

# Public transport regulation and contract models

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Overview of situation in Sweden

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## *INTRODUCTION*

This report presents a background to the Swedish public transport legislation and reflects the current situation from a theoretical view on governance and contracting public transport. The report is supposed to give support to current discussion in Finland on contracting models but is valid generally.

The report is written by Stenerik Ringqvist, RTM Konsult. Conclusions and recommendations are based on experiences from Sweden and elsewhere during a long period working as advisor on public transport strategies and organisation worldwide.

## *SUMMARY*

The use of contracts in public transport has developed over time influenced by legislation and national and regional transport policies. In Sweden regional public transport authorities was introduced by the public transport act of 1978 and competitive tendering was introduced in 1989. The public transport market has since then developed and all regional public transport services are today contracted after competitive tendering. The development of the contract models are explained from a theoretical perspective including the roles, responsibilities and driving forces that interact.

The evolution of contract models is explained from an explanatory model showing the criteria needed for a successful contract. The more important part in the design of a contract is the need of balance between the regional authority aiming at “maximising benefits” and the private operator maximising the profit within the regulatory framework set up on national and European level. The contract models also need to reflect the balance with the authority and the operator as well as the balance between the public dialog regarding development of public transport and the customer dialog focusing on service performance. This is discussed in the paper and also presenting the logics for successful contracting based on experiences over 30 years of contracting and competitive tendering in public transport.

In Sweden the gross contract models have been dominant over the years but recently new contract models are introduced based on remuneration linked to boarding passengers. These “ridership incentive contracts” are implemented in Stockholm region and the contract model is presented more in detail.

# 1 PUBLIC TRANSPORT LEGISLATION IN SWEDEN

## 1.1 Public Transport Act before 2010

### 1.1.1 PTA Act from 1978<sup>1</sup> - regional public transport authorities in Sweden

Subsidies of public transport were introduced in the 1960's by national grants to guarantee a minimum service. The services were the responsibility of the operators with route licenses and exclusive rights. Over time the public transport in the bigger cities was organised and financed by the cities and often with municipality owned operators. In Sweden the regional monthly card with flat fare was introduced in Stockholm region in the beginning of the 70's. The idea to introduce this model all over Sweden was proposed in 1976. At the same time the existing model of subsidising public transport services was criticized because the subsidies were linked to operator licenses with exclusive rights and the subsidies were increasing over time. The result of this situation was the introduction of Public Transport Authorities in each county decided by law 1978. All local and regional public transport by bus, tram and metro was from that time a local responsibility on municipality and county council level. The rail service was still a national responsibility with national subsidies to the Swedish Rail Company (SJ). The law from 1978 was fully deployed in 1983 but the operators still had the route licenses. The Public Transport Authority (PTA) was in almost all counties established as a limited company (Aktiebolag) with a board of directors appointed by the municipalities and county council. The board of the PTA had the full responsibility and power to decide on services and fares and the municipalities and county council paid the subsidies needed following rules for distribution of the subsidies..

The act from 1978 regulated the organisation of the PTA and rules on financing were stipulated if voluntary rules were not agreed on which was the case in most PTA. In almost all counties monthly period tickets was introduced covering the whole county like Stockholm but also special monthly tickets were introduced valid for city-traffic and within a municipality. The first years of the new PTA organization focused on integration and improving of the services introducing time-tables for all services and contracted service with the existing operators. The contracts were gross contracts and negotiated with discussions on proper pricing.

During the first years after the PTA reform services increased – from 1980-1984 services increased by 20% and ridership with 30%. The regional bus services increased with 30% and ridership by 55%<sup>2</sup>. Cost coverage during this period increased from 38% to 42%<sup>3</sup>.

The public transport act of 1978 did not change the situation with the operators route licenses with exclusive rights. When the PTA were established integration and improvement of services became more and more important but in conflict with the established route licenses.

Rationalisation of services was difficult to achieve and the PTA's considered the costs for operation too high. The PTA demand was to more freely design the services and contract the most suitable operator to create a better and more efficient service to the public.

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<sup>1</sup> Lag 1978:438

<sup>2</sup> TPR-rapport 1986:17

<sup>3</sup> Public transport in Sweden – co-ordination and competition, SLTF Mars 2002

## 1.1.2 Introduction of competitive tendering – Act from 1985

### *Bus operations*

The law from 1985 stipulated that the PTA from 1989 could introduce services without a route license and the former route licenses were invalid after a four year transition period. During this transition period the operators had the right to be redeemed or acquired alternatively to enter into competition for contracts. Only a few operators chose to end their business.

The new act from 1985 introduced possibilities for new traffic solutions and competitive tendering. The first competitive tendering was introduced in 1989 and after a period of 10 years 98% of all services were contracted after competitive tendering. The results were reduced costs-often 20%. The cost reduction was used to improve services and reduce subsidies. Cost coverage was improved and was at the end of the 1990's ~55%<sup>4</sup>.

The introduction of competitive tendering also resulted in a reorganisation of the bus sector with mergers and concentration to fewer but bigger companies. The public transport operators owned by municipalities/cities lost in procurement or were sold and from 40 municipality owned operators 1989 there were 21 end of 1994<sup>5</sup> and only 9 operators municipality owned in 2004<sup>6</sup>.

### *Rail way services*

Railway services were during the 1980's a national responsibility even if some commuter train services were established in Stockholm, Gothenburg and Malmö regions contracted by the PTA. When the responsibility for regional rail services was transferred to the regional PTA in 1990 rail services were also opened for competitive tendering. From the beginning of the 1990's all regional and local public transport was following competitive tendering rules.

<b>Situation for passenger rail 2013 compared to the situation 1988</b>		
SOURCE: Den svenska buss- och tågtrafiken – 20 år av avregleringar, Gunnar Alexandersson 2014 <sup>7</sup>		
Railway market	1988	2013
Regional unprofitable services	SJ monopoly and subsidised by PTA	Competitive tendering
Regional profitable services	SJ monopoly	Open and free market
Long distance unprofitable services	SJ monopoly and subsidised by the state	Competitive tendering
Long distance profitable services	SJ monopoly	Open and free market

<sup>4</sup> Bearbetad offentlig statistik, RTM Konsult

<sup>5</sup> Artikel Ekonomisk Debatt 1996, årg 24, nr 2, författare Gunnar Alexandersson, Stefan Fölster, Staffan Hultén

<sup>6</sup> källa: Statskontoret rapport "Bättre konkurrens med kommunala bussbolag?", 2004

<sup>7</sup> källa: Den svenska buss- och tågtrafiken – 20 år av avregleringar, Gunnar Alexandersson 2014

## 1.2 Public Transport Act of 2010

A governmental study in 2003 (Koll Framåt<sup>8</sup>) initiated a broad discussion on the future development of the public transport sector. A renewal of organisation and the goals to achieve were at centre of the discussion. The Swedish Transport Administration presented a national strategy for the long term development of public transport. The strategy was developed in close cooperation with stakeholders within the public transport sector.

The strategy highlighted two areas:

- The customer perspective was weak – a reformation from production oriented to customer oriented perspective within the sector was needed.
- The efficiency was not acceptable from a holistic view – a fragmented sector

The final report presented a common vision and values for the sector and an action plan supported by the PT stakeholders being the start for the “doubling project”.

In 2008 the public transport sector (authorities, operators and industry) established a cooperation (“Fördubblingsprojektet”<sup>9</sup>) with the purpose to strengthen the role of public transport and introduce better situation for improving the public transport with the aim of doubling the ridership to 2025. The organisations supporting this initiative were Swedish public transport association, the bus and coach federation, the association of train operators, the taxi federation and Swedish Association of local and regional authorities (municipalities and county councils). The business model presented was a guide and model for the cooperation between authorities and operators based on the vision and values presented as a result of the action plan.

*Utdrag ur rapport ”Affärsmo­dell för fördubblad kollektivtrafik”, april 2009*

*Projektgruppens huvudbudskap i idéskissen är att kollektivtrafiken snabbt måste tas till ”nästa utvecklingsnivå” och bli känd som en modern innovativ framtidsbransch. Det handlar om att öka resenärernas betydelse för alla aktörer som är involverade i kollektivtrafikens utveckling genom att ha en helhetssyn på kundernas behov och flytta besluten närmare resenärerna. Det handlar också om att värna om kollektivtrafiken som ett sammanhängande system med krav på hög systemeffektivitet. Allt detta kräver en effektiv gränslös samverkan mellan branschens aktörer.*

### *The new public transport act of 2010<sup>10</sup> including EU regulation 1370/2007<sup>11</sup>*

Parallel to the public transport sector initiative the government initiated a review of the public transport act. The motivation was the EU regulation 1370/2007 that needed incorporated in Swedish law but also the critics of current legislation. A governmental remit was presented in 2009 but was heavily criticised. The proposal introduced the right for commercial services to have priority and public service obligations only be a complementary service. This proposal was rejected by the public transport sector and not included in the final proposed legislation.

The proposal presented later on by the government incorporated the business model presented by the sector.

