

Invitation to Tender

Scheduled Air Services

Røst – Bodø v. v.

1 February 2002 – 31 March 2003



SAMFERDSELSDEPARTEMENTET

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I INFORMATION ABOUT THE TENDER PROCESS

The deadline for submitting tenders is Friday 19 October 2001 at 1500 hrs (local time), see chapter III section 12.

All tenders must be submitted in **three (3) copies**.

Tenders received in time will be opened **Tuesday 23 October 2001 at 1300 hrs** (local time) in the Ministry of Transport and Communications (meeting room 9427), Akersgt. 59, Oslo, Norway. Representatives from the Ministry of Transport and Communications and from each tenderer can be present at the opening of the tenders.

For further information, please contact one of the following representatives of the Ministry of Transport and Communications:

Deputy Director General Torbjørn Lothe, tel. + 47 22 24 82 61, e-mail:

torbjorn.lothe@sd.dep.no

Adviser Erik A. Stene, tel. + 47 22 24 83 12, e-mail: erik.stene@sd.dep.no

Carriers must register at the Ministry of Transport and Communications with one of its said representatives in order to obtain the complete tender file and be included on the mailing list for possible supplementary information from the Ministry, which will not be published on the internet.

The Ministry reserves the right to apply subsequent negotiations, see chapter III section 4 and chapter VIII Regulation on Tender Procedures in connection with Public Service Obligations to implement Council Regulation (EEC) No 2408/92, Article 4.

The Ministry aims to award the tender contract Wednesday 19 December 2001. For selection criteria, see chapter III section 5 and chapter IV section 1 e).

IMPORTANT

Each carrier shall specify the tender submitted by completing the form on the following page and insert it in the front of its tender document.

MINISTRY OF TRANSPORT AND COMMUNICATIONS



TENDER ON SCHEDULED AIR SERVICES

in accordance with the public service obligations published 23 August 2001, see
chapter II

1. Identification of the tenderer

Name of the tenderer	
Address	
Telephone	
Facsimile	
E-mail	
Contact person(s)	

2. Specification of the tender(s) submitted by stating the remuneration required in NOK 1000 for the entire contract period (1 February 2002 – 31 March 2003).

<i>Subject to tender</i>	<i>Remuneration required</i>
<i>Scheduled air services</i> <i>Røst – Bodø v. v.</i>	

3. Signing

Place	Date	Binding signature

II PUBLIC SERVICE OBLIGATIONS

Communication from the EFTA Surveillance Authority under Article 4.1. (a) of the Act referred to in point 64a in Annex XIII of the EEA Agreement (Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes)

Imposition of new public service obligations in respect of scheduled air services on the route Røst – Bodø v. v.

1. INTRODUCTION

Pursuant to Article 4.1 (a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (http://europa.eu.int/eur-lex/en/lif/dat/1992/en_392R2408.html), Norway has decided to impose new public service obligations as of 1 February 2002 in respect of scheduled air services on the following route:

Røst – Bodø v. v.

2. THE PUBLIC SERVICE OBLIGATIONS INCLUDE THE FOLLOWING:

2.1 Minimum Frequencies, Seating Capacity, Routing and Timetables

The requirements apply throughout the year. A daily service obligation applies in both directions.

Frequencies:

- Minimum two daily return services Monday – Friday and minimum two return services Saturday – Sunday combined.

Seating Capacity:

- In both directions at least 150 seats shall be offered Monday – Friday combined and at least 30 seats Saturday – Sunday combined.
- If the number of seats occupied during the period 1 January – 30 June or 1 August – 30 November exceeds 70 pct of the number of seats offered, the carrier shall increase the seating capacity in accordance with the rules laid down by the Ministry of Transport and Communications in the annex to this publication.

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- If the number of seats occupied during the period 1 January – 30 June or 1 August – 30 November is lower than 35 pct of the number of seats offered, the carrier may reduce the seating capacity in accordance with the rules laid down by the Ministry of Transport and Communications in the annex to this publication.

Routing:

- In both directions at least one of the required daily services Monday – Friday shall be non-stop. On Saturday – Sunday combined, at least half of the required flights shall be non-stop.

Timetables:

Account shall be taken of the public demand for air travel.

At least one daily service must be scheduled to connect with air services Bodø– Oslo v. v.

In addition, the following apply to the required flights on Monday – Friday (local times):

- First arrival in Bodø shall be no later than 10.00 hrs and last departure from Bodø no earlier than 17.00 hrs.

2.2 Aircraft category

Aircraft (fixed-wing) registered for minimum 15 passengers shall be used for the required flights.

Carriers' attention is especially drawn to technical and operative conditions applying at the airports, including short runway at Røst. For further information, please contact:

Luftfartstilsynet (Civil Aviation Authority), Postboks 8050 Dep, N-0031 OSLO,
tel. + 47 23 31 78 00

2.3 Fares

- Maximum basic one-way fare (fully flexible) for the operating period 1 February 2002 – 31 March 2002 may not exceed NOK 755, excluding VAT and the Excise Duty on the Carriage of Passengers by Air (<http://www.toll.no/regelverk/avgiftsrundskriv/>).
- The carrier shall be party to the domestic interline agreements in force at any time, and shall offer all discounts available under such agreements.
- Social discounts conforming to the usual practice shall be offered.

2.4 Service Continuity

The number of flights cancelled for reasons directly attributable to the carrier must not exceed 1.5 per cent of the intended number of flights on an annual basis.

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2.5 Co-operation Arrangements

Following a tender procedure, which limits access to the route Røst – Bodø v. v. to one carrier, these conditions apply:

Fares:

- All connecting fares to/from other air services shall be offered on equal terms for all carriers. Exempted from this are connecting fares to/from other services carried out by the tenderer, provided that the fare is maximum 40 per cent of the fully flexible fare.
- Bonus points from frequent flyer programmes can neither be earned nor redeemed on the flights.

Transfer Conditions:

- All conditions set out by the carrier for the transfer of passengers to and from other carriers' routes, including connecting times and through check-in of tickets and baggage, shall be objective and non-discriminatory.

3. OTHER

These public service obligations replace those published for the route Røst – Bodø v.v. in Official Journal of the European Communities No C 340 of 27 November 1999.

4.

Further information can be obtained from:

Ministry of Transport and Communications
P O Box 8010 Dep
N-0030 OSLO

Telephone + 47 22 24 82 41, facsimile + 47 22 24 95 72

This documentation is also available on the internet:

<http://www.odin.dep.no/sd/engelsk/aktuelt/tenders/index-b-n-a.html>

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ANNEX TO THE IMPOSITIONS OF PUBLIC SERVICE OBLIGATIONS IN RESPECT OF SCHEDULED AIR SERVICES RØST – BODØ V. V.

ADJUSTMENT OF PRODUCTION/AVAILABLE SEATS –

PRODUCTION ADJUSTMENT CLAUSE

1. Purpose of the production adjustment clause

The purpose of the production adjustment clause is to ensure that supplied capacity/seats offered by the operator is adjusted to changes in market demand. Whenever the number of passengers increases significantly and exceeds the following specified limits for the percentage of seats occupied at any time (the passenger load factor), the operator *shall* increase available seats offered. The operator *may* accordingly decrease available seats offered when the number of passengers decreases significantly. See specification below in 3.

2. Periods for measuring passenger load factors

The periods during which the passenger load factor shall be monitored and assessed run from 1 January to 30 June inclusive and 1 August to 30 November inclusive.

3. Conditions for changing production/available seats offered

3.1. Conditions for increasing production

- 3.1.1. An increase in production/available seats offered *shall* take place when the average passenger load factor on each single route encompassed by public service obligations is higher than 70 pct. When the average passenger load factor on these routes exceeds 70 pct in any of the periods mentioned in 2, the operator shall increase production/available seats offered by at least 10 pct on these routes, at latest from the start of the following IATA traffic season. Production/available seats offered shall be increased at least so that the average passenger load factor does not exceed 70 pct.
- 3.1.2. When increasing production/available seats offered according to the above, the new production may take place by using aircraft with lower seating capacity than specified in the original tender, if preferred by the operator.

