



***Country reports on liberalisation and privatisation processes  
and forms of regulation***

***Liberalisation, privatisation and regulation  
in the German local public transport sector***

***Torsten Brandt, Wirtschafts- und Sozialwissenschaftliches Institut  
(WSI)***

**Deliverable 1 for the Project**

***Privatisation of Public Services and the Impact on Quality,  
Employment and Productivity (PIQUE)***

**CIT5-2006-028478 (STREP, June 2006-May 2009)  
funded by the European Commission's  
6th Framework programme**



**Workpackage Lead Partner: Catholic University of Leuven**

**Dissemination level: Restricted**

**November 2006**

**WSI** Wirtschafts- und  
Sozialwissenschaftliches  
Institut

**Hans Böckler  
Stiftung** 

Fakten für eine faire Arbeitswelt.

Wirtschafts- und Sozialwissenschaftliches Institut (WSI) in der Hans-Böckler-Stiftung  
Hans-Böckler-Straße 39, D-40476 Düsseldorf,  
Tel: 0049 211 7778 102, Fax 0049 211 7778-250  
Torsten-Brandt@boeckler.de – www.wsi.de



Photograph: Landesbildarchiv Berlin

# CONTENTS

INTRODUCTION .....	1
1. MARKET STRUCTURE AND STEPS OF LIBERALISATION.....	4
1.1. Market structure before liberalisation .....	4
1.2. Steps and process of liberalisation: measures and driving forces.....	5
1.2.1. Steps of liberalisation in the public urban transport.....	6
1.2.2. Steps of liberalisation in the railway sector.....	7
1.3. Current market structure and remaining challenges.....	9
2. REGULATION.....	12
2.1. Regulatory instruments and regulatory actors before liberalisation.....	13
2.2. Regulatory instruments and regulatory actors since liberalisation .....	14
2.2.1. 2.2.1 Regulated competition model and public financing .....	14
2.2.2. Legal regulation at national level.....	14
2.2.3. Organisational structures of public urban transport.....	16
2.2.4. Tendering experiences and quality regulation.....	17
2.3. Remaining challenges: 3rd proposal for a new European regulation.....	18
3. PRIVATISATION PROCESS AND OWNERSHIP RELATIONS .....	19
4. ROLE OF GOVERNMENT AND OTHER STAKEHOLDERS.....	20
4.1. Role of the government .....	20
4.2. Role of other stakeholders.....	21
4.3. Main conflicts amongst the stakeholders.....	22
CONCLUSIONS.....	24
REFERENCES .....	26

## LIST OF TABLES

Table 1:	<i>Liberalisation and regulation of the German local public transport sector</i> .....	2
Table 2:	<i>Transport of persons (millions) via the public transport (excluding trains) in Germany by municipal and private companies before and since the liberalisation</i> .....	5
Table 3:	<i>Transport performance of the short-distances public transport sector 2004 concerning company size and owner structures</i> .....	9
Table 4:	<i>Transport performance in passenger-kilometres (billion)</i> .....	10
Table 5:	<i>Market structure before and after the liberalisation process</i> .....	11
Table 6:	<i>Regulatory instruments and actors</i> .....	13
Table 7:	<i>Employees in road-bound public transport in Germany 1994-2003</i> .....	24

## LIST OF FIGURES

Figure 1:	<i>Structure of tendering in German public urban transport</i> .....	17
-----------	--	----

## *INTRODUCTION*

In this report the main subjects of research are the specific regulation of the German public urban transport sector under the guideline of liberalisation, the privatisations process and the accompanying political debates.

In the past public urban transport was a sub-sector of the public sector. Initiated by EU regulations, it is now about to be re-regulated or privatised. Although in the past – since 1993 – the public urban transport sector has been re-organised by new legislation implemented following the application of new EU Directives.

Through a new federal act (the so-called “Regionalisierungsgesetz”) and new transportation acts implemented by the Federal States, the organisation, responsibilities and financing of the public transport sector was decentralised and completely re-regulated. Additionally, due to an amendment of the Federal Passenger Transportation Act (“Personenbeförderungsgesetz”) public urban transport was further re-regulated, and the railway-traffic, including the short-distance railway traffic, was basically re-regulated by a new railway act (“Allgemeines Eisenbahngesetz”) of 1993 – according to new EU Directives and which linked liberalisation requirements for each sector. The following chronological table presents main developments:

Table 1: Liberalisation and regulation of the German local public transport sector

Year	Change
1991	<p><b>EU Directive (EEC) No 1191/96</b>, updated as EU Directive (EEC) No 1893/91 was enacted. According to this new legal framework:</p> <ul style="list-style-type: none"> <li>- Member states must in principle end all obligations inherent in the concept of public services in the area of transport by road, rail and inland waterway;</li> <li>- At the same time member states are granted the right to maintain "public service obligations" in order to ensure the adequate provision of public transport services. They should be based on "fixed standards of continuity, regularity and capacity" and ensure that adequate rate and conditions for users apply.</li> </ul>
1991	<p><b>EU Directive (EEC) 91/440</b> concerning railway traffic:</p> <ul style="list-style-type: none"> <li>- Separation of accounts and organisational unbundling of tracks and services;</li> <li>- Right to discrimination-free entry regarding tracks and railway infrastructure for private competitors;</li> <li>- While these principles have to be applied for railway services in general, member states are granted the possibility to 'exclude railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services'.</li> </ul> <p>Due to this separate treatment in Germany the long-distance and the short-distance (regional/local) railway traffic is regulated in a different way. Whereas transport services in the long-distance railway traffic must be "cost-covering" by tickets, in the short-distance railway traffic transport service are subsidised "services of public interests", which have to be awarded by public service contracts.</p>
1993	<p>The new federal law "<b>Regionalisierungsgesetz</b>" concerning the decentralisation, financing and responsibility of the Federal States for the public urban transport sector was enacted:</p> <ul style="list-style-type: none"> <li>- Since 1996 the Federal States are responsible for the short-distance railway traffic.</li> </ul>
1993	<p>A new federal railway act ("<b>Allgemeines Eisenbahngesetz</b>") was enacted:</p> <ul style="list-style-type: none"> <li>- Public railway companies have to open their infrastructure for competitors;</li> <li>- Separation of accounts between net and services;</li> <li>- Traffic which is not cost-covering has to be awarded by public service contracts.</li> </ul>
1993	<p>Amendment of the passenger transportation act concerning public urban transport (without trains) ("<b>Personenförderungsgesetz</b>"):</p> <ul style="list-style-type: none"> <li>- The public urban transport was opened for competition: Communes can opt between direct award or tendering procedures concerning public service contracts</li> </ul>
1994	<p>Merger of the (West-)German National Railways ("Deutsche Bundesbahn") and (East-)German State Railways ("Deutsche Reichsbahn") to <b>German Railways PLC</b> ("Deutsche Bahn AG"/DB AG), with four self dependent divisions (track-way, short-distance public railway transport, long-distance public railway transport, freight transportation).</p>
1996	<p>Start of "regionalisation": Federal States are responsible for short-distance public railway transport</p>
1998	<p><b>Judgement in Magdeburg concerning "Altmark-Trans"</b>: Four criteria with regard to tendering procedures and subsidisation in public urban transport services were defined.</p>
2003	<p><b>"Altmark Trans judgment" of the European Court of Justice</b> concerning financial aid:</p> <ul style="list-style-type: none"> <li>- Subsidisations within cost-covering transport services ("eigenwirtschaftliche Verkehre") are not defined as financial aid;</li> <li>- Subsidisation for cost-covering transport services and transport services of public interest are allowed, but linked to conditions.</li> <li>- There is no obligation to tender transport services of public interest</li> </ul> <p>Decision has doubts on approval praxis in Germany and delegates the final decision to German courts.</p>
2005	<p><b>EU-KOM (2000/0212 COD)</b>: 3rd proposal for a European regulation for public passenger transport services, which shall replace Regulation 69/1191 (but still is not enacted):</p> <ul style="list-style-type: none"> <li>- Maintains the basic approach of imposing competition in public passenger transport through compulsory competitive tendering,</li> <li>- No obligation for tendering, if the (private) transport companies is under control like a own authority, the value of the service contract is lower than 1 million EURO, the duration of the contract is limited to 8-15 years.</li> </ul>
2006	<p><b>Judgment of the Federal Administration Court</b> (19.10.2006): Bus approval praxis in Germany is legal. The special distinction in the German law between "eigenwirtschaftlicher Verkehr" (approx. cost-covering transport services) and "gemeinwirtschaftlicher Verkehr" (approx. transport services of public interest) is consistent with EU Directive (EEC) No 1191/96.</p>

In this analysis the terms “liberalisation” and “privatisation” have been defined, for pragmatic reasons, as follows: “Liberalisation refers to the opening-up of markets for competing providers regardless of who owns the competing companies. Privatisation, on the other hand, usually refers to the existence of some privately owned shares in public service providers. In theory, there could be privatisation without competition.”<sup>1</sup> However, it has to be kept in mind that from a more theoretical point of view “privatisation must be seen as a social intensification of capitalism and a shift in state-society relationships, rather than a mere collection of particular corporations taking over, or partnering in, public services delivery” (Donald and Ruiters 2006: 9).