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<sup>8</sup> KOLL framåt Huvudrapport 2007-12-21 VV publikation: 2008:33

<sup>9</sup> Partnersamverkan för en fördubblad kollektivtrafik

<sup>10</sup> Lag 20101065

<sup>11</sup> EU regulation 1370/2007

Kommittédirektiv 2008:55

... med utgångspunkt i ett tydligt resenärsperspektiv se över och lämna förslag till ny reglering av den lokala och regionala kollektivtrafiken, inklusive stärkta passagerarrättigheter. Utredaren ska lämna förslag till en samlad och överskådlig lagstiftning som är anpassad till EG-rätten och övriga relevanta förändringar i samhället.

*Det offentliga åtagandet*

Utifrån dagens samhälleliga och rättsliga förutsättningar ska utredaren analysera vilken roll de kollektivtrafikansvariga bör ha, det vill säga vad det offentliga åtagandet på kollektivtrafikområdet bör innehålla och hur långt det bör sträcka sig. I detta ligger även att lämna förslag till en lämplig avgränsning mellan den trafik som är föremål för ekonomisk ersättning från det allmänna och den trafik som bedrivs kommersiellt.

Prop. 2009/10:200

*Regeringens bedömning:*

Regionala kollektivtrafikmyndigheter bör ansvara för att ta initiativ till att etablera regional kollektivtrafik. Nyttan av myndigheternas ingripande bör alltid motivera det eventuella men som ingripandet ger upphov till. Däremot behöver myndigheten inte avvakta kommersiella initiativ till att etablera kollektivtrafik.

Kollektivtrafikföretag bör fritt få etablera kommersiell kollektivtrafik förutsatt att de har sådana grundläggande tillstånd för verksamheten som krävs.

The new public transport act clarified the political responsibility by regulating that the competent authority should be the county council or a authority composed by the municipalities and county council in the situation where the municipalities and county council have a mutual responsibility.

The new act also includes regulation on the process on presenting the public transport program and decisions on public service obligation (PSO) following the EU regulation 1370/2007. The decision on PSO should include a market review and justification for market intervention and subsidised services. A consultation process is mandatory before adoption by the competent authority. The decision process on PSO and regulation on public service contracts (PSC) are more clearly defined in the new public transport act compared to the previous legislation.

The competent authority should as part of the public transport program present the reasons for deciding on public service obligation. The reasons should be justified following the EU regulation (PSO is justified if ...*requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward*). The decision on PSO is solely a decision of the PTA and commercial services do not have any preferential rights. If the commercial services only covers part of the supply the authority assess desirable the authority could also decide on public service obligation for all the services. The network effects could also be included in the assessment meaning the value of an integrated system including both profitable and non-profitable services that could not easily be established without a contracted service. Normally this means that if the level of service is not covered by commercial services

the total services will be under a public service contract. The decision is of the PTA to choose what services to include in the PSO and be followed by contracted service.

Exclusive rights are clearly forbidden in the Swedish public transport act.

Any operator is free to establish public transport service on commercial grounds with the requirement of publishing before starting and closing service. Contracted services can thus be met by competing services. This open market approach is vital in the Swedish legislation and aims to open for market initiatives.

In reality this has not happened mostly because the contracted services are subsidised in average by 50%. The public transport services are since 30 years also part of a regional network with integrated information and fares that a new commercial operator can't claim to be part of. The possibility of using general rules as part of the PSO has not been used so far and not clearly included in the Swedish legislation but possible following the EU-regulation.

<b>Legislation area</b> (EU terminology)	<b>EU regulation</b>	<b>Swedish public transport Act 2010</b>
Public Service Obligation (PSO)	Decision by competent authority	Decision by the PT authority on political level
Public Service Contract (PSC)	Defined rules for procurement and contracts	Defined rules following the Swedish law on public procurement
General rules	Defined rules for compensation	Not specially included – EU-regulation annex valid
Exclusive rights	Possible	Not allowed

### 1.3 Legislation regulating procurement of services

When introducing regional public transport authorities and contracted services in the beginning of the 90's the process of contracting was not regulated by law. Only general principles for contracting were adopted by the association of local and regional authorities (SALAR). In 1994 the public procurement act (LoU)<sup>12</sup> was adopted by parliament also including the EU-directive on procurement. In 2007 a revision of the public procurement law was adopted<sup>13</sup> also including EU directive 2004/17&18 and the law came into force in 2008.

The EU regulation 1370/2007 covering all local and regional public transport including procurement process was included in Swedish law by the new PT act from 2010. Currently a revision of the Swedish public procurement act is ongoing also including the new EU directive on public procurement<sup>14</sup>.

<sup>12</sup> Lag 1992:1528 om offentlig upphandling

<sup>13</sup> Lag (2007:1091) om offentlig upphandling och Lag 2007:1092 om upphandling inom områdena vatten, energi, transporter och posttjänster

<sup>14</sup> EU directive on procurement 2014/23, 24 and 25

## 2 BACKGROUND TO CURRENT REGULATION

### 1.1 Public transport and transport policies

Today there is a common understanding that public transport is part of a basic public service and an important mean to achieve a sustainable development. Traditionally the public transport economics has been presented from a strict business economic perspective. The social and environmental benefits are not shown even if those benefits often are the reasons for subsidising public transport. This is illustrated by "the iceberg"<sup>15</sup>. The reasons for subsidising public transport are also these benefits and all are not included in traditional economic analyses.



The reasons for political engagement in the public transport sector are part of a transport policy based on a broader cost benefit analysis including more than traditional transport economics. From an international perspective the reasons for subsidising public transport depends on local situation. In the developing countries the more important are social inclusion and economic perspective for low income groups when in European cities often congestion, livable cities and environmental issues are dominant. All reasons are part of the three dimensions economic, social and environmental sustainability. When discussing public transport the different objectives for public transport services need be recognised and all services can't be viewed in the same way. This is illustrated by the four parts<sup>16</sup> of public transport that have different conditions and objectives.

#### Obligatory services

- Bringing children to school, services for disabled...

#### Basic service level

- Minimum service to meet political decisions on accessibility...

#### Socioeconomic level

- Services for commuting, to reduce congestion, improving environment...

#### Commercial services

- Services operated profitable

Municipalities and county councils have a commitment by law to offer services to bring children to school, offer services for disabled and other public services. These obligatory services need to be offered regardless of number of passengers or economic results. These services should be planned rational and efficient and the way to achieve this is integration of services and effective planning.

The second group includes services based on political decision on minimum service often based on accessibility to service, regional centers for all inhabitants in the county. This gives guidance for basic public transport services and for these services

cost-revenue relations are not useful for decision on the public transport offer.

<sup>15</sup> "Isberget" presented by Skaraborgs Länstrafik beginning of 1990's developed over time

<sup>16</sup> Älvsborgstrafiken verksamhetsplan 1990's and Ringqvist, RTM Konsult, (2001)

The third group includes the majority of public transport under public service obligations and is motivated from a socio-economic view where social and environmental benefits are included. In this group of services a balance between costs and revenues are valid and the cost-revenue relation fulfills an important part in decision on the level of service offered.

The fourth group includes services that could be operated on commercial initiative. These services can be part of contracted services following the public service obligation and by cross financing help in offering a better service. In practice the profitable services are often limited when the subsidies ratio is 50% which is the common level in Sweden.

The motives for subsidising public transport have different starting points but based on benefits created by public transport. Part of the benefits can be calculated and presented in a cost-benefit analysis but some only possible to describe out from overall common values. The Swedish Public Transport Association presented 2011 guidelines with calculation methods for benefits of public transport<sup>17</sup>.

## 2.1 Governance models of public transport in Sweden

During the years the organisation of public transport has developed as well as the roles of the stakeholders. The development has had different reasons. All changes has – even if not specifically presented in this form

– the challenge of public transport summarised in the figure<sup>18</sup>

including the three parts of public transport services –network structure, system performance and quality and customer experience.

The third includes also the ticket

price being part of the customer experience. But the conditions also very much influenced by the city design and the infrastructure used by public transport. In total there are six major areas that need be included when discussing public transport organization and governance and are used in this report explaining the organization of public transport in Sweden.

### The public transport challenge

"Get me from point A to point B....."

"....quickly and don't make me wait..."

"...and I want to feel good about it."

Network structure

System performance

Quality and customer experience

City design

PT infrastructure

Network structure

System performance

Ticket price

Quality customer experience

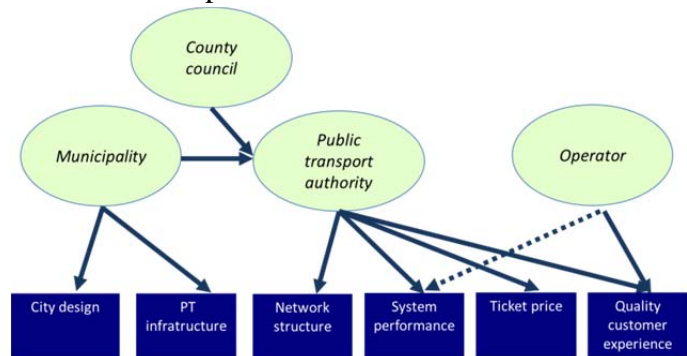
The public transport main objective to offer transportation to the customer is dependent on a range of factors influenced by others. The more important factors are the design of the city with its structure, density and local design and the infrastructure giving the prerequisites for offering an attractive public transport service. Other external factors are also important including taxes, pricing of services and legal prerequisites that influence economics for the public transport sector. This repor focus on the six areas and the main stakeholders involved in the development of public transport that are the municipalities, county councils, the PTA ´s and the operators.

