

PUBLIC PROCUREMENT AND THE RISE OF NATIONAL CHAMPIONS IN THE DEREGULATED EUROPEAN MARKETS FOR PUBLIC TRANSPORTATION ¹

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Abstract

An important element in the deregulation of the public sector in the European Union (EU) is public procurement. EU has created a Community legislation on public procurement which aims at reducing costs for contracting authorities, increase intra-Community competition in key industries, and permit competitive European firms to develop.

Public transportation is one of the affected sectors. For instance, the opening up of national markets of railway passenger services has created new opportunities for railway operators to become international players. In this paper we look at these trends of development in a context of the creation and viability of national champions. A comparative case study approach is used to find similarities and differences between the strategies of Sweden, Germany, Great Britain and France concerning deregulation and public procurement of railway services.

The internationalization patterns of the countries' railway operators are analyzed, as well as the impact of time lags in the adoption of the EU public procurement legislation. We identify a number of transition problems or failures in the process of going from state enterprise to a competitive market, and argue that different problems arise depending on whether a country has adopted a first-mover, follower or laggard policy. It seems clear that the four countries seek very different goals when they apply EU legislation. While Sweden and Great Britain promote competition by inviting foreign firms to their national public transport markets, France is closest to a strategy of seeking to develop multi-national or European champions in the sector.

Introduction

Public procurement of services and products is an important ingredient in the deregulation of the public sector in the European Union (EU). The Community legislation on public procurement aims at reducing costs for contracting authorities, increase intra-Community competition in key industries, and permit competitive European firms to develop.

Public procurement of goods and services is a multibillion Euro industry, being applied in many different public sectors in Europe. Its importance also tends to increase as more sectors are being deregulated and opened to competition. One such sector is the public transportation sector. Since the mid 1980's, deregulation, privatization and various forms of franchising and tendering have

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affected public transportation in several countries in Europe. Beginning with bus services, a similar development has followed for railway services during the 1990's.

The opening up of national markets in the railway passenger sector has created opportunities for railway operators and firms to become international. Previously, the scope for international railway companies was very limited, simply because it would have required control and ownership of railway infrastructure in several (and preferably bordering) countries. However, the spread of reforms implying vertical separation of railway infrastructure from operations, coupled with the introduction of public tendering of railway services, have in effect changed all that. Despite the fact that the railway industry is still widely considered to be a network industry, it is nowadays even possible for a company to run railway services in a number of countries without any common borders at all. A common network is no longer needed.

In this paper we look at these trends of development in a context of the creation and viability of national champions. Since the 1960's, governments in several European countries have tried to develop national champions, initially to meet competition from American and Japanese firms. The deregulations of the 1990's, along with public procurement of public utilities, challenge some of these national champions, while others seem able to benefit and may become important multi-national or European champions.

An important part of the paper is devoted to a case study of the deregulation and public procurement of passenger railway services in four EU member states: France, Germany, Great Britain and Sweden. The paper has five main goals: a) to compare the deregulation of railway passenger services in these four countries, b) to analyze the internationalization pattern of the countries' railway operators, c) to analyze how time lags in the adoption of the public procurement legislation in these countries influence market processes and competition, d) to analyze various transition problems following from the process of increasing competition, and e) to consider the impact of national champions going international in the European passenger railway market.

National champions in theory and practice

In the 1960's, several European countries experienced a shift in their industrial policy, from governing an industrial sector's activity towards developing national champions that could become players in the internationally competitive arena. The focus on national champions was in particular applied by France, for both historical and institutional reasons. Hayward (1995) claims that, in the contexts of growing international competition as a consequence of trade liberalization (in particular from American firms), a common belief in France was that the "industrial backwardness" of the country motivated public intervention, financial support and official guidance. Other countries followed France, using similar policy instruments, such as providing capital on favored terms, discrimination in government procurement policies, and subsidization of research programs (Vernon, 1974).

In the early 1980's, France suggested the same kind of policies on the European Community (EC) level and argued in favor of Euro-protectionist policies to constitute European champion firms. A few successful projects, for example Airbus, resulted as a consequence of this policy,

but overall, the policy was abandoned for a more pro-competitive EC policy in the 1980's (Hayward, 1995). Woolcock and Wallace (1995) argue that the EC Internal Market program of the early 1990's, a proactive competition policy, and a general market-led increase in crossborder direct investment and mergers have undermined the viability of national champions, forcing them to become multi-national champions in order to survive.

