

# **TOWARDS INNOVATION IN PUBLIC TRANSPORT TENDERING IN THE NETHERLANDS**

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## **INTRODUCTION**

The public transport reform discussion initiated in 1992 in the Netherlands ended in 2000 with the enactment of a new passenger transport law. According to this new law, about a third of public transport services will have to be tendered by regional authorities in the coming years. In the meantime, a few regional railway lines have been contracted or tendered and preparations are made to tender for the operations of a number of regional and urban bus networks across the country. It is scheduled that after this first period, Parliament will review the effects and decide whether the new legislation will be extended to all public transport services.

After presenting the main elements of the reform path and some achievements to date, this paper will review two current cases of competitive tendering and compare these practices with the reform aims. One of the main aims of the reform was to introduce a clear distinction between authorities and operators whereby authorities would retain control on the transport policy while operators would gain a larger control on service design. The analysis of cases will show that reality remains at a substantial distance from this ideal. In the paper we will discuss reasons that may lead to this situation and that should be taken into account in the further implementation path and later reforms in the context of the future evaluation by Parliament.

## **THE DUTCH REFORM OF PUBLIC TRANSPORT**

Dutch public transport is currently subject to fundamental reforms. This is true for both local and regional transport (buses, trams and metros), on which we will focus in this paper, and for the railways, on which we will spend only a few words. In this chapter, we will briefly describe the historical public transport regime in the Netherlands before presenting the main features of the newly enacted Passenger Transport Act 2000.

\* The opinions presented in this paper are those of the authors and not necessarily those of the Ministry of Transport and Water Management.

## **Historical regime and developments up to 2000**

Local and regional public transport in the Netherlands was historically based upon the principle of market initiative but moved de facto gradually away from that principle, giving a great degree of stability to incumbent operators, which were mostly authority-owned.

The 1988 Passenger Transport Act was meant to simplify the regulatory framework (limited deregulation), to better integrate services and give more control on the growing deficits. A lump-sum subsidisation regime was implemented while the nation-wide ticket and fare integration introduced in 1980 was maintained. The subsidisation was rather complex and often fine-tuned by the Ministry. It moved from a supply norm base, to a passenger-km base and finally a passenger revenue base but it was crippled with exceptions and time lags that weakened its incentive power. Regional transport companies, owned by the state or local authorities, were amalgamated into one large group before being split again and for some parts privatised in order to generate competitors for the pending tendering regime. Autonomous entry by private operators, while still legally possible, hardly ever took place in practice.

It has to be noted that two experiences with competitive tendering took place in 1994. This resulted in the entry of an American operator on a few rural routes in the south of the Netherlands. This operator proved able to provide, roughly speaking, about 30% more services for the same amount of subsidy as the incumbent (van de Velde, 1995). Although measurements diverge according to the source, a substantial increase in passenger number was also achieved.

## **The Passenger Transport Act 2000**

This Passenger Transport Act 2000 marks the end of a public transport reform discussion that started in the early nineties with the recognition that public transport was at a loss in the competition with the car (evolution since 1950 shows a declining public transport market share while maintaining ridership). The origin of the act is a report published by a Committee appointed by the Minister of Transport (Commissie Brokx Openbaar Vervoer, 1995) that called for a decentralisation of tasks and powers from central government to provincial and regional authorities, for the introduction of tendering and for putting authority-owned local transport companies at arm's length. These recommendations were based upon the perception that the existing unchallenged monopolies were working inefficiently and took too little account of the wishes of their customers. As a result, public transport did not provide a competitive service compared to the car, which was and still is a main policy concern. Competition by tendering at the regional level was then seen as an incentive that should be introduced to change this situation.

From the first of January 2001 the Passenger Transport Act 2000 forms the new legal basis for public transport by bus, tramway or metro in the Netherlands. It is also partly applicable to public transport by train and is the keystone in a process of redistribution of tasks and powers among central government and local and regional authorities, of introduction of competition and of redrawing the relationship between transport operators and local and regional authorities.