<sup>17</sup> Kollektivtrafikens samhällsnytta, En vägledning, Svensk Kollektivtrafik 2011

<sup>18</sup> Ringqvist, RTM Konsult, CTH masterutbildning 2007

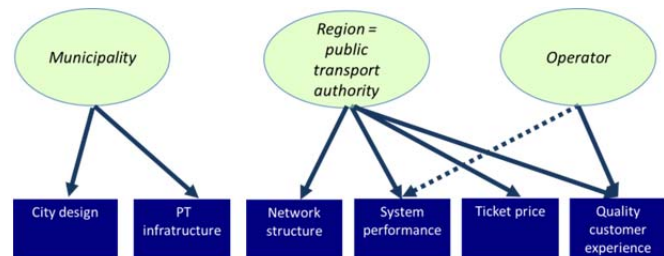
*1980's – introduction of regional public transport authorities*

The introduction of the regional PTA's beginning of the 80's introduced new prerequisites for the public transport sector. A public body (PTA) had the responsibility to deliver the public transport services with close links to the local and regional level (municipalities and county councils) The new PTA's had the role of service provider and contracted operators to deliver the services. The need of close cooperation was obvious but responsibilities were spread to several bodies. Different models were established to meet the need of cooperation- some with good result and some only on paper. The municipality responsibility of spatial planning and local infrastructure and the PTA to deliver the services were not always coordinated. Operators contract were mainly gross contracts and the operator delivered the defined services and influenced in reality only the quality of performance. The main problem was the operators focus on "low cost operation" and the operator did not gain from increased ridership except the need for more services paid by the PTA.



*Current organisation following the public transport act of 2010*

The new public transport act of 2010 changed the playing field for the sector. It introduced a clear political responsibility and the responsibility was in many counties transferred to the region<sup>19</sup> (County council) but some counties kept the mutual responsibility of municipalities and county councils. The latter thus kept the structure from previous legislation but with a more clear political responsibilities demanding decisions by the municipalities and county councils in some central points earlier decided by the board of the PTA. Those counties with the region being the authority the overall responsibility is described in the figure. The need of cooperation between the PTA and the municipalities are today even greater but at the same time the split responsibility is more obvious. The regional PTA with its role as "providing public transport services" and the integration of public transport in the overall spatial development is dependent on voluntary cooperation. The operator is still delivering the defined services and still gross contracts with or without incentives are in majority.



<sup>19</sup> Some of the county councils were renamed to "region", and in some counties a special body called region were established after a reform transferring responsibilities to the regional level on regional development

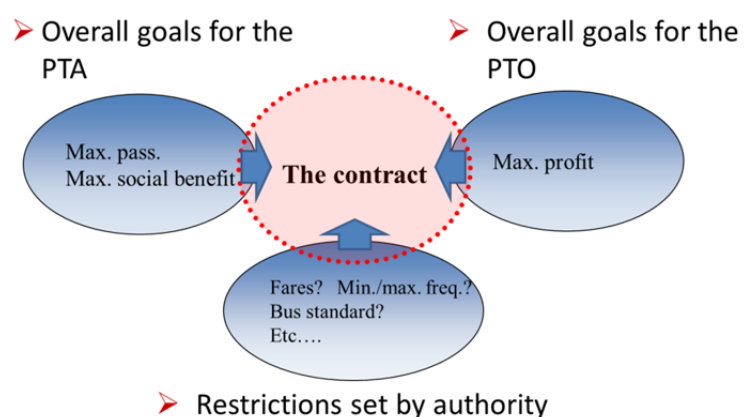
## 2.2 Driving forces

To really understand the essence in public transport sector the driving forces are key. The PTA with its overall goal to deliver a service as part of a socio-economic benefit framework is met by the operators with the overall goal to make profit in business. The balance of these two major driving forces are included in legislation, decisions on taxes and fees to steer towards the overall objectives of economic theory. But most important are the contracts between the PTA and PTO that are defining the roles, responsibilities and level of influence to develop the public transport in line with the overall goals defined by the political bodies. To make this possible the clear and logic distribution of responsibilities and influence are critical to include and motivate the operators in development which was concluded in a Nordic study 1994<sup>20</sup>. The study recommended that contracts should reflect these factors and include the design of incentives out of the driving forces of the contract partners. It also concluded the incentives need to be of a significant level to be considered in the daily situation. Too small incentives tend to be only cosmetic.

The experiences from last 20 years show the PTA still decides on most operating issues and the operators still delivers the service defined by the PTA and thus still focus on "low cost operation". Only last years new contract models are introduced presented later in this report.

A model to explain these driving forces is shown in the figure<sup>21</sup> presenting a general situation.

The operator's goal of "maximum profit" is met within the constraints set by society in the form of laws and taxes, together with the restrictions imposed by the authorities in the form of rules for public transport may be conducted. This has historically been done by traffic legislation and regulations for operating licenses (eg tariff set by the provincial government).



Society's overall goal of "maximum social benefit" is based on a socio-economic perspective. This cannot be achieved solely by general limitations and requires intervention of society that can be done in various ways. Sweden and Europe have chosen the model with the contract between "authority/society" and "operator" that regulates both traffic and financing<sup>22</sup>. The design of the contract is therefore crucial to achieve a balance between authority and operator so that their individual drivers can be met. This balance must include the responsibility, role and influence.

<sup>20</sup> Nordisk arbetsgrupp för incitamentsavtal i kollektivtrafik, Ringqvist et al, KFB rapport 1994 dnr 93-498-732

<sup>21</sup> Ringqvist, RTM Konsult, föreläsningar CTH master utbildning 2007 och studier i Sverige och Sydafrika

<sup>22</sup> EU förordning 1370/2007

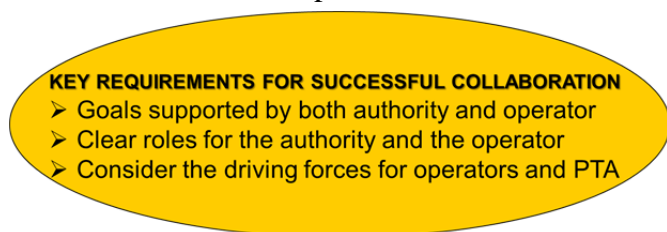
If public transport should be a key component of urban and regional development it needs a holistic and systemic perspective as the starting point. This means that society must take the main responsibility for the overall structure of the route network structure and infrastructure for public transport as well as to create an organisation and the basis for a coordinated public transport.

It is also equally logical that those who meet the client in daily business have the main responsibility for the quality of public transport, service and support. The question may therefore be limited to what extent and in what way “society” represented by the authority should control the traffic supply and operations and what requirements should be defined for quality and services under a contract between authority and operators.

The driving forces are also influenced by the importance of public transport in the overall city development as well as social and governance issues that are a priority at the current time<sup>23</sup>. Not least the profession of players affects the perception of public transport. The priority of different issues and the driving forces in the organisations with great impact influences to a great extent how public transport evolve over time.

Profession	Human science and sociology	Public Economy	Market oriented	Political science	Town planning
Objective	"Satisfy the customer"	"Manage the market"	"Schedule the service"	"Produce the policy"	"Develop the city"
Focus area	Customer oriented. Operator ↔ customer	Market oriented. Authority ↔ operator	Service oriented. Operator ↔ customer	Organisation oriented. Authority ↔ operator	Planning oriented. Authority ↔ public

To create the incentives for all players a common vision and overall goal of the public transport to be offered is necessary. These "goals" thus describes what will be offered and achieved. These goals should not be compared with targets and KPI's identified and part of contracts that primarily should be based on the driving forces of the participating stakeholders. This is summarised in the three key requirements for a successful collaboration between authority and operator and is general and applicable in countries with completely different conditions<sup>24</sup>.



The public transport specific conditions are general and are described in an analysis as follows: *..... At the same time it is the most complex urban transport challenge because of a) the need of an integrated approach with other aspects of spatial development and b) there are a number of agencies involved in the transport sector development, with differing perspectives, goals and driving forces. The need of a broadened discussion and involvement of all relevant stakeholders is necessary*<sup>25</sup>.

<sup>23</sup> Ringqvist, RTM Konsult, SKL konferenser inför nya kollektivtrafiklagen 2009

<sup>24</sup> Ringqvist, RTM Konsult, bl a föreläsning CTH master utbildning 2007

<sup>25</sup> Sustainability review of Visakhapatnam City, Indien, SIPU/RTM 2010

Knowledge and understanding of the actors' motivations is vital to create conditions for the development of public transport as part of the development of the city/community. The need for jointly formulated vision and overall goals together with clearly defined roles for the stakeholders with responsibility and influence in balance is the basic prerequisite for success.