The term and the concept “*public urban transport sector*” used in this paper also need to be clarified:

In transport planning as well as in statistics, there is a traditional separation of road-bound (buses, taxis) and rail-bound services (S-Bahn transit, tram, underground) in Germany, based on different types of regulation for both types of services. But in the urban areas, public transport density and organisation is different concerning the services and the structure of the service providers. Concerning the definition of *public urban transport* a new definition of (short-distance) public transport was introduced in Germany by the implementation of a passenger transportation act (“Personenbeförderungsgesetz”) in 1996, which had not existed before this date:

The public (short-distance) urban transport focuses on transport services with less than 50 km – or a travel time of less than an hour. The definition integrates railway and road-bound services for the first time (Latniak 2006: 2).<sup>2</sup>

Furthermore, the current legal framework for the public urban transport sector distinguishes between *two forms of public urban transport* with different regulatory frameworks (Eichmannn, Berschin, Bracher and Winter 2006: 23):

- 1) The “*public urban transport with trains*” (“Schienenpersonennahverkehr”/SPNV) includes – according to the railway act, regional trains and S-Bahn transit within the short-distance transport as a regulatory framework (in this paper I will use the term “short-distance public railway transport”).
- 2) The (remaining) “*public urban transport*” (“Öffentlicher Straßenpersonennahverkehr”/ÖSPNV) includes all remaining public urban transport systems: trams, trolley-buses and buses. Trams are also aerial railways, underground and cable railway but not suburban railways (S-Bahn transit). The main regulatory framework is the passenger transportation act.

Accordingly, in this paper the different regulations and developments of the “public urban transport” and the „short-distance public railway transport” will be analysed.

<sup>1</sup> For these definitions see Verhoest and Sys (2006: 2).

<sup>2</sup> For the statistics, the integration was introduced in 2004 (Reim and Reichel 2006). Thus, the official data since 2004 is not comparable with the time before. Accordingly the following data up to 2003 focus on the (not only urban) bus and tram based public transport (“öffentlicher Straßenpersonennahverkehr”). Railroad aspects are mentioned occasionally, if needed.

## 1. MARKET STRUCTURE AND STEPS OF LIBERALISATION

### 1.1. Market structure before liberalisation

At the beginning of the 20th century – up to the middle of the nineties – public urban transport was mainly a *municipal and state task*, which to a large extent was realised via transportation companies in municipal or state ownership (Bracher and Trapp 2003: 7). The services provided by the municipal transportation companies were limited to the communal territories. Private transportation companies were additionally active to a lesser degree on single transport lines – most of them by order of the municipalities. The German National Railways (“Deutsche Bundesbahn”) hold a state monopoly with regard to railway traffic and still acts as the main provider in short-distance public railway transport.

In the course of the development of areas of concentrated traffic – in large urban areas such as Hamburg, Rhein-Ruhr (Ruhr area), Rhein-Sieg (around Cologne and Bonn) etc. – the S-Bahn transit was built up. In addition *public transport networks* (“Verkehrsverbünde”) were established by municipal transportation companies in order to provide a uniform service in certain regions (Bracher and Trapp 2003: 7):

Here large publicly owned companies, such as the German Railways plc. (“Deutsche Bahn AG”, formerly the German National Railways) and private companies provide integrated and adapted services in certain areas (railroad, bus, tram, or o-bus services as well). “Verkehrsverbünde” are characterised by an integrated scheduling of services, by a common ticket system, and by a high degree of contractual relationships among the joint partners. Since the late 1960s and early 1970s this integrated provision of services (including the railroad with adapted scheduling) was widely introduced in the urban areas of west-Germany. In the meantime this type of network is a dominating pattern of public transport systems in many German urban areas (Latniak 2006: 8).<sup>3</sup>

Altogether, the public urban transport sector was interpreted as being a public task. Hence it has been co-financed by the state and will also depend on allowances in the future (Bracher and Trapp 2003: 8).

Regarding the modest share of persons transported by private transportation companies in the public transport sector (excluding trains), this sector can still be characterised as a sector with a low level of competition. After the (formal) liberalisation process started in the middle of the nineties due to new tendering procedures inspired by the EU legislation, the market shares hardly changed:

---

<sup>3</sup> In the countryside, there are also traffic networks, but there has been a much higher share of private bus companies.

Table 2: Transport of persons (millions) via the public transport (excluding trains) in Germany by municipal and private companies before and since the liberalisation<sup>4</sup>

	1991	1996	2003
Municipal companies	7,121	7,058	7,293
Private companies	570	591	614

Source: DIW (2005: 92, 93).

Nevertheless it has to be kept in mind that also in the past municipal owned companies always had to compete against other means of transportation. Hence (and due to shortfalls in state allowances) they have exerted themselves to become efficient. In public urban transport systems passengers are often interviewed on the basis of surveys organised by the respective transport companies. Dissatisfaction with municipal transport companies has direct influence on local politics, whereas the influence of the citizens on the German National Railways and the German Railways plc. has been rather modest.

### 1.2. Steps and process of liberalisation: measures and driving forces

In Germany the process of liberalisation has proceeded farther in the public urban transport system than in the short-distance public railway transport. The implementation process has been dependent on different decisions in national and international bodies. The initial point for the liberalisation of the public transport was the “COUNCIL REGULATION (EEC) No 1893/91 of 20 June 1991 – amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterways”:

The Directive clearly states that member states must in principle end ‘all obligations inherent in the concept of public services’ in the area of transport by road, rail and inland waterways. At the same time, it protects the public service concept by granting member states the right to maintain “public service obligations” in order to ensure the adequate provision of public transport services. They should be based on “fixed standards of continuity, regularity and capacity” and ensure that adequate rate and conditions for users apply (Schweiger 2006: 2).

In consequence, the *separation of responsibilities for transport services in “purchaser”* (e.g. the municipalities, and federal states) and *“service provider”* (transport company) clearly changed the traditional roles of transport companies and the public authority (Bracher and Trapp 2003: 9).

<sup>4</sup> In the German statistics classified as “öffentlicher Straßenpersonenverkehr” (bus and tram focused public transport excluding trains), which includes urban and long-distance traffic.

### 1.2.1. Steps of liberalisation in the public urban transport

In Germany Regulation (EEC) No 1893/91 of 20 June 1991 was transformed by an amendment to the *passenger transportation law* (Personenbeförderungsgesetz/PBefG) of 1993:

- According to this act the public urban transport was opened to competition, in the sense that local authorities can either award public service contracts directly or they can opt for competitive tendering (so called “regulated competitive model”).
- But in this act the German legislation made a special distinction of public urban transport in “eigenwirtschaftliche Verkehrsleistungen” (quasi cost-covering transport services) or “gemeinwirtschaftliche Verkehrsleistungen” (transport services of public interest). Depending on the kind of transport services, the legal consequences, approval procedures and co-financing possibilities may vary (Lasch, Lemke, Jugelt and Probst 2005: 14).

This legal distinction was declared to be a *situation of legal uncertainty* in the German transport sector, which enormously *reduced the pace of liberalisation*:

Traditionally not only transport tickets finance the communal public transport, because the respective owner of the transport companies (e.g. city, local authority, rural district) compensate for the deficit. Exactly this direct compensation is dealt with as “income under commercial law” (“sonstige Erträge im handelsrechtlichen Sinne”, § 8 PBefG)! Hence this subsidised public transport is legally considered not to be in need of allowances (i.e. an “eigenwirtschaftlicher Verkehr”). Therefore the majority of public urban transport is not linked with competitive tendering, even though public transport services are not cost-covering (and due to this, “normally” have to be tendered according to EU regulations).

The so-called “*Magdeburg-Judgement*” (1998) was linked to this distinction: A profound dispute between the City of Magdeburg and the regional transport company NVGA. concerning the award of a public service contract emerged. The district council of Magdeburg had awarded an exclusive public service contract for certain bus routes to the transport firm Altmark without a public tendering procedure. As Altmark received subsidies for the costs involved in the provision of the public bus service, the NVGA lodged an appeal against Magdeburg before the administration court of Magdeburg. The judgement passed by the Magdeburg administration court of 7.4.1998 said that “every benefit or allowance of public authorities to transport companies has to be defined as state aid and therefore is not allowed”. But in the revision conducted by the Federal Administration Court (6.4.2000) the proceeding was interrupted and delegated to the European Court of Justice (ECJ). The court asked the European Court of Justice to establish rules for the correct procedure in such cases (<http://www.fachportal.nahverkehr.nrw.de/>).

