

PRESS RELEASE

24th February 2014

Complaint to the Commission of the European Communities regarding failure to comply with Community Law (VR's passenger transport monopoly)

VR-Group Ltd (VR) and the Finnish Government signed a monopoly concession for passenger traffic on 30th November 2009, for the period 3rd December 2009 to 31st December 2019. In accordance with an option the concession was extended on 2nd July 2013 until 31st December 2024, based on a major rolling stock acquisition. In both cases, the matter has been decided in the Cabinet Committee on Economic Policy¹, even if the pre-contractual legal situation was based on an Act (the Railway Act, § 16). The Parliament has been completely disregarded in the decision-making process and there are cover-ups in the decision-making.

According to the agreement, other companies are allowed to run passenger trains at their own financial risk on other parts of the national rail network administered by the Finnish Transport Agency². PSO subsidies, however, are paid only to the domestic and state-owned VR. Railway sections open to others are mostly fragmented, so a “gut feeling” tells that they will very rarely form a viable going-concern in terms of traffic operations and business economics.

The current arrangement leaves citizens and regional and local administrations desiring better train services with no influence at all. In addition, potential domestic and foreign passenger rail operators are dissatisfied with the current state of affairs. Those other operators have also claimed they can provide train services at lower cost than VR. These allegations are supported by third-party research and Government reports also indicate that competition and tendering of subsidized services results in lower costs of train services.

Officially the aim was to implement the Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road (PSO)^{3,4} According to the 25th section of the introductory part (emphasised here)

“Public passenger transport by rail raises specific issues of investment burden and infrastructure cost. In March 2004, the Commission presented a proposal to amend Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (5) so as to guarantee access for all Community railway undertakings to the infrastructure of all Member States for the purpose of operating international passenger services. **The aim of this Regulation is to**

¹ <http://valtioneuvosto.fi/hallitus/ministerivaliokunnat/en.jsp>

² <http://portal.liikennevirasto.fi/sivu/www/e/>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0001:0001:FI:PDF>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0001:0013:EN:PDF>

establish a legal framework for compensation and/or exclusive rights for public service contracts and not the further opening of the market for railway services.”

As stated, Finland opened the railway market, but even the Government admits that the sections it opened are not economically viable. Therefore, the PSO-arrangement contravenes Community Law in many ways and grants aid that distorts competition (articles 101, 106 and 107 of the Consolidated version of the Treaty on the Functioning of the European Union⁵, for example). The illegal position manifests itself at least as follows:

- PSO subsidies will be paid only to one operator
- defining between subsidized or obligated train departures and other departures running at VR's own risk is unclear
- the open railway sections are not economically viable
- possibilities for regional and local administrations to influence train service levels do not meet the requirements of Community Law
- the “major rolling stock acquisition” has been identified as only a few carriages, at a fraction of the value of VR's rolling stock renewal project
- despite the partial liberalization, VR's special status is also upheld by allowing the company to scrap usable railway rolling stock instead of offering it to other operators
- the decision process of the exclusivity provision does not meet the procedural requirements of Community Law, either.

While in name implementing the PSO, Finland has executed an arrangement that encroaches on EU jurisdiction. For this reason on 17th February we submitted a complaint to the European Commission's Representation in Finland. As the unclear legality of the arrangement has continued since the end of 2009, we hope the Commission will take this into consideration and make quick deliberations.

Press release in Finnish:

http://www.rautatiematkustajat.fi/eu-kantelu/SRM_PSA_kantelutiedote.pdf

The whole complaint text in Finnish (with also all infringed articles named):

<http://www.rautatiematkustajat.fi/eu-kantelu>

A previous letter to the Commission:

http://www.rautatiematkustajat.fi/EU_RAILWAYPACKAGE4.pdf

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www.rautatiematkustajat.fi (short sections also in Swedish and English)

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