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COMMISSION IMPLEMENTING DECISION (EU) 2024/2138

of 18 July 2024

on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to commercial railway passenger transport in Sweden

(notified under document C(2024) 4998)

(Only the Swedish text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement procedures of entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC [1] and in particular Article 35(3) thereof,

After consulting the Advisory Committee for public contracts,

Whereas:

1. FACTS

1.1. The request

(1) On 13 December 2019, SJ AB ('the applicant' or 'SJ') submitted to the Commission a request pursuant to Article 35(1) of Directive 2014/25/EU ('the original request'). The request complies with Article 1(1) of Commission Implementing Decision (EU) 2016/1804 [2].

(2) On 2 July 2020, the Commission adopted Implementing Decision (EU) 2020/1193 [3] pursuant to Article 35(3) of Directive 2014/25/EU. Article 1 of the Decision stated that Directive 2014/25/EU shall not apply to contracts awarded by contracting entities and intended to enable activities related to provision of railway passenger services under a public service obligation contract to be carried out in the territory of Sweden. Article 2 of the Decision stated that Directive 2014/25/EU shall continue to apply to contracts awarded by contracting entities and intended to enable activities related to provision of commercial railways passenger services to be carried out in the territory of Sweden.

(1) OJ L 94, 28.3.2014, p. 243.
(2) Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275, 12.10.2016, p. 39).
(3) Commission Implementing Decision (EU) 2020/1193 of 2 July 2020 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to railway passenger transport in Sweden (OJ L 262, 12.8.2020, p. 18).

(3) The applicant sought the annulment of Article 2 of Implementing Decision (EU) 2020/1193 with the General Court. On 1 February 2023, the General Court annulled Article 2 of Implementing Decision (EU) 2020/1193 in case T-659/20 because of non-respect of the rights to be heard. On 22 December 2023, SJ submitted a modified and updated request, which the Commission is treating in accordance with Article 35(4) of Directive 2014/25/EU ([4]).

(4) The modified and updated request concerns procurement by an operator of commercial railway passenger transport services in Sweden. It is not intended to cover procurement by regional public transport authorities, national public transport authorities or other authorities ([5]).

(5) Section 24 of Chapter 3 of the Swedish Act on public procurement in the utilities sectors ([6]) allows contracting entities to submit requests under Article 34 of Directive 2014/25/EU. The applicant is a contracting entity in accordance with Article 4(2) of Directive 2014/25/EU and it carries out an activity relating to operation of networks providing a service to the public in the field of transport by railway, within the meaning of Article 11 of that Directive.

(6) The request is not accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activities concerned.

(7) In accordance with point 1 of Annex IV to Directive 2014/25/EU, the Commission is to adopt an Implementing Decision on the request within 105 working days. (i.e. a period of 90 working days (where free access to a given market is presumed on the basis of the first subparagraph of Article 34(3)) which is prolonged by 15 working days where the request is not accompanied by a reasoned and substantiated position, adopted by an independent national authority that is competent in relation to the activity concerned). The initial deadline for the modified and updated request expired on 6 June 2024 ([7]).

(8) The Commission held a conference call with the representatives of the applicant on 7 February 2024. The Commission sent a request for information (hereinafter 'RFI') to the Swedish authorities on 1 March 2024 with a deadline for response on 15 March 2024. The response was received on 22 March 2024. The Commission sent a RFI to SJ on 15 April 2024 with a deadline for response on 17 April 2024. The reply was received on 14 May 2024. The Commission sent a further RFI to AJ on 3 June 2024 with a deadline for response on 7 June 2024. The

([4]) In case T-427/23, SJ is currently challenging the Commission's position explained in the Commission's letter of 20 March 2023 to the Applicant that a new, updated application with recent market data, which would replace the previous application, was needed for the Commission to be in a position to adopt a new Implementing Decision on the applicability of Article 34 of Directive 2014/25/EU as a follow-up to the General Court's ruling in case T-659/20. On 30 March 2023, the Applicant replied that the annulment of Article 2 of Implementing Decision (EU) 2020/1193 did not entail the annulment of the Applicant's request for exemption or the entire procedure prior to the adoption of the annulled Decision. In the Applicant's view, to give effect to the judgment in case T-659/20, the Commission had to adopt a new implementing decision which amends the annulled Decision with respect to commercially operated railway passenger services either without taking into account the data collected by the Commission (on which the Applicant had not been heard, which led to the annulment in Case T-659/20) or, in the alternative, with due regard to observations submitted by the Applicant following the communication of the pricing data. On 10 May 2023, the Commission replied to the Applicant's letter recalling, amongst other, that an exemption granted under Article 34 of Directive 2014/25/EU applies across all future tenders after its adoption and, therefore, the principle *tempus regit actum* applies and the new decision has to take into account the current situation in the commercially operated railway passengers services market(s) in Sweden and be based on the most recent available information for the latest years (i.e. 2019 until 2022). Finally, the Commission invited the Applicant to supplement its former application and subsequent submissions with updates on the elements listed therein. The Applicant was also invited to submit any observations and views it considered relevant for the assessment of those data, as well as an updated opinion of the National Competition Authority or National Regulator, should it consider it necessary. The letter of 10 May 2023 indicated that once all those additional elements had been received, the Commission would start the procedure with the same timing as a new application.

([5]) See Request, paragraph 30.

([6]) Lag (2016:1146) om upphandling inom försörjningssektorerna.

([7]) OJ C, C/2024/2795, 19.4.2024, ELI: http://data.europa.eu/eli/C/2024/2795/oj.

reply was received on 24 June 2024. In accordance with point 2 of Annex IV to Directive 2014/25/EU, in the event of late or incomplete answers, the review period is suspended for the period between the expiry of the time limit set in the request for information and the receipt of the complete and correct information. Consequently, the deadline for the Commission to adopt its decision expires on 22 July 2024.

1.2. The applicant

(9) The applicant is a public undertaking, owned 100 % by the Swedish State, which was created in 2001 as one of the six divisions formed by the separation and corporatization of the former historic State owned railway company Affärsverket Statens Järnvägar. It is active in the railway passenger transport sector.

(10) SJ's business model has two pillars: providing commercial rail services under its own brand (covered by this Decision) and providing rail services procured by regional and national public transport authorities under its own brand or that of the procuring authority (covered by Implementing Decision (EU) 2020/1193) ([8]).

2. LEGAL FRAMEWORK

(11) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable, unless the activity is exempted pursuant to Article 34 of that Directive.

(12) Pursuant to Article 34 of Directive 2014/25/EU, contracts intended to enable the performance of an activity to which that Directive applies are not to be subject to it if the relevant Member State or contracting entities can demonstrate that the activity is directly exposed to competition on markets to which access is not restricted in the Member State in which the activity is performed. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned ([9]). This assessment is, however, limited by the short deadlines applicable and by the need to rely on the information available to the Commission – either from already available sources or from the information obtained in the context of the application pursuant to Article 35 – which cannot be supplemented by more time consuming methods, including, in particular, public inquiries addressed to the economic operators concerned ([10]). The assessment of direct exposure to competition that can be carried out in the context of Directive 2014/25/EU is consequently without prejudice to the full-fledged application of competition law ([11]).

(13) Access is deemed to be unrestricted if the Member State has implemented and applied the relevant Union legislation opening a given sector or a part of it. That legislation is listed in Annex III to Directive 2014/25/EU.

(14) Direct exposure to competition should be evaluated on the basis of various indicators, none of which is necessarily on its own decisive. In respect of the market concerned by this Decision, market shares constitute one criterion which should be taken into account, along with other criteria, such as entry barriers or intermodal ([12]) competition.

([8]) applicant's Annual Report 2018, p. 22.
([9]) Directive 2014/25/EU, recital 44.
([10]) Ibid.
([11]) Ibid.
([12]) Competition from modes of transport other than the train, in this case, notably bus travel and travel by air.

(15) This Decision is without prejudice to the application of the rules on competition and to other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty on the Functioning of the European Union or under Council Regulation (EC) No 139/2004 ([13]) as confirmed by the General Court ([14]).

(16) The aim of this Decision is to establish whether the services concerned by the request are exposed to such a level of competition (in markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU) which will ensure that, also in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2014/25/EU, procurement for the pursuit of the activities concerned will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.

3. **ASSESSMENT**

3.1. **Unrestricted access to the market**

(17) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legislation opening a given sector or a part of it. That legislation is listed in Annex III to Directive 2014/25/EU. Concerning rail services, that Annex lists Directive 2012/34/EU of the European Parliament and of the Council ([15]) for rail freight transport and for international rail passenger transport but contains no entry for domestic rail passenger transport. However, Directive (EU) 2016/2370 of the European Parliament and of the Council ([16]) extends the liberalisation of the rail sector to domestic rail.

(18) Sweden has fully transposed both directives in its national law – the Railways Act ([17]). Access to the relevant market is therefore deemed not to be restricted in accordance with Article 34(3) of Directive 2014/25/EU.

3.2. **Competitive assessment**

3.2.1. *Product Market Definition*

(19) The present decision only concerns procurement for the supply of commercially operated railway passenger services. Procurement for the supply of railway passenger services under public service obligation (PSO) was subject to Implementing Decision (EU) 2020/1193, which exempted from the application of Directive 2014/25/EU contracts awarded by contracting entities and intended to enable activities related to provision of railway passenger services under a PSO contract to be carried out in the territory of Sweden.

Distinction between commercial services and services operated under PSO contracts

(20) In previous merger and antitrust decisions ([18]), the Commission found that it may be appropriate to distinguish between the market for the supply of railway passenger services under public service obligation (PSO), and the supply of commercially operated railway passenger services. This distinction is mainly justified by supply-side

([13]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

([14]) Judgment of 27 April 2016, *Österreichische Post AG* v *Commission*, T-463/14, ECLI:EU:T:2016:243, paragraph 28. See also Directive 2014/25/EU, recital 44.

([15]) Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

([16]) Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (OJ L 352, 23.12.2016, p. 1).

([17]) Railways Act (2004:519).

([18]) Cases M.7897. *Arriva Rail North/Northen Franchise*, paragraphs 15 to 18; M.5855 – *DB/Arriva*, paragraphs 64-69 and 131-133; M.5557 – *SNCF-P/CDPQ/KEOLIS/EFFIA*, paragraph 17; M.7146 – *Govia/Thameslink, Southern and Great Northern Passenger Rail Franchise*, paragraphs 16 to 19; M.4797 – *Govia/West Midlands Passenger Rail Franchise*, paragraph 13.

considerations, notably the different regulatory regimes applying to those services. This distinction reflects the fact that transport services operated under PSO contracts are characterised by competition for the market, meaning that rail undertakings are competing to be awarded the right to offer transport services on a given route, whereas commercial transport services are characterised by competition in the market, meaning that rail undertakings compete to attract passengers.

(21) According to the applicant 'the relevant product market for the provision of passenger transport services to end customers (passengers) contains at least railway passenger services featuring direct connections, including both commercially operated services as well as services operated under PSO contracts.' ([19]).

(22) The Swedish National Competition Authority (NCA) indicates that, 'on several routes in the country, SJ's commercial services overlap with PSO services, which often concern regional and commuter services rather than long-distance rail services. These services may constitute a competitive constraint on SJ's commercial offer. This is particularly true for routes where differences in travel time are limited and can be compensated by better slots and lower prices. Competitive pressure may exist on the entire route, or on specific sub-routes' ([20]).

(23) However, the Commission notes that PSO services may also constitute a complementary service rather than a competing one depending on the route. In its response to the Commission's RFI, the NCA indicates that 'in many cases PSO traffic constitutes a substitute for SJ's commercial traffic if it operates on the same route. On certain routes, it could be considered complementary, for example if it can pass on passengers to specific stations not operated by SJ.[…] The Transport Agency's 2023 report states that PSO traffic has recently expanded and that it can both compete with and complement commercial traffic on different routes. The extent to which PSO traffic is in competition with or as a complement to the commercial traffic depends on the part of the route concerned' ([21]).

