Diffusion through competition necessitates an analysis of actors’ expectations of what would be the effects of introducing different organisational alternatives. If diffusion through learning has taken place, there will be adaptations of the selected solution to contextual factors. Moreover, if diffusion through emulation is a dominant mechanism this would be conveyed through the adherence to consultancy and researchers’ advice as well as how similar the organisational solution is to those in other counties.

Crucial evidence includes the legal framework, minutes from political meetings, consultancy and research reports, newspaper articles as well as six in-depth interviews with politicians in opposition and position, the former County Executive, the Chief Financial Officer, the Head of Department and a representative from the bus drivers' union. The interviews have been important for establishing the mechanisms at work, whilst data from the counties' web sites has been gathered for the purpose of making temporal graphs of diffusion patterns.

4. Organisation of Public Transport in Sør-Trøndelag - a Path Dependent Decision

In this section, an analysis of what happened in Sør-Trøndelag provides insights to better understand the tendency of establishing public transport agencies and introducing competitive tendering at subnational level. Given a legal framework that allows for reintegration, why do left-oriented politicians introduce such organisational principles?

In 2007, there were three important events that created a “window of opportunity” (Kingdon, 2003) for organisational change of public transport in the County of Sør-Trøndelag. Firstly, the EU Public Passenger Transport Services Regulation, which Norway as a member of the European Economic Area was obliged to apply, would deem current practices of negotiations illegal as soon as it was transposed. Secondly, Sør-Trøndelag was about to end an experiment of organisation of public transport (Norheim, Nilsen, & Ruud, 2008). Normally the counties are responsible for local public transport (with the exception of rail), yet from 2004 to 2007 the largest city in the county, Trondheim, was in charge of its own public transport. At the end of the experiment this responsibility, including financial resources, was transferred back to the county. Thirdly, in 2007 all of Sør-Trøndelag's existing compensation contracts and concessions, which allow operators to deliver public transport services, ended. Whilst most of these contracts were extended through negotiations, the county failed to agree with the bus operator producing the services in the city. As a temporary solution, awaiting political decisions, the contract was prolonged for a year.

The difficult negotiations with the bus operators was a key reason as to why the legislators urgently wanted to reform the organisation of public transport. In 2002, the city sold the bus company producing city services to a private operator (Sandvik, 2008). Since that time, the public transport authorities had to negotiate with a private monopolist. According to civil staff and politicians, it was a tedious process to encourage and enforce the operator to improve their services. For every renewal the operator claimed more resources. Their opinion of the operator was a lack of proactiveness to develop the services, which media had also consistently criticised (interview st1, st4,

st6). The only bargaining card of the County to “discipline” the operators was to threaten with competitive tendering. However, for a threat to work, it needs to be credible and effective (Halftack, 2008). Given the red-green coalition’s dedication to vote against competition and its close ties with unions, the threat was not very effective. As a consequence the politicians looked for other ways of better being able to steer the local public transport services.

The EU Public Passenger Transport Services Regulation included two main possibilities. Although enforcing competition as a main rule, it made an exception for internal operators. The politicians and civil staff, awaiting national transposition and expecting a long transposition period, were in no hurry to apply the EU Regulation, yet it importantly framed the potential organisational models (interviews st1, st5). Whilst the conservative and liberal politicians argued that competitive tendering would improve the service level; the left-oriented, which represented the majority, were concerned with employment issues and curious about the possibilities of establishing an internal operator. On the 12th of December 2007, the legislative majority decided to investigate the possibilities of establishing an internal operator in Sør-Trøndelag (Sør-Trøndelag fylkeskommune, 2007, p. 2). At the same time they agreed to work towards creating a “regional organisation.” The aim of this organisation was to enhance coordination of information, route planning, product development, ticketing and fare systems as well as marketing of public transport (Sør-Trøndelag fylkeskommune, 2006). This was an old idea, whose intention was to improve the cooperation with the largest city.

In general, the relationship between large cities and counties is competitive and likely strained since both hold important measures for influencing the public transport system and tend to blame one another when things do not work to plan (interview st6). Establishing a common organisation could improve the relationship between them. However, the final decision to establish such an agency was postponed as at that time, it was unclear who would be in charge of local public transport services at the end of the transport experiment (interview st2).