The objectives of this whole process, and therefore of the Passenger Transport Act 2000, are twofold. In the first place it aims at creating conditions to improve public transport services' attractiveness such as to lead to an increased usage of public transport especially in areas worst hit by congestion. In the second place it aims at achieving a higher cost recovery ratio

by decreasing the subsidisation rate from, roughly, two-third of the full costs of public transport in the past to 50% in the future.

To attain these objectives the law decentralises powers and aims at a clear distinction between authorities and operators. Decentral authorities would retain the control on transport policy and therefore define public transport services on a strategic level. The decentralisation is based on the idea that local authorities are in a better position than the Ministry to draw local public transport policies (while municipal authorities were already responsible for local transport, interurban transport was decentralised in 1 January 1998 and many regional train services will be decentralised during the coming years). Operators, on the other hand, would retain control on the tactical and operational level<sup>1</sup> and therefore gain control over service design. The philosophy behind this distinction is based on the idea that an operator has a better knowledge of the preferences of (potential) passengers and must therefore have all instruments in hand to adjust services to meet these preferences. It is also believed that production costs will sink when operators are enabled to organise services according to their own visions while respecting guidelines set by authorities at the strategic level to fulfil their public duties.

The Passenger Transport Act 2000 introduces a radical change to the existing regime by introducing a regime of authority initiative<sup>2</sup> whereby service provision will, ultimately, be delegated to (private) operators selected according to competitive tendering. Under the old law operators could introduce new services. These could only be rejected by the authorities when the proposals were deemed not to meet the public interest or deemed to be against the financial interest of the authority. The Passenger Transport Act 2000, on the contrary, prescribes that an operator requires a concession initiated and granted by the authority before being allowed to start new activities on the public transport market. It thereby gives the authorities a firmer grip on public transport. The two key-elements of the new act are the system of concessions and the possibility/obligation to put concessions out for tender.

- **Concessions**

A concession is a kind of public service contract that gives an operator a temporary exclusive right to provide public transport services in a specific area or on a specific transport link. The operator who has obtained a concession is obliged to carry it out. Under certain conditions, two (or more) operators could operate in the same area, for instance when separate concessions for bus and tram services are issued for a same area. The law states that a concession is required before being allowed to provide public transport services. However, transport operators may upon their request and under certain circumstances be allowed to operate without concession, i.e. enter the market upon their free decision and without first being submitted to a call-for-tender. Such request to the contracting authorities may only be refused when the services suggested excessively compete with the existing concessions.

Concessions are granted by regional (provinces, metropolitan areas) or local (municipalities) authorities; there are in total 35 competent authorities (although there are discussions ongoing to reduce this number). The area to which a concession applies may, in principle, extend no further than the boundaries of the province, municipality or metropolitan area issuing it. As passengers will frequently travel through more than one concession, the act requires authorities to include provisions for service harmonisation across concession boundaries. If this is

<sup>1</sup> See van de Velde (1999) for a further description of the strategic, tactical and operational levels.

<sup>2</sup> See van de Velde (1999) for a further presentation of the concepts of market initiative and authority initiative.

not achieved, the Minister of Transport may issue an order to remedy the situation, either on his own initiative or at the request of one of the authorities involved.

The authorities may decide on the length of the concessions, subject to a maximum of six years. However, exemptions from the six year maximum can be granted by the Minister of Transport for concessions for tram, metro or other guided systems when the concessionaire is required to make sizeable investment in rolling stock or when sizeable investments in infrastructure have to be made.

The law stipulates that each concession must contain rules on the involvement of consumer organisations, the information to be provided by the operator for monitoring purposes, auditing, accessibility requirements for disabled passengers, safety of both passengers and staff and procedural rules on fares and timetable setting. The authorities may set additional rules.

In the past, the Minister of Transport set nationwide fares. With the new act, local and regional authorities may introduce regional tickets and fares. The Minister will, however, at first continue to set the price of nationwide through-tickets that have to be accepted by all operators. The ultimate aim is to introduce a single smart-card system by 2002 that will function as a support for all regional fares across the country.