(24) For the purposes of the assessment under this Decision, in view of the ensuing analysis and without prejudice to the application of competition law, it is not necessary to conclude on whether commercial services form a separate market or belong to the same market as PSO services, since the Commission reaches the same conclusion under either product market definition.

Distinction between rail and other modes of transport

(25) In previous merger and antitrust decisions ([22]), the Commission has considered that other modes of transport such as car, bus, plane or ferry did not belong to the same product market as rail due to regulatory differences and limited demand substitutability (differences in terms of e.g. comfort, speed, connectivity, and price).

(26) The applicant claims that 'the relevant product market may also include other modes of transport on certain (sub-) routes, such as e.g. bus services on the Gothenburg-Malmö route and air services on the Stockholm-Gothenburg end-to-end sub-route. Importantly, even if services operated under PSO contracts and/or other modes of transport would not be deemed sufficiently substitutable to be included in the same relevant product market as commercially operated railway passenger services, they still exercise a competitive constraint' ([23]).

([19]) Applicant's submission of 22.12.2023, paragraph 29. For the purposes of this Decision, a route is understood as encompassing all journeys between any of the stations along that route (i.e. all point-to-point combinations along that route). A sub-route is understood as a segment of a route, encompassing all the point-to-point combinations between two stations along a route.

([20]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 11, last paragraph.

([21]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 12, second paragraph.

([22]) AT.39678 – *Deutsche Bahn I* and AT.39731 – *Deutsche Bahn II*, paragraph 33; M.202446 – *Govia/Connex South Central*, paragraph 13; M.5855 – *DB/Arriva, paragraphs* 137 to 140, M.5557 – *SNCF-P/CDPQ/KEOLIS/EFFIA*, paragraphs 32 to 36.

([23]) Applicant's submission of 22.12.2023, paragraph 29.

(27) The NCA indicates that ‘As far as rail passenger services are concerned, it is usual practice to define the product market on the basis of the route. Depending on the characteristics of the route, the product market may also include other means of transport (e.g. train, bus, car) or be narrower and only include trains’ ([24]).

(28) In light of the above, the Commission will assess the competitive pressure from other modes of transport on a (sub-)route-by-(sub-)route basis, taking account of the characteristics and specificities of the service, such as travel time, price levels, pricing patterns, comfort and availability.

3.2.2. *Geographic Market Definition*

(29) In previous antitrust and merger decisions relating to rail passenger transport services, the Commission has defined the geographic market by reference to an entire national railway network ([25]), routes ([26]), or point-to-point travel between an origin and a destination ([27]), depending on the specificities of each case.

(30) According to the applicant, ‘the relevant geographic market for the provision of passenger transport services to end-customers (passengers) is to be delineated at the point-to-point level.’ ([28]).

(31) The applicant submits that the market is delineated on a point of origin to a point of destination basis, as competitive conditions can vary significantly across such point-to-point delineations. The applicant argues that ‘Hence, the methodology used to evaluate whether an individual route is directly exposed to competition is exactly the same as at the national level. In fact, the assessment of competition at the individual route level constitutes a building block to the assessment of competition at national level’ ([29]).

(32) The applicant also proposes to leave the market definition open, as the exposure to competition has to be evaluated on a wider basis, since railway operators’ costs are not determined on a point-to point basis but at a wider level. Given the very high number of point-to-point markets, and the impossibility to analyse each of those markets, the applicant proposes to analyse the five most important routes in Sweden (i.e.: Stockholm-Malmö(-Copenhagen), Stockholm-Gothenburg, Gothenburg-Malmö, Stockholm-Sundsvall-Umeå and Stockholm-Karlstad(-Oslo). The applicant argues that an exemption covering all of Sweden could be granted on the basis of market data for these most important routes. ‘Since these routes were of a high economic significance to SJ, the aggregate competitive conditions on these routes would exercise decisive influence over SJ’s procurement strategy’ ([30]).

(33) These routes are the most important routes for the applicant as they account for more than [confidential] % of revenues and almost [confidential] % of its profits ([31]). Moreover, these routes represent ([32]) almost [confidential] % of all routes, all operators combined, in terms of revenues and [confidential] % in terms of passenger-kilometres.

(34) The NCA indicates that ‘the relevant geographic market is defined on the basis of each point-to-point connection (without taking into account sub-routes, which are themselves additional geographic markets), unless supply substitution from sub-routes or longer routes constitutes a credible threat’ ([33]). Nevertheless, in its opinion, the NCA suggests that it is more appropriate to perform an aggregated competitive assessment of the most commercially significant important routes for the purpose of the assessment under Article 34 of Directive 2014/25/EU, considering that ‘many of the inputs and services being procured are joint costs’ ([34]). ‘Moreover, as already stated in the previous report, it is neither possible nor appropriate to assess the competitive pressure on each of the routes potentially capable of being defined. Instead, it seems more appropriate to make an aggregated assessment of the most commercially significant routes. Moreover, that approach seems all the more reasonable in the light of the

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([24]) NCA response of 22.3.2024 to Commission’s request of information of 1.3.2024. p. 9 last paragraph,
([25]) Cases COMP AT.39678 and AT.39731, paragraphs 34 and 35; case M.5855, paragraphs 159 and 160.
([26]) Case M.*7011 SNCF/SNCB/Thalys JV*, paragraphs 41-46.
([27]) Case M.7897 *Arriva/Rail Noth/NorthernFrancise* paragraphs 19 to 23.
([28]) Applicant’s submission of 22.12.2023, paragraph 30.
([29]) Applicant’s submission of 4.6.2020, paragraph 15.
([30]) Applicant’s submission of 4.6.2020, paragraph 17.
([31]) Applicant’s submission of 22.12.2023, table 6, p. 13 and table 7, p. 14.
([32]) Annex 1 to NCA response of 22.3.2024 to Commission’s request of information of 1.3.2024.
([33]) NCA response of 22.3.2024 to Commission’s request of information of 1.3.2024, p. 11, 1st paragraph.
([34]) Position of the NCA, p. 11.

purpose of the examination under Article 34 of the Directive and the fact that many of the inputs and services procured constitute joint costs. In line with the previous report, this means that the overall economic importance of sufficiently competitive markets must be balanced against the importance of non-competitive markets' ([35]).

(35) The Commission finds indications that the provision of rail passenger transport services in Sweden is national in scope. First, the regulatory framework (such as the requirements to operate as a rail undertaking) is nationwide. Secondly, some providers (such as SJ, MTR, Transdev, etc.) operate on different routes in Sweden. It cannot be excluded that these providers might operate further routes depending on the evolution of market conditions. Thirdly, the characteristics inherent to the railway network must be taken into account. In particular, the existence of economies of scale and network effects, that is the generation of additional traffic by the linkage between various routes ([36]), is also an element pointing to the existence of a nation-wide market.

(36) Defining the relevant market as national in scope (i.e. all routes taken together) for the purpose of assessing the request under Article 34 of the Directive is also more appropriate since, according to the applicant, it procures 'most of its inputs for commercially operated services on a joint basis' ([37]). Furthermore, the applicant indicates: 'SJ's investments are predominantly related to purchasing of new fleets of trains as well as refurbishment/upgrades of existing fleets. These fleets are not pre-allocated to specific (sub-)routes but rather continuously allocated according to various market characteristics. These characteristics, such as consumer demand patterns, can shift over time and thereby induce a re-allocation of trains' ([38]). The applicant further states that 'the lion's share of SJ's purchases do not correspond to point-to-point markets, and thereby are not directly related to point-to-point-based market delineations, which are based on considerations relating to competition for revenues. Rather, SJ's purchases jointly cover one or several routes' ([39]). Furthermore, the applicant explains ([40]) that the NCA agrees with its view, that the assessment of whether the market is exposed to competition should be based on an aggregated competitive assessment given the large share of applicant's joint purchases. The applicant explains that joint purchases are particularly relevant for the three routes (Stockholm-Malmö, Stockholm-Gothenburg and Gothenburg-Malmö), and that the relevant metric for assessing if those routes are exposed to competition is to assess them jointly.

(37) In view of the foregoing, for the purposes of the assessment under this Decision and without prejudice to the application of competition law, the Commission considers that the relevant geographic market is national in scope. However, for the sake of completeness and in line with the approach proposed by the applicant and the NCA, the Commission will also carry out an aggregated assessment of the degree of competition to which the applicant is exposed on the five most commercially significant routes in Sweden (taken together).

3.2.3. *Market analysis*

National level

(38) On the market covering commercially operated rail passenger transport services and rail passenger transport services operated under PSO contracts (including regional/short distance and long-distance railway passenger services operated under a PSO) the applicant estimates (hereinafter '2023E') ([41]) its market share at [50 to 60] %

([35]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 11, 2nd paragraph.
([36]) In page 18 of its opinion of 2019, the NCA states: 'owing to 'network effects' SJ is likely to have an incentive to maintain traffic: its offer of connecting journeys that are complementary to the main routes may be assumed to increase the attractiveness of the latter'.
([37]) Request, paragraph 465.
([38]) Request, paragraph 467.
([39]) Applicant's submission of 4.5.2020, paragraph 29.
([40]) Applicant's submission of 4.5.2020, paragraphs 31 and 32.
([41]) Provisional data for 2023 based on internal revenue data of the applicant for the first semester of 2023.

in 2023 in terms of revenues ([42]). In the same year, the next market player was MTR with a market share of [20 to 30] %, followed by Transdev with [10 to 20] % and VR (former Arriva) with [5 to 10] %. As these market shares show, SJ's market share is 2,5 times larger than that of its most immediate competitor and almost five and seven times larger than that of the third and fourth largest competitors, respectively. The applicant's market share constitutes an preliminary indication of significant market power.

(39) On the market for the provision of commercial rail passenger transport services only, SJ's share, in terms of revenues, is expected to be [70 to 80] % in the estimates for 2023E, up from the share of [70 to 80] % of 2019 ([43]) and the [70 to 80] % in 2016 ([44]). Similarly, its share for commercial railway passenger services in terms of passenger-km is expected to be around [80 to 90] % in 2023E (estimates provided by the applicant), slightly higher than the [80 to 90] % recorded in 2019 ([45]) and clearly higher than the [80 to 90] % of 2016 ([46]).

(40) According to SJ, the total Swedish market for commercial passenger services in 2023 is expected to remain more than 10 % below the size of 2019 ([47]), due to decreased business travel and the expansion of PSO services. SJ and A-Train, are the only commercial operators expected to increase their market share. A-Train is expected to have a [0 to 5] % share in 2023E compared to [0 to 5] % in 2019. In the case of FlixTrain the comparison is made with 2021, when it started operating ([48]).

(41) The stability and persistence of the applicant's very large overall market shares seem to indicate that, its significant market power cannot be successfully contested by other rail operators at national level.

(42) The Commission also notes the existence of significant barriers to entry in the market for commercially operated rail passenger transport services in Sweden. These barriers concern notably the necessary high investment costs and associated economic risks for the acquisition of the rolling stock, and technical and regulatory requirements, such as for homologation of rolling stock in a country. In 2019, the NCA and the Swedish Transport Agency also pointed ([49]) to the existence of an entry barrier related to ticket distribution channels, which involve high costs that could discourage new entry and expansion. In its response to the Commission RFI, the NCA indicates ([50]) that some measures have been taken to remedy the situation. However, no action was taken for the development of other ticketing system for commercial rail services to remedy the fact that apart from the applicant's ticketing platform, other platforms have little relevance and awareness amongst passengers.

(43) In addition to its analysis of market shares and barriers to entry, the Commission will also perform an analysis on revenues per passenger-km for the sake of completeness, which it will take into account in subordinate order to determine the degree of competition to which the applicant is exposed. According to Figure 1, from an aggregate perspective, the revenue per passenger-km (defined as the ratio of revenues to the number of passenger-km) since 2016 has been significantly larger for the applicant than the one of its alleged competitors.