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3.2. *Conditions for decreasing production*

- 3.2.1. A decrease in production/available seats offered *may* take place when the average passenger load factor on each single route encompassed by public service obligations is lower than 35 pct. When the average passenger load factor on these routes is lower than 35 pct in any of the periods mentioned in 2, the operator *may* decrease production/available seats offered by no more than 25 pct on these routes from the first day after the end of the above mentioned periods.
- 3.2.2. On routes with more than two daily frequencies offered in each direction, reduction in production according to 3.2.1 shall take place by reducing frequencies offered. The only exception to this is when the operator uses aircraft with larger seating capacity than the minimum specified in the imposition of public service obligations. The operator may then use smaller aircraft, however, not with lower seating capacity than the minimum specified in the imposition of public service obligations.
- 3.2.3. On routes with only one or two daily frequencies offered in each direction, reduction in available seats offered can only take place by using aircraft with lower seating capacity than specified in the imposition of public service obligations.

4. **Procedures for changes in production**

- 4.1. The Norwegian Ministry of Transport and Communications has the responsibility subject to law for approving proposed time schedules submitted by the operator, including changes in production. Reference is made to Circular N-8/97 of the Norwegian Ministry of Transport and Communications, included in the tender file.
- 4.2. When production shall be increased according to 3.1, time schedules for new production/new seats should be agreed between the operator and the county (counties) as administrative unit affected.
- 4.3. If new production shall be offered according to 3.1, and the operator and the county (counties) as administrative unit affected cannot agree upon time schedules according to 4.2, the operator can seek approval from the Norwegian Ministry of Transport and Communications according to 4.1 for a different time schedule for the new production/new seats offered. This does not mean that the operator may apply for approval of a time schedule that does not include the required increase in production. There must exist substantial reasons for time schedules for new production/new seats diverging from those which could be agreed by the county (counties) as administrative unit affected according to 4.2, as a condition for the Ministry to approve such a proposal from the operator.

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5. Unchanged remuneration when changing production

- 5.1. The remuneration to the operator remains unchanged when increasing production according to 3.1.
- 5.2. The remuneration to the operator remains unchanged when decreasing production according to 3.2.

III INVITATION TO TENDER

Operation of scheduled air services

Invitation to tender published by Norway pursuant to Article 4.1. (d) of the Act referred to in point 64a in Annex XIII of the EEA Agreement (Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes) for operation of scheduled air services on the route Røst – Bodø v.v.

1. INTRODUCTION

Pursuant to Article 4.1 (a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (http://europa.eu.int/eur-lex/en/lif/dat/1992/en_392R2408.html), Norway has decided to impose new public service obligations on regional air services Røst – Bodø v. v. as of 1 February 2002, as published 23 August 2001 in Official Journal of the European Communities No C 237 and the EEA Supplement No 41.

Insofar as by two months from the latest day of submission of tenders, see section 12 of this publication, no air carrier has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled flights on 1 February 2002 in conformity with the public service obligations imposed on the route Røst – Bodø v.v., without demanding financial compensation or market protection, Norway will apply the tender procedure provided for by Article 4.1 (d) of the same regulation, thereby limiting access as of 1 February 2002 to only one air carrier for the route.

2. OBJECTIVE OF THE INVITATION TO TENDER

To provide, with effect from 1 February 2002, scheduled air services on the route Røst – Bodø v.v. in accordance with the imposed public service obligations, as published 23 August 2001.

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3. ELIGIBILITY TO TENDER

All air carriers holding a valid operating licence pursuant to Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers are eligible to tender (http://europa.eu.int/eur-lex/en/lif/dat/1992/en_392R2407.html).

4. TENDER PROCEDURE

This invitation to tender is subject to the provisions of subparagraphs (d), (e), (f), (g), (h) and (i) of Article 4.1 of Council Regulation (EEC) No 2408/92.

The Ministry of Transport and Communications reserves the right to reject all tenders. Overdue tenders and tenders not in conformity with the invitation to tender will be rejected.

The Ministry of Transport and Communications reserves the right to apply subsequent negotiations if all tenders submitted are incorrect, or, if after the final date for receipt of tenders there proves to be only one tenderer or competition is otherwise insufficient. Such negotiations shall be in accordance with the public service obligations imposed and without making substantial changes in the original tender conditions.

The tender is binding on the tenderer until the award is made.

5. AWARD

5.1

As the principal rule, cf section 5.2 of this publication, the award shall be made to the tender requiring the lowest amount of compensation for the period 1 February 2002 – 31 March 2003.

5.2

In case the award cannot be made subject to the provisions of 5.1 because there are tenders requiring identical amounts of compensation, the award shall be made to the tender offering the highest number of seats for the period 1 February 2002 – 31 March 2003.

6. TENDER FILE

The full file for invitation to tender, containing the impositions of public service obligations, the specific rules to the invitation to tender (Norwegian Regulation on tender procedures in connection with public service obligations to implement Council Regulation (EEC) no 2408/92, Article 4), the standard contract and tender budget, may be obtained free of charge from the principal:

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Ministry of Transport and Communications
P O Box 8010 Dep
N-0030 OSLO

telephone + 47 22 24 82 41
facsimile + 47 22 24 95 72

The documentation is also available on the internet:

<http://www.odin.dep.no/sd/engelsk/aktuelt/tenders/index-b-n-a.html>

7. FINANCIAL COMPENSATION

The tenders submitted shall be in accordance with the tender budget included in the tender file and explicitly mention the compensation in Norwegian kroner (NOK) required for operation of the service in question during the contract period 1 February 2002 – 31 March 2003. The tenders shall be based on the price level for this period.

The operator shall retain all revenue generated by the service and is fully responsible for the expenses, however, re-negotiation in accordance with the standard contract may apply in case of substantial and unforeseeable changes in the assumptions underlying it.

8. FARES

The tenders submitted shall specify the fares and the conditions thereto. The fares shall be in accordance with the public service obligations published 23 August 2001.

9. DURATION, AMENDMENT AND TERMINATION OF THE CONTRACT

The contract shall start on 1 February 2002 and end 31 March 2003.

A review of the implementation of the contract shall be carried out in concert with the carrier during the six weeks following the end of the contract period.

The contract may not be modified unless the changes are in accordance with the public service obligations. Any modification of the contract shall be recorded in an annex thereto.

The contract may be terminated by the carrier only at the end of a 12-month period of notice.

10. BREACH OF CONTRACT/CANCELLATION

In the event of substantial breach of the contract, it may be cancelled with immediate effect by the other party.

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Subject to the restrictions following insolvency law, the Ministry of Transport and Communications may cancel the contract with immediate effect if the operator becomes insolvent, initiates debt settlement proceedings or goes bankrupt. Equally the Ministry of Transport and Communications may cancel the contract in the other cases dealt with in section 12 of Regulation on tender procedures in connection with public service obligation, which is included in the tender file.

<http://www.lovddata.no/for/sf/sd/sd-19940415-0256.html>

If the operator owing to force majeure or other factors outside his control has been unable to comply with the public service obligations as stated in the contract for more than four of the past six months, the contract may be cancelled at one month's written notice.

The Ministry of Transport and Communications may cancel the contract with immediate effect if the operator has his licence revoked or it is not renewed.

Notwithstanding any action for damages, the financial compensation shall be reduced in proportion to the total number of flights cancelled for reasons directly attributable to the carrier, if the number of flights cancelled for such reasons during an operating year exceeds 1.5 per cent of the planned number of flights.

11. AIRLINE CODES

The flights cannot carry any other airline codes than the tenderer's own and cannot be part of any code-sharing agreement.

12. SUBMISSION OF TENDERS

Tenders must be sent by registered post with acknowledgement of receipt, in which case the postmark will be accepted as a proof of submission, or delivered by hand in return for a receipt, to:

Ministry of Transport and Communications
Akersgata 59 (visiting address)
P O Box 8010 Dep
N-0030 OSLO

not later than 19 October 2001, at 15.00 hrs (local time).

All tenders must be submitted in three (3) copies.