- **Tendering**

The Passengers Transport Act 2000 enables authorities to put concessions out for tender. This is however, for the time being, not an obligation. When authorities choose to use a tendering procedure, the act requires them to draw up a schedule of requirements that has to be met by bidding operators. The authorities are required to consult consumer organisations about this document. Once the procedure has started the authority must follow the rules set by Directive 92/50/EEC relating to the co-ordination of procedures for the award of public service contracts.

The competitive tendering of concessions will be subject to an evaluation by Parliament in 2004. The evaluation will focus on changes in numbers of passengers, quality and costs. In order to make this evaluation possible the law stipulates that from the first of January 2003 at least 35% of the public transport services (defined in terms of turnover) must have been put out for tender. If this quota is not met by this deadline, the Minister of Transport may order the authorities to take the necessary action. The act determines that, depending on the outcome of this evaluation, the legislator will then decide whether competitive tendering will be made compulsory from 2006 on (2007 for municipal transport services as it is felt that municipal authorities require extra time to privatise their transport companies).

A political wish was that the introduction of tendering would not lead to socially unacceptable situations in the labour market. The Passenger Transport Act 2000 therefore protects employees' rights. Employees directly involved in transport provision (e.g. bus drivers) transfer to the new concession holder if their employer loses the concession, employees not directly involved in transport operations transfer to the new concession holder proportionately to the size of the concession. Existing labour agreements and conditions of employment continue to apply to staff transferring to a new employer. These provisions are valid for a period of ten years. In the meantime, employers and trade unions will continue to negotiate labour agreements and conditions of employment could change according to the usual consultation procedures.

In order to introduce tendering in urban areas, municipally-owned providers will have to be made independent from their authority. While privatisation is not made compulsory by the new act, a requirement of independence between contracting parties is expected to lead to privatisation. Furthermore, to prevent unfair competition, municipal transport companies will not be allowed bid on other markets unless their own market is also subject to competition and they will be required to transfer all activities other than public transport services to independent companies. Besides this principle of national reciprocity, the principle of international reciprocity has also been introduced in the act. Companies based in other countries are rejected from tendering unless their own market is also subject to competition.

As the urban and regional transport markets have been closed for a long time, a specific policy has been developed to favour entry by new providers and prevent any provider from gaining a dominant position. Therefore the Competitive Trading Act has been applied to public transport and the Netherlands Competition Authority will ensure that providers do not abuse dominant positions and it may prevent the formation of cartels through mergers, take-overs, joint ventures and the like. In response to the Authority's findings, the Minister may decide to put in operation a number of sections of the act such as to restrict providers' dominance.

### **The railway reform**

The reform of the Dutch railways is made up of two main phases. The 1995 reform led to a first step in the separation of infrastructure and operations. The 2000 reform is now leading to further steps toward contractualisation and tendering of railway services<sup>3</sup>. We will focus here on those developments that are most relevant for local and regional passenger transport.

The 1995 reform involved a reorganization of the national railway company Nederlandse Spoorwegen (NS) and a substantial deregulation. The reform was implemented by a transitional contract for 1996-2000.

Competition also appeared during this period, though not exactly as planned; free competition 'on the tracks', as took place during the 'Lovers Experiment' between Amsterdam and Haarlem, has now been rejected (except for freight transport). In the eastern part of the Netherlands, the state-owned regional bus operator won the right to operate a short railway line by competitive tendering. NS started a joint venture (*Syntus*) with that operator and a subsidiary of the SNCF Group to operate an integrated bus-train network and was granted by the same province a further contract without competition. A similar development was seen in the north where NS co-operates with Arriva (a British operator who bought part of the national bus company) in a joint-venture called *NoordNed*. Later this joint-venture won a competitive tender for a local train network in a neighbouring province. It is expected that further bus-train integrations will appear in the near future. A further major competitive tendering case is that of the currently conducted triple tendering of infrastructure design, capacity provision and transport for the Amsterdam-Rotterdam-Brussels high-speed line (to be connected to the existing Brussels-Paris line in 2005).