([42]) Applicant's submission of 22.12.2023, figure 1.
([43]) Applicant's submission of 22.12.2023, paragraph 40, figure 4.
([44]) Request 13.12.2019, paragraph 101, figure 4.
([45]) Applicant's submission of 22.12.2023, paragraph 41, figure 5.
([46]) Request 13.12.2019, paragraph 101, figure 5.
([47]) Applicant's submission of 22.12.2023, paragraph 41.
([48]) Applicant's submission of 22.12.2023, paragraph 41, figure 5.
([49]) Position of the NCA, p. 5 and position of the Swedish Transport Agency, p. 7.
([50]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 8 2nd and 3rd paragraph.

Figure 1

Ratio of SJ revenue per passenger-km for commercial railway services to other operators ([51]) ([52]) **[confidential]**

(44) Figure 1 shows that, compared to MTR, the applicant's revenue per passenger-km was [confidential] % higher in 2019 and [confidential] % higher in 2023E. In the case of Transdev, its revenue per passenger-km has systematically been [confidential] lower than the applicant's since 2016. The same pattern occurs for all other operators except A-Train. A-Train is the commercial operator of Arlanda Express, an express train service which operates on the route Stockholm City (Central Station)-Stockholm Arlanda airport ([53]). This route is clearly a very specific market (otherwise called 'niche market') whose particularities do not make it appropriate for a comparison with other passenger rail commercial services in Sweden. For A-Train the revenues per passenger-km are consistently [confidential] larger than those of the applicant. At the other extreme, FlixTrain primarily targets price sensitive passengers traveling for leisure purposes using low ticket prices ([54]). This is clearly reflected in the data, as the revenue per passenger-km of the applicant is more than double of FlixTrain's in 2023E.

(45) The fact that the applicant is able to consistently keep a higher revenue per passenger-km over time and vis-à-vis competitors (except the particular case of A-Train) indicates that the applicant may not be subject to sufficient competitive pressure. Otherwise, it would be naturally expected that competitors would be able to either gain a significant amount of market share (as their revenue per passenger-km, and hence average price, is lower) or to charge higher prices at the expense of potentially not getting larger shares of passenger-km (but better profits due to increased revenues per passenger-km). The fact that neither of the two situations happens suggests that the applicant is acting independently of its competitors, which appear to be only attracting those consumers that are not commercially interesting to the applicant.

(46) The survey evidence provided by the applicant suggests that there may be some degree of segmentation of the market along the price and quality parameters. For instance 'SJ's competitor survey from December 2022 shows that FlixTrain's customers view ticket price as a more important determinant for choice of operator than SJ's customers. Further, FlixTrain outperforms SJ with regard to ticket pricing, whereas SJ outperforms FlixTrain with regard to parameters such as perceived "easiness to travel with", which is an important driver for choice of operator for SJ's customers.' ([55]). Further, it seems that 'leisure passengers represent the main target group for FlixTrain and Snälltåget and an important customer group for MTR' ([56]), so it would seem that, at best, some commercial operators would be able to compete for only a limited fraction of the applicant's customer base.

(47) The above analysis is based on aggregated data. The specificities of certain routes may suggest a different situation if a disaggregated approach is taken. This is considered in the next section.

(48) In view of the factors examined above, the Commission cannot conclude that the provision of commercially operated rail passenger transport services at national level in Sweden, regardless of how the product market is defined, is directly exposed to competition in the meaning of Article 34(1) of Directive 2014/25/EU.

Aggregated route level

(49) The importance for the applicant of its five most significant commercial routes (i.e. Stockholm-Malmö (-Copenhagen), Stockholm-Gothenburg, Gothenburg-Malmö, Stockholm-Sundsvall-Umeå and Stockholm-Karlstad (-Oslo) taken together, is expected to increase from [confidential] % in 2019 to [confidential] % in 2023E in terms of revenues. Gothenburg-Malmö is the sole route out the main five ones for which the share of revenue for the

([51]) Own calculations based on Annex 2 to applicant's response of 26.4.2024 to Commission's RFI of 15.4.2024.
([52]) The table reads as follows: 1,200 means that SJ's revenue per passenger-km is 20 % higher, 0,19 means that SJ's revenue per passenger-km is 81 % lower.
([53]) Request of 13.12.2019, paragraph. 91.
([54]) Applicant's submission of 22.12.2023, paragraph 13.
([55]) Applicant's submission of 22.12.2023, paragraph 98.
([56]) Applicant's submission of 22.12.2023, paragraph 99.

applicant is expected to decrease, from [confidential] % in 2019 to [confidential] % in 2023E. The revenues of the applicant in the other four main commercial routes are expected to increase ([57]). The comparison with 2022 yields similar qualitative conclusions, except for Gothenburg-Malmö, where the share of revenues remains unchanged ([58]).

(50) The applicant takes the view that the entirety of its activity is directly exposed to competition ([59]), including on each of the five above-listed routes. The factors explaining this conclusion are the competition exerted by providers of commercially operated rail passenger transport services, providers of rail passenger transport services under PSO contracts and intermodal competition.

(51) The Commission will carry out an assessment of the degree of competition to which the applicant is exposed on each on the above-identified five routes, before concluding at aggregated route level (taking the above-identified five routes together).

(52) For each of the above-identified five routes, the Commission will first examine the competitive situation on the market for rail passenger transport services under the two possible product market definitions (i.e. commercial and PSO services together and commercial services only). In its assessment of the competitive situation on the market for rail passenger transport services, the Commission will rely on the market shares of the applicant and its competitors and on the existence of significant barriers to entry, as explained in recital (42) ([60]). For the sake of completeness, in subordinate order, the Commission will also rely on a comparison of the revenue per passenger-km for the applicant and its competitors.

(53) For each of the above-identified five routes, the Commission will, second, determine the degree of competitive pressure from other modes of transport (if any), taking account of the following general considerations on intermodal competition.

(54) Bus travel and air travel recovered much slower than rail travel following the COVID-19 pandemic. The 2022 KTH Report informs that the provision of bus service had not recovered from the impact of the pandemic ([61]). As regards air travel, the applicant indicates that: ‘compared to passenger numbers in 2019, expected passenger numbers for air services in 2023 are lower on all four main routes. Further, in 2023 air services are expected to lose market share on all four routes compared to 2019. The most significant share decreases in terms of passengers are observed on the Stockholm-Malmö-Copenhagen and Stockholm-Gothenburg routes. Following the COVID-19 pandemic, demand for leisure travel has recovered well, whereas demand for business travel has not recovered to the same extent This has impacted travel by air more than travel by rail, since air services have traditionally been more oriented toward business travel.’ ([62]).

(55) The Commission notes that the competition from air transport is relevant only for the assessment of the end-to-end subroutes (STO-GOT, STO-MAL-COP, STO-UME and STO-OSL).

(56) As a general rule, the Commission will assess routes and sub-routes on the basis of their relative economic importance for the applicant.

([57]) Applicant’s submission of 22.12.2023, paragraph 42, figure 6.
([58]) Applicant’s submission of 22.12.2023, paragraph 43, figure 7.
([59]) Applicant’s submission of 13.12.2019, paragraph 23.
([60]) The Commission finds that the market for supply of rail passenger transport services in Sweden is characterised by significant barriers to entry, which equally limit entry of rail undertakings on each of the above-mentioned routes. The existence of significant barriers to entry being a common feature of the five routes under assessment, it will not be repeated in each individual assessment.
([61]) 2022 KTH Report, p. 29, figure 13.
([62]) Applicant’s submission of 22.12.2023, paragraphs 206 and 207.

3.2.3.1. Stockholm-Öresund (STO-ORE) [63]

(57) This route, which includes trains operated between Stockholm, Malmö and Copenhagen, represented [confidential] % of SJ commercial railway services revenues in 2016, increasing to [confidential] % in 2022 and [confidential] % in 2023E [64]. It is one of the two most important routes for the applicant, as it accounts for [confidential] % of profits [65]. On this route the applicant's competitor (operating commercial end-to-end train) is Transdev (Snälltåget). Regional PSO services are provided on different sub-routes.

(58) In a market encompassing both commercially operated and PSO rail passenger transport services, the situation is as described in the following recitals.

(59) In 2019 FlixTrain was expected to enter the route with two daily departures of commercially operated trains. However, this entry did not materialize and, in March 2024, FlixTrain cancelled all its applications for train paths for an indeterminate period.

(60) The market share of the applicant in the overall market in terms of revenues was [60 to 70] % in 2016 and it is expected to increase up to [60 to 70] % in 2023E. In terms of passenger-km it is expected to decrease from [50 to 60] % in 2016 to [50 to 60] % in 2023E [66]. The other commercial service (Snälltåget) has remained with a stable share over the period. Öresundståg (owned by Transdev), which operates as a PSO in some sub-routes, has gained some market share in terms of passenger-km, but it has decreased more pronouncedly in terms of revenues. The 2022 KTH report [67] indicates that the applicant's fast train accounts for nearly 80 % of the departures in the Malmö-Stockholm route and has the lowest average travel time. The price comparison of the report shows that the applicant's fast train prices are double the price of other intercity trains between 2019 and 2022.

(61) The revenue per passenger-km of the applicant in the overall route is [confidential] than that of the other competitors (between 2016 and 2021 the applicant operated Mälardalstrafik). Figure 2 shows, for each year, the ratio of the applicant's revenue per passenger-km compared to the ratio of each other operator. For example, in 2023E the revenue per passenger-km of the applicant is [confidential] % than Snälltåget's (SJ revenue / Snälltåget revenue = [confidential]). Compared to the other operators, the applicant's revenues per passenger-km are between [confidential] and almost [confidential] in 2023E.

Figure 2

Relative differential of SJ revenues per passenger-km compared to other operators in STO-MAL-COP [68]
[confidential]

(62) The prices of Snälltåget are generally [confidential] than the applicant's ticket prices. The ticket price comparison provided by the applicant suggests that Snälltåget competes primarily for [confidential] customers [69]. [confidential] [70].

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(63) Stockholm-Öresund represent the route between Stockholm and Öresund region.
(64) Applicant's submission of 22.12.2023, paragraph 42, figure 6 and request of 13.12.2019, paragraph 129, figure 8.
(65) Applicant's submission of 22.12.2023, figure 7, p. 14 and Commission's calculation as share of the four main routes where the applicant makes profit.
(66) Applicant's submission of 22.12.2023 paragraph 46, Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, Annex 2, figures 10 and 11 and the request of 13.12.2019 paragraph 135, figures 12 and 13.
(67) Applicant's submission of 22.12.2023, paragraph 290, figure 173.
(68) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024 and Annex 50 to the request.
(69) Applicant's submission of 22.12.2023, paragraph 87.
(70) The Snälltåget economy and SJ economy plus are the closest ticket categories, SJ's being slightly more comfortable (applicant's submission of 14-5-2024, Annex 11).

(63) In a market for commercially operated rail passenger transport services only, the Commission notes that the applicant has only one competitor – Transdev. The applicant enjoys an even stronger market position than on a market also encompassing PSO services, with a market share of almost [80 to 90] % ([71]) in terms of passenger-kilometres.

(64) Bus transport's share ([72]) is very low compared to train services ([73]). Moreover, the price (bus tickets approximately cost half of the train tickets) and time travel differences (8 hours against 5 hours or less) compared to train services are so significant ([74]) that bus services exert a very limited competitive constraint on train services.

3.2.3.1.1. Stockholm-Öresund (STO-ORE) (end-to-end) sub-route

(65) This sub-route is expected to account for over [confidential] % of the applicant's revenues in the overall route in 2023 ([75]). Based on total revenues for all railway passenger operators, end-to-end travel is expected to account for around [confidential] % of revenues of the overall route. It is the single most important sub-route on this route. The applicant's market share in commercial services has remained stable at an extremely high level: [80 to 90] % of revenues and [80 to 90] % of passenger-km in 2016, compared to a [80 to 90] % (expected [80 to 90] % in 2023E) and [80 to 90] % (expected [80 to 90] % in 2023E), respectively, in 2022. The applicant's increase is to the detriment of the sole other commercial operator (Snälltåget) ([76]).