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13. VALIDITY OF THE INVITATION TO TENDER

This invitation to tender shall be valid only to the extent that no EEA air carrier by two months from the latest day of submission of tenders, see section 12 of this publication, has provided documentary evidence to the Ministry of Transport and Communications of commencing scheduled air services on 1 February 2002 in accordance with the public service obligations imposed on the route Røst – Bodø v.v., without demanding financial compensation or market protection.

IV TENDER REQUIREMENTS

1. General requirements

The requirements for the tender and the tender procedure appear from enclosed impositions of public service obligations, invitation to tender and regulation on tender procedures in connection with public service obligations, etc.

The Ministry of Transport and Communications would like to point out the following:

- a) Tenders shall be drawn up in either English or a Scandinavian language.
- b) Scheduled air services might be required to carry post. Such requirement will be compensated for, see the Norwegian Postal Act, section 16.
(<http://www.lovdato.no/all/tl-19961129-073-0.html#16>).
- c) The tenderer must have fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the state in which he is established. A certificate proving this and issued by the competent authority in the state concerned shall be annexed to the tender.
- d) Any reservations regarding the tender must be clearly indicated, as well as any consequences this may have for the contract, see chapter X. Tenderers cannot make reservations which imply that the compensation shall be adjusted according to actual revenues or costs generated by the service, as this would be in conflict with the conditions set out in chapter III, section 7.
- e) Tenderers are fully responsible for offering traffic programmes in accordance with the public service obligations at all times. Traffic programmes must be included in the tenders submitted, including a specification of the number of seats offered on each route encompassed by the public service obligations, as this might be a criterion for awarding contracts, see chapter III, section 5. Tenderers are also informed that there is no service obligation on Christmas Day and on Good Friday.
- f) The discounts available under the interline agreements (e.g. “Midipris” and “Minipris”) shall be offered both for the routes encompassed by the public service obligations and for connecting traffic.

2. Technical and operational requirements

The tenderers must prove that they hold the required technical and operational qualifications in order to operate the air services in question. If the tenderers cannot prove this

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satisfactorily by the deadline to submit tenders, the tender must give an account for how the requirements can be fulfilled by 1 February 2002.

The tenderers must hold a valid licence and Air Operator's Certificate, c.f. Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (http://europa.eu.int/eur-lex/en/lif/dat/1992/en_392R2407.html).

Aircraft operations shall be in accordance with JAR-OPS 1, see Norwegian Regulation for the implementation of operational requirements in accordance with JAR-OPS 1, Commercial Air Transportation – Aeroplanes.

The tenderers must fulfil the Norwegian regulations in force at the time in question.

The tenderers must be able to prove that they are operational by the start up of the operations 1 February 2002.

Please note that the Ministry of Transport and Communications after the opening of the tenders may require the tenderers at short notice to submit information from their licensing authorities in order to verify the information given in the tenders, or if such information is not submitted, may directly approach these authorities for such verification.

The tenders will, regarding technical and operational requirements, be evaluated by Luftfartstilsynet (Civil Aviation Authority) before the tender award is made.

Further information may be obtained from:

Luftfartstilsynet (Civil Aviation Authority)
P O Box 8050 Dep
N-0031 Oslo
Tel.: + 47 23 31 78 00

V TENDER BUDGET

This chapter contains the tender budgets to be completed for each tender, see chapter III section 7. The tender budgets shall be drawn up for the entire tender period as well as for each single operating year, the periods being indicated on the budget sheets.

All figures shall be given in NOK 1000 and in the price level for the contract period 1 February 2002 – 31 March 2003.

All figures in the tender budget shall be specified. This also applies when the figure is NOK 0, e.g. when the tender is based on marginal cost or if the revenue or cost concerned is irrelevant for the operations offered.

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TENDER BUDGET: 1 February 2002 – 31 March 2003

All figures in NOK 1000 and based on the price level for the contract period

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Commission revenues	_____
4	Revenues from in-flight sales	_____
5	Other operating revenues	_____
6	Total operating revenues (1...5)	_____
7	Passenger charges	_____
8	En route charges	_____
9	Take-off charges	_____
10	Fuel expenses	_____
11	Crew salaries	_____
12	Crew expenses	_____
13	Technical maintenance	_____
14	Mechanics' pay	_____
15	De-icing	_____
16	Short-term lease of aircraft	_____
17	Handling/station services	_____
18	Irregular passenger service	_____
19	Meals and refreshments on board	_____
20	Commission expenses	_____
21	Reservations/distribution	_____
22	Distribution of air ticket revenues	_____
23	Fixed administrative expenses	_____
24	Depreciation	_____
25	Leasing of aircraft	_____
26	Other operating costs	_____
27	Total operating costs (7...26)	_____
28	Financial revenues	_____
29	Financial expenses	_____
30	Financial items (-28+29)	_____
31	Profit margin	_____
32	Compensation required (-6+27+30+31)	_____
VI	SOCIAL DISCOUNTS	
A	Senior citizen discount	

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1. Application

The discount is applied for the following travel in Norway: OW (one way) and RT (return).

2. Eligibility

The senior citizen discount is applicable as follows:

- a) Persons aged from 67 years
- b) Blind persons aged from 16 years
- c) Disabled persons aged from 16 years who receive a pension according to the Norwegian law of 'Folketrygd' of 17 June 1966 or similar law in any EEA country.
- d) Students aged from 16 years attending special schools for people with hearing problems.

The discount is also applicable for:

- e) Accompanying spouse irrespective of age, or a person who has to accompany persons included in a)-d). Spouse is man/woman, even unmarried, living together with head of family in the same household. The person entitled to a discount decides the need for escort.
- f) **Note:** This discount is not applicable when the travel is paid for by the government and/or social security office.

3. Fares

50 per cent of published normal Y-fare. Retroactive application is not permitted.

4. Children's/infants' fares

Not permitted.

12. Routing

According to attached routing to the normal Y-fare.

16. Reservations

Reservations are to be made in M-class.

21. Agents' discounts

Not permitted.

22. Tour conductor discounts

Not permitted.

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23. Travel together

The family must travel together on all flights for the entire journey (see e) and f) under point 2 Eligibility). If not, the discount is applicable to accompanying spouse only on the portions travelling together.

Exception: After departure individual travel is permitted in the event of illness (certificate required).

24. Documentation

The following documents must be presented at time of ticketing:

- a) For persons aged from 67 years proof of age (passport or other official document).
- b) People under age 67 years who receive a pension, must provide proof of eligibility by means of official documentation according to the Norwegian law of 'Folketrygd', chapter 8 § 8-3. Blind persons must provide proof from a social security office and/or 'Norges Blindeforbund'. Persons from other EEA countries must provide similar documentation from their home country.
- c) Students aged from 16 years, attending special schools for people with hearing problems, must present a student certificate and a letter from the social security office stating that the student is receiving pension according to the Norwegian law of 'Folketrygd'. Persons from other EEA countries must provide similar documentation from their home country.

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B Children's discount

Travellers aged under 16 years on the day of departure shall in any case be entitled to a fare not higher than 50 per cent of the published normal Y-fare.

An adult (aged from 16 years) may carry a child aged under 2 years for free, provided that the child does not occupy its own seat and when travelling together on the entire journey.

VII TRAFFIC INFORMATION (GUIDANCE ONLY)

In this chapter certain traffic information for the routes encompassed by the public service obligations is offered.

The following number of passengers appears from the statistics of Luftfartsverket (Norwegian Air Traffic and Airport Management, NATAM):

Røst Airport, 1 January 2000 – 31 December 2000: 10,245

The figure shows the number of passengers arrived and departed on domestic services at Røst airport.

Complete statistics, updated on a monthly basis, are available on the NATAM's web pages: <http://www.lv.no/>.

The following numbers of passengers on scheduled services appear from information from the operating carriers:

1 January 2000 – 31 March 2000:	2538 passengers
1 April 2000 – 31 December 2000:	7601 passengers
1 January 2001 - 29 March 2001:	2118 passengers

The above figures must be seen in accordance with the traffic programmes offered in the said periods:

- During 1st quarter 2000 the Røst-Bodø route was served by 37-seat DHC-8-103 aircraft with 12 weekly roundtrips, half of which with intermediate stop at Leknes and half of which non-stop
- During the period 2nd quarter 2000 – 1st quarter 2001 the Røst-Bodø route was served by 19-seat Dornier 228 aircraft with 12 weekly roundtrips, all flights being non-stop

The tenderers themselves are responsible for calculating the revenues generated from the routes encompassed by the public service obligations, taking into account the revenue reductions related to transfer discounts.