The industrial sectors concerning public utilities (like energy, telecommunications and transportation) have for a long time been treated separately in the EU, meaning a very slow pace of reforms aiming at increased competition. However, when countries like Great Britain started to liberalize and privatize these sectors, some companies were released from being nationalized industries and became active players in other countries. As Woolcock and Wallace (1995) point out, this development raises important questions concerning EU competition policy, since some of the "multi-national champions" face less competition on their (still tightly regulated) home markets, thereby having a competitive advantage when operating across the European Union.

Public procurement may be a challenge to national champions on their home markets. Although the European Commission has worked hard to make the member states open up more of their national purchasing to competition, the rules have rarely been enforced. Woolcock and Wallace (1995) claim that one important reason is a lack of foreign suppliers that are 1) interested in even bidding due to a disbelief about open EU markets, and 2), prepared to challenge a procurer's decision on the basis of EU law, since this is the same as challenging a possible future customer.

To sum up, it may be argued that while some traditional ways of supporting national champions – like direct subsidies, access to cheap capital, and funding of R&D investment – may be somewhat less easy to pursue under current EU competition policy, there seems to remain substantial scope for discrimination by means of adopting procurement policies. The resulting protection against home market competition may also help firms to finance their internationalization strategy.

In order to look into these matters further, the following section is devoted to a case study on public procurement and the opening up of one sector of utilities, the railway transportation sector.

The Europeanization of the national railway markets

In this section we will look at the EU regulatory structure concerning public procurement and opening of railways to competition, the internationally active railway operators, and how far deregulation has progressed in a selection of European countries. The research method is a comparative case study of Sweden, Germany, Great Britain and France. These countries have all been very influenced by the deregulation of the European passenger railway market.

The empirical material in the case studies is of three types: a) communication from the EU, private and public firms, and state agencies, b) second-hand data presented in research reports and articles, and c) data gathered when writing previous research reports on the Swedish railway deregulation.

EU legislation and regulation

The European Commission has been acting to increase the competitiveness of the railway sector for several decades. The competitiveness should be increased both by promoting competition in railway operations and by supporting innovations such as high-speed trains and intermodal transportation. One measure to increase the transparency of the railway system is the separation of accounts for railway operations from infrastructure, as stipulated in Directive 91/440, that was to be adopted by member states no later than 1 January 1993. In 2004, a proposal for an amending directive was produced, aiming at opening up international rail passenger services in the EU to competition no later than 1 January 2010 (European Commission, 2004).

Today, two types of EU legislation regulate the actual competition in the passenger railway markets in Europe: the regulation from 1969 concerning public service contracts for public transport, and the public procurement legislation from the 1990s.

In general, public bodies awarding contracts have to follow the competitive tendering rules in the public procurement directives. However, the regulation on public service contracts (Council Regulation [EEC] 1191/69, amended in Regulation [EEC] 1893/91), that allows competent authorities to impose public service obligations on transport firms, does not address the question of *how* to award public service contracts (van de Velde, 2003). This may be explained by the fact that the amended regulation appeared a few years before the EU – in 1992 and 1993 – decided on public procurement rules, and also before the public transportation networks were opened to competition. A new regulation, aimed at replacing 1191/69, has been in preparation for several years, but the European Council has yet to ratify the European Commission's proposal for this regulation (produced in 2000 and amended in 2002).

In practice, the regulation from 1969, amended in 1991, provides minimum requirements for how the state and other public institutions can pay subsidies to firms that provide public transport services. According to this regulation, a firm may receive a subsidy after a negotiation with a public entity. The public procurement regulation goes much beyond this and stipulates that a public entity – before awarding a contract – should invite interested firms to participate in a competitive tender and that the invitation should specify the evaluation procedure. In case there is no specification the lowest bid wins.

It is not clear when the EU public procurement code will be commonly used for the purchases of subsidized railway services in Europe. France has so far never used it, Sweden uses it for most subsidized railway services, Great Britain has used it for many of the railway tenders and it is increasingly being used in Germany. A further complication for a unified regulatory system is that each EU member state decides on how to apply the code. For three years, France has interacted with the European Commission about its public procurement code. On February 4 2004 the European Commission acted to enforce European Law in France, following the non-compliance of the French public procurement code with the Directives on public contracts and the EU Treaty. The Commission complains about France excluding loan contracts from the code, and that France has not accepted a ruling saying that the minimum number of applicants invited to tender should not be less than five in a restricted procedure – for example a tender not open to everyone wishing to submit a bid (EU, 2004).