Subsequently, the County administration asked an external consultant to provide an analysis of the possibilities of establishing both an internal operator and a public transport agency. In early 2008, the consultant published two reports and gave an account of four alternative organisational models (Asplan Viak, 2008a, 2008b). These are (1) an internal operator producing services for the whole county; (2) a mix of internal operation in the city area of Trondheim and procurement in the rest of the County; (3) *status quo*, i.e. continued negotiations with operators, at least until the EU Regulation is transposed into national law; and (4) a public transport agency, whose main responsibility is to purchase services through competitive tendering.

Investigating the opportunities to establish an internal operator in Sør-Trøndelag and also in Hedmark, the consultant suggests two ways of establishing an internal operator: The County buys an

already existing company *or* it establishes a new shell firm. Whilst voluntary agreement and agreeing on the premises creates the main obstacles for purchasing an existing company, the lack of concessions provides the main barrier to establish a new shell company. Strict concession rules require the County to take existing concession holders' opinions into consideration when considering further concessions (Asplan Viak, 2008a, p. 4). This empowers existing companies – in practice, there are hardly any new concessions given for local public transport. Transfers of concession holders happen in circumstances of fusions or transfer of enterprise ownership and occasionally when operators compete for concessions at the end of a lengthy concession period. In national law, the only stated possibility for the public transport authorities to pull back a concession from a law-abiding company, is to introduce competitive tendering. Thus, competitive tendering is the *safest* route to draw back a concession from a company (Asplan Viak, 2008a, p. 5). Any other “unfair” attempt to give a new internal operator concession is likely to raise the conflict level in the bus industry, inducing a risk of litigation (Asplan Viak, 2008a, p. 7). However, introducing competition and establishing a new internal operator does not guarantee that the new public company will win such competition, as the county is hardly admitted to give preference to its own company when evaluating the differing bids. In other words, the legal framework combined with privatisation had created a path, according to which, competitive tendering was the easiest, less risky and less costly thing to do.

On this basis, the County Executive strongly recommended competitive tendering. The civil staff saw an advantage in competitive tendering as the County would then be in charge of deciding defined criteria in advance of entering into a contract and avoid the risk of having a business. Despite such benefits of competitive tendering, theories that suggest that even leftist politicians vote in favour of such reform, if the expected utility of competition is considerable and the costs of reintegration are too high (Braun & Gilardi, 2006, p. 305f), do not hold. The politicians were willing to take the costs that the opposition and civil staff were fearing. On the 17th of June 2008 the political majority decided to initiate negotiations about purchasing Team Trafikk, the enterprise operating the city routes in Trondheim (Sør-Trøndelag fylkeskommune, 2008c). At the same time, they decided to introduce competitive tendering in the remaining areas and confirmed the establishment of a public transport agency. Such “mixed solutions” are costly (Longva & Osland, 2010, p. 121). Not only would the County potentially employ around 600 bus drivers, it would also have to build up an administrative procurement body with planning competence for the route areas set out for competitive tendering.

The decision to allow for competitive tendering was difficult to accept for several politicians. Yet the Labour party was divided on the issue and played an important role in getting the needed majority in favour of introducing some competitive tendering. Although 100 bus drivers met with

banners in the County Council on the day of voting, the majority actually did vote in favour of competition (Sør-Trøndelag fylkeskommune, 2008a). The most important push for this daring vote came from the frustration with the *status quo* – the lack of political steering and the tiring negotiations with the operators.

Initially the owner of Team Trafikk seemed willing to sell the company. In an “intention agreement” on the 1st of July 2008, both parties assented to negotiate about transferring the bus company to the County. Three months later, the owner and the County agreed on a price and that the County would take over 80 percent of the company’s shares. At that point, politicians and civil staff were convinced that they would become the majority owner of the bus company. Surprisingly, few days after the final agreement, the owner withdrew from the offer on the 17th of October 2008 (Sør-Trøndelag fylkeskommune, 2008b) – to the relief of some and frustration of others. Whilst civil staff and politicians favouring competitive tendering had feared the burdens of operating a bus company and been concerned about inefficiencies; those proposing reintegration of the operator felt that they had been fooled. Consequently, a number of politicians who were originally against competition, now voted in favour of procurement.