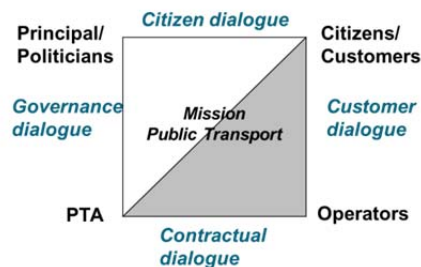
### 2.3 Responsibilities

Public transport is characterised by a complexity interacting between politics and business. The starting points for policies focus on "social benefits" and the operational business on "financial results". This financial result is different depending on whether the business is run from a commercial perspective (max profit) or based on the financial framework set based on political considerations.

Enquist<sup>26</sup> has described this in a picture of a value-stakeholder network where roles are reflected in the dialogue. The four dialogues have different focus. If the citizen dialogue and governance dialogue tend to focus on production it will also influence the contractual dialogue. The customer dialog has its focus on services and is based on normal market conditions.

#### Responsibilities Stakeholder network in public transport

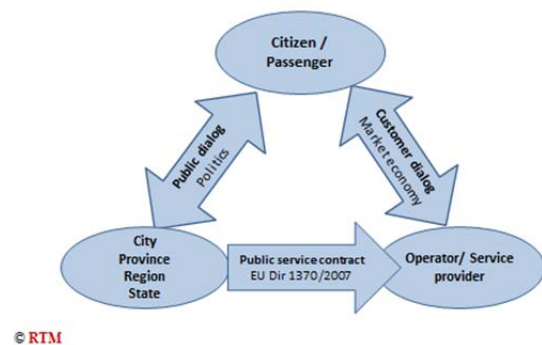
Interacting value-creating processes and dialogues



Source: B.Enquist, Service Research Center – Karlstad University, Sweden

The theoretical roles can also be described as the “Three dimension dialog<sup>27</sup>” including the major players being the citizen/passenger, the authority/political level and the service provider having different roles and responsibilities. Citizen participation in the public dialogue takes place between the citizen and "political bodies" where the starting point beyond the individual interest is the social benefit. The dialogue that takes place between the passenger (customer) and the operator/service provider has its starting point based on market economy. The individual sees this dialog based on their own interest and what to pay for the service as opposed to the public dialogue in which the demands being made on the community to provide the service (motivating the subsidy). These two dialogues with different approach need to be balanced in the social commitment and the contracts and regulations that govern the performance of the service of public transport.

#### The three dimension dialog



<sup>26</sup> Enquist, 1999 Från produktionsparadigm till serviceparadigm

<sup>27</sup> Ringqvist, RTM Konsult, SKL konferenser inför nya kollektivtrafiklagen 2009

The division of roles in this model is theoretically clear - local/county/region is responsible for the politics and socio-economic balance and translates this into directives, public service obligations and in public service contracts with operators.

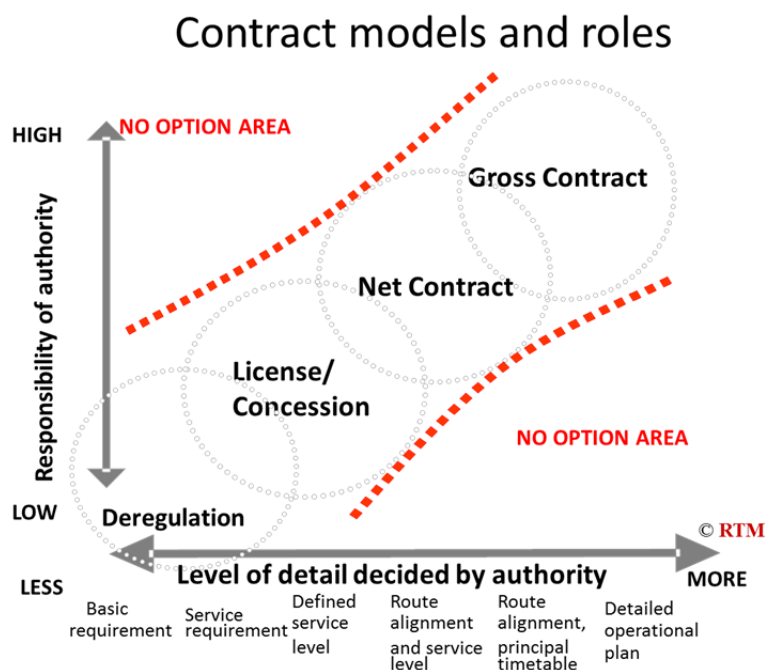
The confusion that often existed - and also applies today - is when the same body is responsible for both public dialogue and customer dialogue and not separated. This is especially relevant when the authority is responsible for information, pricing, ticketing system and marketing where the two dialog roles are difficult to separate. The criticism often raised against the former public transport authorities can be explained in these dialogues not being separated and therefore not demonstrated the difference between the political and executive responsibility. This also applies to today's organization with regional public transport authorities often have both roles in relation to the individual dialogue in which the authority (or via owned company) act as service provider.

The theoretical responsibility in this value networks need also be transferred into the contract between the authority (Competent Authority according to EU terminology) and the operator. The contract should reflect their mutual responsibilities and level of influence so that a desired balance of the goals of society, operator business objectives and general criteria is achieved.

The public commitment decided by the authority - in the form of Public Service Obligation as per EU Regulation 1370 - must be balanced by responsibility and influence in the contract with the operator. This is described in an explanatory model<sup>28</sup> in which the influence of the authority decisions and responsibility are set in relation to the possible contract models. This explanation is applicable in many

situations and developed as explanation of a change from a deregulated to regulated public transport but is equally relevant in the Swedish and European situation.

The levels of details that the authority decides influence the contract model that may be possible. The logic of this model is obvious.... *the one who decides must take the consequences*. But often is this simple truth forgotten and leads to situations in the dialogue between authorities and operators based on both aiming at the no option area.



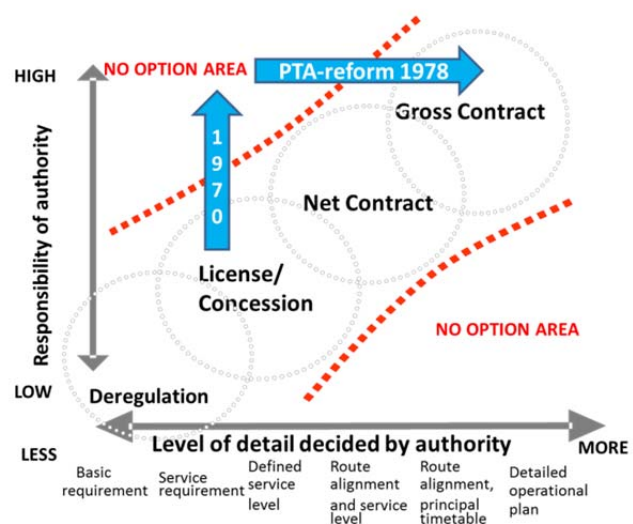
<sup>28</sup> Contract models–evaluation of options, Eastern Cape province, South Africa -Ringqvist RTM Konsult 2007

The development of contracts began in connection with public transport received subsidies/ grants. In the 1960s, it was designed as general state aid (subsidies by veh km for a minimum service level) which was regulated according to state regulations. In the explanatory model it corresponds to the situation with licenses and the requirement of a defined minimum service level to get a refund. Society's influence over the traffic was very small, and society's responsibility was limited to the state regulated standards. In pace with increased demands for subsidies responsibility of society increased as a financier but operators had the full influence over the traffic design.

Public funding became increasingly larger, and thus the financial responsibility increased and ended up in a contract situation in the “no option area”. This situation was followed with demands for increased public influence and in many cities the public transport operations were taken over by municipalities and municipal owned public transport companies were established. The rural public transport was regulated by requirements on municipal public transport provision programs and agreements with the operators to receive government grants.

A major change occurred when the law on regional public transport authorities of 1978 was implemented in the beginning of the 1980's. The influence and responsibility changed dramatically from having been in a situation of licenses/concessions now moved the playing field to the area of gross contract.

Through the introduction of procurement in 1989 distribution of influence and responsibility drastically altered where public transport authorities now had total influence and also the full responsibility and operators delivered the “defined services” with the risk on only the production side. This also meant a development where the operators focused on “low cost operation” – a production oriented business. As a result of this the competence of marketing, communication and sales basically was rationalised away and the public transport authorities took over these tasks.



During the past 20 years a number of new contract models were introduced more or less successfully. The debate has often been assumed that the operator would have increased influence over public service but the willingness to include an economic risk was often low. In the explanatory model described it as the operator sought an agreement in the “no option area”. Similarly, public transport authorities presented proposals that the operator should take greater responsibility but at the same time found it difficult to accept the influence on services and ticket price required for this- also contracts in the "no option area". This awareness has increasingly risen and in the framework of the partnership and the development of new business models, these issues have been addressed.