The 2000 reform of the railway sector is based upon a policy document (Ministerie van Verkeer en Waterstaat, 1999) that was published by the new Labour Minister of Transport. It considers that it is better to let the existing main-line network find its new equilibrium without competition. NS will therefore be granted a 10-year concession to operate the whole main-line

<sup>3</sup> See van de Velde [, 2000 #7751 for further details on this whole reform process.

network but this will be subject to contractual performance obligations with financial incentives. This should give NS more management freedom while allowing the Ministry to set clearer targets for socially necessary services and transport policy aims than was the case until now. As far as local railway lines are concerned, the reform involves a transfer of the responsibility for the local lines to regional transport authorities and a gradual transition from negotiated contracts to competitive tendering by provincial governments. The concessioning and tendering regime would be the one developed for local and regional passenger transport in the Passenger Transport Act 2000. The policy document also plans to evaluate the results after a few years before deciding on further steps.

## **CASE STUDIES**

In this chapter we will present two cases of urban networks that are either about to grant a concession on the basis of competitive tendering (Leeuwarden) or that are well advanced in a process leading them to competitive tendering in the near future (Amersfoort). We have chosen these two cities such as to illustrate the variety of approaches in location of the service design function permitted by the new Passenger Transport Act 2000.

### **Leeuwarden**

Leeuwarden (Ljouwert) is a city of about 90.000 inhabitants on an area of about 84 km<sup>2</sup> (including a large rural area). It is the capital of the province of Fryslân in the North of the Netherlands. The current public transport network is operated by Arriva (the British owned private operator, after privatisation of the Northern part of the national bus company VSN) on the basis of a traditional negotiated contract. It counts 11 lines and generates about 16 million passenger-km per year. The city is submitted to the regulatory regime of the Ministry of Transport whereby subsidies granted to the city are linked to the passenger revenue by public transport operations in the area. The City of Leeuwarden is the transport authority for the city. The level of cost coverage currently amounts to a mere 27%.

The city has started a competitive tendering procedure in January 2001. This is the first tendering procedure in the Netherlands according to the provisions of the new Passenger Transport Act 2000. Furthermore an additional demand-responsive system is also tendered simultaneously (this is essentially a mobility-impaired transport system that has the particularity of being open to all passengers). The winning bid will be announced during the summer of 2001. Operations is due to start in January 2002.

According to a policy document of the municipality, the process leading to tendering aims at improving service quality, improving efficiency and using the knowledge and creativity of potential operators. The municipality began with the development of a new bus network based on a differentiation of services into a faster 'star'-like network and a slower underlying network providing closer services to neighbourhoods. Leeuwarden has deliberately chosen to keep the service design as a prerogative of the authority. The city has fixed routes, stops, minimum frequencies, periods of service, etc. The national fare system remains valid and determines an upper limit to the fare variations that could be suggested by the operator. It should however be noted that the municipality has chosen for a regime where all fare initiatives by the operator have to be approved by the municipality before implementation. This new network, which represents a lower level of service compared to the current network, is the base case on which operators have to bid. Besides this a number of options for additional services have been defined. These include well-defined improvements to the frequency, peri-

ods of service and services areas or a lengthening of the contract period from 4+1+1 to 6 years, but operators can also suggest own variations. A contract price has to be delivered for both the base case and the options. The winning bid will be mainly determined on the basis of the highest level of service that can be provided while remaining within the limits of the public transport budget. This budget represents 94% of the national subsidy given to Leeuwarden by the State. Most of the remaining 6% will be used to form a bonus fund to be paid to the operator when specific ridership increase targets are realised. All passenger revenues accrue to the operator who carries all revenue risk after receiving the lump sum subsidy. Leeuwarden also included a penalty regime linked to the inadequate or missing delivery of operational and financial information by the operator to the authority.

