



ROYAL NORWEGIAN
MINISTRY OF TRANSPORT

EFTA Surveillance Authority (ESA)
Avenue des Arts 19H
BE-1000 Brussels
Belgium

Your ref

Our ref

Date

23/2616-

26 November 2024

Overall description of the announced merger between Vygruppen AS and Flytoget AS

The Norwegian Ministry of Transport refers to the discussions in the package meeting on 25 October this year, and the invitation from ESA that the Ministry of Transport provides a brief description of the announced merger between Vygruppen AS (Vy) and Flytoget AS (Flytoget) by 22 November.

Background:

An essential framework condition for Flytoget has been its PSO contract for the airport express train service, which will expire in February 2028.¹ As explained in the letter of 28 April 2023 from the Ministry of Transport to ESA in case No 90137, the Government has decided that the infrastructure capacity that is currently used by Flytoget should from February 2028, at the latest, be used to form an integral part of the local and regional rail passenger services in the Oslo area. This decision was based on advice from the Railway Directorate. These services are part of the PSO contract Østlandet 2.

After the rail PSO contracts for the Oslo area were signed ("Østlandet 1 and 2") in June 2023, the Norwegian state started to assess potential changes to the structure of its undertakings in the rail sector, and in particular whether it would be rational to merge its two rail passenger undertakings Vy and Flytoget.

The state ownership of those two undertakings were managed by the Ministry of Transport and the Ministry of Trade and Fisheries respectively.

¹ <https://www.jernbanedirektoratet.no/avtaler/trafikkavtaler/gjeldende-trafikkavtaler/trafikkavtale-med-flytoget-as/>

Postal address
Postboks 8010 Dep
0030 Oslo
postmottak@sd.dep.no

Office address
Akersg. 59
www.sd.dep.no

Telephone
+47 22 24 90 90
Org. nr.
972 417 904

Department
Departement of
Management,
Administration and
Public Safety and
Security

Reference
Elisabeth
Guttormsen
+47 22 24 64 51

The considerations were based on the assumption that the State has freedom to organise and re-organise its undertakings under the condition that the transaction is based on conditions which would be acceptable to a private investor in a comparable situation ("the Market Investor Principle").

The main criteria for a merger decision were whether the State in the long term will achieve added value of the merger and a market-based return of its investments. From the perspective of the State as an owner, a transfer of Flytoget's shares to Vy could be regarded as a market-based disposition providing added value to the owner, and a re-structure similar to what a private investor would have done even if the two undertakings were run on a commercial basis without any exclusive rights under PSO contracts.

An external analysis from KPMG shows major synergies by a transfer of Flytoget to Vy, both in terms of increasing the values of the State assets and providing high-quality services to travellers. The external analysis serves to confirm that the transaction from the perspective of the State is rational and commercial (*Nw: "forretningsmessig"*) for the State as a profit-maximising owner.

It is a major concern from the Ministry that the merger can be done within the legal framework, in particular with regard to the State aid rules and other principles and obligations in the EEA Agreement. The established procedure for the transaction is therefore designed to ensure that the potential merger is in line with relevant legislation, in particular with regard to avoiding state aid issues.

The first step related to the merger was taken when the management of the State ownership of Flytoget was transferred from NFD to SD, see press release of 25 June 2024: [Eierskapet av Flytoget blir overført til Samferdselsdepartementet - regjeringen.no](#)

Start of the procedure for merging the two undertakings

The preparation of the merger was announced on 18 September this year, see press release: [Vy og Flytoget slås sammen – Flytoget blir et datterselskap av Vy - regjeringen.no](#).

On 18 September 2024, the Ministry issued a letter to the two leaders of the executive boards of the two undertakings with a mandate to immediately initiate a procedure to prepare the merger of the two undertakings.² In addition to following the applicable legal requirements in chapter 10 of the Private Limited Companies Act,³ the Ministry stated that:

1) Flytoget should be merged into Vy as a daughter, in order to maintain its culture and competence and to share its know-how within the enlarged group.

² <https://www.regjeringen.no/contentassets/7c8f4787718d4661881abe8df1da6c77/mandat-for-sammenslaingsprosess.pdf>

³ https://lovdata.no/lov/1997-06-13-44/KAPITTEL_10-1

2) Flytoget's rolling stock should simultaneously be transferred to the state-owned company Norske tog AS, in order to be used in future PSO rail passenger services in line with other rolling stock owned by Norske tog.

Current state of the procedure

The boards of Vy and Flytoget (and Flytoget and Norske tog AS, respectively) have established working plans in order to merge the two undertakings (and transfer the rolling stock) as soon as possible and have regular meetings with the Ministry.

It can be questioned whether the transfer of Flytoget to Vy may be considered a merger subject to notification to the Norwegian Competition Authority according to section 18 of the Competition Act.⁴ Anyway, a notification has now been sent by Vy as the undertaking subject to the notification obligation. Unless the Norwegian Competition Authority decides otherwise, the merger may not be put into effect before the assessment of the notification is completed.

Further information

The Ministry stands ready to provide ESA with further information.

Yours sincerely

Tove Kristin Flølo
Director General

Elisabeth Guttormsen
Senior Adviser

This document is signed electronically and has therefore no handwritten signature

⁴ <https://lovdata.no/lov/2004-03-05-12/§18>