In Spring 2009, the sector, including both authorities and operators, presented its expert report entitled "Business Model for Doubled Public Transport"<sup>29</sup> as basic input for a discussion on how public transport should be developed. This was further developed in a contracting process that describes the steps in the work of public transport provision programs to contracts. This business model also included the roles and responsibilities highlighted as essential conditions: ....  
*To create the best conditions for increased travel and increased efficiency requires a close cooperation and an efficient division of responsibilities between authorities, operators, municipalities and other stakeholders. It's about everyone taking responsibility for what each and one do best...*



The contract models and guidelines that have been developed in partnership built on the work and responsibilities that the business model introduced. As part of the cooperation, following a contract, the contract is complemented with a cooperation agreement between authority and operator. The purpose of these agreements<sup>30</sup> is described as ... *The basic idea is to formalise cooperation between public transport authorities and contracted operators to attain common goals... .... It is essential, in mutual trust, to clarify each party's goals and that these form the basis of the objectives. This ensures that all parties work together in the same direction. Great effort must be given to anchor the common goals of the parties concerned. Many changes occur during the contract period and unforeseen events will most likely occur. The common objectives should be the basis of the cooperation agreement regardless of such changes...*

Cooperation agreements can therefore be seen as the common platform for cooperation during the contract period, which regulates how the parties can and should act together and clarify responsibilities and influence. These cooperation agreements should also include other actors that are essential to achieve the common objectives.

<sup>29</sup> Affärsmodell för fördubblad kollektivtrafik, Partnersamverkan 2009

<sup>30</sup> Modellavtal avseende Samverkansavtal H19, Partnersamverkan 2013

### 3 CONTRACT MODELS USED TODAY

#### 3.1 Contract models used in Europe

The principle models are valid globally. In Europe the national legislation differ within the EU legislation of EU regulation 1370/2007 and from that also contract models used. The models can be explained in four categories, gross contracts with or without incentives, “ridership incentive contracts”, net contracts and concessions. The normal contract model from the EU regulation is the gross contract or net contract models. The concession model defined as a “right to operate” and not linked to any subsidies are less relevant in the situation where subsidies are needed and thus a contracted service. The contracts are either a directly awarded to an internal operator (often the case in e.g. German cities) or awarded after competitive tendering (the dominant situation in Scandinavia).

#### Examples of contract models used in competitive tendered services

Contract category	Contract design	Remuneration method	Decision and collecting fares	Focus for operator	Countries using the model
Gross contract without incentives	By route or group of routes	Payment by production	PTA	Low cost operation	Scandinavia, London
Gross contract with incentives	By route or group of routes	Payment by production plus reward/penalty based on quality, performance and ridership	PTA	Low cost operation and measures to improve quality, performance and ridership only if costs >possible incentive reward	Scandinavia, London
“Ridership incentive contracts”	By route or group of routes	Payment by boarding passengers	PTA	Low cost operation and maximise boarding passengers	Stockholm
Net contracts	Network contract	Fixed sum + revenues	PTO within limits in contract	Max profit – balance cost and revenues	France, Netherlands
Concessions	Route or area	Revenues + payment for extra services	PTO + general rules	Max profit – balance costs and revenues	
Deregulation	Often route operation	Revenues + subsidies for extra services	PTO + general rules	Max profit	UK outside London

In Sweden the gross contract models with or without incentives are a majority but recently ridership incentive contracts are introduced. Contracts in Sweden are presented in chapter 3.2.

In UK the contracts used are different for the London area compared to the rest of UK. In London competitive tendering was introduced in the 1980's and gross contracts with incentives are the dominant contract model used today, very much the same as used in Scandinavia and often called the Scandinavian model.

In the UK outside London the bus services were deregulated in the 1980's and the authority could contract additional non profitable services mostly used for low density areas and services with low demand often in evenings and weekends. Using general rules for special fares for dedicated customer groups (school transport, senior citizens) a model of subsidies tickets are introduced. The introduction of quality contracts using a model of exclusive rights with minimum services requirements for the operator is a model of partnership between the authority and the operator with mutual responsibilities. These contracts can include infrastructure measurements by the authority and in response increased service level by the operators.

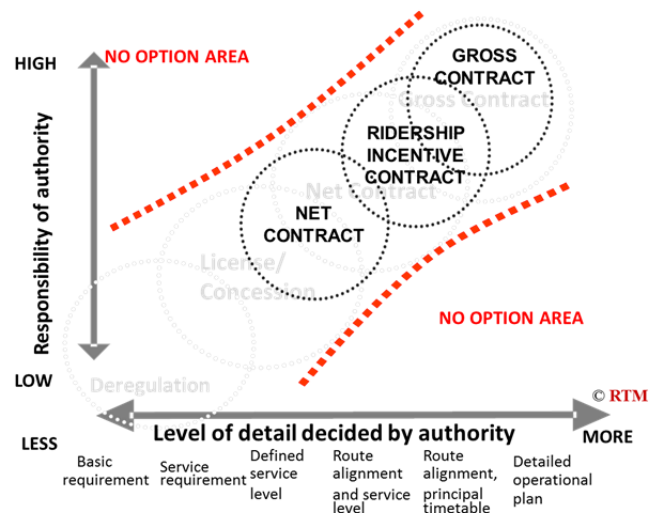
In France outside Paris the model of competitive tendering and net contracts (service concessions) are used since long parallel to internal operations. The contracts often include a city's or regional public transport total network. The contract is often also called "management contracts" because the assets and employees are transferred to the contracted operator. The French model include a close cooperation between the operator granted the service concession and the competent authority often being an inter municipal cooperation body (Communautés urbaines or Communautés d'agglomération).

In Paris the operations is undertaken by RATP, SNCF and private bus operators contracted by STIF, the competent authority of Paris region. The contracts are historically directly awarded and negotiated. In recent years the introduction of competitive tendering is introduced and all contracts awarded after 2009 are signed after a competitive tendering process following the EU regulation. The contracts used today are mostly gross contracts with a numerous of incentives including performance indicators and quality requirements.

In Norway and Denmark, as in Sweden, gross contract models with or without quality incentives are mostly used. Both Norway and Denmark have introduced regional public transport authorities and competitive tendering for bus services. Rail services are mostly organised directly by the government and with direct award contracts with the state railway companies.

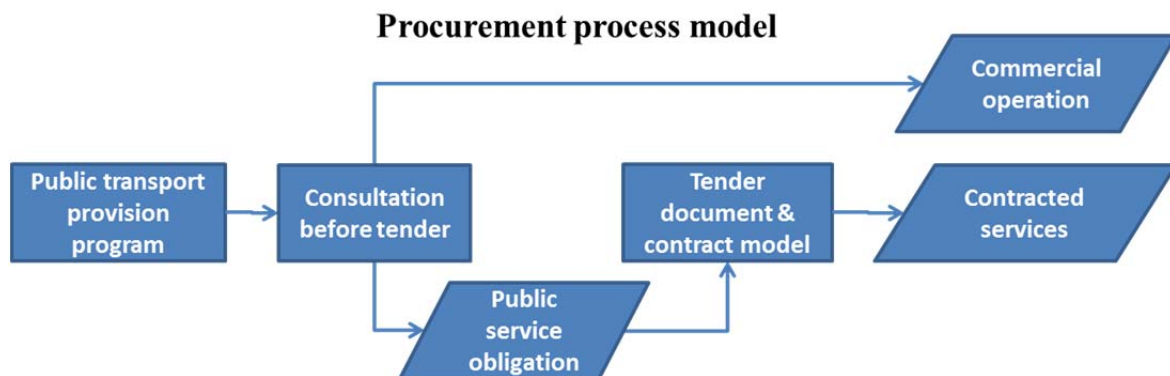
### 3.2 Contract models in Sweden

The contract models used today are gross contracts with or without incentives, ridership incentive contracts and net contracts. Most of today's contracts are gross contracts or contracts with incentives linked to quality and ridership. Net contracts- often also mentioned service concession contracts - are used to a very limited extent, and today implemented for some railway services contracts. The ridership incentive contract is recently introduced mainly in Stockholm region and is explained more in detail in chapter 4. In the explanatory model, these contracts can be described as shown in this figure



The need for a renewal of the contract models used in Sweden was agreed on during the process in 2009 ending up with the new business model for the sector. Introducing more incentives for the operator was a way to customer orientation of the services focusing on the overall goal of increasing ridership which is not the case with gross contracts only focusing on “low cost operation”.

The procurement process agreed on within the public transport sector in 2013<sup>31</sup> includes a number of steps where the major are the regional public transport provision program, consultation before procurement, decision on public service obligation (PSO) the tendering procedure. The tendering procedure is very strict following the procurement law and therefore the pre-stages of regional public transport provision program and consultation before procurement are important for the final outcome.