Portraying the image as to how existing structures decreased the options available to the public transport authority, the analysis so far supports path dependency as explaining why the politicians decided to introduce competitive tendering despite an ideological commitment to do otherwise.

5. Learning and Functional Responses

Although Scandinavian counties tend to establish public transport agencies when introducing competitive procedures, there are successful examples of public transport administrations, which deal with competitive tendering procedures from *within* the county administration. So why do competitive tendering and agency tend to go hand-in-hand?

An important reason is that competitive procedures require specific purchasing and planning competence, increasing the administrative burden. Whether a county awards contracts to operators directly through negotiations or use competitive tenders imply different roles for the county administration and politicians. Typically the operators are in charge of route planning and ticketing, when their contracts are directly awarded (Longva & Osland, 2010, p. 122). Differently, these responsibilities are in the hands of the public transport authorities in cases of competitive tendering.⁶

⁶ For differences between concession and contract, see Christopher H. Bovis (2008, p. 159f).

In addition to this need of competence, the competitive environment has also generated larger and stronger bus operators (Mathisen & Solvoll, 2008). In general across Europe, bus operators have become international, the legal framework more complex and actors expect court rulings to settle future disputes (Leiren, 2010). In Norway there have already been a few infringements regarding competitive tendering procedures of local public transport. This fits well with what Daniel Kelemen (2011) calls a shifting “legal landscape” in Europe. He argues that there has been a growth of litigation and that business leaders are expecting an increase in litigation and the associated costs in near future. In such a reality it is wise of a county to strengthen its public transport competence, especially if it chooses to adopt competitive procedures. The counterpart is no longer a small, local operator, but may be a company with strong, “movable,” economic and legal competence, due to their frequent involvement in competitions (Vista Analyse AS, 2009, p. 6).

However, this does not explain why the buyer should strengthen its competence in a separate agency and not internally in the administration. Vista Analyse (2009, p. 7) provides a justification, pointing to difficult recruitment. Arguing that bodies with responsibility of performance and extensive freedom of action more easily attract skilled personnel, the consultant recommends “autonomous” public transport agencies. According to this view, the establishment of an agency is necessary in order to attract and keep crucial skills for market development.

In addition to concerns about competence, a diffusion pattern suggests that a transfer of policy has taken place. As Figure 2 highlights, since the second half of the 1990s counties have increasingly introduced separate public transport agencies.