The 2003 ‘*Altmarck case ruling*’ of the ECJ set out *four conditions for the award of public subsidies* as part of a public service contract, without prior need to obtain permission from the EU Commission (Schweiger 2006: 8):

- 1) The recipient firm must have public service obligations, which are clearly defined;

- 2) The method of compensation must be declared in advance and be fully transparent;
- 3) The compensation paid must not exceed the costs, which occurred as part of the provision of the public service;
- 4) The amount of the compensation must be determined on the basis of a comparison with a public service operation, which can be regarded as ‘typical’ (in case of no public tendering procedure).

Hence, the German financing model was allowed, i.e. “eigenwirtschaftliche Verkehrsleistungen” (approximately: quasi cost-covering transport services) “*can*” directly be awarded under certain conditions without competitive tendering procedures. Only the very rare “transport services of public interest” (“gemeinwirtschaftliche Verkehrsleistungen”) have to be awarded by competitive tendering (<http://www.fachportal.nahverkehr.nrw.de/>). Again this judgement left space for legal doubts and the final decision was delegated to German courts!

Meanwhile, on 19 October 2006, the German Federal Administration Court decided that the German approval practice concerning the award of bus lines is within the legal framework (VDV press release 20.10.2006).

Further Steps of liberalisation can be expected regarding the “PROPOSAL FOR A REGULATION ON PUBLIC PASSENGER TRANSPORT SERVICES BY RAIL AND BY ROAD (COM(2005)319) 3rd Commission proposal” of 2005 (see section 2.3 Remaining challenges).

### *1.2.2. Steps of liberalisation in the railway sector*

With the aim of advantaging competition in the railway sector with the help of the new Common Railroad Law of 1993 (“Allgemeines Eisenbahngesetz”/AEG) and another new federal act of 1993 (“Regionalisierungsgesetz des Bundes”/RegG) the railway transport sector was reorganised:

The initial step of the new German railway regulation framework was Directive 91/440/EWG on the development of the Community’s railways, which was issued in 1991. The Directive is aimed at opening up national transport sectors to external competition and is based on the definition of railway undertakings as commercial enterprises rather than public service providers. The following elements are essential:

- 1) Separation of accounts and organisational unbundling of tracks and services;
- 2) Right to discrimination-free entry regarding tracks and railway infrastructure for private competitors.

The crucial element of the Directive lies in the principle of separation of financial accounts for infrastructure management and actual transport operation (Article 6). Subsidies paid for any of the two areas may therefore no longer be used in the other area, which limits the financial scope of member states in terms of the provision of railway transport services (Schweiger 2006: 3).

The Directive 91/440 was the basis for the new German Common Railroad Law of 1993. Hence the significant elements can also be found in this new act (for details see section 2.2):

- 1) Public railway companies have to open their infrastructure to competitors;
- 2) Separation of accounts between net and services;
- 3) Traffic which is not cost-covering has to be awarded through public service contracts (according to Directive 1893/91)

However the EU Directive 91/440 makes an important distinction: While these principles have to be applied to railway services in general, member states are granted the possibility to 'exclude from the scope of this Directive railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services' (Article 2).

Due to this separate treatment in Germany the long-distance and the short-distance (regional/local) railway traffic was regulated in a different way: Whereas transport services in the long-distance railway traffic must be "cost-covering" by tickets, in the short-distance railway traffic transport service are subsidised: "services of public interests", which have to be awarded by public service contracts.

By a new federal act of 1993 (the so-called "Regionalisierungsgesetz") and by new transportation acts of the Federal States the organisation, responsibilities and financing of the public transport sector was decentralised and completely re-regulated. Since 1996 the Federal States have been responsible for the short-distance public railway traffic.

This so-called "Regionalisierungsgesetz" of 1993 and the *passenger transportation law* ("Personenbeförderungsgesetz") 1993 were the legal basis for the railway-structure-reform ("Bahnstrukturreform"). This reform includes the following elements:

- 1) In 1994 the merger of the (West-)German National Railways ("Deutsche Bundesbahn") and (East-)German State Railways ("Deutsche Reichsbahn") to German Railways PLC ("Deutsche Bahn AG"/DB AG), with four self dependent divisions (track-way, short-distance public railway transport, long-distance public railway transport, freight transportation);
- 2) The responsibility of the Federal States for the short-distance public railway traffic since 1996 ("regionalisation");
- 3) Discrimination-free entry regarding tracks and railway infrastructure for private competitors. Investment subsidies for the German Railways PLC resulting from the Federal State. Subsidies for the Federal States with regard to their tasks.

At the beginning of the "regionalisation" of January 1 1996 the German Railways PLC, the division responsible for the short-distance public railway transport – the "*DB-Regio*" –, was the *only provider* of short-distance public railway transport. Hence almost all public service contracts were awarded to DB-Regio ([http://www. Forschungsinformationssystem.de/](http://www.Forschungsinformationssystem.de/)).

To sum up, the EU Directives were the initial points for the reorganisation of the public transport sector in Germany, which was accompanied by long-lasting proceedings. Nevertheless, what has been the effect of the formal liberalisation on market structures?

### 1.3. Current market structure and remaining challenges

Regarding current market structures the following table shows the transport performance of the short-distances public transport sector (“Linienverkehr”) 2004 concerning means of transport, company size and owner structures:<sup>5</sup>

Table 3: Transport performance of the short-distances public transport sector 2004 concerning company size and owner structures

	Companies	Passengers	Transport performance
	Number	Number (Million)	Passenger-kilometres* (Million)
Short-distance public transport total	2,849	10,249	93,498
- (Short-distance) Trains	72	1,975	40,485
- Tram	64	3,429	14,986
- Bus	2,783	5,519	38,027
- Companies with under 250,000 passengers per year	1,871	120	2,494
- Companies with at least 250,000 passengers per year	978	10,130	91,004
Owner structures			
- Public companies	392	8,409	74,748
- mixed	68	606	4,294
- private	2,389	1,235	14,456

\* Passenger-kilometres (PKM) is defined as the number of transported persons multiplied by the number of kilometres which have been passed by them; Data source: Reim and Reichel 2006: 362

According to this data the share on the transport performance (in Passenger-kilometres/PKM) of just 392 public companies is about 80% (74,748 million PKM), whereas 2,389 private companies reach only 15% (14,456 million PKM) and 68 private-public mixed companies unify 5% (4,294 PKM). About two-thirds of all companies are small companies (under 250,000 passengers) with a share of the transport performance (in PKM) of just 2.7%. It is also interesting to note the (huge) share of trains in public urban transport in relationship to the transport performance (43% of PKM).

<sup>5</sup> Due to a change in the official statistics data concerning 2004 are not comparable with the time before.

Besides current market structure it is interesting to know how market structures changed after the (formal) liberalisation.

According to the data in Table 2 (see section 1.1), between 1991 and 2003 market shares concerning *ownership relations* hardly changed in “public transport (excluding trains)”:<sup>6</sup>

- In 1991 the number of passengers conveyed by public companies was 7,121 million and in 2003, 7,293 million;
- In 1991 the number of passengers conveyed by private companies was just 570 million and in 2003 614 million. Their share increased from 7,5% to 7,8%.

Hence there is still a market dominance of public transport companies in the “public transport (excluding trains)”.

Since the formal liberalisation in the road-bound transport, competitive tendering has been rare since the liberalisation, but in the short-distance public railway transport competitive tendering has increased. What was the influence of competitive tendering in the short-distance railway transport (1) with regard to the transport performance and (2) with reference to market structures?

To begin with, the following table gives an overview concerning market structures in relation to the means of transportation:

Table 4: Transport performance in passenger-kilometres (billion)

	1991	1996	2003
Transport total	874.7	1,013.8	1,076.2
Motorised individual traffic	713.5	831.8	885.8
Public transport	161.2	182.0	190.4
Among public urban transport	77.3	88.0	92.4
- among short-distance public railway transport	23.3	36.1	39.7
- among line operation	54.0	51.9	52.7

Data: DIW (2005: 228, 229).

(1) From Table 3 it follows that the transport performance (in PKM) of the short-distance railway public transport from 1993 to 1996 increased enormously (from 23.3 billion PKM up to 36.7 billion PKM. That means a plus of approximately 50%).

In 1991 the short-distance public railway transport was almost completely provided by the German National Railways without competitive tendering. Since 1996 competitive tendering has started. Nevertheless, the increase of the transport performance cannot be linked to tendering procedures, because the increase in 1993 (with a plus of 5 billion

<sup>6</sup> The following data up to 2003 focus on the (not only urban) bus and tram-based public transport (“öffentlicher Straßenpersonenverkehr”). This official data is not comparable with the official data since 2004.

PKM and also in 1995 with an additional 5 billion PKM) was extremely high (DIW 2005: 228, 229).