<sup>31</sup> Avtalsprocess för fördubblad kollektivtrafik, Partnerskapsamverkan 2013

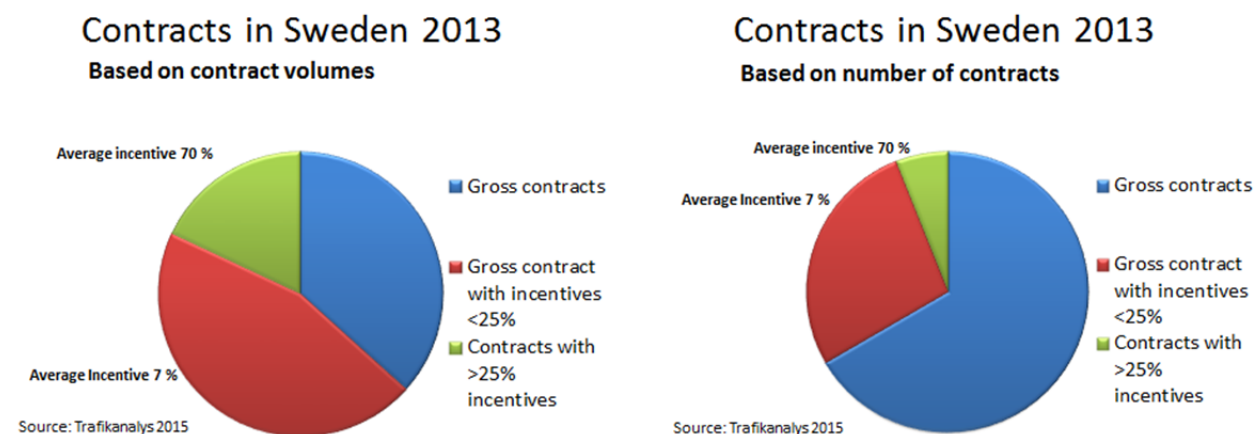
The regional public transport provision program sets out the overall goals for the public transport to achieve, the need of services and a proposed public transport network with routes and interchanges and principle frequencies of services. The program should include a market review and justification for market intervention and subsidised services and the process in developing the program should include a consultation process when all stakeholders` view are incorporated. This program is a formal document that needs to be adopted by the competent authority before any decisions on public service obligations.

The program is proposed to be followed by a consultation process with all interested operators to find out the possibilities for commercial operations fulfilling the services defined in the provision program and also giving guidance to the authority on the preferred contract model to be used for different services. The consultation is followed by a formal decision on PSO when also services not to be contracted are defined. The PSO is the starting point for the procurement with tender documents including all requirements and proposed contracts for the service. The tendering process follows the strict rules of the public procurement law including the evaluation of bids from operators, decision on chosen bid followed by the contract signed after a period when the decision can be overruled to court.

As part of the procurement process guidelines contract templates are presented for the three contract models and templates for annexes defining requirements on environment, vehicle standards, quality and remuneration index model.<sup>32</sup>

The distribution of contract models used today is shown by statistics from 2013, see the figure below. Gross contracts with or without incentives are still dominant and with quite low proportion of incentives. The current contracts in force include a large part of contracts signed before 2009 when new contracting process was agreed. Contract models developed in recent years include a number of contracts with significant ridership incentives, in some cases 100% of remuneration. These ridership incentive contracts are also seen as a possibility for the operator to increase profit by increasing ridership and thus a win-win situation for the authority and operator. The outcome of these ridership incentive contracts is too early to know and will only be evaluated after the contract models have been in use for some years.

**Figure. Contract models in Sweden 2013, Source: Statistics presented by Trafikanalys<sup>33</sup>**



<sup>32</sup> (For all details see [www.svenskkollektivtrafik.se/partnersamverkan/mallavtal/](http://www.svenskkollektivtrafik.se/partnersamverkan/mallavtal/))

<sup>33</sup> Avtalen för den upphandlade kollektivtrafiken 2013, Trafikanalys Rapport 2015:13

## 4 RIDERSHIP INCENTIVE CONTRACTS –EXAMPLES FROM STOCKHOLM AND WEST SWEDEN

This chapter will include a presentation of the two principle ridership incentive models used in Stockholm region (SLL) and West Sweden (Västtrafik). The presentation of the SLL case is mostly from a K2 report presented 2016<sup>34</sup> and the West Sweden case from Västtrafik procurement documents.

### Summary of the principles of the ridership incentive contracts

<b>SLL ridership incentive contract model</b>	<b>Västtrafik ridership incentive contract</b>
<p><u>Major feature of contract</u></p> <ul style="list-style-type: none"> <li>• 100% of remuneration based on verified boarding passengers</li> </ul> <p><u>Prerequisites in tender</u></p> <ul style="list-style-type: none"> <li>• Route network and service level</li> <li>• Vehicle requirements</li> <li>• Minimum customer satisfactions score</li> <li>• Ticket prices decided by SLL and revenues kept by SLL</li> </ul> <p><u>Tender include:</u></p> <ul style="list-style-type: none"> <li>• Proposed operation/services</li> <li>• Remuneration per verified boarding passenger</li> </ul> <p><u>Remuneration to operator</u></p> <ul style="list-style-type: none"> <li>• Remuneration per verified boarding passenger</li> <li>• Reduced remuneration if minimum customer satisfaction is not reached</li> </ul>	<p><u>Major feature of contract</u></p> <ul style="list-style-type: none"> <li>• 60-70 % of remuneration a fixed sum</li> <li>• 30-40% of remuneration based on boarding passengers</li> <li>• Quality bonus/malus incentives</li> </ul> <p><u>Prerequisites in tender</u></p> <ul style="list-style-type: none"> <li>• Route alignment and preliminary timetable</li> <li>• Vehicle requirements</li> <li>• Minimum customer satisfactions score</li> <li>• Ticket prices decided by Västtrafik and revenues kept by Västtrafik</li> </ul> <p><u>Tender include:</u></p> <ul style="list-style-type: none"> <li>• Yearly operational cost for the services</li> <li>• ‘Costs per unit for increased/decreased production volume</li> </ul> <p><u>Remuneration to operator</u></p> <ul style="list-style-type: none"> <li>• Yearly fixed sum of 60 or 70% of offered total cost</li> <li>• Remuneration per boarding passenger calculated as 40 or 30% of offered total cost divided by number of boarding passengers the first contract year.</li> <li>• Bonus of max 4% for higher customer satisfaction score</li> <li>• Reduced remuneration if minimum customer satisfaction is not reached</li> </ul>

<sup>34</sup> Superincentive contracts, A study of the VBP contract models in Stockholm. K2 Working Papers 2016:3

### *The Stockholm case*

SLL introduced a new business model in procurement process E19B (SLL 2014) that sought to provide bus transport in Norrtälje. This model was subsequently used in the procurement of most new transport contracts. The business model means that all or a large proportion of remuneration to the operator is based on the number of validated passengers travelling. It goes under the name of a VBP contract (Verifierade Betalande Påstigande = verified paying passengers).

SLL has defined three main objectives for the development of future transport services, and the intention is that VBP contracts will be able to achieve the objectives of financial efficiency, increase ridership, and customer satisfaction. Financial efficiency means that the right transport services based on travel demand must be produced at the lowest possible cost. VBP remuneration is not expected to automatically result in higher customer satisfaction and increased ridership, and incentives and penalties remain in place for these.

In SLL's new business model, the authority defines public transport goals in the tender documentation and assumes responsibility for general transport planning. Put simply, SL defines the minimum standard and which kind of transport services must be used. SL also defines the fares, sets the environmental standards for vehicles, and takes care of general marketing. SL retains all ticket revenues, thus VBP contracts are different from so-called net-cost contracts or service concessions. The operator takes care of more detailed transport planning such as routing and timetables. The operator also decides what kinds and what sizes of vehicles are to be used to meet the contract requirements but SLL must approve the operator's proposals.

The operator receives all or part of its remuneration per VBP. VBP remuneration can be combined with fixed remuneration or production-based remuneration when the VBP remuneration only partly covers the costs. The VBP model can be combined with other incentives, e.g. for vehicles with less environmental impact. The operator must pay penalties if the agreed standard is not achieved, for example, if there are too many standing passengers or too low customer satisfaction score. Tenders must include not only prices, but also suggested transport service structures, vehicles, environmental impacts, passenger forecasts, forecasts for VBP rate, expected customer satisfaction, etc. When evaluating the tenders, the authority assesses whether the tenders meet legal requirements and the defined requirements, as well as whether they are realistic. The latter is significant in this kind of tender because unrealistic passenger forecasts and validation rate forecasts have a very significant impact on remuneration to the operator. The tender is submitted as a price for transport services in the first year divided by a number of journeys specified in the tender. The number of journeys is based on measurements from the automatic passenger counting system provided by the contracting authority.