Freight and post are not encompassed by the public service obligations and that the tenderers themselves are responsible for the budgeting of such revenues and for concluding possible contracts with post and freight customers.

The tenderer's attention is especially drawn to the fact that this traffic information is offered for guidance purposes only, and that the tenderers themselves are fully responsible for the tender budgeting, see chapter III, section 7. Accordingly, tenderers may not make reservations as to the traffic information.

VIII REGULATION ON TENDER PROCEDURES IN CONNECTION WITH PUBLIC SERVICE OBLIGATIONS TO IMPLEMENT COUNCIL REGULATION (EEC) NO 2408/92, ARTICLE 4¹

Laid down by the Ministry of Transport and Communications on 15 April 1994 pursuant to Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation, section 3.

Section 1 *Definitions*

For the purpose of this regulation:

1. 'principal' shall mean the Ministry of Transport and Communications or executive agency;
2. 'tenderer' shall mean an air carrier that submits a tender;
3. 'open tender procedure' shall mean a procurement procedure whereby all air carriers may submit tenders;
4. 'open tender procedure with subsequent negotiations' shall mean a procurement procedure whereby the principal, having applied an open tender procedure in accordance with subsection 3 of this section, consults one or more tenderers of its choice and negotiates the terms of the contract with one or more of them;
5. 'award of contract by negotiated procedure', shall mean a procurement procedure whereby the principal consults air carriers of its choice and negotiates the terms of the contract with one or more of them.

Section 2 *Scope of application*

This regulation applies to routes which are put up for tender pursuant to Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation, section 1, subsection 4.

Section 3 *General requirements on tenderers*

Any entity which submits a tender must have a valid licence issued by the civil aviation authority in accordance with Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation, section 1, subsection 8.

Any entity which submits a tender must be able to prove that it fulfils special requirements, if any, as to safety, aircraft and the protection of the environment in accordance with specifications set out in the invitation to tender.

Any tenderer receiving financial compensation in connection with the operation of other routes on which its traffic rights are granted without competition shall separate such grant-aided activity from tender activity for accounting purposes.

¹ 15 April 1994, no. 256

Section 4 *Choice of procurement procedure*

Procurement shall be effected by means of an open tender procedure. Exceptions may be made to this provision provided the conditions of subsection 2 or 3 are satisfied.

An open tender procedure with subsequent negotiations may be applied if:

all or certain tenders submitted in response to a call for competition are incorrect, c.f. section 11;

after the final date for receipt of tenders there proves to be only one tenderer or competition is otherwise insufficient.

The principal's reservation of the right to apply subsequent negotiations must be clear from the invitation to tender which shall also state that substantial changes cannot be made in the original tender conditions.

The principal shall by appropriate means inform the tenderer(s) who participated in the open procedure that subsequent negotiations will apply. However, this does not apply if the principal includes at the subsequent negotiations all air carriers who have submitted tenders in response to the prior open procedure in accordance with the formal requirements of the procurement procedure.

A contract may be awarded by negotiated procedure without prior publication of an open tender notice, if, due to events unforeseeable by the principal, the time limits laid down for the open procedure cannot be met.

Section 5 *Publication*

The principal shall publish notice of the tender competition in the Official Journal of the European Communities and in the Norwegian Gazette and other suitable national media and/or publications.

Notice in the Official Journal of the European Communities shall be worded and published in its entirety in one of the official languages of the European Union.

Section 6 *Deadlines*

1. The deadline for submission of tenders shall not be earlier than one month after the day of publication.
2. The period between submission of tenders and opening of tenders should be at least 24 hours.
3. Provided they have been requested in good time, the tender documents and supporting documents shall be sent to tenderers by the principal within a reasonable period.
4. A period of two months shall elapse after the deadline for submission of tenders before any selection is made.

Section 7 *Urgent cases*

In urgent cases where it is impossible to adhere to the deadlines mentioned in section 6, the principal may after a specific assessment lay down shorter deadlines.

Section 8 *Model for notice of a call for competition*

Such notice shall normally set out:

- a) the principal's name, address, telephone number, telegraphic address and telefax numbers;
- b) the name and address of the agency to which requests for relevant documents may be directed as well as the final date for making such requests;
- c) special requirements, if any, as to safety, aircraft and the environment etc.;
- d) the geographical location of the route network or route
- e) the minimum transport standard desired, including type of aircraft, frequency, number of stops en route, fares, service, etc.;
- f) details as to use of a standard tender form;
- g) how the tender shall be presented, including requirements as to documentation of revenues, costs and traffic volume, as well as a statement of methods of calculation and basis for analysis and any use of a special form (e.g. tender budget);
- h) how remuneration requirements, if any, shall be presented;
- i) deadline/place for submission of tenders, including the address to which the tender shall be sent;
- j) the language in which the tenders must be drawn up;
- k) a statement that the principal reserves the right to reject all tenders;
- l) the persons authorised to be present at the opening of the tenders and the date, hour and place of such opening;
- m) a statement that overdue tenders and tenders not in conformity with the invitation to tender will be rejected;
- n) a statement that the principal reserves the right to apply subsequent negotiations;
- o) the period during which the tenderer is bound to keep open his tender;
- p) the period of validity of the contract (normally 3 years), including the starting date;
- q) criteria that will be applied when awarding the contract, where possible in descending order of importance, see section 14;
- r) information concerning use of a standard contract in this area;
- s) sanctions in the event of breach of contract.

Section 9 *Details regarding overdue tenders*

Tenders arriving after the closing date for submission of tenders, see section 6, shall be rejected as overdue and be returned.

However, this does not apply to tenders which arrive after the closing date but before the opening of the tenders provided it is clear from the postmark that, given normal postal service schedules, the tender was mailed early enough for it to have arrived before the deadline, or the tenderer in question has proven this by a receipt from Norway Post before the opening of the tenders.

The rejection decision including the grounds for it shall be entered in the register of tenders.

Section 10 *Procedures in connection with the opening of tenders²*

Tenders received in time shall be opened at the place and hour stated in the tender documents. At the opening of the tenders a representative of the principal, duly designated beforehand, shall undertake the opening of the tenders and sign the register of tenders. Each tenderer is entitled to have one representative present.

During the opening of the tenders the name of the tenderer shall be read out, but not the remuneration required and the proposed transport standard. Once the principal has resolved not to start subsequent negotiations, see section 4, subsection 2, the remuneration required shall be made public. In the case of subsequent negotiations, the remuneration required will be made public once the negotiations are closed.

The following shall be entered in the register of tenderers:

- a) date and hour of the opening;
- b) the tender's identification mark;
- c) which route network/routes the invitation to tender covers;
- d) persons present;
- e) the compensation required in the tender as well as the name of the tenderer;
- f) any rejections of the tenderers/tenders, see section 11.

Section 11 *Rejection*

A tender shall be rejected if:

- the tender as it appears at the final date fails to fulfil the requirements for participation in the competition, c.f. section 3.

1. A tender may after closer assessment be rejected if:

- a) the tender does not contain all the information prescribed in the invitation to tender;
- b) the tender fails to state the compensation required as prescribed in the invitation to tender, c.f. section 8, litera h);
- c) the tenderer is unable to start up within the time-limit prescribed in the invitation to tender, c.f. section 8, litera p);
- d) the tender requires compensation that is unreasonable in relation to the service to be provided and the tenderer is unable to provide a satisfactory reason for this.

The register of tenders shall make clear which tenders are rejected and the reason for rejection, c.f. section 10, litera f).

Section 12 *Criteria for exclusion of tenderers*

1. Principals may when selecting a tenderer and when awarding a contract exclude any tenderer who:

² Subsection 2 in this section is laid down by the Ministry of Transport and Communications 25 September 1998 pursuant to Regulation no. 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation.