(66) In 2023E, SJ's revenue per passenger-km was [confidential] than Snälltåget's.

Figure 3

Relative differential of SJ revenues per passenger-km compared to other operators in STO-MAL-COP end-to-end ([77]) **[confidential]**

(67) Bus transport's share is very low ([0 to 5] % in passengers ([78])) compared to train services ([79]). Moreover, the price and time travel differences compared to train services are so significant ([80]) (bus tickets cost approximately half of the train tickets travel time by bus is 8 hours against 5 hours or less by train) that bus services exert a very limited competitive constraint on train services.

(68) On this route, the NCA indicates ([81]) that it is likely that there is some competitive pressure from air transport and potentially increasing competitive pressure from the low-cost flights.

(69) Three airline companies offer direct flights between Stockholm airports Arlanda and Bromma and the airports in the Öresund region: Copenhagen and Malmö. Ryanair, which entered the market in 2021 offering journeys from Stockholm (Arlanda and Bromma) to Malmö and Copenhagen, has exited. Overall, air travel has lost market shares on this route since 2019, while the applicant's shares have increased ([82]).

(70) In an intermodal market including commercially operated rail passenger transport services, PSO rail passenger transport services, air and bus transport, the Commission notes that the applicant has a market share of [40 to 50] % in terms of passengers ([83]).

([71]) Own calculations based on applicant's submission of 22.12.2023, figure 11.
([72]) The applicant submitted market shares' estimates in revenues and argued that market shares in passenger numbers (which the Commission sees as a more accurate indicator) were not available.
([73]) Applicant's submission of 22.12.2023, paragraph 184, figure 109.
([74]) Applicant's submission of 22.12.2023, paragraph 154and 155, figure 88.
([75]) Applicant's submission of 22.12.2023, paragraph 47.
([76]) Applicant's submission of 22.12.2023 paragraph 47, figures 12 and 13 and request of 13.12.2019, paragraph 135, figures 14 and 15.
([77]) Own calculations based on Annex 2 to applicant's response of 26.4.2024 to Commission's RFI of 15.4.2024 and Annex 50 to the request.
([78]) Applicant's submission of 22.12.2023, figure 157.
([79]) Applicant's submission of 22.12.2023, paragraph 184, figure 109.
([80]) Applicant's submission of 22.12.2023, paragraph 154and 155, figure 88.
([81]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 14, paragraph 3.
([82]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 14, paragraph 2.
([83]) Applicant's submission of 22.12.2023 paragraph 210, figure 119.

(71) Total travel time ([84]) is one hour and half shorter by rail than by air, which gives rail a slight advantage.

(72) Regarding air transport, SAS' prices ([85]) are about [confidential] than the applicant's comparable tickets (in terms of class and flexibility) and steeply increase as the purchase date approaches the date of departure, [confidential] ([86]). Similar qualitative conclusions can be drawn from the comparison with Braathens (BRA) ([87]) (Figs. 23, 24 of Annex 32 submitted on 21-12-2023). A price comparison with Ryanair, is no longer relevant since Ryanair no longer offers services on that route.

(73) The 2022 KTH report also shows that average ticket prices for flights between Stockholm and Malmö are in general more than double train ticket prices ([88]).

(74) Approximately [confidential] % of the applicant's tickets in the route are sold within 15 days ahead of departure ([89]). This is precisely the time period where flight and train prices significantly diverge from one another. The pricing patterns of SAS and BRA are very similar while the pricing patterns (but not the price levels) of the applicant and Snälltåget are also very similar. Flight operators have different pricing pattern and price levels from that of rail operators. [confidential] ([90]). There are therefore clear differences in terms of prices of rail and air tickets. Due to their [confidential] prices, air services are likely to only exert a limited competitive pressure on the rail services of the applicant.

3.2.3.1.2. Stockholm-Östergötland (STO-OST) sub-route

(75) This sub-route is expected to account for just under [confidential] % of the applicant's revenues in the overall route in 2023. Based on overall revenues for all rail passenger transport operators on this route, this sub-route is expected to account for around [confidential] % in 2023 ([91]).

(76) The market share of the applicant in terms of revenues was [90 to 100] % in 2016 ([92]). The applicant's share in terms of revenues was [80 to 90] % in 2023E, up from [70 to 80] % in 2019 (when Mälardalstrafik's was [5 to 10] %). The situation is similar in terms of passenger-km, where the applicant has a very high market share of [80 to 90] % ([93]).

(77) Every year between 2019 and 2023E, SJ's revenue per passenger-km has been [confidential] % higher than Snälltåget's.

([84]) Total travel time is defined a travel from city centre to city centre, and thus, for air travel includes travel to and from the airport.
([85]) Throughout the decision, the price comparison between air and rail prices includes the transfer costs between and from the airport because, as pointed in the 2023 KTH report: 'If the cost of connecting journeys between the city (railway station) and the airport is added to the air ticket price (compare Figure 18), a price is obtained that more clearly reflects the price of the journey between nodes with high accessibility, i.e. city to city.' (page 34 in Annex 12a to the applicant's submission of 22.12.2023. The applicant provides, for this and other routes, price comparisons with other transport operators (like SAS in Figs. 17, 18 of Annex 32 to the applicant's submission of 22.12.2023) where the average of SJ prices included only departures featuring, for example, more than 40 % tickets purchased under corporate agreements. This implies that departures of SJ at time slots not fulfilling that condition are not included in SJ average. However, the averages for the operators with which SJ is being compared do not seem to be adjusted in a similar manner. Therefore, it is not clear whether such comparisons are appropriate.
([86]) Applicant's submission of 22.12.2023, Annex 32, figures 15, 16, 21 and 22.
([87]) Applicant's submission of 22.12.2023, Annex 32, figures 23 and 24.
([88]) Applicant's submission of 22.12.2023 paragraph 292, figures 176, 177, 178 and 179.
([89]) Applicant's submission of 22.12.2023 paragraph 238, figure 137.
([90]) Applicant's submission of 22.12.2023, figures 132 to 136.
([91]) Applicant's submission of 22.12.2023, paragraph 49.
([92]) However, it is unclear whether this included also the revenues of Mälardalstrafik, which was operated by the applicant as concessionaire.
([93]) Applicant's submission of 23.12.2023 paragraph 50, figures 14 and 15 and the request of 13.12.2019, paragraph 140, figures 16 and 17 and Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, Annex 2.

Figure 4

Relative differential of SJ revenues per passenger-km compared to other operators in STO-OST ([94]) **[confidential]**

3.2.3.1.3. Hässleholm-Malmö (HAS-MAL) sub-route

(78) This sub-route is expected to account for [confidential] % of the revenues of the overall route, based on the revenues for all operators ([95]). In terms of revenues, the market share of SJ is very small at [0 to 5] % in 2023E. Öresundståg is operator with the largest market share by far ([60 to 70] % in 2023E), with Pågatåg second with [20 to 30] % in 2023E. Market shares of all operators have remained fairly stable between 2019 and 2023E. In terms of passenger-km, the shares of SJ are smaller (0,3 % in 2023E) but the overall picture is qualitatively similar.

(79) The revenue per passenger-km of SJ in this sub-route is [confidential] % larger than Snälltåget's for every year between 2019 and 2023E. It is almost [confidential] larger than the revenue per passenger-km of Öresundståg and Pågatåg in 2023E, as shown in Figure 5.

Figure 5

Relative differential of SJ revenues per passenger-km compared to other operators in HAS-MAL ([96]) **[confidential]**

(80) Hässleholm-Malmö sub-route is the last section (78km) of the Stockholm-Malmö route (513 km). The Commission notes also the observations made by the applicant regarding the very last section of this sub-route (Lund/Malmö-Copenhagen): 'Competing for commuters on this sub-route is not a primary objective for SJ, since the passenger volumes cannot be efficiently handled based on SJ's supply of departures. Moreover, if SJ were to position itself as a strong competitor for commuters, commuter travel would risk offsetting travel on the longer distance sub-routes, which are important revenue generators for SJ on the Stockholm-Malmö/Copenhagen route' ([97]).

3.2.3.1.4. Alvesta-Malmö (ALV-MAL) sub-route

(81) This sub-route is expected to account for almost [confidential] % of total revenues of the overall route in 2023E and almost [confidential] % of the revenues of the applicant ([98]).

(82) The revenues market share of the applicant, when the PSO operator Öresundståg is included, has increased slightly from [40 to 50] % in 2019 to [40 to 50] % in 2023E. In terms of passenger-km SJ's share has decreased from [20 to 30] % to [20 to 30] % between that period. If Öresundståg is excluded from the market share calculations, the revenues share of the applicant in the commercial operations is [80 to 90] % every year between 2019 and 2023E (applicant's share in terms of passenger-km is [70 to 80] %, with a minimum in the period of [70 to 80] % in 2020). Both Öresundståg and Snälltåget are operated by Transdev.

(83) The revenue per passenger of SJ is also [confidential] % higher than that of the other commercial operator (Snälltåget) and between [confidential] larger than that of the PSO operator (Öresundståg).

([94]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024 and Annex 50 to the request.
([95]) Applicant's submission of 23.12.2023 paragraph 51.
([96]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024 and Annex 3 to applicant's response of 24.6.2024 to Commission's RFI of 3.6.2024.
([97]) Request, paragraph. 348.
([98]) Applicant's submission of 22.12.2023 paragraph 53.

Figure 6

Relative differential of SJ revenues per passenger-km compared to other operators in ALV-MAL ([99]) **[confidential]**

3.2.3.1.5. Lund-Malmo / Copenhagen LUN/MAL-COP sub-route

(84) In this sub-route the presence of the applicant is extremely small ([0 to 5] % share in terms of revenues and passengers) ([100]).

(85) Nevertheless, in 2023E the revenue per passenger of the applicant's commercial services (i.e., not including SJ traffic while it had the PSO contract for Öresundståg) was [confidential] than in 2016 and has [confidential] since 2019, [confidential] ([101]).

3.2.3.1.6. Linköping-Norrköping LIN-NOR sub-route

(86) The shares of the applicant in this sub-route are below [0 to 5] % both in terms of revenues and passengers. The PSO operator Östgötatrafiken has between [90 to 100] % shares of passengers and revenue in the sub-route ([102]).

(87) Östgötatrafiken holds PSO contracts which, being so called production contracts ([103]), include a remuneration for operations whereas ticket sales, including the determination of ticket prices, are managed by the procuring entity ([104]).

(88) The ability of a PSO operator to exert a competitive constraint on commercially operated services is related to the degree of similarity of the respective services. For instance, the business model of the PSO Östgötatrafiken focuses on short distance and interurban commuting within the Östergötland region, offering the possibility to get tickets that combine train with city bus and tram ([105]). Alternatively, the business model of Öresundståg is based on a joint regional train system with train traffic in Sweden and Denmark, including the traffic between Malmoe and Copenhagen through the Öresund bridge ([106]). Compared to a commercial operator offering train connections between cities, the business model of Öresundståg is likely to be perceived as a closer alternative than that of Östgötatrafiken (in their respective geographic areas), whose business model may appear as more complementary.

(89) The revenue per passenger ([107]) of the applicant is [confidential] than other operators between 2016 and 2023E, [confidential] ([108]).

Conclusions STO-ORE

(90) As in its 2019 opinion ([109]), in the answer to the Commission RFI, the NCA concludes that 'the competitive pressure on the route in question continues to exist to such an extent that SJ cannot act completely independently in its pricing practices, but the Competition Authority does not consider that the competitive pressure, if not weaker than last, is sufficient to conclude that the route is directly exposed to competition.' ([110]).