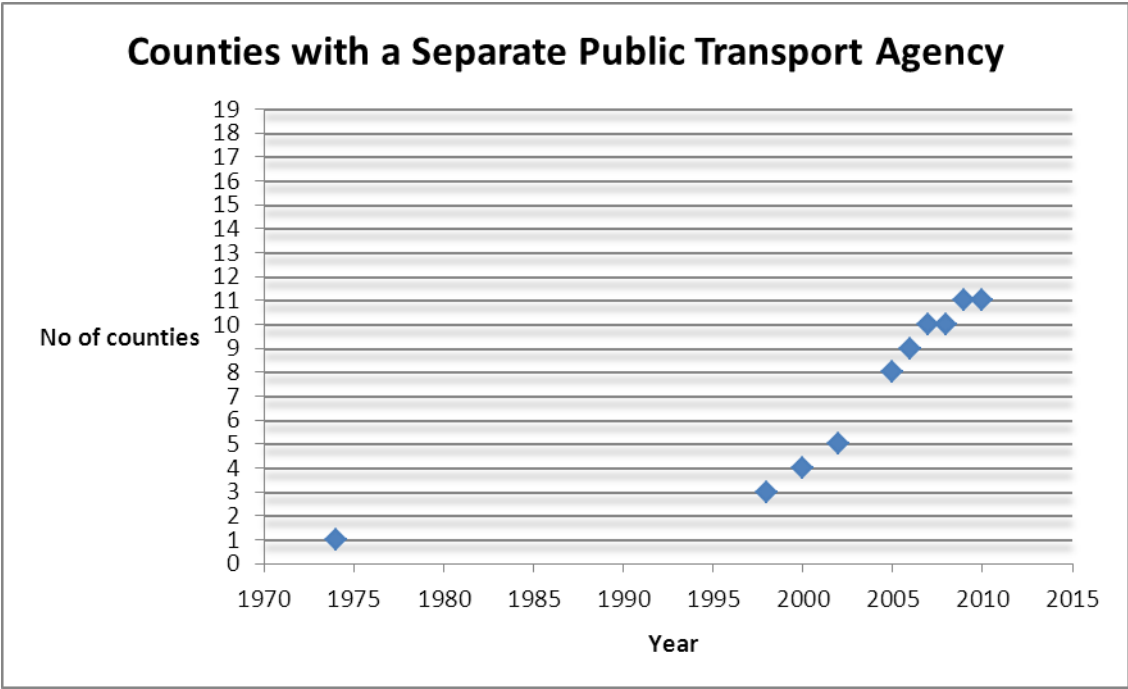


Figure 2. Counties with a Separate Public Transport Agency

Today, eleven of the 19 Norwegian counties have delegated public transport responsibilities to a separate agency. Figure 3 shows that there is a similar pattern of diffusion for competitive tendering.

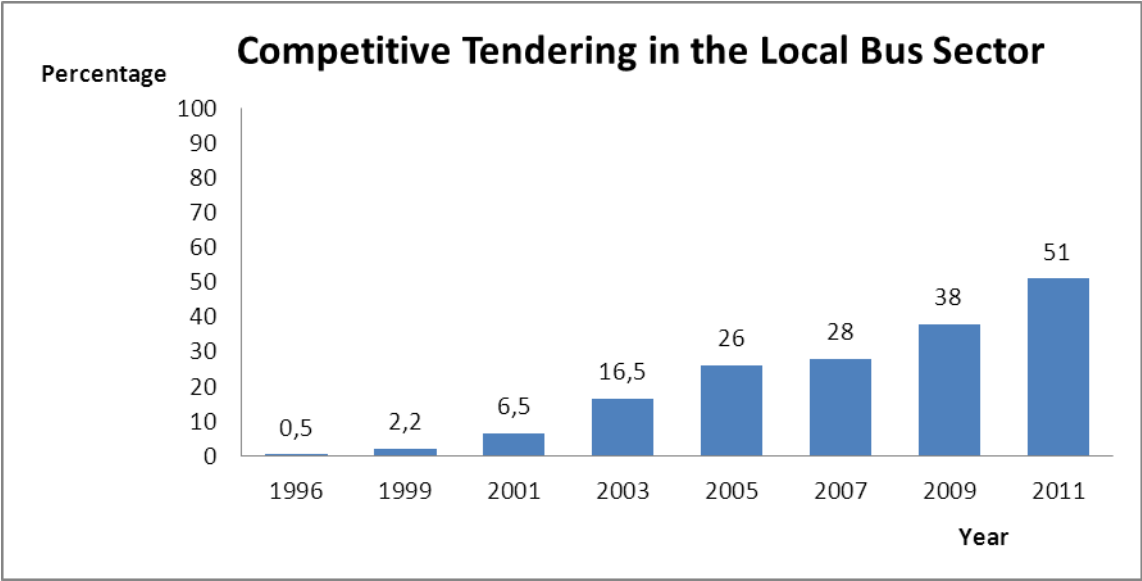


Figure 3. Status of Competitive Tendering in Norwegian Local Public Transport. Percentage of Local Bus Services Measured in Route Production (Route Kilometres) on Competitive Tendering (NHO Transport, 2011)

Different mechanisms are useful for explaining the patterns highlighted in figures 2 and 3. As has already been shown, in the case of Sør-Trøndelag path dependency was crucial for the outcome of competitive tendering. Although civil staff were concerned with what other counties had implemented (interview st2), such interdependence was not important in Sør-Trøndelag as the political majority was willing to go against this pattern. Therefore, diffusion does not explain the choice of competitive tendering in Sør-Trøndelag.