The contractual content, i.e. the 'concession', has strangely enough not been determined nor sketched before tendering. This will have to take place after choosing the winning bid. It remains to be seen whether this process will be easy to fulfil.

### **Amersfoort**

Amersfoort is a city of about 126.000 inhabitants on an area of about 64 km<sup>2</sup> located about 15 km to the Northeast of the main city of Utrecht. The current public transport network is operated by Connexion (the nationally owned regional public transport operator) on the basis of a traditional negotiated contract. It counts 13 lines and generates about 14 million passenger-km per year. The city is submitted to the regulatory regime of the Ministry of Transport whereby subsidies granted to the city are linked to the passenger revenue by public transport operations in the area. The City of Amersfoort is the transport authority for the city. This status was threatened by the low level of cost-coverage in the city, which would have led to the transfer of the transport authority status to the Province in the new regime. However, a specific plan to improve cost coverage led to an agreement to maintain the independent authority status of the city. The level of cost coverage currently amounts to 31%.

The city has decided to start a competitive tendering procedure during 2001 to grant the concession for the whole of its urban passenger transport services. This decision is not based on dissatisfaction with the current operator, but rather on a desire to further improve transport services. The city had already tried to implement tendering in 1998 – as one of the first in the Netherlands – but difficulties linked to the delayed enactment of the Passenger Transport Act 2000 led to a postponement of this intention. A plan to grant two concessions simultaneously, one for the regular urban services and one for demand-responsive services, has also been shelved. The demand responsive system will now be integrated in the provincial demand responsive system and that may be tendered at a different date. A final choice of operator for the urban services is currently expected by January 2002, while the starting date of the new concession is expected to coincide with the railway timetable change of December 2002.

The example of Amersfoort is currently unique in the Netherlands in that it is the first city aiming to transfer substantial service planning powers (tactical level) to the operator. The municipality expects that this will lead to an optimised transport network. The schedule of requirements, to be included in the call for tender, is currently being developed. For this reason, little can be said at this moment about the details of the procedure. However, it is expected that it will contain the main policy aims of the recently adopted Municipal Transport

Plan.<sup>4</sup> Let us review the main features of the 1998 tendering intention as they illustrate the general philosophy adopted by Amersfoort and as they are broadly compatible with the spirit of the new Passenger Transport Act 2000.

The 1998 intention was to include, amongst others, minimum service requirements in dimensions such as minimum frequencies (varied according to periods of the day and week), maximum walking distance to bus stops from every house (e.g. 400 m), servicing of a specified list bus stops at main places in the city, connections to intercity train services to Utrecht and Amsterdam, and a maximum bus age of 8 years. The concession would have been granted to the operator suggesting the economically most attractive bid, fulfilling all service requirements as weighed by a multi-criteria table included in appendix to the schedule of requirements. This table also included the financial part, calculated as price per bus-km and price per bus-hour such that the resulting score could be used to select the winning operator. The operator would receive the national subsidy minus a specific amount set aside for a public transport fund. He would have had to carry all revenue risk after receiving this amount. However, a rather marginal bonus scheme linked to increases in passenger was added.

## **BARRIERS**

The two examples presented illustrate the scope of variation given to transport authorities when developing concession-tendering regimes. While much more variation is feasible, it remains to be seen whether transport authorities will dare to venture on these grounds, which were created on purpose by the new Passenger Transport Act 2000. The examples to date, such as Leeuwarden but also the tendering of the regional railway lines in the Province of Groningen (a case that was not presented here), illustrate the high level of restraint exhibited by authorities, keeping most parts of service design (tactical level) in their own hands. While Amersfoort seems to be perseverant in trying to delegate service design to the operator (even here, suggestions have to be submitted to authority approval), it is too soon, though, to draw general conclusions as most authorities are still in a policy development phase. In the rest of this section, we will present possible sources of barriers to the realisation of the original aims of the Passenger Transport Act 2000 and fill in a few elements identified in the cases described. Numerous features may create barriers to the realisation of the original aims behind the Passenger Transport Act 2000. We attempt at classifying these barriers in Table 1.