The railway operators

The European public transport industry shows many different organizational forms of awarding contracts to firms. Two important trends may be observed: 1) a growing involvement of private firms, and 2) increasing use of competitive tendering. This has led to the appearance and growth of international transportation firms in Europe. Two completely different patterns may be noticed for the French firms and for the British firms that internationalize their railway passenger business. The French firms are active in all European markets that are open for competition: Germany, Great Britain and Sweden. SNCF (the French state-owned operator) also runs high speed trains (Thalys) in collaboration with the national railway operators in Belgium and the Netherlands and with the British for the Eurostar trains. With the exception of one firm (Arriva) the British firms have either not been active, or have withdrawn from the railway passenger markets on the continent. Almost all British firms have also divested their operations in the bus passenger market on the continent. Instead, the British firms have focused on the British market and the North American market. The railway firms originating in Germany or in Sweden are not active in the foreign markets. However, Connex' bus division in Sweden was formerly a privately owned Swedish company (called Linjebuss) that was one of the most internationalized bus firms in the 1990's. Sweden's national railway operator SJ aimed at participating in public tenders abroad in 1999-2000 but was advised by its owner the state to concentrate on the Swedish market. SJ also has a joint operation called Linx with the Norwegian State railways NSB for the train services between Stockholm and Oslo and between Oslo and Copenhagen. Due to disappointing results the company will be dismantled in 2004.

The deregulation of the British bus market in the 1980's led to the appearance of firms like Arriva, First, Go-Ahead and Stagecoach. All firms now operate one or more railway franchises in the deregulated and privatized British railway market. The British firms are mostly operating bus fleets in the international markets and have directed most of their investments to the North American markets. Go-Ahead and Stagecoach initially entered several of the public transportation markets in Europe when they became open to competition. In most cases, the firms acquired bus companies or won contracts for bus services. Go-Ahead also started railway operations jointly with the French company Keolis (at that time called VIA-GTI) and a small Swedish firm called BK Tåg, after winning two big contracts in Sweden. One contract was for the Stockholm suburban trains and one was for the inter-regional trains on the West Coast Line (Gothenburg-Malmö). When these contracts turned out to imply big problems, including the loss of money, Go-Ahead withdrew from the Swedish railway market entirely. The franchise to operate the train services on the West Coast Line was abandoned altogether after only a few months, while Keolis continues to run the suburban trains in the Stockholm region, since 2003 controlling 100 per cent of the shares of the operating subsidiary Citypendeln. Arriva won a contract for railway services in Denmark (starting operations in 2003) and bought a German railway operator called Prignitzer Eisenbahn Gruppe that operates trains in North-Rhine Westphalia, Brandenburg and Meldenburg-West Pomerania (Arriva, 2004).

The long-standing tradition in France of contracting out, combined with the new European trend, has led to the expansion of the existing French groups to the rest of the continent (van de Velde, 2003). Connex, Keolis and Transdev are now the three main operators. Connex is the passenger

transport firm in the Veolia group (former Vivendi), Keolis is partly owned by SNCF and Veolia, and Transdev is a publicly owned firm. SNCF won all the regional contracts after negotiations for the new regional railway networks that were awarded in 2001 and 2002. The total state subsidy for these contracts was 1508 million Euro in 2002. SNCF has contracted out a few lines to Connex, which is the biggest French player in the international markets. Connex has won contracts in public tenders in Sweden – for example the train services to northern Sweden from Stockholm and Gothenburg – and has acquired the formerly publicly owned company that runs the subway in Stockholm. Connex has also won a number of contracts in Germany. In one public tender for the line Hamburg-Flensburg-Padborg, the Connex’ subsidiary filed a petition for insolvency after only eight months. Deutsche Bahn claims that the insolvency occurred because the calculations for the fare revenues were totally unrealistic (DB, 2004, p. 11). Connex has also started commercial train services on a few long distance lines. One of these train services was aborted a few months after start-up because of too few passengers. Connex has not taken over any commercial train services from Deutsche Bahn. In 2001, Connex sold its railway operations in southern England (South Central Trains) to Govia – a company owned jointly by Go-Ahead (65%) and Keolis (35%), after having lost the franchising tender. In 2003, Govia signed a new franchise agreement with the British Strategic Rail Authority with a minimum term of five years that will expire in December 2009 (Go-Ahead, 2003). In addition to the participation in southern England, Keolis has full ownership control of the suburban trains in the Stockholm region. Transdev got its first railway passenger contract abroad in 2003 when (in cooperation with RATP – responsible for local public transport in the Paris region) it took over the majority shares in Trans Regio from the Düsseldorfer Rheinbahn company (DB, 2004, p. 5).