(2) However the share of non-state-owned railways has changed slightly:

In 2004 the transport performance of the German Railways plc. concerning the short-distance public railway transport segment was 37.9 billion PKM. The share of non-state-owned transport companies was 2.1 billion PKM, i.e. 5.3%. In 2000 their market share was 2.6%.

Their market share concerning “train kilometres” (i.e. distances passed by trains) rose between the years 2000 and 2004 from 6.4 to 13.2% (Deutsche Bahn AG 2005: 15). This higher share in relation to PKM indicates that non-state-owned trains more often supply unprofitable train routes.<sup>7</sup>

The reason why the share of the non-state-owned railways has not decreased faster is firstly that the largest amount of train kilometres was awarded directly to the German Railways plc (respectively “DB-Regio”, the 100% company subsidiary) by so-called “traffic contracts” (Verkehrsveträge). Secondly, DB-Regio received a large share of those contracts, which were awarded via competitive tendering – although private competitors have been regained:

- In 2004 the transport performance in the German short distance railway traffic was 633 million train-kilometres, in the period between 1995 and 2004 114.6 million train-kilometres were allocated following competitive tendering, i.e. in 10 years 18% of the train-kilometres of 2004.
- The most successful companies were “DB-Regio” (44.9%), the international company “Arriva” (21.9%) and the French company “Connex” (17%).

In future the strong market position of DB-Regio will not change, because according to the current status of long-term traffic contracts, up to the year 2014 at the utmost 50% of the current traffic will be tendered (Eichmann, Berschin, Bracher and Winter 2006: 23).

Table 5: Market structure before and after the liberalisation process

	Before	Latest situation following further liberalisation
Short-distance public railway transport	German National Railways (99%)	DB Regio (95%) and not-state-owned companies (5 %) of PKM in 2004
Public transport (excluding trains)	Municipalities with 92,5% of passengers in 1991 and private companies	Municipalities with 92,2 % PKM in 2003 and private companies

Data: Deutsche Bahn AG 2005: 15; [www.forschungsinformationssystem.de/](http://www.forschungsinformationssystem.de/); DIW 205: 92, 93 (own calculations).

<sup>7</sup> The market share of the German Railways plc. in the long-distance public transport railway is currently 99% (<http://www.forschungsinformationssystem.de/>).

Nevertheless, the *available statistical data concerning market structures can lead to a superficial and undifferentiated perception of the real situation of public urban transport:*

In general public urban transport has been characterised by the increasing preparation of the public transport companies to cope with the concession procedures fitting into the EU regulation standards since the mid-1990s. Especially, as the financial basis of the public transport services has changed dramatically by shortcuts in state aid (see section 2, Regulation), *companies have been trying to prepare for competition and increasing efficiency.* Along with the change of cost structures, the ownership and the internal structure of the companies is about to be re-organised (Latniak 2006: 9; see also section 3).

Additionally, regarding the short-distance-railway traffic and public urban transport *starting conditions for the competition* induced by EU Directives are completely different.

DB-Regio – as a subsidiary company of the German Railways PLC, which is planning to expand all over Europe after the future initial public offering – has a much stronger market position than single municipal transport companies. Municipal transport companies still have a strong political lobby, are locally legitimised and in particular have influence on tendering procedures. But in the context of shortfall in public revenues they have to compete with international companies. The open question seems to be whether the local and supra-local political influence will be sufficient to implement a more quality-based than price-based competition in the future.

## 2. REGULATION



Photo: Landesbildarchiv Berlin.

## 2.1. Regulatory instruments and regulatory actors before liberalisation

Before liberalisation there was no separation of responsibilities for rail-bound and road-bound transport services in “purchaser” and “service provider” (Bracher and Trapp 2003: 9). The public owners simply paid the deficits of the transport companies.

The German National Railways was owner of a state-assured monopole over railway traffic. The Federal Ministry for Railway was responsible for price regulation, investments, employment conditions and supply obligations.

The local authorities were owners of the communal transport companies, which represented quasi public monopolies. Local authorities and municipal transport companies regulated quantity and quality of transport services, prices, investments and employment conditions.

Table 6: Regulatory instruments and actors

	Before liberalisation	After liberalisation
<b>Short-distance public railway transport</b>	<ul style="list-style-type: none"> <li>- Public monopole on railways, infrastructure and trains</li> </ul> <p>Federal Ministry of Railway traffic is responsible for:</p> <ul style="list-style-type: none"> <li>- price regulation</li> <li>- investment plan</li> <li>- employment conditions</li> <li>- supply obligations</li> </ul>	<ul style="list-style-type: none"> <li>- Free access to network, setting of network tariffs and legal unbundling is controlled by the Federal Railway Administration and The Federal Cartel Office</li> <li>- Co-financing sources by the Federation, redistribution by Federal States</li> <li>- Federal States define service the quantity and quality of service supply in their territories, as well as the amount and kind of tendering procedures/definition of the reserved area/market opening by Federal States</li> <li>- Concrete service is defined in traffic contracts and tendering contracts between Federal States and short-distance railway companies</li> </ul>
<b>Public urban transport</b>	<p>Quasi public monopole of municipal transport companies at local authority level.</p> <p>Local authorities and municipal transport companies regulate quantity and quality:</p> <ul style="list-style-type: none"> <li>- prices</li> <li>- investments</li> <li>- employment conditions</li> </ul>	<ul style="list-style-type: none"> <li>- Federal Passenger Transportation Law offers competitive tendering and directly awards public service contracts, as well as subsidisation</li> <li>- "Zweckverbände"<sup>8</sup> decide on buses for which concessions will be tendered. Additionally, they define prices and quality of services.</li> <li>- "Aufgabenträger"<sup>9</sup> coordinate the scheduling and comprehensive coverage of the ticket system</li> <li>- Plans for the short-distance transport (made by of the communal Aufgabenträger) describe the requirements for the concrete service. They are one basis for approvals of the Zweckverbände</li> </ul>

<sup>8</sup> Single-purpose administrative association: co-operative structures of public authorities in a region, e.g. cities/municipalities.

<sup>9</sup> Aufgabenträger are often formed by a co-operation of different companies.

## 2.2. *Regulatory instruments and regulatory actors since liberalisation*

### 2.2.1. *2.2.1 Regulated competition model and public financing*

The German public transport sector is characterised as a “regulated competition model” in the framework of a highly substituted service sector:

- The present regulation of the German public transport system is directed towards the implementation of a “competition for the market”. Up to now, it has obviously not intended to develop a system of direct competition amongst companies in Germany (as in the United Kingdom). The competition is tied to the concession of railway companies on the one hand and the concession and approval of certain lines in road-bound transport on the other, thus providing a certain security for the concession owner for a limited time period for the line.
- In Germany the common focus is still that the state is in charge of providing public passenger transport services. Public passenger transport services are interpreted as being elementary services (of public interest) that should be sufficiently available for everybody at affordable prices. Accordingly, it is quite evident that public transport will not be manageable in a cost-covering manner but that it is necessary to co-finance the *services* (Latniak 2006: 4).
- The degree of cost coverage of public owned passenger transport companies (excluding trains) in 2004 was 71,9% in West Germany and 65,6% in East Germany (VDV 2005: 30). Besides the sales of passenger tickets different financial sources for subsidies are available:
  - 1) There is a huge *investment in public transport infrastructure* and services by Federation complemented by money from the Federal States.
  - 2) Furthermore, there are different *grants for the transport of disabled persons, school children, apprentices and students* (source: the public households of the Federal States).
  - 3) Finally, there is compensation for the deficits caused by transfers from other publicly owned infrastructure companies co-funding public transport by profits from other services as mentioned (“*communal-cross-subsidisation*”).

But the amount of money available is continuously decreasing due to scarcity of public finances (see below). Additionally, EU-regulations and decisions made by the European Court of Justice restrict government subsidies and their distribution to publicly owned enterprises.

### 2.2.2. *Legal regulation at national level*

The legal framework at national level includes three Federal Laws and special regionalist laws of the Federal States:

- 1) The “Regionalisierungsgesetz des Bundes”, which is the basis for the regionalist acts of the Federal States;

- 2) The Common Railroad Law (“Allgemeines Eisenbahngesetz”) concerning railway traffic;
- 3) The Passenger Transportation Law (“Personenbeförderungsgesetz”) concerning public urban transport without trains.

*(1) Regionalisation*

Since 1996 within the federal structure of Germany, the Federal States (“Bundesländer”) are in formal charge of public transport systems. The intention is to tie together the responsibilities for planning, organising, and financing for the entire public urban transport in order to provide an integrated and adapted offer to the customer (BMVBW 1999: 29). While for the rail-bound traffic, the regionalisation of the responsibilities has introduced far-reaching changes (with an impact on the tendering), the road-bound transport has been less influenced by the changes – the structures had been regionalised before (Latniak 2006: 5). The financial resources of the Federation, which were distributed to the Federal States to finance the short-distance public railway transport in the territories, were determined by the “Regionalisierungsgesetz des Bundes” of 1993. But with reference to the period from 2006 to 2010, by 16 June 2006 reduced financial resources (so-called “Regionalisierungsmittel des Bundes”) have been decided (financial details see: [www.forschungsinformationsdienst.de](http://www.forschungsinformationsdienst.de)).