<sup>4</sup> Such integral transport plan, delineating policy aims on urban mobility by all modes is a requirement of the National Planning Act 1998.



Table 1 Barriers to delegating service design to the operator in a context of competitive tendering

**Important remark:** This table contains **possible barriers** to implementing one of the main ideas of the Passenger Transport Act 2000, i.e. delegating the determination of passenger service design to the operator in a context of competitive tendering (we call this idea ‘delegation’ in this table for space and clarity reasons). The barriers mentioned here, though plausible, are solely provided as **examples**. They that do not necessarily exist at this moment in the Netherlands. Further research is needed to validate or invalidate the presence of these barriers.

	← Objective barriers →		← Subjective barriers →
	<b>FACTUAL</b> Impossibility	<b>INFORMATIONAL</b> Lack of knowledge	<b>BEHAVIOURAL</b> Psychology of actors
<b>LEVELS</b> <i>Each level leaves more or less freedom to the next one</i>	<i>Barriers due to objectively identifiable feature in laws, regulations, governance or contract, which makes delegation illegal, impossible or not workable</i>	<i>Barriers due to lack of information for actor(s) concerning the regime, its possibilities or lack of information on the market</i>	<i>Barriers due to subjectively determined features in the behaviour of involved actors. Remark: these barriers are reinforced by the presence of factual and informational barriers</i>
<b>1 Customs, traditions</b>	-	-	Competitive tendering is considered as opposed to general business ethics
<b>2.1 Legal regime</b> <i>The laws to which public transport is submitted</i>	Regime design flaw or frustrating element in the law (e.g. the law makes delegation inadvertently impossible, the law chooses for a tendering procedure that frustrates the appearance of delegation, the law makes some desirable forms of contracts illegal,...)	Authorities do not know which and how much flexibilities are offered by the law (e.g. in term of choice of tendering procedures, choice of contract content,...) Authorities do not understand the law	Authorities are against the delegation idea altogether. Authorities consider central government should continue to be responsible.
<b>2.2 Regulatory regime</b> <i>The general rules, that are decided within the scope of the law</i>	Regime design flaw or frustrating element in the regulations (e.g. the regulations make delegation inadvertently impossible, the regulations choose for a tendering procedure that frustrates the appearance of delegation, the regulations make some desirable forms of contracts impossible,...) Subsidisation and tarification (NTS) regimes render delegation difficult to implement due to resulting uncertainties	Authorities do not know which and how much flexibilities are offered by the regulations Authorities do not understand the regulations	Authorities do not want to engage in negotiations with government to solve problems

	<b>FACTUAL</b> Impossibility	<b>INFORMATIONAL</b> Lack of knowledge	<b>BEHAVIOURAL</b> Psychology of actors
<b>3 Governance</b> <i>The choice of organisational form by transport authorities within the scope of the existing laws and regulations</i>	Internal administrative procedures chosen by (local) authorities make delegation impossible	Authorities do not know how to create clever organisational forms within the scope provided by the law and additional regulations	Authorities are afraid of potential political consequences of delegation when public opinion or the press reacts negatively to actions by operators Authorities (politicians and/or civil servants) want to keep all powers for themselves (hobbyism) Complexity issues in local decision making (intertwined policy domains such as town planning and social policy) Past experiences of delegation or competitive tendering that failed
<b>4 Contract</b> <i>The choice of incentives in (contractual) relations between authorities and operators, within the scope of the chosen organisational form</i>	Choice of contractual incentives that render all delegation features in the contract ineffective (or no incentives at all) Lack of skilled potential operators to carry out delegation	Authorities do not know how to write good incentivising contracts Authorities do not know how to attract potentially 'good' operators to their call-for-tenders Operators do not have good information on market potentials	Authorities and/or operators are excessively risk averse Misconceptions about the motives and behaviour of the other actor in the principal-agent relationship created by public transport contracts Untrustworthy partners in past contractual relationships