The decision to establish an agency differs from that of competitive tendering. Whilst the dispute of competitive tendering was ideological, the rationale behind the agency was to improve the services through enhanced cooperation with the city and the neighbouring county and achieve better coordination of different modes (interview st1). If the aim of improved services had been part of a strategy to become better than other counties, this would have supported the competition hypothesis. However, there is no such evidence. The evidence suggests that the agency was mainly a rational decision, in order to improve the public transport system for the county’s citizens.

Nevertheless, the agency design was decisively influenced by experience in other counties. Civil staff, politicians, a consultant and union representatives travelled on a study trip to other Norwegian and Swedish counties that had created agencies and introduced competitive tendering. The exchange of experiences at such trips contributed to form the decisions. There was especially one county that informants remember well. In Rogaland, issues such as route changes and technical

problems of ticketing systems damaged the relationship between the politicians and the agency (Vista Analyse AS, 2008). The problems resulted in a serious lack of trust. As compensation, the politicians began to steer the agency in the details – to the extent as if the agency had been an internal department in the county (Vista Analyse AS, 2008). Accordingly, the agency’s scope of action was limited, thereby causing frustration and neglect of duties.⁷

In Sør-Trøndelag such problems were perceived as specific for the hybrid solution adopted in Rogaland, a public enterprise with a political board. In their opinion, both Swedish and Norwegian agencies organised as limited companies with professional boards seemed to perform better. This was decisive for their own choice of creating a limited company with a professional board. It also convinced them that, given the desire of politicians to get involved in everyday-life details, a distance to the agency would be beneficial (interview st5). In other words, as the legislators did more than just copying other counties, learning and not emulation contributes to explaining the choice of the agency model. There was a great amount of learning.

Finally, as there are no incentives or requirements in the national nor European legal framework favouring a public transport agency model, coercion has not been present. Differently, there are elements of coercion for competitive tendering. Since the late 1990s, advocates of competition have argued that the EU would eventually enforce procurement (interview st3, st6). However, at the time of decision making in Sør-Trøndelag this was no longer the case as the Regulation had already introduced exceptions from competition and the national government had signalled that it would transpose all these exceptions into national law. It was clear that compliance required organisational changes, but not necessarily competition. Therefore, the public transport authority in Sør-Trøndelag perceived itself as free to choose between alternatives (interview st2, st3). The spur to change the *status quo* was mainly driven by functional responses at local level (interview st5, st6).

⁷ Issues with delineation of roles between politicians and the agency has been addressed in the literature on agencies. When turmoil arises and users complain, politicians find themselves drawn towards the operational level (Longva & Osland, 2010, p. 122). Although political steering normally happens through a general agreement, which regulates the division of responsibilities, and a yearly contract, which specifies the service level, in everyday life the separation of roles is both unclear and difficult to accept (Vista Analyse AS, 2008). “The distinction between policy and operational matters is not the same as the distinction between politics and administration (Hogwood, Judge, & McVicar, 2001, p. 44).” In such “grey zones” between autonomy and political steering (Christensen & Lægreid, 2006), politicians are likely to demand more hierarchical intervention. This happens “exactly when the conditions for hierarchical intervention are no longer present (Lodge, 2008, p. 285).”

6. Concluding Thoughts

The findings suggest that once privatisation has occurred in the market, it is difficult to take private enterprises back into public hands or to establish new public companies. The main reason is that current legislation with strict concession rules makes existing operators empowered that in turn makes new establishments difficult. Neither is the alternative to buy an existing company an easy solution, as it depends on the owners' willingness to sell. Hence, contradictory as it may seem, competitive tendering is the most appropriate way to go, in order to increase political steering. That way public transport authorities may – without legal uncertainty – withdraw existing concessions and bring route planning competence back into public hands. As shown, most counties do so by establishing a separate agency. Yet whilst path dependency explains the introduction of competitive tendering, the motive of improving coordination in the public transport system explains the establishment of the agency in Sør-Trøndelag. The agency design was crucially influenced by learning from other counties.

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