The deregulation process in the four countries

Taking a closer look at the deregulation process in the countries of Sweden, Great Britain, Germany and France, a wide variation in market access and subsidization regimes may be observed.³ These circumstances considerably reduce the transparency for potential entrants.

The Swedish market. The origins of the Swedish deregulation process may be traced back to the 1960’s, when the services of the suburban trains of Stockholm were transformed into a contractual agreement between a local authority and SJ, the national operator. A similar development then took place in several other regions, often initiated by threats of line-closure.⁴

³ For an overview of the railway reforms in a couple of European countries, see for example Monami (2000) and van de Velde (1999).

⁴ The pre-history of the Swedish railway reforms is described in more detail by Alexandersson et al (2000).

In 1979, a nation-wide reform implied that regional public transport authorities were created (one in each of Sweden's about 20 counties), becoming responsible for the co-ordination of local bus services. In order to facilitate and rationalize this work, a parliamentary decision to abolish the exclusive licenses of the bus operators to run certain lines was taken in 1985. In many counties, this implied that public procurement of bus services by competitive tendering was introduced gradually from 1987 and onwards.

Following SJ's financial crises during the 1980's, the groundbreaking decision to split infrastructure from operations was taken by Parliament in 1988. Maintenance and renewal of railway infrastructure was to be handled by a new authority, Banverket, financed by the state and (to a limited extent) by track usage charges.⁵ At the same time, the responsibility for the unprofitable services on the local and regional lines was transferred to the county public transport authorities, along with the subsidies and vehicles needed to uphold the services. These two reforms, coupled with the positive early experiences from tendering of bus services, implied that competitive tendering also of railway services became a reality in 1989, resulting in the first new entrant, BK Tåg, in 1990.

Drawing from the positive experiences of competitive tendering of local railway services, a new non-socialist government introduced tendering also of subsidized inter-regional services, taking effect from 1993. A decision to completely deregulate the railway sector was also taken, but this was swiftly abolished by the socialist government coming into power in 1994. Instead, a deregulation of freight services was implemented in 1996 and the rights of the county public transport authorities to run inter-regional railway services were expanded. Additional reforms intended at facilitating equal access for all operators to railway specific common recourses finally led to a break-through for new operators on the tendered inter-regional lines in 1999-2000. As a consequence, SJ was split into several limited companies in 2001, making it easier for the former passenger division (now SJ AB) to compete with the new operators.

Today, SJ still has a monopoly on the so-called profitable passenger lines, i.e. the important trunk lines between Stockholm and major cities like Gothenburg, Malmoe, Karlstad and Sundsvall. All subsidized lines are tendered by either the regional authorities or the national authority Rikstrafiken. Some old long-term contracts between local authorities and SJ remain, but eventually these will probably be tendered as well.

Sweden has been a member of the European Union since 1995. The most direct consequences for the bus and railway sectors have probably been that the regulations on public procurement and competition have become stricter and more formalized (a process initiated already with the implementation of the EES treaty in 1994). In other respects, the Swedish railway deregulation process has been pushed forward almost entirely for domestic reasons, rather than as adjustments to comply with European Union directives and policy. Since the events in Sweden preceded (and partly inspired) EU policy, Sweden has in many cases fulfilled the intentions of several directives (in both meaning and action) even before they came into being. For example, Sweden had separated the accounts for infrastructure from operations already in 1985.

⁵ The vertical separation of infrastructure from operations, and its implications, are described thoroughly by Nilsson (1995).

The British market. The deregulation and privatization of the British railway sector was a step-wise process, but it was completed in only a few years time between 1994 and 1997. Preceding this, discussions on how to reform the sector had been going on for many years.