*(2) Legal regulation of railway traffic*

Railway transport has been regulated by the federal Common Railroad Law (“Allgemeines Eisenbahngesetz”/AEG) since 1993. According to this act:

- 1) For railroad companies, there is only a need to have a concession to provide railroad based services. Each company having a concession is allowed to provide rail bound services on the tracks (and has to pay the track-owner for the use) (§6 AEG);
- 2) Railway companies are obligated to separate accounts of net and traction operations (§ 9 AEG);
- 3) Public railway companies have to assure other companies entry to their net (§14 AEG).

*Concerning short-distance services*, additional federal subsidies have been provided because there is a common perspective that these services will not leave a margin. The notion is that *only co-financed transport is possible*, which will not provide real earnings and which would not be performed by the company on its own initiative in this sub-sector (so called “gemeinwirtschaftlicher Verkehr”) (Bracher and Trapp 2003: 11). Consequently public service contracts for short-distance railway services have to be awarded (§12 AEG).

The rail-net entry is controlled via a Federal Authority (so-called “Eisenbahn Bundesamt”/EBA). EBA also controls the pricing of the “DB Netz AG” (the track-route department of the German Railways plc.). In addition the Federal Antitrust Agency is responsible.

### (3) *Legal regulation of road-bound transport*

Road-bound transport (including buses, tram, O-bus etc) was formally regulated by the amendment of the federal Passenger Transportation Law (“Personenbeförderungsgesetz”/ PBefG) in 1993. This act predominantly defines the approval procedure.

There is the idea that the transportation services would provide a margin for the service company – but in fact, this is only possible by integrating all subsidies and ticket turn-over into the calculation of costs and prices for these lines. The point is, that services which provide a margin do not need to be tendered formally – they can be immediately ordered from the performing service provider company.

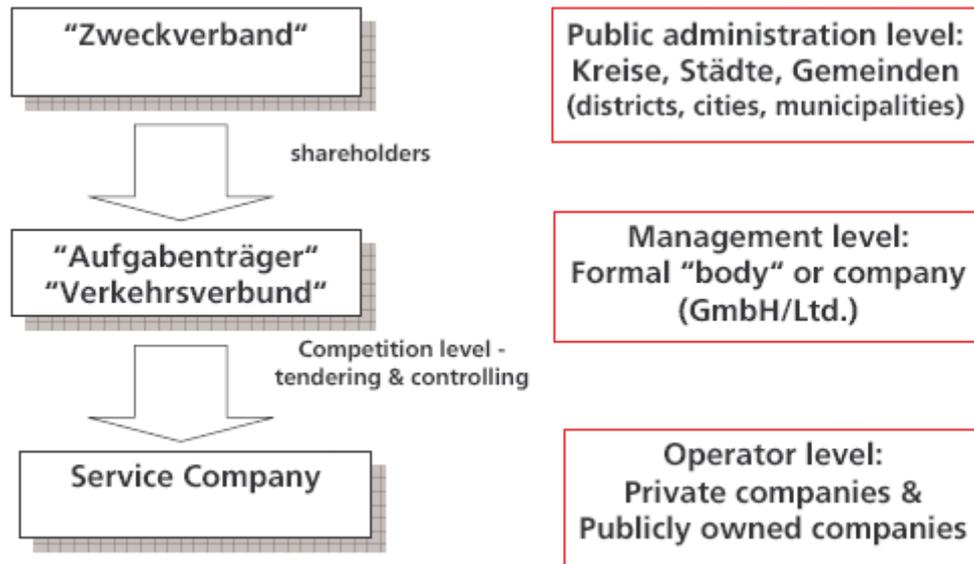
In detail the Passenger Transportation Law determines – amongst other points –, that transport lines can be authorised in bundles (in praxis profitable and less profitable lines are mixed in bundles (§9, PBefG) and are limited (for buses 8 years, for trams 25 years (§ 16, PBefG)).

#### 2.2.3. *Organisational structures of public urban transport*

In order to implement the EU directives for public transportation by separating the “demand”-side (purchaser) from the “supply”-side (service provider), the present regulatory structure of German public short-distance transport can be characterised by three different levels in general: the public administration level, the management level, and the operator level (Latniak 2006: 5).

- 1) For the formal definition of public transport services according to the quality demands and the legal regulations, there are “Zweckverbände” (approx. single-purpose administrative associations) at the *public administration level*: These units are co-operative structures of public authorities in a region, e.g. cities/municipalities and “Kreise” (approx. districts or counties). These units *decide on bus or railway lines for which concessions will be tendered*. They have to *define the prices and the quality of services*.
- 2) The distribution of these concessions among competing companies is organised at the *management level* on which the “Aufgabenträger” are active. These units are often comprised of a co-operation of different companies. The “Aufgabenträger” – in some of the cases the transport networks (“Verkehrsverbund”) – take care of the coordination of the scheduling and on the comprehensiveness of the ticket system (according to the idea that you only need one ticket for travelling in an area even if you change from tram to bus or railway).
- 3) The services on the transport lines are provided at an *operator level*. Here, private companies and publicly owned companies are active. They compete for the concessions for the lines tendered, which the companies receive for a certain period of time.

Figure 1: Structure of tendering in German public urban transport



Source: Latniak 2006: 6.

Due to the fact that in Germany, still, in many cases the cities and municipalities are formal owners of the public transport companies and furthermore compulsory members of the "Zweckverbände" as well, it will depend on the decisions at the public administration level, whether the publicly owned companies will have to compete with the private companies in the future and how the tendering will be structured. The close interrelation between companies and public bodies has been widely criticised by the promoters of competition.

#### 2.2.4. Tendering experiences and quality regulation

Concerning the present practices of tendering, the patterns for railway and for buses etc. are different:

According to expert interviews (see Latniak 2006) the tendering for *railway concessions* is directed towards large volume contracts (e.g. for all railroads of an entire federal state as is the case in Sachsen-Anhalt) with a duration of 10 or 12 years. The definition of services is partly very detailed and there are even penalties for train delays or a lack of cleaning etc – with an increasing rigidity of the institutions ordering the services. In some cases, the need to pass on information to the customers is strongly emphasised and measured. But it depends on the level of demand just how the tendering is done in detail. There is some variation in the present practices. On the other hand, there is a magnitude of different procedures concerning the bus lines and the *road-bound transport tenders* and, accordingly, there is no one or single way how this might be performed in near future. The tendered transport volumes are much smaller than in tendering railroad lines. The most common practice is to tender for a "bundle" of lines

in which the tendering institution is integrating lines which are financially interesting with less attractive ones.

Plans for short-distance transport (“Nahverkehrspläne”) – developed by the body responsible for the task “Aufgabenträger” – describe the requirements (quality and quantity) for the concrete service in the region of the “Aufgabenträger”. They are one basis for approvals and tendering procedures of the “Zweckverbände” (Tillmann/Bracher 2003: 12-14).

### 2.3. *Remaining challenges: 3rd proposal for a new European regulation*

For the past five years the European Commission has been working on a new Regulation, which aims to introduce the principle of competition into public passenger transport by compulsory competitive tendering. In July 2005 the European Commission presented its 3<sup>rd</sup> proposal for a European regulation for public passenger transport services, which shall replace Regulation 69/1191.

The EU Transport Council found a consensus on 9th June 2006 in Luxembourg concerning an amendment to EU Directive 1191/69. According to this consensus a new Directive for awarding public transport service contracts is to be valid from 2022. However member states should implement the new regulations before this date in phases. The consensus still has to be transferred to the European Parliament. So it remains open in which form and when a new Directive will be enacted ([www.forschungsinformationsdienst.de](http://www.forschungsinformationsdienst.de)).

Nevertheless, in the new proposal the Commission maintains its basic approach of imposing competition in public passenger transport through compulsory competitive tendering, the so-called regulated competition model. There are two areas where the new proposal contains fundamental changes (ETF 2005: 1):

- 1) In the light of the Altmark Trans judgement passed by the European Court of Justice in 2003, the principle of freedom of choice for public authorities to organise public transport has now been recognized for the first time. Looking into the details, however, that principle is undermined in the Commission’s proposal by extremely restrictive definitions. *In reality that freedom of choice to organize public transport “in house” through a direct award barely exists, and the spirit of the Altmark Trans ruling is ignored.*
- 2) *Quality and social criteria*, which were fundamental elements of the first proposal (and even improved upon in the second proposal after taking into consideration the European Parliament’s decisions), have now been completely *deleted*. Those criteria were a logical requirement to fulfil the Commission’s declared objective of high quality public transport services. *The Commission has clearly refocused its policy objectives in favour of competition based on lowest cost rather than competition based on quality.* Consequently this proposal has no protection against wage cutting and social dumping.