The ridership incentive contract model is supposed to result in a more engaged and market-oriented operator, which in turn should be positive for the development of better public transport services. The contract model is focused on increasing ridership whilst the remuneration does not increase if transport production increases. Every increase in production instantly reduces the operator's profit. The most profitable solution for the operator is to increase the number of journeys during off-peak service times and to plan routes so that there is equal loading in both directions (this is probably a well-known fact for the authorities but not so clear for new VBP tenderers). Routes with a high proportion of short journeys require low VBP remuneration, while

express bus routes with long journeys require high remuneration. This needs to be kept in mind in large contracts that contain several kinds of routes and in which the VBP remuneration under the contract is an average value.

If production is correctly adapted to travel demand it should increase both the number of trips and the financial efficiency of the operation. Proposed structure of transport services included in the tender can partly be implemented when services start while others require measurements for example within the infrastructure of the tender area and implemented only after operations have been running for some time. It is therefore important that the prerequisites are included in the contract and also agreed on with the municipality normally responsible for infrastructure measurements.

In a gross-cost contract with quality incentives (as a part of a bonus/malus system), the operator normally does not allocate any resources to transport planning that aims to result in an increased number of journeys but concentrate on low cost operations with penalties minimised and reward incentives maximised. In VBP contracts, the operator can be expected to allocate resources for route and timetable planning with a dedicated focus on satisfying demand for travel. The operator should also be more interested in transport and land-use planning in general and collaboration with the municipalities should be encouraged and supported by the public transport authority. Of course, the success depends on how the operator develops and organises its future (new) planning activities. It is also profitable to attempt to spread the traffic peaks. The operator however, cannot influence ticket prices and fare structures, which is the most important tool for demand management. The increased costs as an obstacle for deploying more vehicles in peak periods can result in increased on board congestion. In order to counteract this tendency the authority need to define minimum key performance indicators for seating capacity standards and customer satisfaction scores.

The conclusions so far from the VBP contract model is summarised in the K2 report<sup>32</sup>: ....*The concepts of 'super-incentive contracts', suppletive remuneration, and, as described in this paper, remunerating contractors in full according to the number of VBPs are relatively new in Sweden. It is therefore not yet possible to assess the long-term consequences of these contracts. In the short term however, it does not appear that the transport authorities' costs have increased. Experiences of the start-up periods of the contracts have been mixed, but this has not necessarily been because of the method of remuneration, but rather due to some of the contractors' lack of experience in transport services in the contract area or the Stockholm region. Based on the experiences gained so far, our overall assessment of VBP remuneration as a way of improving services and enhancing cost-efficiency is that the basic concept of VBP remuneration appears sound.....*

### *The West Sweden case*

The West Sweden (Västtrafik) case with ridership incentive contracts are very similar to the Stockholm contracts though the part of remuneration by ridership is not 100% but a mix of fixed yearly remuneration and remuneration by number of boarding passengers. The revenues are kept by Västtrafik and Västtrafik decides on prices and fare structures which is the same as the Stockholm case.

Västtrafik introduced recently a procurement process very much in line with the national guidelines including the consultations before the tendering process starts. Västtrafik also introduced a “business development contract” in addition to the operating service contract. The business development contract includes the authority and operator signing the “operating service contract” guiding the cooperation during the contract period. The business development contract could also include municipalities and other stakeholders important for fulfilling the overall goals of the public transport services in order to broaden the cooperation in developing the public transport services.

The ridership incentive contracts are based on the registration on boarding passengers being the key performance indicator. The procurement process starts with the tender documents including the route alignment and preliminary timetable for the tendered services, vehicle requirements, environmental requirements and minimum customer satisfactions score.

The bid should include a yearly operational cost for the services included in the tender document and costs per unit for increased/decreased production volume. The bid is very similar to a gross contract situation. The bid is transformed into the contract with the remuneration during the first year of contract remuneration only linked to production being 100% of the bid and from the second year of the contract period divided in two parts – 1/a fixed yearly remuneration of X% of the total cost of the bid and 2/ a remuneration paid for each “registered boarding passenger”. The remuneration linked to boarding passengers is calculated as  $(100-X) \%$  of the total bid divided by the number of registered passengers during the first year of the contract.

The remuneration is linked to the service and production volume included in the tender document. Increased or decreased production or need of buses as a result of decision by the authority or following overcrowded buses is paid for following the bid on changes in production volume paid by vehicle kilometres, vehicle hours and number of buses.

In addition to the production and ridership linked remuneration there is also a bonus/malus incentive system part of the contract. The bonus is linked to customer satisfaction and could be up to 4% of total remuneration.

If the operator fails to deliver the services or contract requirements to agreed quality, agreed vehicle quality and safety requirements penalties are defined in the contract to be paid by the operator.

The ridership incentive contracts in West Sweden are only recently being implemented and the results and effects of these new contracts are to be seen in coming years.

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## Memo - Swedish Public Transport Act 2010

### APPENDIX I

## Memo Swedish Public Transport Act 2010 (in force from January 1, 2012)

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Som underlag för Finska Lokaltrafikföreningens arbete med lagstiftningsfrågor sammanfattas i detta notat den svenska lagstiftningen och med fokus på några frågor som är aktuella i den Finska diskussionen. Notatet är skrivet i slutet av 2015 av Stenerik Ringqvist på uppdrag av Finska Lokaltrafikföreningen. I denna version är några språkliga justeringar gjorda. *I detta dokument är text med kursiverad stil utdrag ur lagtexten.*

### SVENSK LAGSTIFTNING

Ny lagstiftning som reglerar den regionala kollektivtrafiken beslutades 2010 och började gälla i praktiken från januari 2012. Lagen är också ett införlivande av EU-rätten (Förordning 1370/2007) i den svenska lagstiftningen. Svensk lag (2010:1065) om kollektivtrafik innehåller tre huvuddelar

1. Organisation av den behöriga myndigheten
2. Uppgifter och beslutsbefogenheter hos myndigheten
3. Krav på kollektivtrafikföretag m.fl.

Inom dessa tre huvudområden regleras i allt väsentligt hur den regionala kollektivtrafiken planeras, beslutas och organiseras. Lagen reglerar den regionala kollektivtrafiken och lagstiftningens definitionen av regional kollektivtrafik är: *sådan kollektivtrafik som 1/äger rum inom ett län eller, 2/ om den sträcker sig över flera län, med avseende på trafikutbudet huvudsakligen är ägnad att tillgodose resenärernas behov av arbetspendling eller annat vardagsresande och som med hänsyn till sitt faktiska nyttjande tillgodoser ett sådant behov.* Långväga kollektivtrafik på väg (och järnväg) förutsätts därmed ske helt på kommersiell grund och med fritt marknadstillträde – dvs avreglerad trafik vilket varit gällande under en längre tid i Sverige.

Utöver kollektivtrafiklagen är också lagen om offentlig upphandling samt lagar om anpassning till funktionshindrade och lag om resenärsrättigheter viktiga kompletterande lagar.

### Organisation av den behöriga myndigheten

Kap 1,2§ I varje län ska det finnas en regional kollektivtrafikmyndighet.

I lagen anges att det inom varje län skall finnas en regional kollektivtrafikmyndighet. Detta kan vara ett kommunalförbund i de fall där kommunerna och landstinget tar ett gemensamt ansvar eller landstinget är regional kollektivtrafikmyndighet i de län där landstinget tar hela ansvaret för den regionala kollektivtrafiken.

Lagstiftningen ger möjlighet för den regionala myndigheten att överlämna befogenheten att ingå avtal om allmän trafik till ett aktiebolag eller till en kommun inom länet i fråga om kollektivtrafik som bedrivs inom denna kommuns område. Detta tillämpas t ex i Västra Götaland där Västra Götalandsregionen äger Västtrafik som sköter upphandling och avtal med trafikoperatörer. I både Stockholms län och Skåne är det landstinget som genom sin förvaltning svarar för dessa uppgifter.

Skillnaden mot tidigare lagstiftning är främst att den regionala kollektivtrafikmyndigheten måste vara ett politiskt organ i form av kommunalförbund eller landsting.

## Memo - Swedish Public Transport Act 2010

### Uppgifter och beslutsbefogenheter hos myndigheten

Kap 2, 8§ Den regionala kollektivtrafikmyndigheten ska regelbundet i ett trafikförsörjningsprogram fastställa mål för den regionala kollektivtrafiken

Den regionala myndigheten skall upprätta ett trafikförsörjningsprogram som anger vilken trafik myndigheten avser ta ansvar för. Den utgör också grund för de beslut om trafikplikt som myndigheten kan ta.

Kap 3, 1§ Den regionala kollektivtrafikmyndigheten är behörig lokal myndighet enligt EU:s kollektivtrafikförordning och fattar beslut om allmän trafikplikt inom länet.

I de fall den trafik som myndigheten beskriver i trafikförsörjningsprogrammet inte bedrivs av trafikoperatörer på kommersiella villkor fullt ut eller till den kvalitet som krävs skall myndigheten besluta om trafikplikt. Detta motsvarar EU-rättens beslut om ”public service obligation (PSO)”. Därefter skall myndigheten (eller det bolag/kommun som man överlåtit detta till) träffa avtal om genomförande av trafiken – dvs upphandla och avtala med operatörer – EU-rättens ”Public service contracts”. Möjligheten finns också att trafikplikten utformas som ”allmänna bestämmelser” enligt EU-förordningen men har inte tillämpats i Sverige.