The intention with the reforms was to make "better use of the railways, [to ensure] greater responsiveness to the customer, [to achieve] a higher quality of service and better value for money for the public who travel by rail" (OPRAF, 1995, p. 29). This was to be achieved mainly through privatization, based upon a belief in the superior incentives provided by the private sector (Foster, 1994). The 1993 Railways Act laid the ground rules for the privatization of British Rail, setting out the regulatory and statutory conditions under which this process, beginning in April 1994, could be undertaken.

The company Railtrack was created by the Act, having as its key purpose to own, maintain and develop Britain's mainline rail infrastructure. Originally, the company was to be kept in public hands, but in 1996 it was completely privatized when the shares were floated on the stock market. The rolling stock was divided between three separate companies, ROSCOs, which were subsequently sold to the private sector in 1995-96. A similar approach was applied to British Rail's freight businesses, and in addition open access for freight operators was introduced. Attracting most attention was probably the reorganization of British Rail's passenger rail operations into 25 separate units, then transformed into Train Operating Companies (TOCs). One or two at a time, these companies were then franchised by a process similar to competitive tendering, with interested parties placing bids competing mainly on the grounds of required subsidies. The competitive tendering was organized by the newly created body Office of Passenger Rail Franchising (OPRAF) and was completed in late March 1997. Among the winning bidders, British bus companies and French transportation companies were well represented.

Deregulation and privatization also implied new and detailed regulations governing the new structure. These were designed with the purpose to encourage competition but also guarding the passengers' interests concerning prices and coordination of rail services. The overall responsibility for making sure that the different actors follow these rules was placed in the hands of the Office of the Rail Regulator (ORR), also created by the Act.

Since privatization was completed in 1997, a couple of important events and regulatory changes have occurred. Firstly, a new authority, the Strategic Railway Authority (SRA) replaced OPRAF in 2001 (Holvad, Preston and Huang, 2003). Secondly, several franchises have been retendered or extended, coupled with the introduction of several changes in e.g. subsidy levels and obligations concerning investments. Thirdly, and perhaps most importantly, Railtrack (now called Network Rail) has ceased to exist as an independent privately owned company, by and large returning under government control. Following several severe accidents, partly caused by neglected security issues and infrastructure under-investment, new regulations have come in place. Likewise, heavy infrastructure investments are scheduled for the future.

The German market. Germany initially intended to adopt EU directive 91/440/EEC by means of an institutional separation of tracks and operations. In the first stage of reforms (1994-98), Deutsche Bahn was split into four subdivisions: DB Netz (responsible for track infrastructure), DB Reise & Touristik (long-distance passenger services), DB Regio (regional passenger services), and the freight division DB Cargo. From 1999 these divisions became public companies operating as part of a holding company, the German Railways Group (DB), and the two passenger companies merged. Following an intense political debate, further separation has come to a halt (Link, 2003).

The rail network has been opened up to third parties. A firm interested in getting time slots for commercial (non-subsidized) services on the German railway network files an application to DB Netz. The infrastructure charges are high and supposedly cover all costs for maintenance and renewal. It could also be problematic to enter into direct competition with DB since DB Netz is unwilling to change the time slots for established customers. This gives DB a continuing monopoly position in the German long distance railway market. When Connex has entered the market, the operator has been forced to invent new lines that are not being operated by DB. However, on parts of Connex' new lines their trains compete directly with DB's trains.

The question of the track charges is further complicated by the fact that DB is loss making and is less hurt by the infrastructure charges, since its owner the state, at least in theory, can transfer back DB's charges to refinance the state-owned operator. A private firm does not have access to this kind of potential financing.

In 1996, a regionalization reform was implemented. The responsibility for subsidized regional passenger services was transferred to the regional *Länder* (Schnell, 2001). Competitive tenders have increasingly been used for these regional train services, but competitors to DB have often had difficulties competing on equal terms. For example, DB Netz has given information advantages and even privileges to DB operators, and rolling stock originating from DB has been explicitly forbidden to be used by DB's competitors (Link, 2003). In 2004, tenders and price inquiries concerning 32.2 million train kilometers are expected or have already been invited. DB won 47.5 per cent of the decided tenders in the period 1995-2004, but due to the fact that many contracts are negotiated, the former monopolist has 89 per cent of the total order volume for these kind of contracts (DB, 2004, p. 8). The direct contract award system was tried by the Brandenburg Higher Regional Court in 2003 after a complaint from Connex. The court decided that the *Länder* and other procurers possess scope for discretion when awarding contracts for regional transport services and are not obliged to use competitive tenders. The court's ruling has been criticized by the European Commission in 2004 (DB, 2004, p. 9).