([99]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024 and Annex 3 to applicant's response of 24.6.2024 to Commission's RFI of 3.6.2024.
([100]) Applicant's submission of 22.12.2023 paragraph 137, figures 75 and 76.
([101]) Own calculations based on Annex 23 to applicant's response of 22.12.2023 to Commission's RFI of 10.5.2023 and Annex 51 to the request.
([102]) Applicant's submission of 22.12.2023, paragraph 143, figures 82 and 83.
([103]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, Annex 1.
([104]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, paragraph 38.
([105]) https://www.ostgotatrafiken.se/.
([106]) https://www.oresundstag.se/en/about-oresundstag/who-are-we/.
([107]) Own calculations based on Annex 23 submitted on 22.12.2023 and Annex 51 to the request.
([108]) This might be partly a result of the method used to estimate Snälltåget's passengers, as compared to the one used to estimate revenues, which 'reduces the assumed number of passengers for Snälltåget', (applicant's response of 23.6.2024 to Commission's RFI of 3.6.2024, page 37).
([109]) Position of the NCA, p. 14.
([110]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 14, paragraph 4.

(91) In a market encompassing both commercially operated and PSO rail passenger transport services, the Applicant has high market shares of [50 to 60] % in terms of passenger-km on the overall route and high market shares on the most important sub-routes. SJ's market shares are low only on three sub-routes (HAS-MAL, LUN-MAL-COP and LIN-NOR) which are of very limited economic importance for the applicant. The applicant's market shares are even higher in the market for commercially operated rail passenger transport market.

(92) Additionally, bus and flight operators have limited market shares and different offer characteristics. Consequently, they do not impose a sufficient competitive constraint on the applicant. Even if the level of competitive constraints may not be identical across sub-routes, when the importance of each sub-route is considered, the applicant is able to behave independently from other rail passenger transport operators to a sufficient extent for its activity not to be considered subject to enough competitive pressure.

(93) In view of the factors examined above, and considering that inter-modal competition exerts a limited constraint on the applicant, the Commission cannot conclude that the activity of provision of commercially operated railway services on the Stockholm-Öresund route is directly exposed to competition.

3.2.3.2. Stockholm-Gothenburg (STO-GOT)

(94) This overall route represented [confidential] % of the applicant's commercial railway services revenues in 2016, slightly decreasing to [confidential] % in 2023E ([111]). Together with Stockholm-Öresund route, this is one of the two most important routes for the applicant. This route accounts for [confidential] % ([112]) of its profits.

(95) The commercial operators on this route were the applicant, MTR and FlixTrain (end-to-end train). FlixTrain has stopped operating trains between Stockholm and Gothenburg in January 2024. PSO rail passenger transport services are provided on different sub-routes.

(96) In a market encompassing both commercially operated and PSO rail passenger transport services, the situation is described in the following recitals.

(97) Overall, the market share of the applicant in terms of revenues decreased from [80 to 90] % in 2019 to [80 to 90] % in 2023E. In terms of passenger-km it decreased from [70 to 80] % to [70 to 80] % in the same period ([113]). For comparison, the second major operator on this route, MTR held in 2023E a market share of [10 to 20] % both in terms of revenues and passenger-km ([114]).

(98) The 2022 KTH report ([115]) indicates that SJ's fast train has consistently held roughly half of the departures in the Stockholm-Gothenburg route (in both directions) with the lowest average travel time. Including SJ's regional train, the applicant accounts for roughly 70 % of the departures in the route.

(99) SJ's revenue per passenger-km is over [confidential] % larger than that of MTR, the second major commercial operator and significantly larger than that of Västtrafik and FlixTrain [confidential]. [confidential]

([111]) Applicant's submission of 22.12.2023, paragraph 42, figure 6 and request of 13.12.2019, paragraph 129, figure 8.
([112]) Applicant's submission of 22.12.2023, figure 7, p. 14 and Commission's calculation as share of the four main routes where the applicant makes profit.
([113]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, Annex 2.
([114]) Ibid.
([115]) Applicant's submission of 22.12.2023, paragraph 290, figure 173.

Figure 7

Relative differential of SJ revenues per passenger-km compared to other operators in overall STO-GOT ([116]) **[confidential]**

(100) MTR's ticket prices in second and first class are lower than the corresponding SJ ticket classes. [confidential]

(101) The cumulative distribution of tickets sold by the applicant for end-to-end travel on the STO-GOT route until departure ([117]) shows that 60 days ahead of departure the applicant has sold slightly over [confidential] % of the tickets for the trip and from 22 days until departure roughly [confidential] % of the tickets are sold. Therefore, in the period of 22 to 60 days ahead of departure roughly [confidential] % of the applicant's tickets are sold. Of this [confidential] %, the applicant will give consideration to MTR prices unless a sold out is expected. In addition, business and economy extended tickets seem more frequently sold in the period up to 22 days ahead of departure (compared to the economy tickets) ([118]). In view of the fairly stable price differential between the applicant and MTR described above, it is unclear whether the applicant's behaviour is actually influenced by MTR prices.

(102) An additional price comparison is included in the request ([119]), where average ticket prices for SJ, MTR and airlines are presented according to time slots of departure. [confidential]

(103) The applicant underlines that it scrutinises MTR's pricing strategies in order to adapt its own ([120]). [confidential].

(104) Conversely, for earlier ticket purchases ([121]), the applicant seems to be able to set its prices very much independently of airline companies, getting closer to MTR, but still [confidential] than MTR in most time slots.

(105) The number of average daily departures from Stockholm to Gothenburg of the applicant's high speed train between weeks 16 and 19 is 15 ([122]), compared to 9 for MTR. In addition, the applicant has an average of 8 regional trains on the route. MTR has the same average number of departures from Stockholm to Gothenburg but the applicant has on average 16 high speed trains and 10 regional ones. Therefore, the offer of the applicant is much wider and covers a wider range of times of the day compared to MTR.

(106) Other modes of transport, like bus or regional trains, may have relatively close departures to the applicant's high speed trains, but their characteristics and travelling times do not make them comparable to a high speed train service. For flights, the actual departure of the passenger to arrive on time to the flight is well beyond what is required of trains or buses and therefore not directly comparable.

(107) Overall, the scale of operations and the capacity to operate more slots limits the competitive pressure by MTR in this route.

(108) The prices of FlixTrain are much lower than SJ's. [confidential] ([123]). The very low frequencies ([124]) of FlixTrain and its basic level of comfort ([125]) mean FlixTrain targets a very specific set of customers, different from those of the applicant's. For instance, FlixTrain's customers view ticket price as a more important determinant for choice of operator than the applicant's customers ([126]), suggesting a segmentation of the market that would shield the applicant from its direct competitive pressure.

([116]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024.
([117]) Applicant's submission of 22.12.2023, paragraph 244, figures 144.
([118]) Applicant's submission of 22.12.2023, paragraph 244, figures 145.
([119]) Request of 13.12.2019 paragraph 309, figures 78 and 80.
([120]) Request of 13.12.2019 paragraph 144.
([121]) Request of 13.12.2019, figures 80 and 81.
([122]) Applicant's submission of 22.12.2023, Annex 27c.
([123]) Applicant's submission of 22.12.2023, paragraph 94, figures 49.
([124]) Applicant's submission of 22.12.2023, Annex 27c.
([125]) Applicant's submission of 22.12.2023, paragraph 96.
([126]) Applicant's submission of 22.12.2023, paragraph 98.

(109) Regarding entry and exit, the STO-GOT market has shown some activity in the recent years. Blå Tåget left the market in the summer of 2019 due to lack of profitability ([127]). The NCA views this market exit as a possible reduction on competition on this route ([128]). MTR had entered in 2015 ([129]), but is exiting the market in 2024, following a deal to sell the company to the Finnish state-owned company VR Group. According to the Moody's Orbis database, MTR Express (Sweden) AB, the MTR Group subsidiary operating in this route has reported losses every year between 2015 and 2022 (last available year in the database at the moment of consult).

(110) FlixTrain has been allocated slots for three daily departures from the spring of 2020 on this route but entered the market in May 2021. Its market share was very low. FlixTrain primarily targeted price sensitive passengers traveling for leisure purposes using low ticket prices ([130]). Early 2024, FlixTrain cancelled all its departures on this route for an indefinite period ([131]).

(111) The other operator, Västtrafik AB, is owned by the Västra Götaland region and its market share has remained very small and even decreasing over time.

(112) In a market for commercially operated rail passenger transport services only, the Commission notes that the situation is very similar with the one described in recital (95), as PSO services accounts for [0 to 5] % in terms of revenues and [0 to 5] % in terms of passenger-kilometres.

(113) Bus transport's share is very low ([0 to 5] %) compared to train services ([132]). Moreover, the time (6 to 7 hours against 3 hours approximately) travel differences compared to train services are so significant ([133]) that it does not seem to exert any significant competitive constraint on rail services.

3.2.3.2.1. Stockholm-Gothenburg (STO-GOT) (end-to-end) sub-route

(114) The end-to-end connection for STO-GOT is by far the most important sub-route of the market, account for over [confidential] % of revenues on the route for the applicant and overall ([134]). This means that the overall analysis performed above gives an accurate picture also for this sub-route. Nevertheless, the applicant has submitted further disaggregated data concerning specifically end-to-end traffic. According to these data, the revenues share of the applicant in the sub-route has increased from [70 to 80] % in 2016 to [80 to 90] % in 2023E (and decreased from [70 to 80] % to [70 to 80] % in terms of passenger-km). The share of MTR remains fairly stable at a much lower level (market share of [10 to 20] % in terms of revenues and [20 to 30] % in terms of passenger-km, in 2023E ([135])) and FlixTrain has acquired some very small market share that is decreasing in 2023E compared to 2021. Västtrafik does not operate in this sub-route.

(115) Three airline companies offer flights between Stockholm airports Arlanda and Bromma and Gothenburg airport. Total travel time is similar by railway and by air.

(116) In an intermodal market including commercially operated rail passenger transport services, PSO rail passenger transport services, air and bus transport, the Commission notes that the applicant has a market share of [60 to 70] % in terms of passengers ([136]).

([127]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 4, paragraph 4.
([128]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 15, paragraph 2.
([129]) Request of 13.12.2019, paragraph 144.
([130]) Applicant's submission of 22.12.2023, paragraph 13.
([131]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 4, paragraph 2.
([132]) Applicant's submission of 22.12.2023 paragraph 185, figure 110.
([133]) Applicant's submission of 22.12.2023 paragraphs 159 and 160 and figure 91.
([134]) Applicant's submission of 22.12.2023, paragraph 58.
([135]) Applicant's submission of 22.12.2023 paragraph 59, figures 22 and 23.
([136]) Applicant's submission of 22.12.2023 paragraph 211, figure 120.

(117) Regarding air transport, SAS' prices are around [confidential] than the applicant's comparable (in terms of class and flexibility) tickets [confidential] [137]. Similar qualitative conclusions can be drawn from the comparison with BRA [138]. Concerning the price comparison with Ryanair, it is not clear to what extent such a comparison is appropriate given that the route seems to be available only during the summer season.

(118) The 2022 KTH report also shows that average ticket prices for flights between Stockholm and Gothenburg are in general more than double than train tickets [139].

(119) Roughly [confidential] % of the applicant's tickets in the route are sold within 15 days ahead of departure [140]. This is precisely the time period where flight and train prices diverge from one another. The pricing patterns of SAS and BRA are very similar while the pricing patterns (but not the price levels) of the applicant and MTR are also very similar. However, the pricing pattern and price levels of flight operators are very different from that of rail operators. Additionally, there are clear differences in terms of passenger experience and characteristics of each mode of transport. Altogether this indicates that flights do not exert a significant competitive constraint on rail transport between Stockholm-Gothenburg.

3.2.3.2.2. Stockholm-Skövde (STO-SKO) sub-route

(120) The STO-SKO sub-route accounts for around [confidential] % of SJ's as well as overall revenues on the overall route in 2023 [141].