We distinguish in Table 1 between a number of levels, using a concept from the economics of institutions (Williamson, 2000) where each level determines more or less the scope left at next level. As we analyse a recent and deliberate change at the legal level, we mainly focus on the ‘hierarchical’ relation between this level and the lower levels. We do not consider at this time the dynamics and feed-backs that may appear in the longer term. We distinguish between what we call the ‘legal’ and the ‘regulatory’ level as we feel this distinction is potentially relevant to discuss barriers in public transport reforms. Laws are typically more stable and more difficult to reform than additional regulations enacted by government. Governance pertains here to specific choice in terms of what we call ‘organisational forms’, i.e. decision as to the parts of public transport provision that will be contracted out. The fourth level refers to decisions on contractual content, especially incentives, between authority and operator.

We also distinguish three columns in a continuum, varying from the more ‘objective’ barriers to the more ‘subjective’ barriers, which we name ‘factual’, ‘informational’ and ‘behavioural’.

- **Factual barriers**

By ‘factual’ barriers we mean those barriers that are due to objectively identifiable features in the public transport regime making the realisation of its aims difficult, unlikely or illusory. Examples of such barriers could be (see also Table 1):

- At the legal and/or regulatory level: the choice for an excessive procedural strictness in tendering may, under certain conditions, impose frustrating restriction to the tendering authorities when letting contracts. France, e.g., has chosen for allowing negotiated procedures in public transport tendering involving substantial revenue risks for the operator while the Netherlands have chosen to avoid such procedures as much as possible. This choice is to some extent based on differences in customs and traditions.
- At the regulatory level: the choice of a specific subsidisation regime may hamper some developments in terms of tendering of service design. The national subsidisation regime to which Dutch transport authorities are submitted is an important peculiarity of the Dutch regime. Local and regional authorities receive a public transport budget from the national governments on a year by year basis. This future budget is linked to future public transport performance in the area. This creates uncertainties as to the future subsidisation budget available, which may be frustrating when tendering contracts for several years. This means that, on the one hand – and contrary to what is usual in many other countries – the amount of subsidisation available to public transport at the local level is neither freely determined by the local authority nor can it simply be budgeted for a whole contract period. On the other hand, this yearly subsidy grant from central government cannot be spent on anything else than public transport. This feature of the Dutch regime has already been responsible for a substantial amount of discussions between central government and candidate tendering authorities. Leeuwarden reached an agreement with the Ministry, while Amersfoort rejected the compromise. It has up till now lead authorities to a tendering regime whereby the amount of subsidy is to a large extent fixed at the current level and where selection takes place on the basis of the level and quality of service that can be offered for that amount of subsidy. It remains unclear, however, how these uncertainties will affect contract incentives. Problems may, e.g., appear if national subsidisation was to be reduced while service levels were contractually fixed at the local level.
- At the regulatory level still: the Dutch national ticketing system continues to impose an absolute limit to the fares policy of operators. Freedom to reduce fares can be given to operators, but this is not always done, furthermore fare changes are often subject to prior ap-

proval by the transport authority. It is strange to observe that operators are asked to carry revenue risk and are submitted to passenger increase bonuses while being deprived from one of the most effective revenue management tools. Here too, future will tell whether what appears to be a barrier to effective delegation effectively hampers its functioning or not.

- At the contractual level: a choice for an inefficient risk and instrument allocation between contract partners may lead to too expensive contracts and to a situation where the freedoms given to the operators remain unutilised, a lack of adequately skilled operators may frustrate the realisation of the aims of the reform,...

- **Informational barriers**

By 'informational' barriers we mean barriers resulting from a lack of information available to actors concerning the regime and its potentialities. Examples of such barriers could be (see also Table 1) a lack of information at the level of tendering authorities on the exact content and possibilities offered by the new legal framework, by the additional regulations, but also a lack of information on potentially effective organisational forms and contracts that are feasible with the enacted regime, or about the specific effects of some incentive regimes. The Centre for Innovation in Public Transport is one of the instruments designed in the context of the legal reform to avoid such barriers by providing information and guidance to local authorities in the process of competitive tendering. But in some cases it will be practice that will reveal the properties of the developed approaches. Experience will provide the required information.