### 3. PRIVATISATION PROCESS AND OWNERSHIP RELATIONS

At first privatisations in Germany took place in the form of changes concerning the legal form of the companies. Concerning *the legal form of the companies* the statistics of the “Association of German Transport Undertakings” (Verband Deutscher Verkehrsbetriebe/ VDV) can give an indication, even though the data does not fit the categories of the official statistics. The member companies of the association are structured as follows: There are 28 “Eigenbetriebe” (subunits of the local infrastructure companies, owned by municipalities), 69 AGs (public limited company/plc.) and 409 GmbH (limited liability company/Ltd.) (VDV 2006: 42, 43).

Although the change of legal forms has to be interpreted as a first step towards privatisation, the owners of most communal transport company are still the local authorities – due to their majority shareholdings.<sup>10</sup> However partial privatisations have been increased (detailed data is not available).

According to the “Delphie-survey” (Lasch, Lemke, Jugelt and Probst 2005: 26-41) in future partial privatisations, outsourcing measures and private public partnerships will be the dominant forms of privatisations in Germany. A main obstruction to privatisations might be that in the case of a privatisation the communal cross-subsidisation of the transport service is no longer possible. And the need for public subsidisation would still remain, because in the end the local authorities are responsible for the public transport services. With regard to partial privatisations and outsourcing measures garages are a particular possibility. In the survey international companies are mentioned as most potential buyers.

However partial public companies are *newly also active beyond their communal territories*, e.g. the “Hamburger Hochbahn” in the cities Lübeck, Wiesbaden and Fulda – by means of acquisition or gain of competitive tendering (Lasch, Lemke, Jugelt and Probst 2005: 26). Additionally international activities of communal transport companies seem to be visible (Grünes Europabüro Sachsen 2006).

With reference to international companies, mainly the French company “Connex” and “Arriva” are active in Germany: in the meantime Connex is the biggest private public transport company in Germany. The German Connex-group holds capital shares in 40 transport companies with 3,300 employees and a turn-over of 292 million euro (in 2003) (<http://www.connex-gruppe.de>). In 2006 the city “Pforzheim” sold the majority of capital shares of its transport company to Connex. This was the first time that a private company had received the majority of a communal transport company in Germany (Die Welt, 25.07.2006). In Germany the British transport company “Arriva” has been very active in short-distance public railway transport due to acquisitions (Deutsche BahnAG 2005; [www.pignitzer-eisenbahn.de/indexfr.html](http://www.pignitzer-eisenbahn.de/indexfr.html)).

<sup>10</sup> Concerning a description of the actors active in the market before and after the process of liberalisation and privatisation and also concerning ownership structure see sections 1.1 and 1.3.

At this point *changes in railroad system* can be outlined as follows:

According to the German Union Treaty (“Einigungsvertrag”), the “Deutsche Reichsbahn” (the railroad of GDR) became special property of the Federal State. Since then the merger of the “Deutsche Reichsbahn” und “Deutsche Bundesbahn” has been prepared. Both state-owned railways were integrated into “Deutsche Bahn AG” (DB AG – “AG” approx. means “plc.”) in 1994. In 1999, DB AG was transformed into a management holding with several divisions (the federal state is still the owner). The company is now about to be transferred from an authority into a market oriented Plc.-type of company. But still the material privatisation of the company is subject to political struggle. The core problem is that the DB AG is not willing to leave the responsibility and ownership of the tracks to a public administrative unit and claims the ownership – thus challenging the EU regulatory framework in the railway sector (Latniak 2006: 9).

## 4. *ROLE OF GOVERNMENT AND OTHER STAKEHOLDERS*

### 4.1. *Role of the government*

Firstly the Federal Government has influence on the regulation at EU level by the EU Transport Council (e.g. concerning the bargaining about a new EU short-distance public transport Directive). Moreover in implementing new EU regulations in national law the Federal Government has a scope of interpretation. For instance the amendment of the German passenger transportation law allowed so much scope for interpretation that competitive tendering has been used very restrictively – to the favour of the local authorities. Between national and EU level the German Federal Government seems to act rather as policy-moderator than as a policy-maker. Vis-à-vis the EU Commission it seems to act as an advocate of the communities.

The German Ministry of Finances plays an important role as financier of the public urban transport. Starting in 2006 financial subsidies will be reduced annually.

As owner of the “German Railways plc.” (“Deutschen Bahn AG”) the federation until now has not – notwithstanding public critics – limited the management activities of the German Railways plc, which is focused on profit: The Federal Government did not intervene when the market entry of private competitors to the tracks was blocked by high dues demanded by the “German Railways plc.”. Hence the “DB-Regio” (the 100% substitute of the German Railways plc. for short-distance public railway transport) was protected. First and foremost there was no intervention when the price of railway tickets was raised enormously, even though the profits of the “German Railways plc.” increased to 1.5 billion euro in 2006 (Frankfurter Rundschau, 27.10.2006: 9). However within the German Government there are contradictory positions with regard to initial public offerings of the “German Railways plc.”, which has been displaced. The main

confliction question was, if the tracks should stay in public ownership or not. In November 2006 it was finally decided that the tracks and train stations should stay in public ownership.

#### 4.2. *Role of other stakeholders*

Besides the Federal Government and the EU actors (e.g. the EU Commission, the European Court of Justice and the European Parliament) it is the local authorities in particular that have influenced the liberalisation- and privatisation process in Germany:

The local authorities and communal transport companies demonstrate their interests via the “German Association of Cities and Towns” (Deutsche Städtetag) and the “Association of German Transport Undertakings” (Verband Deutscher Verkehrsunternehmen/VDV): The “Association of German Transport Undertakings” is the organisation for Germany’s public transport undertakings and rail freight transport companies. The VDV tries to avert reductions of subsidies and is lobbying at EU level – here in cooperation with the German Traffic Ministry. The “German Association of Cities and Towns” acts similarly. It is Germany’s biggest national local-authority organisation, and brings together more than 5,700 cities and towns with a total of 51 million inhabitants. The “German Association of Cities” actively represents the interests of the cities and towns in their dealings with the Federal Government, the Parliament and the Federal Council, the European Union and numerous other organisations (<http://www.staedtetag.de/>).

The financial situation of the local authorities and Federal States is a very decisive variable concerning the amount and conditions at which public service contracts are awarded, as well as how privatisations and outsourcing measures are promoted. A main obstruction of privatisations might be that in the case of a privatisation the communal cross-subsidisation – which is threatened by the EU Commission – of the transport service is not any more possible. But the need for public subsidisation of the public transport stays in place.

The local authorities are employers and social partners in wage negotiations. The *decentralisation of industrial relations in public services* in the last years in Germany has stressed the importance of the local authorities: Instead of one large basic agreement, a set of different agreements for sub-branches of the public service are about to be developed – and this is the case for the public transport. Concerning the negotiating organisations in public transport, on the union side, there is the “*German united services union*” (Verdi) and the “*Tarifgemeinschaft DBB*” (an integrated union organising civil servants with a strong emphasis on broadening the membership in collective bargaining areas especially at the local government level), while on the employers’ side, the “*Kommunale Arbeitgeberverband*” (association of public employers at the community level) is active (Latniak, 2006: 22).

Similarly, the “*German united services union*” (Verdi) represents the interests of the local authorities, for instance in joint public actions at local level with reference to the

European Action Day (5.5.2006). Many managers of local transport companies are union members.

*Private competitors* were rather unsuccessful in proceedings concerning market entries.

*Consumer organisations* in Germany predominantly have some influence via the media in organising protests against high prices in public transport. Additionally they lobby for high quality at affordable prices and also want to restrict individual traffic in favour of public traffic due to environmental reasons. One prominent consumer organisation is the “VCD”. The VCD is an association for sustainable mobility and a major German transport and environmental organisation. It has about 63,000 members and supporters. The VCD offers information to the public on sustainable means of transportation. They lobby for better jurisdiction on sustainable mobility. In addition there are the “*Federation of German Consumer Organisations*” and “*PRO BAHN*”. PRO BAHN is a non-profit organisation for passengers of public transport in Germany. It has almost 5,000 members. The chairman of Pro Bahr has argued that more competition and a multitude of transport suppliers in railway transport would lead to quality and price advantages for passengers (Naumann 2002: 4).