(121) The applicant has gained market share in terms of revenues between 2016 ([70 to 80] %) and 2023E ([80 to 90] %) at the expense of the other two operators (MTR and FlixTrain). Västtrafik does not operate this sub-route. The applicant's share in terms of passenger-km also increased from [70 to 80] % in 2016 to [80 to 90] %in 2023E [142].

3.2.3.2.3. Skövde-Gothenburg (SKO-GOT) sub-route

(122) The third most important sub-route is Skövde-Gothenburg, which accounts for almost [confidential] % of overall revenues on this route. On this sub-route, the applicant has market shares of [70 to 80] % in terms of revenues and [60 to 70] % passenger-km [143].

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(123) The NCA considers [144] that the competitive pressure has not been reduced since the date of its opinion of 2019. In its view, apart from the competition from MTR it is likely that both new entrants FlixTrain and Ryanair increase competitive pressure on the route. The NCA concludes [145] that the route continues to be considered directly exposed to competition despite the applicant's high market shares.

(124) The Commission notes that the applicant has very high and rather stable market shares on the overall route and on the most important sub-routes and that the applicant's market shares are four times higher than those of its next competitor MTR. The Commission also notes FlixTrain's low market shares and recent cancellation of all departures as well as Bla Taget's market exit.

(125) In addition, the analysis of the evidence for the sub-routes and the overall Stockholm-Gothenburg route shows that, regardless of whether PSO operators are to be taken into account, the applicant is able to apply pricing patterns and to maintain a significant price margin with respect to other commercial and PSO operators over time, while not seeing its market share significantly affected.

[137] Applicant's submission of 22.12.2023, Annex 32, figures 57, 58, 65 and 66.
[138] Applicant's submission of 22.12.2023, Annex 32, figures 67 and 68.
[139] Applicant's submission of 22.12.2023, paragraph 292, figures 176, 177, 178 and 179.
[140] Applicant's submission of 22.12.2023, figure 144.
[141] Applicant's submission of 22.12.2023, paragraph 60.
[142] Applicant's submission of 22.12.2023, paragraph 61, figures 24 and 25 and the Request of 13.12.2019, paragraphs 151, figures 22 and 23.
[143] Annex 1 to NCA response of 22.3.2023 to Commission RFI of 1.3.2024.
[144] NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 4, paragraph 4.
[145] NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 4, paragraph 5.

(126) Bus and flight operators have limited market shares and different specificities in terms of characteristics of their offer showing that they do not impose a sufficient competitive constraint on the applicant. Ryanair's exit from the Stockholm-Gothenburg route raises further doubts on the competitive pressure from airlines on the applicant. Even if the level of competitive constraints may not be identical across sub-routes, when the importance of each sub-route is considered, the applicant is able to behave independently from other rail transport operators to a sufficient extent for its activity not to be considered subject to enough competitive pressure.

(127) In view of these factors, and considering that intermodal competition does not exert a competition constraint on SJ, the Commission cannot conclude that the activity of provision of commercially operated railway services the Stockholm-Gothenburg route is directly exposed to competition.

3.2.3.3. Gothenburg-Malmö

(128) The route is the third most important route in Sweden. For SJ this route is much less important than the previous two main routes from a revenue and profitability point of view, as it accounts for [confidential] % of the applicant's total revenue ([146]) and [confidential] % of its profit ([147]).

(129) In the overall route, the market share of the applicant has clearly fallen both in terms of revenues ([10 to 20] % in 2023E) and passenger-km ([10 to 20] % in 2023E). Concerning the other two PSO providers, Pågatåg has also experienced a decrease in market share, while Öresundståg has clearly increased its presence on this route. MTR had only a testimonial presence in this market. The applicant had withdrawn from this route in April 2012, but resumed its operations in December 2013 with an upgraded service with reduced travel time. The applicant operated the Öresundstagen PSO contract in 2021 and 2022. The PSO contract was due to expire in 2030, but was prematurely terminated in December 2022, with the agreement of both parties, due to changes of operating conditions. During 2021 and 2022 the applicant faced no competition in the two major sub-routes and reduced competition overall. The applicant had a market share of almost [60 to 70] % in 2021 and [60 to 70] % in 2022 in terms of revenues and [50 to 60] % in 2021 and [60 to 70] % in 2022, in terms of passenger-km. Transdev took over that PSO contract, whose ticket prices and number of departures are heavily regulated.

(130) The 2022 KTH report indicates ([148]) that the SJ fast train accounted for almost one third of the departures in the MAL-GOT sub-route (in both directions) in 2019 and that it went down to one fifth in 2022. The number of departures of Öresundståg remained constant in the period. The SJ fast train had the lowest average travel time.

(131) As illustrated in Figure 8, the revenue per passenger-km of the applicant is larger than the one of the other operators.

Figure 8

Relative differential of SJ revenues per passenger-km compared to other operators in overall GOT-MAL ([149]) **[confidential]**

(132) In a market for commercially operated rail passenger transport services only, the Commission notes that the applicant has no competitor.

([146]) Applicant's submission of 22.12.2023, figure 6, p. 13.
([147]) Applicant's submission of 22.12.2023, figure 7, p. 14 and Commission's calculation as share of the four main routes where the applicant makes profit.
([148]) Applicant's submission of 22.12.2023, paragraph 290 figure 173.
([149]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024.

(133) Regarding bus transport, the share is low ([10 to 20] %) compared to train services ([150]). The price and time travel are comparable to train PSO services but the applicant's service is still significantly faster (2 hours 35 against 3 hours to 3 hours 25) and more expensive (between 30 % and 100 % approximately) than bus services for tickets purchased between 0 to 14 days ahead of departure ([151]). As a result, bus services may exert some competitive pressure in this route.

3.2.3.3.1. Gothenburg-Malmo GOT-MAL (end-to-end) sub-route

(134) End-to-end travel is expected to account for around [confidential] % of revenues on this overall route in 2023.

(135) On the end-to-end travel (which represents [confidential] % of the applicant's revenue and [confidential] % overall ([152])) the applicant had in 2023 market shares of [20 to 30] % based both on revenue and on passenger–kilometres ([153]).

(136) Öresundståg sets constant prices regardless of the anticipation of the purchase with respect to the date of departure ([154]). Its PSO contract is a production contract, which includes a remuneration for operations whereas ticket sales, including the determination of ticket prices, are managed by the contracting authority ([155]). Therefore, Öresundståg is not entitled to apply more complex price schemes or take other actions that would allow it to compete in the market more effectively as a commercial operator. [confidential].

3.2.3.3.2. Gothenburg-Halmstad GOT-HAL sub-route

(137) This sub-route is expected to account for around [confidential] % of the applicant's revenues on the overall route and around [confidential] % of overall revenues. it has market shares of almost [10 to 20] % in terms of revenue and [5 to 10] % in terms of passenger-kilometres ([156]).

3.2.3.3.3. Gothenburg-Boras GOT-BOR sub-route

(138) SJ's share has slightly decreased, in terms of passengers, from [20 to 30] % in 2019 to [20 to 30] % in 2023E. However, its share in terms of revenues has increased from [30 to 40] % to [30 to 40] % in the same period ([157]).

(139) The revenue per passenger of SJ is [confidential] than that of Västtåg [confidential].

Figure 9

Relative differential of SJ revenues per passenger compared to other operators in overall GOT-BOR ([158]) **[confidential]**

(140) In view of the factors examined above, the Commission considers that currently the activity of provision of commercially operated railway services on the Gothenburg-Malmö route can only be considered to be directly exposed to competition in a market encompassing both commercially operated and PSO rail passenger transport services.

([150]) Applicant's submission of 22.12.2023, paragraph 163 figures 92 and 93.
([151]) Applicant's submission of 22.12.2023, paragraphs 164 and 165, figures 94 and 95.
([152]) Applicant's submission of 22.12.2023, paragraph 64.
([153]) Applicant's submission of 22.12.2023, figure 27 and 29, p. 20.
([154]) Applicant's submission of 22.12.2023, paragraph 120, figures 62 and 63.
([155]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, paragraph 38.
([156]) Applicant's submission of 22.12.2023, figures 30 and 31.
([157]) Applicant's submission of 22.12.2023, figures 70, 71, 89 and 90 of the request for exemption.
([158]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024.

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(141) The Competition Authority considers ([159]) that this route may continue to be regarded as directly exposed to competition in view of the competitive pressure both bottom-up and top-down and the decrease of the applicant's market share over time.

(142) In view of the factors examined above, the Commission considers that currently the activity of provision of commercially operated railway services on the Gothenburg-Malmö route can only be considered to be directly exposed to competition in a market encompassing both commercially operated and PSO rail passenger transport services.

3.2.3.4. Stockholm-Sundsvall-Umeå (STO-SUN-UME)

(143) This is the fourth most important route in Sweden and it represents ([160]) overall, around [confidential] %, both of the total revenues and of total passenger–kilometres, of all five main routes, all operators combined. This is SJ's third most important route as it accounts for [confidential] % of its revenues ([161]) and almost [confidential] % of its profits ([162]). This route is currently operated (end-to-end train) by the applicant and by Vy under PSO contract for a night train. Railway PSO services are operating different sub-routes.

(144) In a market encompassing both commercially operated and PSO rail passenger transport services, the situation is described in the following recitals.

(145) In overall terms, the revenues' market share of the applicant has increased from [70 to 80] % in 2016 to [70 to 80] % in 2023E. The increase in terms of passenger-km has been from [60 to 70] % to [60 to 70] % ([163]).

(146) The 2022 KTH report ([164]) indicates that SJ fast train accounts for the vast majority of departures in the SUN-STO route (in both directions) and the lowest average travel time. SJ fast train represents nearly half of the departures in the UME-STO (in both directions) and has the lowest average travel time.

(147) SJ's revenue per passenger-km is significantly higher than all other operators ([confidential]) except the Övre Norrland Night train. In 2019, this PSO contract was operated by SJ which had a revenue per passenger-km around [confidential] % higher. The PSO contract has been operated by Vy since 2020. After the loss of the PSO night train contract in December 2020, the applicant started operating a night train on a commercial basis. Excluding the years of the pandemic (2020 and 2021), the differential in revenue per passenger-km [confidential].

Figure 10

Relative differential of SJ revenues per passenger-km compared to other operators in overall STO-SUN-UME ([165]) **[confidential]**

(148) The Commission notes that despite the decrease in the applicant's market shares, in nominal terms both the revenues and the passenger kms, accounted for by the applicant are higher in 2023 than in 2019. Additionally, the Commission notes that Vy will not extend the PSO contract which expires in December 2024, on the ground that it incurred higher costs than expected ([166]).

(149) In a market for commercially operated rail passenger transport services only, the Commission notes that SJ has no competitor.

([159]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p;17, paragraph 2.
([160]) Annex 1 to the NCA response of 22.3.2024 to Commission's request of information of 1.3.2024.
([161]) Applicant's submission of 22.12.2023, figure 6, p. 13.
([162]) Applicant's submission of 22.12.2023, figure 7, p. 14 and Commission's calculation as share of the four main routes where the applicant makes profit.
([163]) Applicant's submission of 22.12.2023, paragraph 70 figures 32 and 33 and Request of 13.12.2019, paragraph 162, figures 30 and 31.
([164]) Applicant's submission of 22.12.2023, paragraph 290, figure 173.
([165]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024.
([166]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p;17, paragraph 3.

(150) Bus transport's share is very low ([0 to 5] % in terms of passengers in 2023E) compared to train services ([167]). Moreover, the quality and time travel differences (6 hours against 9 hours) compared to train services are so large ([168]) that it does not seem able to exert a competitive pressure on rail transport.

3.2.3.4.1. Stockholm-Umeå STO-UME (end-to-end) sub-route

(151) This sub-route is expected to account for around of [confidential] % of the applicant's revenue in the overall route in 2023 and for around [confidential] % of revenue if all operators are considered ([169]).