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- a) is bankrupt, is engaged in debt settlement proceedings or is being wound up, who has halted his business activities or who is in any analogous situation arising from a similar procedure pursuant to national laws or regulations;
 - b) is the subject of proceeding for a declaration of bankruptcy, for debt settlement, for an order for compulsory winding up or is the subject of any other similar proceedings pursuant to national laws or regulations;
 - c) has been convicted by final judgement of an offence concerning his professional conduct;
 - d) has been guilty of grave breaches of professional and ethical standards in his line of business, which have been proven by any means which the principal approves;
 - e) has not fulfilled obligations relating to the payment of taxes and levies in accordance with national laws of the state in which he is established, or of Norway;
 - f) is guilty of serious misrepresentation in supplying the information required under sections 8 and 13.
2. Where the principal requires tenderer proof that none of the cases mentioned in a), b), c), e) or f) of subsection 1 applies to him, the principal may accept as sufficient evidence:
- a) for a), b) or c), an extract from the National Register of Convictions or the National Register of Insolvencies. Failing this, an equivalent document issued by a judicial or administrative authority in the tenderer's home state or state where he is currently present showing that none of these cases applies to the tenderer;
 - b) for e) or f), a certificate issued by the competent authority in the state concerned.

Section 13 *Supplementary information*

The principal may, if he finds it appropriate, request tenderer(s) to supplement the certificates and documents submitted or to clarify them.

The same applies within the contract period.

Section 14 *Selection of tenderer*

1. The criteria on which the principal shall with reference to sections 3 and 8 base the award of contracts shall be either the lowest required compensation only, or the economically most advantageous tender.
2. If, based on an overall assessment, the award is made to the economically most advantageous tender, but the required compensation alone is not the decisive criterion, all criteria that the principal intends to apply to the award shall have been stated in the contract notice, where possible in descending order of importance.
3. If, for a given contract, tenders appear abnormally low in relation to the service to be provided, the principal may examine the details of the tenders before deciding to whom it will award the contract. For this purpose the principal shall request the tenderer to furnish the necessary explanations and, where appropriate, it shall state which parts it finds unacceptable.

Section 15 *Notice of contracts awarded*

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Notice of contract awarded shall be published in an appropriate manner.

Section 16 *Supplementary regulations*

The Ministry of Transport and Communications may lay down amendments to supplement and clarify this regulation.

Section 17 *Commencement*

This regulation comes into force on 1 July 1994.

IX **COUNCIL REGULATION (EEC) NO 2408/92**

of 23 July 1992

on access for Community air carriers to intra-Community air routes

http://europa.eu.int/eur-lex/en/lif/dat/1992/en_392R2408.html

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission(1) ,

Having regard to the opinion of the European Parliament(2) ,

Having regard to the opinion of the Economic and Social Committee(3) ,

Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Council Decision 87/602/EEC of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States(4) and Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States(5) constitute the first steps towards achieving the internal market in respect of access for Community air carriers to schedules intra-Community air routes;

Whereas Regulation (EEC) No 2343/90 provides that the Council shall decide on the revision of that Regulation by 30 June 1992 at the latest;

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Whereas in Regulation (EEC) No 2343/90 the Council decided to adopt rules governing route licensing for implementation not later than 1 July 1992;

Whereas in Regulation (EEC) No 2343/90 the Council decided to abolish capacity restrictions between Member States by 1 January 1993;

Whereas in Regulation (EEC) No 2343/90 the Council confirmed that cabotage traffic rights are an integral part of the internal market;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas the development of the air traffic system in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores is at present inadequate and for this reason airports situated on these islands should be temporarily exempted from the application of this Regulation;

Whereas it is necessary to abolish restrictions concerning multiple designation and fifth-freedom traffic rights and phase in cabotage rights in order to stimulate the development of the Community air transport sector and improve services for users;

Whereas it is necessary to make special provision, under limited circumstances, for public service obligations necessary for the maintenance of adequate air services to national regions;

Whereas it is necessary to make special provision for new air services between regional airports;

Whereas for air transport planning purposes it is necessary to give Member States the right to establish non-discriminatory rules for the distribution of air traffic between airports within the same airport system;

Whereas the exercise of traffic rights has to be consistent with operational rules relating to safety, protection of the environment and conditions concerning airport access and has to be treated without discrimination;

Whereas, taking into account problems of congestion or environmental problems, it is necessary to include the possibility of imposing certain limitations on the exercise of traffic rights;

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers;

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Whereas it is necessary to specify the duties of Member States and air carriers for the purposes of providing necessary information;

Whereas it is appropriate to ensure identical assessment and evaluation of market access for the same types of air services;

Whereas it is appropriate to deal with all matters of market access in the same Regulation;

Whereas this Regulation partially replaces Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States(6) , -

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns access to routes within the Community for scheduled and non-scheduled air services.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of the provisions of this Regulation to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

4. Airports in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores shall be exempted from the application of this Regulation until 30 June 1993. Unless otherwise decided by the Council, on a proposal from the Commission, this exemption shall apply for a further period of five years and may be continued for five years thereafter.

Article 2

For the purposes of this Regulation:

(a) 'air carrier' means an air transport undertaking with a valid operating licence;

(b) 'Community air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 of licensing of air carriers(7) ;

(c) 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;

(d) 'scheduled air service' means a series of flights possessing all the following characteristics:

(i) it is performed by aircraft for the transport of passengers, cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorized agents);

(ii) it is operated so as to serve traffic between the same two or more airports, either:

1. according to a published timetable; or

2. with flights so regular or frequent that they constitute a recognizably systematic series;

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- (e) 'flight' means a departure from a specified airport towards a specified destination airport;
- (f) 'traffic right' means the right of an air carrier to carry passengers, cargo and/or mail on an air service between two Community airports;
- (g) 'seat-only sales' means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorized agent or a charterer;
- (h) 'Member State(s) concerned' means the Member State(s) between or within which an air service is operated;
- (i) 'Member State(s) involved' means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;
- (j) 'State of registration' means the Member State in which the licence referred to in (b) is granted;
- (k) 'airport' means any area in a Member State which is open for commercial air transport operations;
- (l) 'regional airport' means any airport other than one listed in Annex I as a category 1 airport;
- (m) 'airport system' means two or more airports grouped together as serving the same city or conurbation, as indicated in Annex II;
- (n) 'capacity' means the number of seats offered to the general public on a scheduled air service over a given period;
- (o) 'public service obligation' means any obligation imposed upon an air carrier to take, in respect of any route which it is licensed to operate by a Member State, all necessary measures to ensure the provision of a service satisfying fixed standards of continuity, regularity, capacity and pricing, which standards the air carrier would not assume if it were solely considering its commercial interest.

Article 3

1. Subject to this Regulation, Community air carriers shall be permitted by the Member State(s) concerned to exercise traffic rights on routes within the Community.
2. Notwithstanding paragraph 1, before 1 April 1997 a Member State shall not be required to authorize cabotage traffic rights within its territory by Community air carriers licensed by another Member State, unless:
 - (i) the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as a preliminary of a service to, the State or registration of the carrier;
 - (ii) the air carrier does not use, for the cabotage service, more than 50 % of its seasonal capacity on the same service of which the cabotage service constitutes the extension or the preliminary.
3. An air carrier operating cabotage services in accordance with paragraph 2 shall furnish on request to the Member State(s) involved all information necessary for the implementation of the provisions of that paragraph.
4. Notwithstanding paragraph 1, before 1 April 1997 a Member State may, without discrimination on grounds of nationality of ownership and air carrier identity, whether incumbent or applicant on the routes concerned, regulate access to routes within its territory for air carriers licensed by it in accordance with Regulation (EEC) No 2407/92 while otherwise not prejudging Community law and, in particular, competition rules.

Article 4

1. (a) A Member State, following consultations with the other Member States concerned and after having informed the Commission and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services to an airport serving a peripheral or development region in its territory or on a thin route to any regional airport in its territory, any such route being considered vital for the economic development of the region in which the airport is located, to the extent necessary to ensure on that route the adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing, which standards air carriers would not assume if they were solely considering their commercial interest. The Commission shall publish the existence of this public service obligation in the Official Journal of the European Communities.