From a very slow start, the reforms in Germany have gradually resulted in a passenger railway market that is open to actual competition. The German Rail Company (DB Netz AG) now has more than 280 non Deutsche Bahn customers. In 2003, DB Netz' business volume with these customers rose by more than 40 per cent to 70.3 million train-path kilometers. If one includes the train kilometers on their own networks (15 million train path kilometers) these firms operated 8.5 per cent of the trains in Germany in 2003 (DB, 2004, p. 5).

The French market.⁶ Beginning in 1997, the French political system has engaged itself to transform the French railway system. The old structure with a state-owned railway company was to be replaced with a system consisting of a railway network agency (RFF), a railway operator (SNCF), and regions with responsibility for the regional railway services and the state. In 1997, the Réseau Ferré de France (RFF) was created and became the owner of the French railway network. The goal of the state agency is to manage, develop, construct and finance the national railway network. The creation of RFF liberated SNCF from its responsibility for the railway network. The transfer of infrastructure ownership established a new type of relationship in the French railway system, between one infrastructure holder and one operator. SNCF is since then the client of RFF concerning the access to the network, and to get access SNCF pays track charges. A new law was taken in 1998 with the objective to stabilize the debt of RFF and decrease the debt burden of SNCF.

The roles of RFF are: 1) to present its needs to the state, and 2) to command and pay for work on the infrastructure. This can be either development or modernization projects. The agency is responsible for controlling the costs, the deadlines and the quality of the projects.

SNCF has many roles as regards the railway infrastructure. First of all it has to pay track charges. It is also the principal consultant to carry out technical studies, to prepare the tenders for the work on the infrastructure, and to supervise the work carried out by the contractors. In addition, RFF has delegated a number of tasks to SNCF. These tasks concern the management of train movements, security, and the functioning of the technical installations (inspections, maintenance, repair and emergency repair). One important reason why RFF has outsourced so much of its responsibilities to SNCF is the small organizational size of RFF. In 2004 it had 530 employees who, among other things, manage 1.7 billion Euro in maintenance work and 750 million Euro in modernization contracts. RFF concentrates its action to the issues where it can get the highest value added: management of projects and socio-economic and financial evaluations.

The reorientation of the French political institutions' policy in favor of rail takes the form of agreements between the state and the regions on the development of the railways (a total of 220 projects at a cost of 4.7 billion Euro). With the law of 13 December 2000, concerning Solidarity and Urban Renewal, the regions have become key actors for the development of the railway sector as organizers of the transportation system. The decentralization giving the regions the responsibility of the regional railway services came into effect in January 2002.

Another major change that is about to happen is the opening of the railway freight market to competition. With a decree of 7 March 2003 regarding the utilization of the French railway system, the RFF has an enlarged mission as a manager of the infrastructure. It will participate in the selection of applying railway companies. It will also manage the timetable slots that the operators can use.

⁶ Information about the French system has been found on www.rff.fr.

Comparing the regulatory systems of the four countries

As is evident from the presentation of the deregulation process in the four countries, they have decided to open their markets with different speed and with different measures. Great Britain and Sweden opened their passenger railway markets in advance of the stipulations in the European regulatory framework. Germany started its deregulation in accordance with EU legislation and France is lagging behind. The British deregulation process was the fastest and most profound.

Table 1 shows the market characteristics and the type of markets that have been opened to competition in the four countries. In France the former monopolist SNCF continues to be the only railway operator. Consequently, no markets are opened for competition, but the regionalization provides an opportunity for market entry in the future if the negotiated contracts are replaced with tenders. In Germany, new entrants have won several regional railway contracts and Connex has started a few commercial railway lines. However, DB still dominates the market. In Sweden, the former monopolist SJ meets competition in nearly all markets that are open to tender. It has also lost some of its most important contracts, for example the suburban trains in the Stockholm region and the long-distance trains to northern Sweden. In Great Britain, there was a rapid and radical shakeup of the former monopolist British Rail, disappearing as a railway operator when all its assets were divested and privatized. All British railway services were tendered in the late 1990's, but since then most of the franchisees have become monopolists in their networks.