(152) In this sub-route the share of the applicant dropped due to the loss of a PSO contract in favour of Vy. From the point of view of commercially operated services the share of the applicant (as sole commercial operator in the route) remains at [90 to 100] %. Regarding the PSO operations, taking 2019 as reference (the last year the applicant operated as monopolist the sub-route, both from a commercial and a PSO perspective) it seems that the commercial share in terms of passenger-km has only been mildly eroded (from [70 to 80] % in 2019 to [60 to 70] % in 2023E). However, the share of SJ has increased in terms of revenues from [60 to 70] % in 2019 to [60 to 70] % in 2023E ([170]).

(153) The revenue per passenger-km of the applicant is [confidential] than the PSO service. [confidential].

Figure 11

Relative differential of SJ revenues per passenger-km compared to other operators in overall STO-UME end-to-end ([171]) **[confidential]**

(154) The applicant operated the Night train Övre Norrland until the end of 2020. Vy has been awarded the contract until the end of 2024. However, the contracting authority, Trafikverket, has announced that there is no operator from 2025 onwards and that an emergency contract is expected to be awarded directly – the applicant has been asked to take over the traffic operations, but neitherdecisions have been made nor agreements entered into yet ([172]). SJ started its commercial night train service on 13-12-2020, coinciding with the transfer of the operations to Vy under the night train PSO contract ([173]).

(155) The average price of the applicant's night train service is lower than the night train PSO Övre Norrland's ([174]). SJ's night train's travel time is larger. Additionally, the applicant offers several other train services, including high speed train ([175]) so the night trains represent only a part of its interests in this sub-route.

(156) On the end-to-end sub-route, three airline companies operate direct flights. Travel time by railway is around 5 hours, while total travel time by air is three hours.

(157) The NCA considers ([176]) that 'the difference in travel time between rail and air is approximately 2 hours, which is approximately the same difference in travel time as on the Stockholm-Öresund route, so that the competitive pressure from this mode of transport should be comparable on the two routes. For several years, track work has been ongoing on the route, which significantly extended the journey time for trains, but the track work was completed in 2023'.

([167]) Applicant's submission of 22.12.2023, paragraph 167, figures 96 and 97.
([168]) Applicant's submission of 22.12.2023, paragraphs 168 and 169, figures 98 and 99.
([169]) Applicant's submission of 22.12.2023, paragraph 71.
([170]) Applicant's submission of 22.12.2023, paragraph 73 figures 34 and 35.
([171]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024.
([172]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, Annex 1.
([173]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, paragraph 46.
([174]) Applicant's submission of 22.12.2023, paragraph 106 figures 50, 51, 52 and 53.
([175]) Annex 27c to the submission of 22.12.2023.
([176]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 19, paragraph 2.

(158) In an intermodal market including commercially operated rail passenger transport services, PSO rail passenger transport services, air and bus transport, the Commission notes that the applicant has a market share of [10 to 20] % in terms of passengers ([177]).

(159) Regarding air transport, SAS' prices are [confidential] than the applicant's comparable tickets and steeply increase as the purchase date approaches the date of departure, becoming [confidential] when the purchase is made 10 days or less ahead of departure ([178]). Similar qualitative conclusions can be drawn from the comparison with BRA ([179]) and Norwegian ([180]).

(160) The 2022 KTH report also shows ([181]) that average ticket prices for flights between STO-UME are in general over 50 % more expensive than train tickets.

(161) Approximately [confidential] % of the applicant's tickets in the route are sold within 15 days ahead of departure ([182]). This is precisely the time period where flight and train prices become totally apart from one another. The pricing patterns of SAS, BRA and Norwegian are very similar while the pricing patterns (but not the price levels) of train operators are also very similar. However, the pricing pattern and price levels of flight operators are very different from that of rail operators. Additionally, there are clear differences in terms of travel time, passenger experience and characteristics of each mode of transport.

(162) In view of the above, the Commission concludes that flights may exert competitive pressure on rail transport on STO-UME end-to-end.

3.2.3.4.2. Gävle-Sundsvall (GAV-SUN) sub-route

(163) Gävle-Sundsvall sub-route accounts for [confidential] % of the applicant's revenue on this route and [confidential] % of the overall revenues (all operators on this route) ([183]).

(164) X-tåget and the applicant are the sole operators in the sub-route with X-tåget being the leader with [50 to 60] % share of revenues in 2023 ([60 to 70] % of passenger-km). The revenues share of the applicant has increased from [30 to 40] % in 2016 to [40 to 50] % in 2023E (and from [20 to 30] % to [30 to 40] % in terms of passenger-km) ([184]). The PSO operator has fixed prices for tickets, which are much lower than the levels of the applicant's ticket prices ([185]), while the average travel time is almost identical ([186]).

(165) The price comparison of the applicant's price tickets with X-Trafik's shows a sharp difference, with over 50 % higher prices for SJ's Intercity and Fast train economy classes, and more than triple for business tickets ([187]). Given the large price differences it is not clear whether the applicant and X-Trafik would be competing for the same profile of customers ([188]).

([177]) Applicant's submission of 22.12.2023 paragraph 270, figure 163.
([178]) Applicant's submission of 22.12.2023, Annex 32, figures 95, 96, 101 and 102.
([179]) Applicant's submission of 22.12.2023, Annex 32, figures 99, 100.
([180]) Applicant's submission of 22.12.2023, Annex 32, figures 105 and 106.
([181]) Applicant's submission of 22.12.2023, paragraph 292, figures 176, 177, 178 and 179.
([182]) Applicant's submission of 22.12.2023, figure 150.
([183]) Applicant's submission of 22.12.2023, paragraph 74.
([184]) Applicant's submission of 22.12.2023 paragraph 75, figures 36 and 37 and request of 13.12.2019, paragraph 166, figures 34 and 35.
([185]) Applicant's submission of 22.12.2023, figure 58 and 59, p. 38.
([186]) Applicant's submission of 22.12.2023, paragraph 116.
([187]) Applicant's submission of 22.12.2023, paragraph 114, figures 58 and 59.
([188]) Applicant's submission of 22.12.2023, Annex 12a 2023 KTH report, page 19.

3.2.3.4.3. Uppsala-Gävle UPP-GAV sub-route

(166) Uppsala-Gävle sub-route accounts for [confidential] % of the applicant's revenue on this route and [confidential] % of the overall revenues (all operators on this routes) ([189]). Upptåget and the applicant are the sole operators in the sub-route with Upptåget being the leader with [70 to 80] % share of revenues in 2023E and [80 to 90] % of passenger-km. The revenues share of the applicant has increased from [10 to 20] % in 2016 to [20 to 30] % in 2023E and from [5 to 10] % to [10 to 20] % in terms of passenger-km ([190]).

(167) SJ's and Mälartåg's business models are different in this sub-route. The applicant offers this connection as part of longer distance routes serving these cities, while Mälartåg, as PSO operator, connects Uppsala and Gävle with many stops along the route ([191]).

(168) Mälartåg sets constant prices regardless of the anticipation of the purchase with respect to the date of departure ([192]). Its PSO contract is a production contract, which includes a remuneration for operations whereas ticket sales, including the determination of ticket prices, are managed by the procuring entity ([193]). Therefore, Mälartåg is not entitled to apply more complex price schemes or take other actions that would allow it to effectively compete in the market as a commercial operator would do.

(169) The applicant offers four types of services in this sub-route: Fast train economy, Fast train business, Intercity economy and Intercity business. [confidential].

3.2.3.4.4. Stockholm-Uppsala (STO-UPP) sub-route

(170) Stockholm-Uppsala sub-route is indicated by the applicant and by the NCA as an important sub-route, which could be regarded as a further main route. This sub-route accounts for [confidential] % of the applicant's revenue on this route and [confidential] % of the overall revenues (all operators on this routes) ([194]). The STO-UPP is comparable in size, from an overall revenue perspective to the STO-KAR-OSL route ([195]).

(171) On this sub-route the applicant operates a commercial train service and has as competitor MTR who operates under PSO contracts (Aktiebolaget Storstockholms Lokaltrafik-"SL" and Mälardalstrafik MÄLAB AB – "Mälartåg").

(172) SJ's revenues per passenger-km are roughly [confidential] of those from SL, a PSO contract operated by MTR. According to the 2022 KTH report ([196]), the SL commuter train Stockholm-Uppsala partly competes with the applicant's commercial train service between the end points but complements it by going via Arlanda and having several stops. The PSO contract with SL was prematurely terminated, and since March 2024 the applicant operates it under an emergency PSO contract for two years.

(173) Mälardalstrafik is another PSO contract currently operated by MTR. This contract is going to be taken over by Transdev following an emergency contract with open books. The revenue per passenger-km of this PSO contract is closer to the applicant, but the applicant's is still lower. The 2022 KTH report indicates that Mälartåg also competes with the applicant's commercial Stockholm-Uppsala service, but through the Movingo ticketing partnership the services complement each other.

([189]) Applicant's submission of 22.12.2023, paragraph 74.
([190]) Applicant's submission of 22.12.2023, paragraph 76, figures 38 and 39 and the Request, paragraph 169, figures 36 and 37.
([191]) Applicant's submission of 22.12.2023, Annex 12a 2023 KTH report, page 19.
([192]) Applicant's submission of 22.12.2023, paragraph 112, figures 56 and 57.
([193]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, paragraph 38.
([194]) Applicant's submission of 22.12.2023, paragraph 74.
([195]) Applicant's submission of 22.12.2023, paragraph 127.
([196]) Request of 13.12.2019, Annex 12a.

Figure 12

Relative differential of SJ revenues per passenger-km compared to other operators in overall STO-UPP ([197]) **[confidential]**

(174) SL and Mälardalstrafik's prices remain the same irrelevant of the date of departure ([198]). Both PSO contracts are production contracts, which include a remuneration for operations whereas ticket sales, including the determination of ticket prices, are managed by the procuring entity ([199]). Given the conditions governing their respective PSO contracts they are not entitled to apply more complex price schemes or take other actions that would allow them to effectively compete in the market as a commercial operator would do.

(175) The Stockholm-Uppsala sub-route is served by frequent trains from the three operators (e.g., the SL commuter train offers services every 30 minutes from early morning) ([200]). Both SJ and PSO operators have services connecting directly the two cities. Additionally, the services offered by SJ include this connection as part of a longer route passing through these two cities ([201]).

(176) [confidential] The applicant has decided to cease its commercial railway passenger service on this route as from December 2024 ([202]). Nevertheless, 'certain trains that operate on longer routes which include travel between Stockholm and Uppsala, such as e.g. on the Stockholm – Sundsvall – Umeå route, will continue to make a stop in Uppsala.' ([203]). As a result, the applicant will still be present in this market from a commercial perspective. In addition, the applicant began operating the PSO contract for the Stockholm commuter trains in March 2024 through the award of a two-year emergency contract.

(177) In view of the reported complementarities and the different nature of the PSO and commercial operation in terms of pricing and business models, PSO services do not appear to exert competitive pressure on the applicant.

3.2.3.4.5. Sundsvall-Umea (SUN-UME) sub-route

(178) On this sub-route, the share of the applicant is [10 to 20] % both in terms of revenues and passenger-km ([204]).

(179) The average prices of Vy Norrtåg are [confidential] of SJ's Fast train economy up to seven days ahead of departure [confidential]. Prices of SJ Fast train business are also lower and the difference is particularly large for purchases done with more than seven days ahead of departure ([205]). In view of these price differences, it is not clear that SJ and Vy Norrtåg focus on the same type of customers.

Conclusions Stockholm-Sundsvall-Umeå

(180) The NCA concludes ([206]) that the entire route is not exposed to competition but given the competitive situation on sub-routes and their overall economic importance compared to the entire route, the applicant is unable to act completely independently in its pricing.

(181) In a market encompassing both commercially operated and PSO rail passenger transport services, the Applicant has a large market share on this route overall and on three important sub-routes (STO-UME end-to-end, GAV-SUN and UPP-GAV).