(b) The adequacy of scheduled air services shall be assessed by the Member States having regard to:

(i) the public interest;

(ii) the possibility, in particular for island regions, of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;

(iii) the air fares and conditions which can be quoted to users;

(iv) the combined effect of all air carriers operating or intending to operate on the route.

(c) In instances where other forms of transport cannot ensure an adequate and uninterrupted service, the Member States concerned may include in the public service obligation the requirement that any air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with the other terms of the public service obligation.

(d) If no air carrier has commenced or is about to commence scheduled air services on a route in accordance with the public service obligation which has been imposed on that route, then the Member State may limit access to that route to only one air carrier for a period of up to three years, after which the situation shall be reviewed. The right to operate such services shall be offered by public tender either singly or for a group of such routes to any Community air carrier entitled to operate such air services. The invitation to tender shall be published in the Official Journal of the European Communities and the deadline for submission of tenders not be earlier than one month after the day of publication. The submissions made by air carriers shall forthwith be communicated to the other Member States concerned and to the Commission.

(e) The invitation to tender and subsequent contract shall cover, inter alia, the following points:

(i) the standards required by the public service obligation;

(ii) rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;

(iii) the period of validity of the contract;

(iv) penalties in the event of failure to comply with the contract.

(f) The selection among the submissions shall be made as soon as possible taking into consideration the adequacy of the service, including the prices and conditions which can be quoted to users, and the cost of the compensation required from the Member State(s) concerned, if any.

(g) Notwithstanding subparagraph (f), a period of two months shall elapse after the deadline for submission of tenders before any selection is made, in order to permit other Member

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States to submit comments.

(h) A Member State may reimburse an air carrier, which has been selected under subparagraph (f), for satisfying standards required by a public service obligation imposed under this paragraph; such reimbursement shall take into account the costs and revenue generated by the service.

(i) Member States shall take the measures necessary to ensure that any decision taken under this Article can be reviewed effectively and, in particular, as soon as possible on the grounds that such decisions have infringed Community law or national rules implementing that law.

(j) When a public service obligation has been imposed in accordance with subparagraphs (a) and (c) then air carriers shall be able to offer seat-only sales only if the air service in question meets all the requirements of the public service obligation. Consequently that air service shall be considered as a scheduled air service.

(k) Subparagraph (d) shall not apply in any case in which another Member State concerned proposes a satisfactory alternative means of fulfilling the same public service obligation.

2. Paragraph 1 (d) shall not apply to routes where other forms of transport can ensure an adequate and uninterrupted service when the capacity offered exceeds 30 000 seats per year.

3. At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of paragraph 1, or on its own initiative, the Commission shall carry out an investigation and within two months of receipt of the request shall take a decision on the basis of all relevant factors on whether paragraph 1 shall continue to apply in respect of the route concerned.

4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Article 5

On domestic routes for which at the time of entry into force of this Regulation an exclusive concession has been granted by law or contract, and where other forms of transport cannot ensure an adequate and uninterrupted service, such a concession may continue until its expiry date or for three years, whichever deadline comes first.

Article 6

1. Notwithstanding Article 3, a Member State may, where one of the air carriers licensed by it has started to operate a scheduled passenger air service with aircraft of no more than 80 seats on a new route between regional airports where the capacity does not exceed 30 000 seats per year, refuse a scheduled air service by another air carrier for a period of two years, unless it is operated with aircraft of not more than 80 seats, or it is operated in such a way that not more than 80 seats are available for sale between the two airports in question on each flight.

2. Article 4 (3) and (4) shall apply in relation to paragraph 1 of this Article.

Article 7

In operating air services, a Community air carrier shall be permitted by the Member State(s) concerned to combine air services and use the same flight number.

Article 8

1. This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system.

2. The exercise of traffic rights shall be subject to published Community, national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots.

3. At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.

4. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

5. When a Member State decides to constitute a new airport system or modify an existing one it shall inform the other Member States and the Commission. After having verified that the airports are grouped together as serving the same city or conurbation the Commission shall publish a revised Annex II in the Official Journal of the European Communities.

Article 9

1. When serious congestion and/or environmental problems exist the Member State responsible may, subject to this Article, impose conditions on, limit or refuse the exercise of traffic rights, in particular when other modes of transport can provide satisfactory levels of service.

2. Action taken by a Member State in accordance with paragraph 1 shall:

- be non-discriminatory on grounds of nationality or identity of air carriers,
- have a limited period of validity, not exceeding three years, after which it shall be reviewed,
- not unduly affect the objectives of this Regulation,
- not unduly distort competition between air carriers,
- not be more restrictive than necessary in order to relieve the problems.

3. When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month of receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 4, takes it up for further examination.

4. At the request of a Member State or on its own initiative the Commission shall examine action referred to in paragraph 1. When the Commission, within one month of having been informed under paragraph 3, takes the action up for examination it shall at the same time indicate whether the action may be implemented, wholly or partially, during the examination taking into account in particular the possibility of irreversible effects. After consulting the Committee referred to in Article 11 the Commission shall, one month after having received all necessary information, decide whether the action is appropriate and in conformity with this Regulation and not in any other way contrary to Community law. The Commission shall communicate its decision to the Council and the Member States. Pending such decision the

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Commission may decide on interim measures including the suspension, in whole or in part, of the action, taking into account in particular the possibility of irreversible effects.

5. Notwithstanding paragraphs 3 and 4, a Member State may take the necessary action to deal with sudden problems of short duration provided that such action is consistent with paragraph 2. The Commission and the Member State(s) shall be informed without delay of such action with its adequate justification. If the problems necessitating such action continue to exist for more than 14 days the Member State shall inform the Commission and the other Member States accordingly and may, with the agreement of the Commission, prolong the action for further periods of up to 14 days. At the request of the Member State(s) involved or on its own initiative the Commission may suspend this action if it does not meet the requirements of paragraphs 1 and 2 or is otherwise contrary to Community law.

6. Any Member State may refer the Commission's decision under paragraph 4 or 5 to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

7. When a decision taken by a Member State in accordance with this Article limits the activity of a Community air carrier on an intra-Community route, the same conditions or limitation shall apply to all Community air carriers on the same route. When the decision involves the refusal of new or additional services, the same treatment shall be given to all requests by Community air carriers for new or additional services on that route.

8. Without prejudice to Article 8 (1) and except with the agreement of the Member State(s) involved, a Member State shall not authorize an air carrier:

(a) to establish a new service, or

(b) to increase the frequency of an existing service,

between a specific airport in its territory and another Member State for such time as an air carrier licensed by that other Member State is not permitted, on the basis of slot-allocation rules as provided for in Article 8 (2), to establish a new service or to increase frequencies on an existing service to the airport in question, pending the adoption by the Council and the coming into force of a Regulation on a code of conduct on slot allocation based on the general principle of non-discrimination on the grounds of nationality.

Article 10

1. Capacity limitations shall not apply to air services covered by this Regulation except as set out in Articles 8 and 9 and in this Article.

2. Where the application of paragraph 1 has led to serious financial damage for the scheduled air carrier(s) licensed by a Member State, the Commission shall carry out a review at the request of that Member State and, on the basis of all relevant factors, including the market situation and in particular whether a situation exists whereby the opportunities of air carriers of that Member State to effectively compete in the market are unduly affected, the financial position of the air carrier(s) concerned and the capacity utilization achieved, shall take a decision on whether the capacity for scheduled air services to and from that State should be stabilized for a limited period.

3. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

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Article 11

1. The Commission shall be assisted by an Advisory Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall advise the Commission on the application of Articles 9 and 10.
3. Furthermore, the Committee may be consulted by the Commission on any other question concerning the application of this Regulation.
4. The Committee shall draw up its rules of procedure.

Article 12

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.
2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned require the information to be applied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

Article 13

The Commission shall publish a report on the application of this Regulation by 1 April 1994 and periodically thereafter.