#### 4.3. *Main conflicts amongst the stakeholders*

1) Conflicts have arisen concerning declining subsidies (“*Regionalisierungsmittel*”) in the federation with reference to the short-distance public railway transport. The Ministries for Traffic of the Federal States had argued in the Federal Council of Germany against the Federal Minister of Finances (Peer Steinbrück) and reached a compromise solution in June 2006: In the public debate, it was said that the Federal Minister for Transport would have to save approx. 2.3 billion euros until the year 2009. After increasing political turmoil and protest, the amount was reduced to 1.8 billion euros by the federal treasury. Therefore, there is a fear of a cutback in either the services or the quality, and a reduction of the service density. For certain areas, as e.g. North Rhine – Westphalia (NRW), this could lead to a 20% reduction of the network density (Latniak 2006: 4).

2) A multitude of different conflicts took place with reference to the short-distance public railway transport:

Because of massive pressure from the Federal States, the German Railways plc. is driving on non-profitable railway lines (AK Wien 2005: 113). The Federal States are confronted with the allegation that they primarily award non-profitable railway lines by competitive tendering. Another point is the long-term traffic contracts with DB-Regio (<http://www.forschungsinformationssystem.de/>).

Delays and high ticket prices offset by the German Railways plc have not only been criticised by consumer associations, but also by the Federal State Minister for Traffic in North Rhine-Westphalia (Frankfurter Rundschau 27.10.06: 9).

3) The material privatisation of the German Railways plc has been subject to political struggle. The management of the German Railways plc. was not willing to leave the responsibility and ownership of the tracks to a public administrative unit and claimed the ownership. The unions affected by privatisation (“Transnet”, “Gewerkschaft der Lokomotivführer”/GDL) represent unequal positions at this point. Transnet has been afraid of job losses and has been arguing with the management of the German Railways plc. The GDL and consumer organisations are in favour of legal unbundling of rails and services, and the public ownership of the tracks as well (press release GDL 13.9.06; Handelsblatt 14.09.2006; Mitbestimmung 19/2006: 9).

4) At the local level there have been some *hard conflicts concerning employment conditions*. The deterioration of employment conditions is not only the result of privatisation processes: “Taking the different effects of change into account, it is likely that the effects of the competition approach will be limited in public transport. Instead the budgetary problems and the rationalisation effects seem to be responsible for the employment reduction” (Latniak 2006: 28). Nevertheless wage differences between private and public transport companies are very distinct:

- A private bus company presently pays approx. 10.30 – 10.66 € per hour (in North Rhine-Westphalia), whereas according to the collective agreement the monthly wages range between 2,500 and 2,800 euros, which would mean an hourly rate of 14.88 – 16.01 € (Latniak 2006: 23).
- According to union members in short-distance public railway transport the wages are 20% below the wages of DB-Regio. And if DB Regio loses a competitive tender there is a job reduction of 50% on the respective line (Junge Welt, 27. 6.2006).

A specific point of dissent among the new collective agreements for the public transport is the question of whether the collective agreement is only valid for the transport company or for the supplying companies and for sub-contractors as well. The reason for the dispute is that the transport providers have partly outsourced specific tasks, as for example, the controlling of tickets, cleaning, or security services, to specialised service companies. These companies are not tied to the collective agreement in public transport, but they often pay lower wages according to different agreements in other sectors or branches. This regulation leads to bargaining pressure on works councils and unions in the public transport companies which are trying to defend jobs and wages against cuts and reductions (Latniak 2006: 23).

5) Concerning privatisation processes and the effects on employment, one prominent case of *local protests* was recently stressed in the media: The privatisation of the public urban transport in the large town “Pforzheim” in 2006. Contrary to public protests the local authority of Pforzheim sold 51% of its public transport company to the French global player Veolia (Die Welt, 25. Juli 2006; Berliner Zeitung 8.08.2006).

In general the protests have been focused on bad payment conditions and working times for employees. Nevertheless the following table shows a continuous *reduction of employment* since the mid nineties in the road-bound public transport sector in Germany:

Table 7: Employees in road-bound public transport in Germany 1994-2003

Year	Drivers	Technical staff	Others	Total
1994	127.331	34.775	34.481	196.587
1995	125.238	33.776	32.654	191.668
1996	124.164	32.258	30.872	187.294
1997	126.213	31.217	30.752	188.182
1998	125.421	30.111	30.963	186.495
1999	126.076	28.179	30.549	184.804
2000	124.933	26.926	30.726	182.585
2001	125.856	26.014	30.000	181.870
2002	124.654	25.607	30.751	181.012
2003	123.214	25.078	29.380	179.675

Data: Statistisches Bundesamt, Straßenpersonenverkehr. Fachserie 8, Verkehr, R. 3.2; Statistisches Jahrbuch.

## CONCLUSIONS

Concerning the practices of tendering and competition, the implementation of the EU regulations is still ongoing, but it will take some time until the effects become really visible. In general, market shares between public and private companies have not changed fundamentally, but have to be analysed in a differentiated way. The public urban transport and the short-distance public railway transport are concerned by various developments:

The visible effects of the liberalisation approach have been limited in public urban transport, to date. The local authorities have been largely able to decide themselves about tendering procedures. In particular they have been able to block attempts of the EU-Commission and private competitors to restrict the possibilities of communal cross-subsidisation. But this might change in future. Nevertheless the local authorities have severe financial problems to finance public urban transport. It was due to these financial problems in the past that privatisation processes took place. Although many of the public owned companies are now preparing for a price-based competition in the near future, the budgetary problems and the rationalisation effects seem to be responsible for privatisation processes.

Several rationalisation and privatisation measures have been applied in the public urban transport sector:

- a) Public owned companies subcontract private bus companies for certain traffic lines;
- b) Selected tasks are outsourced to specialised companies (cleaning, security) active in branches where lower wages are paid;

- c) Specific “driver companies” are outsourced – with lower wages due to wage agreements which are different from the public owned (mother) transport company (e.g. Leverkusen);
- d) In several cases, the community owned public transport companies were partly (“public-private partnership”) or (rather rarely) completely sold to private competitors as are e.g. VEOLIA (e.g. Pforzheim).

Regarding the short-distance public railway transport the link between new liberalisation regulations at the EU level and privatisation effects was much stronger than in the public urban transport (without trains). Hence, liberalisation has been the initial point for the ongoing privatisation of the German Railway sector. Here the motives seem to be the anticipated (expansive) market opportunities on the long-distance European railway sector. Concerning the short-distance railway sector in Germany, competition was accepted to a remarkable degree. Nevertheless the DB-Regio will still have the market monopoly in future. In general the service quality has been reduced and prices have been raised.

An open question for further research is the change of service quality, employment conditions and industrial relations. Concerning the latter aspect it has to be kept in mind that the former “standardised” collective agreement structure of the German public services no longer exists. The present outcome in the public transport sector is a patchwork of collective agreements for some regions or for selected private or public owned companies.

## REFERENCES

- AK Wien (2004): Zur Zukunft öffentlicher Dienstleistungen. Liberalisierung öffentlicher Dienstleistungen durch das GATS. Gemeinwirtschaftliche Auswirkungen in den Sektoren Wasserversorgung und Verkehr (Schiene, ÖPNV); Studie im Auftrag der Kammer für Arbeiter und Angestellte Wien, Nr.4, Wien
- Allgemeines Eisenbahngesetz (AEG) vom 27.12. 1993 (BGBl I S. 2378, 2396, 1994 I S. 2439), zuletzt geändert durch das Dritte Gesetz zur Änderung eisenbahnrechtlicher Vorschriften vom 27.04.2005 (BGBl I S. 1138)
- BMVBW (=Bundesministerium für Verkehr, Bau und Wohnungswesen) (1999): Bericht der Bundesregierung über den Öffentlichen Personennahverkehr in Deutschland nach der Vollendung der deutschen Einheit 1999. Berlin.
- Bundestag (2000): Liberalisierung im ÖPNV. Der Aktuelle Begriff 11/00. [www.bundestag.de/aktuell/begriff/2000/11\\_2000.pdf](http://www.bundestag.de/aktuell/begriff/2000/11_2000.pdf)
- Bracher, Tilman/Trapp, Jan Hendrick (2003): Netzgebundene Infrastrukturen unter Veränderungsdruck – Sektoranalyse ÖPNV. nertWORKS-Papers Heft 3. Berlin: Deutsches Institut für Urbanistik (DIFU). Oktober 2003
- COUNCIL REGULATION (EEC) No 1893/91 of 20 June 1991 amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway; download: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991R1893:EN:HTML>
- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railway
- Eichmann, Volker/Berschin, Felix/Bracher, Tilman/Winter, Matthias (2006): Umweltfreundlicher, attraktiver und leistungsfähiger ÖPNV – ein Handbuch. Deutsches Institut für Urbanistik, Berlin
- European Commission (2001) European transport policy for 2010: Time to decide, Brussels: European Commission White Paper. [http://europa.eu.int/comm/transport/white\\_paper/documents/doc/lb\\_texte\\_complet\\_en.pdf](http://europa.eu.int/comm/transport/white_paper/documents/doc/lb_texte_complet_en.pdf)
- COUNCIL REGULATION (EEC) No 1893/91 of 20 June 1991 amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway; download: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991R1893:EN:HTML>
- Deutsche Bahn AG (2005): Wettbewerbsbericht 2005, Berlin
- Die Welt (2006). Erste deutsche Großstadt privatisiert Nahverkehr, 25.07.2006
- DIW (2005): Verkehr in Zahlen 2005/2006. Edited via Bundesministerium für Verkehr, Bau- und Wohnungswesen, Deutscher Verkehrs Verlag, Hamburg
- Donald, David and Greg Ruiters (2006): Rethinking Privatisation. Towards a critical theoretical perspective. In: Public services Yearbook, p. 9-20; download: <http://www.tni.org/books/yearbook2005.htm>
- Eichmann, Volker/Berschin, Felix/Bracher, Tillmann/Winter, Matthias (2006): Umweltfreundlicher, attraktiver und leistungsfähiger ÖPNV – ein Handbuch. Deutsches Institut für Urbanistik, Berlin

