Experience with Competitive Tendering in Germany

ECMT-Workshop on Competitive Tendering of Rail Passenger Services: Experience to Date
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Overview

1. Reform of the Regional Rail Passenger Transport in 1996

2. Hindrances to and Effects of Competition

3. The Service Contracts
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3. The Service Contracts
Regionalisation 1996

- Part of the rail reform in 1994
- Responsibility for regional rail passenger transport passed to the federal states
- Regional Authorities (Aufgabenträger) responsible for planning and managing regional rail passenger services (approx 30% cost coverage by ticket sales)
- Federal funding: earmarking of budgets for public local and regional passenger transport: initially € 4.5 bn a year, from 2002 approx. € 6.7 bn
Legal Framework

-Court decision 2002: all regional services have to be allocated by competitive tendering and in a size which leaves chances to all bidders

-Federal government adopted a new regulation of tenders (Vergabeverordnung) in late 2002, allowing the states to award contracts directly without tendering

-In September 2003, a higher regional court decided that RRPS-services do not have to be tendered because the German Railway Law regards them only as an option

-Anticipating this decision, the litigators complained to the European Commission, where a process against Germany at the ECJ was started in 2004, which is still pending
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Development of regional rail transport – passenger-km

Source: Progtrans (2005)
Competitive tendering 1996-2004

Overall market share of competitors

Source: DB AG (2005)
Direct awarding of services to the DB

<table>
<thead>
<tr>
<th>State</th>
<th>conclusion of contract</th>
<th>Train-km (mill.) p.a.</th>
<th>Value (billion €)</th>
<th>duration of contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin/Brandenburg</td>
<td>December 2002</td>
<td>35.0</td>
<td>1.9</td>
<td>10 years</td>
</tr>
<tr>
<td>Lower Saxony</td>
<td>January 2003</td>
<td>27.8</td>
<td>2.5</td>
<td>10 years</td>
</tr>
<tr>
<td>Saxony-Anhalt</td>
<td>March 2003</td>
<td>16.2</td>
<td>2.5</td>
<td>12 years</td>
</tr>
<tr>
<td>Hesse (Rhine-Main-Area)</td>
<td>April 2003</td>
<td>33.0</td>
<td>4.4</td>
<td>11 years</td>
</tr>
<tr>
<td>Baden-Wuerttemberg</td>
<td>July 2003</td>
<td>49.0</td>
<td>4.6</td>
<td>13 years</td>
</tr>
<tr>
<td>Hamburg (S-Bahn)</td>
<td>July 2003</td>
<td>12.5</td>
<td>0.7</td>
<td>6 years</td>
</tr>
<tr>
<td>Rhineland-Palatinate</td>
<td>January 2003</td>
<td>29.5</td>
<td>2.4</td>
<td>11 years</td>
</tr>
<tr>
<td>Northrhine-Westfalia</td>
<td>July 2004</td>
<td>44.0</td>
<td>6.0</td>
<td>15 years</td>
</tr>
<tr>
<td>Saarland</td>
<td>July 2004</td>
<td>6.3</td>
<td>n/a</td>
<td>14 years</td>
</tr>
<tr>
<td>Berlin (S-Bahn)</td>
<td>August 2004</td>
<td>32.4</td>
<td>3.0</td>
<td>15 years</td>
</tr>
<tr>
<td>Bavaria</td>
<td>November 2004</td>
<td>96.1</td>
<td>n/a</td>
<td>11 years (S-Bahn 15)</td>
</tr>
</tbody>
</table>
## Different business models of the TOCs

<table>
<thead>
<tr>
<th>DB AG</th>
<th>TOCs with management-oriented skills</th>
<th>TOCs with specific skills</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Characteristics:</strong></td>
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</tr>
<tr>
<td>- Intra- and intermodal integration of services</td>
<td>- management-oriented</td>
<td>- minor and mid-sized firms</td>
</tr>
<tr>
<td><strong>Strengths:</strong></td>
<td>- internationally focussed</td>
<td>- deliverance of carrier-functions in minor networks</td>
</tr>
<tr>
<td>- Complex train services</td>
<td><strong>Strengths:</strong></td>
<td><strong>Strengths:</strong></td>
</tr>
<tr>
<td>- historically rooted market share</td>
<td>- Market orientated approach</td>
<td>- local knowledge</td>
</tr>
<tr>
<td>- resources (e.g. rolling stock)</td>
<td>- transfer of international experiences</td>
<td>- historically rooted market share</td>
</tr>
<tr>
<td>- vertical integration</td>
<td>- management strength (acquisition, marketing)</td>
<td>- organizational flexibility</td>
</tr>
<tr>
<td>- politically imbedded</td>
<td>- relative cost advantage</td>
<td><strong>If publicly owned:</strong></td>
</tr>
<tr>
<td>- financial advantages</td>
<td></td>
<td>- historically rooted market share</td>
</tr>
</tbody>
</table>

- If publicly owned:
  - historically rooted market share
  - political back-up
  - financial advantages
Four different strategic groups of TOCs

(Market share = percentage of train-km)

Source: Höhnscheid (2005)
Competitors and hindrances to market entry

Share of train-km won by different TOCs in competitive tenders 1996-2004
Source: DB AG (2005)

Hindrances to market entry

• Missing know-how of the Regional Authority directly after the regionalisation
• Rolling stock
• Advantages of the DB
  - High influence on infrastructure investment and infrastructure pricing
  - Political embedding
  - Alleged offer of rail infrastructure related services to the states
  → Usually direct award of services to the DB
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Different forms of contracts

Regional Authorities plan and manage
Regional Rail Passenger Services

Different Awarding Procedures

Direct
Awarding

Price
Request

Competitive
Tender

Different Forms of Contracts

Degree of Specification of Services differs significantly
What kind of contracts were used in tendering?

- No Standardisation of contractual forms
- Severe differences concerning
  - duration and network length
  - service specification
  - risk allocation
  - additional incentive elements
  - contract adjustment
Tendencies (especially 1998-2003)

- Contract duration: on average 8-9 years
- Network length: 1.0 – 3.5 mill train-km p.a.
- Tight service specification concerning timetables and rolling stock
  Partly: Obligatory use of rolling stock pools and maintenance
- Risk allocation:
  - Revenue risk with TOC, Regional Authority or shared
  - Cost risk with TOC
    but: cost pass-through rules (track / station access charges)
- Bonus-Malus contracts (mainly malus, mainly punctuality)
- Contract adjustment: automatic adjustment clauses and formal adjustment processes
Outlook I: What Regional Authorities expect/want …

- Contract duration: 10 + x
- Network length: 5.0 mill train-km p.a.
- Functional service specification
- Risk allocation: Net cost contracts
- Bonus-Malus contracts (quality broadly defined)
- Contract adjustment: automatic adjustment clauses and formal adjustment processes
... but (Outlook II)

- Competitive tendering is the central measure to introduce competition

- Up to now, tendering rail services has fulfilled expectations (Regional Authorities report subsidy reductions by 18-25%, over-average passenger growth)

  - Future development is highly uncertain
    - availability of funds
    - use of tenders vs. direct awarding

  - Envisioned contract design hardly meets compatibility requirements