Article 14

1. Member States and the Commission shall cooperate in implementing this Regulation.
2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 15

Regulation (EEC) No 2343/90 and 294/91 are hereby replaced with the exceptions of Article 2 (e) (ii) and of Annex I to Regulation (EEC) No 2343/90, as interpreted by Annex II to this Regulation, and Article 2 (b) of and the Annex to Regulation (EEC) No 294/91.

Article 16

This Regulation shall enter into force on 1 January 1993.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 July 1992

For the Council

The President

J. COPE

X STANDARD CONTRACT FOR SCHEDULED AIR SERVICES

In conformity with Regulation no 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation section 1 no 4, Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes, Article 4, and with reference to Regulation No 256 of 15 April 1994 on tender procedures in connection with Public Service Obligations to implement Council Regulation (EEC) No 2408/92, Article 4, the following contract is entered into between (the Operator) and the Ministry of Transport and Communications concerning operation of the routes/route networks specified in the contract.

1 Routes/route network

1.1 This contract applies to the following route(s):

2 Requirements as to operation

2.1 This contract grants the Operator the exclusive right and obligation to operate routes/route networks within the contract period in accordance with specifications stated in the Operator's tender which forms part of this contract.

2.2 Operation shall be carried out in accordance with the Aviation Act with appurtenant regulations and with other legislation in force.

2.3 In accordance with the prior invitation to tender, the following shall in annex 3 to this contract be specified for the individual route:

- 1) Traffic programme/route structure
 - a) days of the week on which the service obligations apply
 - b) number of round trips per day on specified route
 - c) number of stops en route/aircraft seating capacity in the tender area
 - d) production measured in seat-kilometres/tonne-kilometres

- 2) Fares
 - structure, level, terms, discounts

- 3) Aircraft type
 - size, comfort

- 4) Requirements as to service

- 5) Reservation, sales, handling:

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- if appropriate, use of CRS, travel agent/agent, commissions, handling partner

6) Special requirements as to safety/aircraft/environment in accordance with Regulation on tender procedures in connection with public service obligations, section 8 litera c).

2.4 The Operator is responsible at all times for fulfilment of the service programme set out in the tender and specified in the annex as mentioned in point 2.3 above.

The Operator is accordingly obliged on his own account to obtain replacement aircraft and/or replacement personnel in case of disruption of operations.

In case of significant deviations from the agreed air service arrangement, the Operator shall immediately inform the Ministry of Transport and Communications giving a written account of the cause. The Operator shall also give information on the measures taken. The Ministry of Transport and Communications may impose such measures on the Operator as are deemed necessary for fulfilment of the service arrangement, and in that event take such measures on the Operator's account and risk.

3 Compensation, risk-sharing, payment of charges etc.

3.1 The Operator is entitled to compensation from the Ministry of Transport and Communications for the following route(s):

.....

The compensation amounts to:

- For the entire contract period _____ NOK

The Ministry of Transport and Communications shall transfer the periodical amounts monthly on a pro rata basis.

The price adjustments of the tender budget for the second and third operating year shall be carried out in accordance with chapter III, section 7 of the invitation to tender.

A reservation is made to the effect that the Storting (the Norwegian Parliament) through its annual budget deliberations makes the necessary funds available to the Ministry of Transport and Communications to cover the compensation mentioned.

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- 3.2 The Operator shall retain all revenues generated by the service. Should the revenues be larger, or the expenditure smaller, than the calculated level on which the tender is based, the Operator may retain the balance. The Ministry of Transport and Communications is not obliged to reimburse any result poorer than that indicated by the calculations.
- 3.3 All public charges, including aviation charges, are payable by the Operator.

In the case of substantial changes in the level of aviation charges, the Operator may demand re-negotiation in accordance with the conditions of point 6.

4 Right of inspection etc. for the Ministry of Transport and Communications

- 4.1 As early as possible, and not later than, the Operator shall on its own initiative send the Ministry of Transport and Communications audited accounts for its total activity the preceding year (annual report).
- 4.2 The Operator shall 6 times each year send a report to the Ministry of Transport and Communications which shall include information on:
1. Accounts for the tender operations
 2. Disruptions of operation, causes of such
 3. Punctuality (within 15 min of scheduled departure time)
 4. Regularity (share of flights cancelled, causes of such)
 5. Traffic information (number of passengers, passenger revenues, share of C-class passengers, share of passengers in transfer to/from other air routes, freight and post revenues)
 6. Actual production for the route(s) in question (seat- and tonne-kilometres, number of landings, number of flying hours and passenger load factor)

The reports shall be submitted to the Ministry of Transport and Communications within six weeks after the end of the reporting period.

For the tender operations, accounts and deviations shall be reported with relation to the tender budget.

The Operator shall inform the Ministry of Transport and Communications if substantial deviations arise between the traffic volume on which the tender was based and the actual traffic volume.

- 4.3 Traffic information obtained according to 4.2, 1 paragraph no 5., may be published, e.g. in connection with publication of documentation concerning tender for air services.

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Even if this traffic information should be subject to duty of secrecy, c.f. Freedom of Information Act section 5a, c.f. Public Administration Act section 13, 1 paragraph no 2, the duty of secrecy will not prevent the publication of the traffic information if this can fulfil the purpose for which it is given or collected, c.f. section 13 b, 1 paragraph no 2.

- 4.4 The Ministry of Transport and Communications may, in accordance with the Regulation on the tender procedures in connection with public service obligations, section 13, demand supplementary or amplifying information at any point in time within the contract period.
- 4.5 If the Operator fails to comply with the requirement to report through either insufficient reporting or not meeting the deadline for reporting, c.f. point 4.1 and 4.2, the Ministry of Transport and Communications reserves the right to retain compensation.

5 Duration

- 5.1 This contract applies to the period 1 February 2002 – 31 March 2003. The contract may be terminated by the Operator only at the end of a 12-month period of notice.

6 Re-negotiation

- 6.1 If, in the contract period, substantial and unforeseeable changes occur in the assumptions underlying this contract, either party may demand negotiations on revision of the contract. Such a demand for revision must be presented one month after the change occurs at the latest. The right to demand negotiations does not entail restrictions in the right to apply sanctions in case of breach of contract pursuant to point 7 or general rules of contract law.
- 6.2 If the Ministry of Transport and Communications presumes that demands for re-negotiation would be ineffective, the Ministry may decide instead to put the route up for tender anew in accordance with section 4 of Regulation on tender procedures in connection with public service obligations.

7 Breach of contract/cancellation

- 7.1 In the event of substantial breach of the contract, it may be cancelled with immediate effect by the other party.
- 7.2 Subject to the restrictions following from insolvency law, the Ministry of Transport and Communications may cancel the contract with immediate effect if the Operator becomes insolvent, initiates debt settlement proceedings or goes bankrupt. Equally the Ministry of Transport and Communications may cancel the contract in the other cases dealt with in

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section 12 of Regulation on tender procedures in connection with public service obligations.

- 7.3 If the Operator owing to force majeure or other factors outside his control has been unable to comply with the public service obligations as stated in the contract for more than 4 of the 6 last months, the contract may be cancelled at one month's written notice.
- 7.4 The Ministry of Transport and Communications may cancel the contract with immediate effect if the Operator has its licence revoked or it is not renewed.
- 7.5 The Ministry of Transport and Communications is entitled to suspend the contract if the Operator fails to comply with his reporting duty or obstructs inspection pursuant to point 4, provided he has received written notice with a time-limit of a minimum of two weeks to rectify the situation. Such suspension may remain in effect until the situation is rectified.

Equally the Ministry of Transport and Communications may suspend the contract if the Operator's aircraft is/are involved in an accident or incident involving possible loss of life. Suspension pursuant to this provision may remain in effect until the question of criminal negligence has been clarified.

Suspension does not entail restrictions of the right to apply sanctions in case of breach of contract.

8 Disputes

- 8.1 In the event of disagreement concerning the understanding of the contract, a resolution shall be sought through negotiation. If negotiation is unsuccessful, either party may refer the matter to the ordinary courts of law for decision, unless the parties agree to resolve the matter by arbitration.

Oslo City Court is the venue for all disputes arising in connection with this contract unless the parties agree otherwise.