TABLE 1
The deregulation in France, Germany, Great Britain and Sweden in 2004

Parts of markets affected by deregulation	Market characteristics			
	State monopoly	State monopoly and minor competitors	State and competitors	Private firms competing
No deregulation	France			
Regions		Germany		
All subsidized markets			Sweden	
All railway networks				Great Britain

Table 2 shows how railway operations have been vertically separated. In this table we also compare what types of market that have been opened to competition. The British railway industry was rapidly disintegrated, but policies have in several ways come to move backwards to more regulation as unforeseen problems emerged. Railtrack has been re-nationalized, contracts have been renegotiated with higher subsidies as a consequence, and the degree of on-the-track competition between operators will probably be lower in the new contracts that are being decided. The disintegration of the Swedish railway industry started some years before the British in 1988, with the separation of infrastructure from operations, but moved forward in a slower pace. In Sweden, we can see fewer retrograde steps than in Great Britain. In Germany, the

management of the infrastructure has been separated from the management of train operations, but both organizations belong to the same state-controlled holding company. France has also separated the infrastructure from SNCF, but the infrastructure holder is heavily dependent on SNCF for all its activities – planning, maintenance, construction and so on.

TABLE 2
Vertical and horizontal disintegration of former railway monopoly

	No parts of the market	Regional markets	All subsidized markets	All railway lines
Very limited disintegration	France			
Infrastructure		Germany		
Infrastructure & rolling stock				
Complete disintegration			Sweden	Great Britain

Analysis

Public transport operators in France and Great Britain have internationalized their operations while the public transport operators in Germany and Sweden concentrate their resources to each national market (see Table 3). Why may it be advantageous for a firm if its home market is deregulated early (as in Great Britain) or late (as in France)? The firms in France and Great Britain have become international players and are ranked among the biggest passenger transportation firms in Europe. The firms in these two countries have in fact used the same kind of competitive advantages to grow internationally.

Both in the British and in the French markets the firms have been able to make substantial profits because of high state subsidies and protected monopoly markets. The initial intention of the privatization of British Rail was that subsidies would decrease. In reality, subsidies have not decreased as much as planned. The firms that won the franchises became local monopolists and in several cases delayed the purchase of new rolling stock to increase profits. The French firms continue to operate in protected markets. SNCF continues to be a monopolist, but also Connex and other French firms meet limited competition in the tenders for local and regional public transportation. Consequently, it may be argued that both an early deregulation and a late deregulation could result in firms enjoying benefits that could facilitate internationalization.

The firms in the Swedish railway market have so far been unable to use their knowledge from public procurement to win market shares in foreign markets. There are several reasons for this: 1) the former monopolist SJ was forbidden by its owner the state to participate in tenders in foreign markets, 2) the start-up firms met fierce competition from SJ and big foreign firms that entered the Swedish market, and 3) public procurement of passenger railway services in the other Nordic countries has so far been very limited.

TABLE 3
Railway operator's degree of internationalization and market openness in 2004

	Low degree of internationalization	High degree of internationalization
Low degree of openness of market		France
Some openness of market	Germany	
High degree of openness of market	Sweden	Great Britain

Transition problems in the Europeanization of the national railway systems

The deregulation of the European passenger railway market is clearly an uneven process, with first-movers, followers and laggards. We may assume that the countries adopt different policies towards deregulation because they have different goals, which result in different types of problems. The incomplete European regulatory framework gives member states many options to develop national strategies that are intended to benefit the firms of their own countries. One check towards opportunistic political actions could be stakeholder interests that question transfers from consumers, the state, competitors etc. to protected national champions. We regard these checks as *transition failures* as they constitute problems that emerge in the transition process from state enterprise to a competitive market. These failures are different than failures that emerge in a regulated monopoly (regulatory failures) or in a market (market failures). Tentatively we have identified five types of transition failures, based upon which stakeholder that is highlighting a certain problem:

The first type of transition failure is a complaint from the EU (primarily the European Commission). These complaints normally appear because a member state is too slow in adopting EU legislation or accepts that actors do not follow the EU legislation. So far, however, actual enforcement of EU policy in a member state is a rare event and may even require a decision by the European Court of Justice.