([197]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024 and Annex 4 to applicant's response of 24.6.2024 to Commission's RFI of 3.6.2024.
([198]) Applicant's submission of 22.12.2023, paragraph 109, figure 54 and 55.
([199]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, paragraph 38.
([200]) Applicant's submission of 22.12.2023, Annex 18a.
([201]) Applicant's response of 24.6.2024 to Commission's RFI of 3.6.2024, paragraph 43.
([202]) Applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024, paragraph 49.
([203]) Applicant's response of 24.6.2024 to Commission's RFI of 3.6.2024, paragraph 43.
([204]) Applicant's submission of 22.12.2023, paragraph 139, figures 78 and 79.
([205]) Applicant's submission of 22.12.2023, paragraph 117, figures 60 and 61.
([206]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024, p. 18, paragraph 2.

(182) Additionally, the analysis of the evidence for the sub-routes and the overall Stockholm-Sundsvall-Umeå route shows that, regardless of whether PSO operators are to be taken into account, the applicant is able to apply pricing patterns and to maintain a significant price margin with respect to other commercial and PSO operators over time, while not seeing its market share significantly affected.

(183) In an intermodal market including commercially operated rail passenger transport services, PSO rail passenger transport services, air and bus transport, the applicant's market share is not high ([10 to 20] % of passengers in 2023E ([207])) on the STO-UME end-to-end subroute. While bus operators have a marginal ([0 to 5] % ([208])) market share, flight operators have a combined market share of [70 to 80] % ([209]). This shows that air transport may exert competitive pressure on rail transport on this subroute.

(184) In view of the factors examined above, and given that intermodal competition exerts a competition constraint on the applicant on a single subroute and that the applicant has an overall high market share on the route, the Commission cannot conclude that the activity of providing commercially operated railway passenger services on the Stockholm-Sundsvall-Umeå route is directly exposed to competition.

3.2.3.5. Stockholm-Karlstad (-Oslo)

(185) This route represented [confidential] % of the applicant's revenues in 2023E ([210]). For the applicant this route accounts for [confidential] % of its revenues ([211]) [confidential].

(186) In a market encompassing both commercially operated and PSO rail passenger transport services, the situation is described in the following recitals.

(187) The revenues share of the applicant in the overall route has fallen from [80 to 90] % in 2016 to [80 to 90] % in 2023E (from [80 to 90] % to [80 to 90] % in terms of passenger-km) ([212]). The only other commercial operator (Tågab) has decreased its revenue share from [0 to 5] % in 2016 to [0 to 5] % in 2023E. Its share in terms of passenger-km has decreased accordingly.

(188) The revenue per passenger-km of the applicant is larger than of the other operators, with the exception of Mälardalstrafik in 2019 and 2020, when this PSO contract was still operated by SJ.

Figure 13

Relative differential of SJ revenues per passenger-km compared to other operators in overall STO-KAR-OSL ([213]) **[confidential]**

(189) Bus transport's share is low ([10 to 20] % in 2023E) compared to train services ([214]). Moreover, the time travel differences compared to train services (7 hours against 5 for train) are so large ([215]) that it does not seem to exert a significant competitive constraint on rail services.

([207]) Applicant's submission of 22.12.2023, paragraph 270, figure 163.
([208]) Idem.
([209]) Idem.
([210]) Applicant's submission of 22.12.2023, paragraph 42, figure 6.
([211]) Applicant's submission of 22.12.2023, figure 6, p. 13.
([212]) Applicant's submission of 22.12.2023, paragraph 78 figures 40 and 41 and the Request of 13.12.2019, paragraph 171, figures. 38 and 39.
([213]) Own calculations based on Annex 2 to applicant's response of 1.4.2024 to Commission's RFI of 22.3.2024 and Annex 50 to the request.
([214]) Applicant's submission of 22.12.2023, paragraph 172, figures 100 and 101 and paragraph 177, figures 105 and 106.
([215]) Applicant's submission of 22.12.2023, paragraph 173, 174 figures 102 and 103, paragraph 175, figure 104 and paragraph 179, figures 107 and 108.

3.2.3.5.1. Stockholm-Oslo STO-OSL (end-to-end) sub-route

(190) End-to-end travel is expected to account for around [confidential] % of SJ's revenues on this route in 2023. Overall, end-to-end travel accounts for around [confidential] % of revenues on this route ([216]). The applicant remains the sole railway passenger operators on this sub-route ([217]).

(191) In an intermodal market including commercially operated rail passenger transport services, PSO rail passenger transport services, air and bus transport, the Commission notes that the applicant has a market share of [10 to 20] % in terms of passengers ([218]).

(192) Regarding air transport, the prices of SAS premium economy are [confidential] of applicant's comparable tickets (in terms of class and flexibility) and steeply increase as the purchase date approaches the date of departure, becoming [confidential] when the purchase is made around 0 to 5 days ahead of departure. The difference between SAS economy and SJ fast train economy are [confidential] % ([219]). Similar qualitative conclusions can be drawn from the comparison with Norwegian ([220]).

(193) Roughly [confidential] % of the applicant's tickets in the route are sold within 7 days ahead of departure ([221]). This is precisely the time period where flight and train prices diverge from one another. The pricing patterns of SAS and Norwegian are very similar between themselves but they are very different from that of the applicant (the sole rail operator in this end-to-end route). Additionally, there are clear differences in terms of travel time (3 hours 15 by plane against more than 5 hours by train), passenger experience and characteristics of each mode of transport. Altogether this indicates that flights may exert some competitive constraint on rail transport on STO-OSL end-to-end.

3.2.3.5.2. Stockholm-Karlstad (STO-KAR) sub-route

(194) This sub-route is expected to account for around [confidential] % of the applicant's revenue on this overall route in 2023 and for around [confidential] % of revenues of all operators ([222]).

(195) The revenues market share of SJ in the sub-route has increased from [90 to 100] % in 2016 to [90 to 100] % in 2023E. In terms of passenger-km it has increased from [90 to 100] % to [90 to 100] % ([223]).

Conclusions

(196) The NCA considers ([224]) that the route is not directly exposed to competition. However, the NCA indicates that both flights and buses exert certain competitive constraint as in the case of Stockholm-Malmo-Copenhagen.

(197) In a market encompassing commercially operated rail passenger transport services only as well as in a market encompassing both commercially operated and PSO rail passenger transport services, the applicant has very large market shares on the overall route and on the main sub-routes. SJ is able to apply pricing patterns and to maintain a significant price margin with respect to other commercial and PSO operators over time, while not seeing its market share significantly affected.

([216]) Applicant's submission of 22.12.2023, paragraph 79.
([217]) Applicant's submission of 22.12.2023, paragraph 80.
([218]) Applicant's submission of 22.12.2023 paragraph 271, figure 165.
([219]) Applicant's submission of 22.12.2023, Annex 32, figures 117, 118, 119 and 120.
([220]) Applicant's submission of 22.12.2023, Annex 32, figures 121 and 122.
([221]) Applicant's submission of 22.12.2023, figure 155.
([222]) Applicant's submission of 22.12.2023, paragraph 81.
([223]) Applicant's submission of 22.12.2023, paragraph 82 figures 44 and 45 and the Request of 13.12.2019, paragraph 175, figures. 42 and 43.
([224]) NCA response of 22.3.2024 to Commission's request of information of 1.3.2024. p. 19, paragraph 2.

(198) On an intermodal market including commercially operated rail passenger transport services, PSO rail passenger transport services, air and bus transport, the applicant is exposed to competitive pressure from air transport on the STO-OSL end-to-end subroute. Bus transport, given its overall low market share, lower prices and higher travel times is not considered to exert significant competitive pressure on the applicant on the STO-KAR-OSL route. Given the limited economic importance of the STO-OSL end-to-end subroute for the applicant, the Commission cannot conclude that SJ is directly exposed to competition on the STO-KAR-OSL route.

3.2.3.6. Conclusion at aggregated route-level

The applicant's views

(199) The applicant considers that since its 'purchases jointly cover routes where SJ faced significant competition as well as routes where SJ was the sole railway operator, SJ argued that competition would come to bear also on those routes where SJ did not face competition' ([225]).

The NCA's views

(200) Following its assessment, the NCA concludes that two routes (i.e., Stockholm-Gothenburg and Gothenburg-Malmö) are directly exposed to competition. These routes account for [confidential] % of applicant's revenues and [confidential] % of profits and are therefore essential for the applicant to be able to make profit. The NCA also indicates that Stockholm-Malmö (-Copenhagen) route, which accounts for around [confidential] % of the applicant's revenues and around [confidential] % of its profits is subject to competitive pressure albeit not sufficient for the route to be considered directly exposed to competition. As regards the remaining two routes (Stockholm-Umeå and Stockholm-Oslo), the NCA concluded that they are not directly exposed to competition, but they are, in the NCA's view, subject to a degree of competitive constraint which prevents the applicant from acting completely independently in its pricing behaviour. The NCA notes, however, that these routes accounts for a smaller share of the applicant's revenues and profits.

(201) Overall, the NCA concludes that the market for commercial rail passenger transport services on the five routes taken together, and more generally in Sweden (combining all routes) should be regarded as directly exposed to competition.

The Commission's conclusion

(202) The Commission does not draw the same conclusion as the applicant or the NCA when assessing the five main routes taken together. The commercial services of the applicant are directly exposed to competition only on the Gothenburg-Malmö route. The Gothenburg-Malmö route accounts overall for almost [confidential] % of the total revenues and almost [confidential] % of total passenger–kilometres of all five main routes, all operators combined ([226]). It has lower economic importance for the applicant compared to the first two routes (Stockholm-Malmö (-Copenhagen) and Stockholm-Gothenburg), and accounts for around [confidential] % of the applicant's revenues and [confidential] % of its profits.

(203) The Commission recalls that the purpose of the competition analysis under Article 34 of Directive 2014/25/EU is to establish the pertinence of application of the public procurement rules, as explained in recital (16). The level of competition on a route such as Gothenburg-Malmö, which is of low representativeness of the overall commercial activity of the applicant, cannot be presumed to discipline its procurement for the provision of commercial services on other, more significant routes, in view of the fact that procurement is operated on a joint basis ([227]). Moreover, the applicant did not provide any example of procurement specific to this route only ([228]).

([225]) Applicant's submission of 4.5.2020, paragraph 30.
([226]) Annex 1 to NCA response of 22.3.2024 to Commission's request of information of 1.3.2024.
([227]) Request of 13.12.2019, paragraph 465.
([228]) For these reasons, and in line with the reasoning applied to the definition of the geographic market relevant for the purposes of this Decision, the Commission finds that it is not appropriate to consider granting an exemption for a single route only.

(204) It is also important to recall that recent market developments occurred in 2024, such as the sale of MTR express to a new owner due to recurring losses of the business or the fact that Flixtrain and Ryanair stopped operating on the Stockholm-Gothenburg route point towards a lesser degree of competition overall on the five main routes on which the applicant provides commercially operated rail passenger transport services.

(205) In the light of the above considerations, for the purposes of this Decision and without prejudice to the application of competition law, the Commission finds that the activity of provision of commercially operated railway services on the five most significant routes (taken together) is not directly exposed to competition within the meaning of Article 34 of the Directive 2014/25/EU.

3.3. **Conclusion**

(206) For the purposes of this decision and without prejudice to the application of competition law, the findings of the market analysis in paragraphs (17) to (198) should be taken as an indication of the fact that the activity of provision of commercially operated rail passenger transport services is not exposed to competition within the meaning of Article 34 of the Directive 2014/25/EU. Consequently, it should be established that Directive 2014/25/EU continues to apply to contracts intended to enable the pursuit of that activity in Sweden.

3.4. **Final remarks**

(207) This Decision is based on the legal and factual situation as of June 2024 and on the information submitted by the applicant, the NCA and publicly available information.

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall continue to apply to contracts awarded by contracting entities and intended to enable activities related to provision of commercially operated rail passenger transport services to be carried out in the territory of Sweden.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 18 July 2024.

For the Commission
Thierry BRETON
Member of the Commission