9 Issue of contract

- 9.1 This contract is drawn up in two (2) original copies of which the Ministry of Transport and Communications retains one and the Operator the other.

10 Annexes

The following are appended to the contract:

1. The invitation to tender 'Scheduled Air Services Røst – Bodø v. 1 February 2002 – 31 March 2003'.

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2. The Operator's tender with a standard calculation sheet (tender budget)
3. Specification of service programme, see 2.3.
4. The Ministry of Transport and Communications' Circular N-8/97 regarding procedures in connection with traffic programmes and fares for scheduled air services in Norway.

XI RULES FOR PUBLIC ACQUISITION – REQUIREMENTS REGARDING PRESENTATION OF TAX CERTIFICATE

Ministry of Trade and Industry

**Circular K-2/95
28.10.1995**

Short summary

State contracting entities are today in circular K-2/95 of 28 July 1995, which entered into force 1 October 1995, instructed to require tax certificates. Through this circular all state contracting entities are instructed to demand the tax certificate not later than at the deposit of a tender, or not later than at the conclusion of a contract in case of negotiated procedure.

In the case of a tax certificate showing arrears, this information shall be included in the overall judgement of the suppliers' economic and financial position and ability. Whether the tender shall be rejected or not shall thus be based on a concrete overall judgement. The main rule, however, is that the suppliers should be rejected when having tax arrears.

For further information, please contact:

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XII PROCEDURES IN CONNECTION WITH TRAFFIC PROGRAMMES AND FARES FOR SCHEDULED AIR SERVICES IN NORWAY

Ministry of Transport and Communications

Circular N-8/97

Department of Air and Rail Transport

29.10.1997

Recipients: The Civil Aviation Administration, county municipal administrations' transport offices and departments, and air carriers.

This circular replaces circulares N-2/92 and N-2/94 which no longer apply to scheduled air services in Norway. Circular N-2/92 *Procedures in connection with approval of traffic programmes* remains effective for the Coastal Steamer (Hurtigruta). In regard to Norwegian State Railways, see Report No. 1 to the Storting (1994-95) *Changed guidelines for approval of Norwegian State Railways' traffic programmes*, page 180.

The first main section of Circular N-8/97, Tender Routes, applies to domestic traffic programmes and fares on routes subject to public service obligations (PSO), where the carrier/carriers operate the route(s) pursuant to a tender contract with the State.

The second main section of Circular N-8/97, Other Routes, applies to domestic traffic programmes and fares on the remaining route network where free competition applies.

TENDER ROUTES

1 The carrier's responsibility for implementing a consultation process in connection with its traffic programme(s)

On routes subject to PSO/tender, consultative bodies may submit to the carrier their comments, in order of priority, on the following:

- 1) *The carrier's compliance with PSO set out in the invitation to tender*
- 2) *The carrier's co-ordination of routes/timetables in relation to other public means of transport*
- 3) *Services over and above PSO and/or tender which the carrier may provide on a commercial basis*

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1.1 *Traffic programmes*

- a) Proposals for traffic programmes shall be circulated to the relevant bodies contained in the list of addresses under *Tender Routes* section II *Consultative bodies for traffic programmes*, with a copy going to the Ministry of Transport and Communications.
- b) Proposals for summer and winter traffic programmes shall be circulated to the relevant consultative bodies by 15 October and 15 May respectively at the latest. The consultative bodies shall send their comments to the carrier by 1 December for the summer routes and 1 July for the winter routes.
- c) The midsummer programme, where appropriate adjusted to PSO set out in the invitation to tender, shall be incorporated in the summer traffic programme.
- d) The carrier shall send the Ministry of Transport and Communications the final traffic programme with a copy of all submissions giving reasons in writing for whether and why the submissions of the consultative bodies in regard to 1), 2) and 3) on page 1 were or were not taken into account in the final traffic programme proposal.
- e) The final traffic programme proposal shall be sent to the Ministry of Transport and Communications by 1 August at the latest for winter routes and by 1 January at the latest for summer routes.
- f) If the final traffic programme proposal contains changes in relation to the original proposal which for example entail negative consequences for the passengers, are not in accordance with PSO, or affect the Norwegian Air Traffic and Airport Management's (NATAM) published airport opening times, the carrier shall co-ordinate such matters with the consultative bodies in accordance with section II *Consultative bodies for traffic programmes*, before the final traffic programme proposal is transmitted to the Ministry of Transport and Communications.
- g) Approval from the Ministry of Transport and Communications must have been sent no later than 45 days before the traffic programme becomes operative.
- h) The carrier is responsible for sending identically-worded letters to the consultative bodies immediately after the traffic programme has been considered by the Ministry of Transport and Communications. The letter shall give an account of the final traffic programme, and the final traffic programme shall be enclosed.

1.2 *Changes to approved air traffic programmes*

- a) Minor changes to an approved traffic programme without direct consequences for the market need not be circulated for comment. Changes of some scope which may have an effect on the market, c.f. I.I f), shall be sent to affected consultative bodies for comment with a copy going to the Ministry of Transport and Communications. The

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consultative bodies shall have at least three weeks in which to reply as from the date on which they receive the proposed changes. Replies shall be sent to the carrier.

- b) The carrier shall send the Ministry of Transport and Communications the final proposal for changes with a copy of all submissions giving reasons in writing for whether and why the submissions of the consultative bodies were or were not taken into account in the final proposal for changes. The Ministry of Transport and Communications shall complete its consideration of the proposed changes and reply to the carrier as quickly as possible.
- c) The carrier is responsible for sending identically-worded letters to the consultative bodies immediately after the changes have been considered by the Ministry of Transport and Communications. The letter shall give an account of the changes, and the traffic programme/changes shall be enclosed.

1.3 *Route changes in connections with public holidays*

- a) The carrier shall send proposed route changes to the NATAM's affected regional units no later than six weeks before the proposed change is due to become effective.
- b) The NATAM's affected regional units shall send their submissions to the carrier no later than three weeks after receiving the proposed changes.
- c) Changes accepted by the NATAM's affected regional units may be implemented without further formality.
- d) If acceptance as mentioned in c) is not forthcoming, the carrier shall send its route proposal, including submissions, to the Ministry of Transport and Communications for consideration.
- e) When a decision is taken with reference to c) or d), the carrier shall itself ensure that approved route changes are announced immediately.

2 *Consultative bodies for traffic programmes*

- a) The NATAM shall always be consulted on proposals for traffic programmes or changes to traffic programmes. Proposals shall be sent both to the NATAM's main office and its affected regional units.
- b) In addition, affected county municipalities / municipalities shall have an opportunity to express their views within the time-limits set out in this circular. Relevant material shall in such case be sent to all affected county municipalities in the person of the chief communications officer.
- c) The carrier must itself take care of necessary co-ordination with Norway Post and the National Defence.

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3 Reporting of fares

- a) Fares may be adjusted at the start of each new year of operation in accordance with the tender.
- b) Fares adjusted in accordance with a), any discounts or new, lower fares shall be sent to the Ministry of Transport and Communications for its information prior to implementation.

4 Formulation of new tenders

- a) The Ministry of Transport and Communications is the designated recipient for initiatives from consultative bodies during the preparation of PSO for new tenders.

OTHER ROUTES

1 Information on traffic programmes

- a) For other domestic routes the carriers shall submit a traffic programme(s) for each summer/winter period 30 days prior to commencement. The same applies where a carrier intends to start up or close down a specific route in the programme period. Traffic programmes shall be submitted directly to the NATAM's main office and its affected regional units with a copy going to the Ministry of Transport and Communications.
- b) Traffic programmes and adjustments to the same during the programme period shall be co-ordinated with the NATAM's affected regional units.
- c) Carriers will receive confirmation from the NATAM's main office that documents in accordance with a) have been received. Unless the carriers are advised to the contrary, their traffic programmes may be put into operation without further formality.

2 Reporting of prices

- a) The Competition Authority is responsible for enforcing Council Regulation (EEC) 2409/92 of 23 July 1992 on Fares and Rates for Air Services. Prices shall be reported in accordance with the Competition Authority's guidelines.