Kap 3, 4§ Ensamrätt får inte medges som motprestation för fullgörande av allmän trafikplikt. Beslut om trafikplikt får inte innehålla någon form av ensamrätt för det företag som erhåller kontrakt. Ensamrätt är uttryckligen förbjuden i svensk lag. Samtidigt är det tillåtet att bedriva trafik fritt – även i konkurrens med upphandlad trafik. (se nedan)

### Krav på kollektivtrafikföretag m.fl.

Kap 4, 1§ Ett kollektivtrafikföretag som har för avsikt att på kommersiell grund bedriva kollektivtrafik ska anmäla detta till berörd regional kollektivtrafikmyndighet.

Kap 4, 2§ Ett kollektivtrafikföretag ska lämna information om sitt trafikutbud till ett gemensamt system för trafikantinformation.

Det är helt fritt för ett trafikföretag att bedriva kollektivtrafik kommersiellt (utan samhällstöd). För denna trafik krävs dels att trafikföretaget skall informera inför trafikstart och inför upphörande av trafiken samt dels att lämna information till gemensamma trafikantsystem som idag hanteras av Samtrafiken<sup>35</sup>. Trafiken kan utföras både lokalt inom ett län och i fjärrtrafik och utan hänsyn till om den skadar upphandlad trafik-dvs en helt avreglerad marknad. Motsvarande gäller sedan lång tid i fjärrbusstrafiken och sedan 2013 också fullt ut i tågtrafiken.

Kap 6, 2§ Den regionala kollektivtrafikmyndighetens beslut om allmän trafikplikt får överklagas hos allmän förvaltningsdomstol av den som på kommersiell grund tillhandahåller eller avser att tillhandahålla kollektivtrafiktjänster som berörs av trafikplikten.

Den möjlighet till överklagan av beslut om trafikplikt är kopplad till EU-rättens krav på att offentligt stöd inte får otillbörligt ingripa på marknaden – dvs om den trafik som myndigheter anser behövs och omfattas av beslut om trafikplikt helt kan tillgodoses på marknadens villkor utan något samhällsstöd. Men om trafikplikten omfattar ett större utbud eller med högre kvalitet än vad som kan köras kommersiellt kan någon skada inte hävdas.

## EFFEKTER AV LAGSTIFTNINGEN (DETTA AVSNITT ÄR FÖRFATTARENS BEDÖMNINGAR)

Den nya lagen från 2010 innebär i praktiken relativt små förändringar jämfört med tidigare. De större förändringarna gäller a) myndighetens organisation med en reglerad beslutsgång med

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<sup>35</sup> Samtrafiken ägs av regionala myndigheter och trafikoperatörer gemensamt och svarar för en samordnad information med tidtabeller, [www.resrobot.se](http://www.resrobot.se) och försäljning av genomgående biljetter –Resplus.

## Memo - Swedish Public Transport Act 2010

trafikförsörjningsprogram – trafikplikt – upphandling – uppföljning, b) öppet marknadstillträde och inga ensamrätter c) införande av EU-lagstiftningen i svensk lagstiftning

### Myndighetens organisation

Den nya lagens påverkan på organisationen av kollektivtrafikmyndigheterna är oftast begränsade. Flera tidigare länsbolag (trafikhuvudmän) har lagts ned och funktionen överförs till landstinget eller kommunalförbund som etablerats som regional kollektivtrafikmyndighet. Några länsbolag har ombildats till att vara en genomförandeorganisation som på uppdrag av den formella regionala myndigheten (landsting eller kommunalförbund) svarar för planering och upphandling etc. Funktionerna i de tidigare bolagen kvarstår i allt väsentligt men alltså i annan organisatorisk form och i praktiken är min uppfattning att mycket små förändringar egentligen har skett utöver den tydligare politiska beslutsprocessen.

Genom att den regionala kollektivtrafikmyndigheten nu är en tydligt politiskt styrd organisation har beslutsprocessen ofta blivit tydligare. Detta har också inneburit en tydlig process från trafikförsörjningsprogram till upphandling och kontrakt och som följer EU-förordningens principer.

Utdrag ur ”Vägledning allmän trafikplikt” framtagen inom Partnersamverkan.

I god tid innan ett trafikavtal löper ut ska den regionala kollektivtrafikmyndigheten (RKM) överväga om beslut om allmän trafikplikt ska tas. Detta gäller också vid stora förändringar som inte ryms inom gällande trafikavtal och som medför att nytt avtalsförhållande måste komma till stånd. Ändringar av villkoren i ett löpande avtal omfattas inte av kravet på ett nytt beslut om allmän trafikplikt.



Den övergripande processen från trafikförsörjningsprogram till årlig rapport innehåller fyra steg. Stegen visas här ovan med fokus på ”Allmän trafikplikt”.

Från 1 januari 2012 står det trafikföretag fritt att etablera kommersiell trafik genom anmälan till RKM. Detta oberoende om RKM fattat beslut om allmän trafikplikt eller ej. Krav på trafikföretag definieras i 4 kap kollektivtrafiklagen

### Öppet marknadstillträde

Lagen från 2010 (i kraft från 2012) innebär att trafikföretag fritt kan etablera kommersiell trafik oberoende av omfattning av trafikpliktsbeslut och åtföljande upphandlad och avtalad trafik. Dvs EU-förordningens möjlighet att införa exklusiva rättigheter är uttryckligen förbjuden i Sverige. Den kommersiella trafiken har inte heller något skydd i form av ensamrätter eller företräde. Dvs myndigheten kan besluta om trafikplikt och upphandla regional kollektivtrafik oberoende av kommersiell trafik under förutsättning att den trafik som omfattas av trafikpliktsbeslutet inte helt kan tillgodoses på marknadens villkor utan samhällsstöd.

## **Memo - Swedish Public Transport Act 2010**

Möjligheten att bedriva kommersiell trafik i konkurrens med upphandlad trafik har inte fått någon praktisk tillämpning och endast några få försök till sådan trafik har gjorts sedan 2012 men också lagts ned efter en kortare tid. I Trafikanalys rapport från september 2015 skriver man: *Flygtransfer och långväga busstrafik över en eller flera länsgränser utgör de absolut största delarna av den kommersiella linjetrafiken på väg, både mätt i utbud och i resande. Den kommersiella linjetrafiken inom län som i någon mån har uppstått som följd av den nya lagstiftningen från 2012 är av mycket ringa omfattning.*

Skälen till att kommersiell trafik inte etablerats bedömer jag beror på tre faktorer:

- 1/ Den regionala kollektivtrafiken som organiseras av regionala kollektivtrafikmyndigheter är subventionerad med i genomsnitt 50%. En trafik i konkurrens med subventionerad trafik kan svårtligen bedrivas kommersiellt om inte mycket speciella förutsättningar finns med en betalningsvilja hos resenären som kraftigt överstiger priserna i den upphandlade trafiken.
- 2/ Kollektivtrafiken utgörs av ett system av linjer som samverkar i ett kollektivtrafiknät och där flertalet resenärer använder mer än en enstaka linje.
- 3/ Den regionala kollektivtrafiken organiserad av de regionala kollektivtrafikmyndigheterna omfattas av ett gemensamt och samordnat pris- och betalsystem som ger tillgång till hela trafiksystemet med fria byten m m. Kommersiellt etablerad trafik med egen prissättning får därmed en mycket svag konkurrensförmåga i utbud och i pris även om samma tekniska system används då prisnivån för att nå lönsamhet blir avsevärt högre än prisnivån i den subventionerade trafiken.

Slutsats: Det öppna marknadstillträdet har i praktiken inte haft någon påverkan på omfattningen av kommersiell trafik. Den kommersiella trafiken är helt inriktad på långväga trafik som också varit öppen för fri etablering under lång tid. Utöver den långväga trafiken finns kommersiell linjetrafik i huvudsak som nisch-tjänster där flygtransfer är dominerande och där regionala kollektivtrafikmyndigheterna oftast inte beslutat om trafikplikt. Denna trafik ingår inte heller i myndighetens huvuduppgift som omfattar regional kollektivtrafik som huvudsakligen är ägnad att tillgodose resenärernas behov av arbetspendling eller annat vardagsresande.

### **Allmänna bestämmelser**

Begreppet allmänna bestämmelse enligt EU-förordningen ger myndigheten möjlighet att ålägga alla trafikföretag att tillämpa t ex maxprissättning, fria resor för definierade grupper (exempelvis gratis resor för seniorer som i England) med åtföljande krav på att ersätta kollektivtrafikföretagen för den ekonomiska nettoeffekten. Regler för detta är redovisade i EU-förordningens bilaga.

I Sverige har allmänna bestämmelser inte tillämpats. All trafik som ingår i myndighetens beslut om trafikplikt regleras i avtal efter konkurrensutsatt upphandling. (något undantag finns för busstrafik i egen regi eller av internt företag där kontrakt direkttilldelas)