The second type of transition failure is a complaint from a national competition authority or some other national public agency – for example an agency that supervises an industry. These complaints may concern how well a certain industry complies with EU legislation, but also deal with national legislation and national problems.

A third type of transition failure is discontented consumers and customers. Consumers or customers may have good reasons to complain even if neither EU nor the national public agencies find anything to criticize; railway passengers in the Stockholm region complained a lot during the chaos that erupted after the transfer of the suburban train operations from SJ to Citypendeln (Keolis).

A fourth type of transition failure is discontented suppliers or employees. Suppliers may consider that the deregulated market gives them unwanted problems; employees have commonly complained on radical changes in the contracts between employer and employee after a new firm has won the contract for a railway service.

A fifth type of transition failure is complaints from competitors, arguing that new entrants or former monopolists act too aggressively when they compete, for example by means of strategic bidding in tenders.

We conjecture that, depending on the country's selected deregulation path – first-mover, follower or laggard – it will run into different types of transition failures.

A laggard should meet the first type of failure and will probably later on be confronted with the third and the fifth type as well. The logic is that as consumers, customers and competing firms in other countries benefit from more competition and less bureaucracy, it will become evident for the actors in the laggard country that they are missing out on the benefits from competition.

France has encountered the first type of transition failure. The European Commission is currently planning to take France to the European court because of non-compliance with the EU public procurement code. So far, SNCF has not met much complaint from the customers because of the firm's monopoly status. French railway passengers seem to be satisfied with the railway services, although there are much more complaints in France due to strikes than in the other three countries.

A follower or a first-mover will be confronted with the second, the third and the fourth type of transition failure. We have noted that national agencies have had to cope with many different problems due to too rapid deregulation. The most discussed case is Railtrack in Great Britain that was blamed for the occurrence of many accidents and other problems related to the railway infrastructure. The third type of transition failure (complaining customers) has occurred both in Great Britain and in Sweden. We have also seen many examples of complaining employees in Great Britain and in Sweden when the control of a railway network has switched from one operator to another.

Conclusions

European nation states have often supported single firms in order to help them develop into national champions and capture market shares in the international markets. Over time, the relative importance of different policy instruments for supporting national champions has changed, for instance due to the increased impact of European competition policy. We argue that the lagging adoption of public procurement policies may provide some opportunities for member states to pursue national policies aiming at protecting national champions and possibly help them become multi-national or European champions.

Our comparative case study of the deregulation of the passenger railway markets in four countries has shown that they have decided to open their markets with different speed and with different measures. Great Britain and Sweden have acted in advance of European regulations, Germany in accordance, while France is lagging behind. The British deregulation process was the fastest and most profound. The internationalization process of the involved firms indicates that both an early deregulation and a late deregulation may result in firms enjoying benefits that may be helpful for their internationalization.

We have identified a number of transition problems or failures in the process of going from state enterprise to a competitive market, and argue that the country's selected deregulation path – first-mover, follower or laggard – will influence the types of experienced transition failures.

Apparently the four countries seek very different goals when they apply EU legislation. It seems as if France really aims at developing national champions that should become European leaders in the sector. Germany's main concern seems to be to cut down the huge deficits in the railway sector. Great Britain hoped that competition and market processes would lead to a more efficient railway sector than the state-run railway operator British Rail. Therefore, the country opted for a radical and rapid deregulation and privatization several years before the EU legislation became an important issue. The deregulation in Sweden was initially driven by recurrent economic problems at the state own monopolist SJ. The state stripped off unprofitable parts of SJ and invested in the revival of the infrastructure. Eventually this resulted in a nearly completely deregulated railway sector.

This takes us to the main concern of the paper: can a country by postponing the adoption of EU legislation protect its leading firms and allow them to become European champions? Our transition failure analysis suggests that this depends on: a) when it is better to be confronted with transition failure issues, and b) if some sort of transition failure gives less problems to a firm than other transition failures.

Today, it is impossible to foresee the long-run outcome of the Europeanization of the national railway markets. French firms seem to be in the driving seat, but experiences from the mobile telecommunication industry (France Telecom) and from the electricity market (EDF) show that an actor that takes on too many costly commitments in foreign markets may run out of funding even if the home market is relatively well protected.

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