- Frankfurter Rundschau (27.10.2006): Bahnchef erwartet Rekordjahr, page 9
- Grünes Europabüro Sachsen (2006): Veranstaltungsmitschrift der Leipziger Kommunalkonferenz „Die Zukunft der Daseinsvorsorge“ am 16.06.2006 in Leipzig
- Heinze/Kirchhoff/Köhler (1999): Planungshandbuch für den ÖPNV in der Fläche, in direkt, Ausgabe/Auflage Heft 53, Bonn
- European Transport Workers' Federation (ETF) (2005): ETF position paper. PROPOSAL FOR A REGULATION ON PUBLIC PASSENGER TRANSPORT SERVICES BY RAIL AND BY ROAD (COM(2005)319) 3rd Commission proposal; download: <http://translate.google.com/translate?u=http://www.itfglobal.org/etf/position-papers.cfm&langpair=en%7Cde>
- Höhnscheid, Heike (2000): Die Regionalisierung des Öffentlichen Personennahverkehrs. In: Baum, H./Willke, R. (Hg.), Buchreihe des Instituts für Verkehrswissenschaft an der Universität zu Köln, Nr. 61, Verkehrs-Verlag J. Fischer, Düsseldorf
- Junge Welt (27.06.2006): Lockende Staatsknete – Profiteure der Regionalisierung und Privatisierung
- Köhler, Uwe (2002): Öffentlicher Personennahverkehr. In: Ders.: Ingenieurbau Teil Verkehr, Ernst und Sohn Verlag
- Köhler, Uwe (2002): Die Liberalisierung des Marktes im ÖPNV. Diskussionspapier zur Expertenrunde der Schader-Stiftung am 5./6.12.2002 in Seeheim-Jugenheim, November 2002, [www.schader-stiftung.de/docs/papier13.nov.oepnvinternet.pdf](http://www.schader-stiftung.de/docs/papier13.nov.oepnvinternet.pdf)
- Kommission der Europäischen Gemeinschaft [EuKom05o] (2005): Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates über öffentliche Personenverkehrsdienste auf Schiene und Straße, Brüssel
- Lasch, Rainer, Lmke, Arne, Jugelt, Reiner, Probst, Gerd (2005): ÖPNV-Markt der Zukunft – Entwicklungen bis zum Jahr 2015. Deplhie Studie im Auftrag des Deutschen Verkehrsforums, Technische Universität Dresden, Dresden 2005; download: [www.delphi-oepnv.de](http://www.delphi-oepnv.de)
- Latniak, Erich (2006): Report on German Public Urban Transport. Projekt paper from DYNAMO – Dynamics of National Employment Models, Institut für Arbeit und Technik, Gelsenkirchen
- Naumann, Karl-Peter (2002): Anbietervielfalt versus Kundenfreundlichkeit. Vortrag im Rahmen der VDV Sicherheitstagung 16./17. September 2002, Berlin
- Personenbeförderungsgesetz vom 21. März 1961. Neugefasst durch Bek. v. 8. 8.1990 I 1690; zuletzt geändert durch Art. 14 G v. 22.8.2006 I 1970; Fundstelle: BGBl I 1961, 241; download: <http://bundesrecht.juris.de/pbefg/index.html> Regionalisierung des öffentlichen Personennahverkehrs
- Gesetz zur Regionalisierung des öffentlichen Personennahverkehrs vom 27. Dezember 1993, Fundstelle: BGBl I 1993, 2378, 2395 Zuletzt geändert durch Art. 25 G v. 29.12.2003 I 3076hverkehrs
- Rein, Uwe/Reichel, Bernd (2006): Öffentlicher Personenverkehr mit Bus und Bahnen, Statistisches Bundesamt, Wiesbaden
- Rhein-Main-Verkehrsverbund GmbH (2000): Wettbewerb im Öffentlichen Personennahverkehr, veröffentlicht in Schriftenreihe des RMV, Ausgabe/Auflage Heft 11, Hofheim, 2000/11
- Reim, Uwe/Reichel, Bernd (2006): Öffentlicher Personenverkehr mit Bussen und Bahnen 2004. Wirtschaft und Statistik 4/2006, Statistisches Bundesamt, Wiesbaden

- Resch, H. (2004): Welche Personalqualität braucht ein gut geführtes Unternehmen? In: Der Nahverkehr 9/2004, 60-64
- Schweiger, Christian (2006): The EU regulatory framework in the transport area. DYNAMO Transport sector studies group (Project discussion paper); Employment Research Centre. Department of Sociology. Trinity College Dublin; Dublin
- Verein deutscher Verkehrsunternehmen (VDV): Bundesverwaltungsgericht ermöglicht einheitliche Praxis bei Bus-Liniengenehmigung in Deutschland. Press release 20.10.2006
- Verband Deutscher Verkehrsunternehmen (VDV) (2006): VDV Statistik 2005. Köln, Verband Deutscher Verkehrsunternehmen
- Verhoest, Koen and Justine SYS (2006): Liberalisation-privatisation-regulation: Concepts, processes and outline of the reports. WP1 – guidelines. PIQUE-Project (project working paper), Leuven
- VERORDNUNG ( EWG ) Nr. 1893/91 DES RATES vom 20 . Juni 1991 zur Änderung der Verordnung ( EWG ) Nr. 1191/69 über das Vorgehen der Mitgliedstaaten bei mit dem Begriff des öffentlichen Dienstes verbundenen Verpflichtungen auf dem Gebiet des Eisenbahn-, Strassen- und Binnenschiffsverkehrs; download. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991R1893:DE:HTML>
- Verordnung über die Vergabe öffentlicher Aufträge vom 9. Januar 2001, BGB I 2001, 110
- VCÖ (Verkehrsclub Österreich) (2003): Globalisierung darf Umwelt und Soziales nicht überrollen, Verkehr aktuell, Ausgabe 01, [www.vcoe.at](http://www.vcoe.at)
- VDV (=Verband Deutscher Verkehrsunternehmen) (2004a): VDV Statistik. Köln: VDV

### *Websites*

#### *German Federal Ministry of traffic:*

<http://www.bmvbs.de/Verkehr/-.1491/Oeffentlicher-Personennahverke.htm>

#### *Scientific websites*

<http://www.fachportal.nahverkehr.nrw.de/>

<http://www.forschungsinformationssystem.de/>

[http://www.publicgovernance.de/knowledge\\_center/13411.htm](http://www.publicgovernance.de/knowledge_center/13411.htm)

<http://www.fachportal.nahverkehr.nrw.de/>

#### *Private competitors*

<http://www.connex-gruppe.de>

#### *Consumer associations*

<http://www.bahn-fuer-alle.de/>

<http://www.bmvbs.de/>

<http://www.kreise.de/landkreistag/>

<http://www.pro-bahn.de/>

<http://www.bahnonunten.de/index.html>

*Unions*

<http://www.gdl.de/>

<http://www.itfglobal.org/etf/>

[http://verkehr.verdi.de/strassenpersonen-\\_verkehr?searchBr=&branchenlist=1105&x=25&y=9](http://verkehr.verdi.de/strassenpersonen-_verkehr?searchBr=&branchenlist=1105&x=25&y=9)

*EU*

[http://www.europarl.europa.eu/committees/rett\\_home.htm](http://www.europarl.europa.eu/committees/rett_home.htm)

[http://ec.europa.eu/dgs/energy\\_transport/index\\_de.html](http://ec.europa.eu/dgs/energy_transport/index_de.html)

*Other associations*

<http://www.uitp.com/home/index.cfm>

[http://www.vdv.de/wir\\_ueber\\_uns/nahestehende\\_organisationen.html?pe\\_id=31](http://www.vdv.de/wir_ueber_uns/nahestehende_organisationen.html?pe_id=31)

<http://www.staedtetag.de/>