- **Behavioural barriers**

By 'behavioural' barriers we mean barriers resulting from subjective features in the behaviour of involved actors, this is linked to the psychology of actors. This third type of barrier often dominates public debate. It should be noted that this type of barrier is actually reinforced by the presence of hidden factual and informational barriers that we want to distinguish here between the 'purer' behavioural barriers. Examples of such barriers could be (see also Table 1):

- At the legal and regulatory level: a simple rejection of the new regime by some authorities. This can be a simple (political) opposition to the idea of competition or a rejection of the idea of tendering because it is imposed by the national legislator to regional authorities who would have preferred a freedom of choice.
- At the governance level: an opposition to the delegation of the service design powers to the operator in fear for potential political consequences when events that are, strictly speaking, compatible with the contract are nevertheless perceived by the public opinion or – worse – the press as undesirable. Some decision makers are then likely to buy a less uncertain future public transport service in order to avoid political risks, even when this entails the loss of possibilities for desirable innovation or performance improvements.
- At the governance level: The complexity of local decision making when several policy domains are intertwined, such as town planning and transport or social policy and transport, is sometimes seen by local decision makers as a reason for requiring full, direct and continuous control on the design of public transport services. This barrier is not necessarily linked to the rejection of the contractual and tendering instrument per se, but rather to a belief in the importance of the ability to amend public transport services at any moment due to evolving decisions in related policy fields.

- At the governance and contractual level: Authorities may nourish doubts in their own ability to use contracting and tendering properly, this can sometimes be due to disappointing experiences with tendering in the past (failed competitive tendering for one reason or another, or untrustworthy partners in past contractual relationships). The actors involved may be subject to misconceptions about the motives and behaviour of the other actor in the principal-agent relationship created by public transport contracts. Some authorities (both politicians and/or civil servants) may simply want to retain all control on public transport in order to use it as a 'toy'. While this is fortunately often only a caricature, this eventuality should however not be neglected.

This list of barriers is by no means complete, neither is it an adequate representation of the current situation in the Netherlands. It is essentially an illustration of possible barriers to implementing one of the main ideas of the Passenger Transport Act 2000, i.e. delegating the determination of passenger service design to the operator in a context of competitive tendering. The barriers mentioned here, though plausible, are solely provided as examples. Further research is needed to validate or invalidate the presence of these barriers in particular cases.

While we have mainly focussed on the positioning of the service design function with the coming contractual relations resulting from competitive tendering in the Netherlands. Further study should also focus on the (reasons for the lack of) local policy background behind some of the tactical decisions included in the tendering cases that are currently being developed.

## **CONCLUSIONS**

The new Passenger Transport Act 200 is based upon ambitious aims. It is particular in its aim to transfer a substantial part of service design to operator. Many transport authorities are currently developing competitive tendering plans, most adopt different approaches. This paper briefly reviews the cases of Leeuwarden and Amersfoort. While this diversity enriches the scope of experiments and the potential sources of lessons, it also reduces the transparency of the market for potential entrants.

Further developments in the implementation of tendering in the Netherlands under the new Passenger Transport Act 2000 will illustrate whether and which of the barriers suggested here really represent obstacles to the realisation of the aims of the legislator. Further analysis in the close future – when more authorities will have implemented competitive tendering of concessions – will enable to distillate eventual regime flaws and practical instruments that can be designed to alleviate barriers. Besides this, comparative performance analysis of competitively tendered networks with non-competitively contracted networks will provide information on the effectiveness of the competitive tendering instrument in the context of the Dutch reform aims. We think the approach suggested here may help to clarify the dimensions of the discussion.

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*The opinions presented in this paper are those of the authors and not necessarily those of the Ministry of Transport and Water Management.*