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INNOVATIONS AND COMPETITION IN LAND TRANSPORT

-- Note by Finland --

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More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/competitionand-innovation-in-land-transport.htm>

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-- FINLAND --

1. Introduction to Finnish transport markets

1. Transport is a major factor in the economy. Finnish households spent EUR 19 billion (Euros) on it in 2012, which is 17% of the households' consumption expenditure.

2. The transport sector has been tightly regulated and also inefficient. Any significant system-level innovations have not been created in decades. The current state of the transport sector can perhaps be compared to tele market sector in the 1970s before liberalization. The same change is now needed in the transport sector.¹

3. Transport regulation has been sectoral and based on the different modes of transport, which may have meant that an examination of the whole structure has been missing. However, in the future, the transport system is seen as an entirety consisting of interoperable services, information and infrastructure. It is created by utilizing information and digitalization in collaboration between users, the private sector and the public sector.²

4. In the future, alongside the traditional public transport, there will be new, knowledge-based mobility services as well as digital ways to share and combine the existing supply in a way that better attracts customers. The legislation should ensure that traditional public transport and new mobility services form an integrated entirety.³

5. A little further in the future the increase of traffic automation requires the processing of large masses of data and high-speed data transfer. Fully automatic vehicles must receive information on traffic signs, traffic control, and weather and road conditions through the communication system.⁴

2. Transport sectors, legislation and competition

2.1 Rail

6. The operational preconditions of rail transport are provided for in the Railway Act (304/2011)⁵, which implemented the Directive on the interoperability of the rail system within the Community (2008/57) and the Directive (2008/110) amending the Directive (2004/49) on safety on the Community's railways. The Railway Act has been amended a few times in order to ensure compliance with the EU law, lastly in 2015 when the Directive (2012/34) establishing a single European railway area was implemented.

¹ Government proposal for Transport Act, <http://www.finlex.fi/fi/esitykset/he/2016/20160161.pdf>, p. 9.

² Ibid., p. 8-9.

³ Ibid., p. 59.

⁴ Ibid., p. 59.

⁵ <http://www.finlex.fi/fi/laki/ajantasa/2011/20110304>

7. The rail transport markets are only partly liberalized in Finland. Domestic rail freight traffic has been open to competition since 1 January 2007. International rail freight is also open to competition, but because of the unique track gauge standard that Finland has its impact on competition has been very small.

8. Previously, the state-owned VR-Group Ltd had a legalized monopoly in rail transport between Finland and Russia. This was recently changed by an agreement with Russia, and rail transport will open up to competition to the extent that it takes place in the Finnish rail network in 2017.⁶ The agreement does not, however, open Russia's internal rail transport market to the undertakings situated in Finland or elsewhere in the EEA territory, nor does it open the Finnish railway market to Russian railway undertakings.

9. In passenger transport services, the VR-Group Ltd has a legal monopoly. The Ministry of Transport and Communications and the VR-Group Ltd have agreed that the VR continues to exclusively provide passenger rail service until the end of 2024.

10. However, there are plans to open up the passenger transport to competition in the near future.⁷ This would imply that the VR's exclusive right would end and other operators could enter the same markets. Since Finland is geographically a large country of low passenger traffic, it remains to be seen to what extent the benefits of competition will be achieved.

11. Finland has one special feature that relates to track gauges: they are compatible with Russia, but not with Sweden and the rest of Europe.⁸ Consequently, if an operator wants to continue transporting a shipment across the border of Finland and Sweden, the goods must be transferred to other wagons.

12. In practice, the unique track gauge standard forms an entry barrier to foreign railway companies. In most cases, market entry is not possible with their existing capacity. This has led some potential entrants to request whether the VR-Group Ltd. could rent or sell some of their locomotives, but it appears that thus far deals have not been made.

13. A separate pool of roll stocks and locomotives, which would rent them to both the VR-Group Ltd. and private operators, could lessen the entry barrier created by the unique track gauge standard and improve competition by multiplying the amount of transport operators. One big step has already been taken as vertical separation between infrastructure management and transport operation has been executed.

14. It appears that thus far technological developments have not played a substantial role in the rail sector's competition. However, the rail markets are not stagnant anymore, since the market entry of inexpensive bus services has improved price competition. As a result, the VR-Group Ltd. has been forced to significantly lower prices and review timetables. More dynamism is expected if rail passenger transport is opened to competition.

2.2 *Buses*

15. The bus service is an important form of public transport in Finland. Its share of public transport trips is almost 60% and over 80% outside the capital area.⁹ Its turnover was around EUR 1.135 billion in

⁶ New undertakings are already entering to the markets regarding rail transport between Finland and Russia. See more: <http://www.nurminenlogistics.com/News/Releases/Cision/Nurminen-Logistics-and-Russian-Rutranscom-to-establish-a-company/>

⁷ <http://www.lvm.fi/-/vr-n-velvoiteliiikennetta-lisataan-junaliikenteen-kilpailun-avaamiseen-saakka>

⁸ The rail width of the Finnish rail network is 1524 mm, which differs from the rail width of 1435 mm in use in most parts of Europe.

2014.¹⁰ The small and medium-sized enterprises are characteristic to it, and a typical Finnish bus company owns not more than five buses (more than 40% of the Finnish Bus and Coach Association member companies).¹¹

16. The operational preconditions of bus transport are regulated in the national Public Transport Act (869/2009)¹² and in the EU Regulation on public passenger transport services (2007/1370). The provision of professional passenger transport services in return for payment is subject to a public transport licence. Licensed passenger transport by bus or coach is regulated by the Public Transport Act (869/2009).

17. The Public Transport Act and the EU Regulation on public passenger transport services entered into force at the end of 2009. The Public Transport Act introduced a transitional period of ten years, during which the organization of transport shall be gradually adapted to the new act and opened up to competition. The old licenses for route traffic were changed into public service contracts for the transitional period. These licenses will gradually expire between 2014 and 2019. The extent to which public authorities may intervene in the markets to guarantee the quantity and quality of public transport services is laid down in the EU Regulation on public passenger transport services.¹³

18. Under the Public Transport Act, the competent authorities are responsible for organizing public transport. The competent authorities comprise nine Centres for Economic Development, Transport and the Environment (ELY Centres) and 26 municipal authorities. The competent authorities define the service level of public transport in their own area and decide how the transport services should be organized. The transport services can be market-based or put out to tender as laid down in the EU Regulation on public passenger transport services.¹⁴

19. Transport shall be put out to tender in accordance with the legislation on procurement and public transport if a sufficient level of service is not reached in the market-based services and public grants are used for the transport services. The competent authorities may decide independently what ticketing and charging system they want to use for public transport in their area and they also determine the ticket prices.¹⁵

20. A public transport or route traffic licence granted by the competent authorities is required for market-based transport operations. In market-based transport, the transport operator may independently determine the ticket prices.¹⁶

21. Today long-distance bus services are market-based, whereas the cities' internal bus services are put out to tender at the route level. It has been criticized that bus services provided within the framework of the Regulation on public passenger transport services have partly distorted the markets. In practice, the authorities have intervened in the markets, even though a market-based service could have been a viable option.

⁹ <http://www.linja-autoliitto.fi/fi/tietoa-alasta/bussijarjestelma/>

¹⁰ Tilastokeskus.fi: Yritysten rakenne- ja tilinpäätöstilasto, Linja-autoliikenne 2014.

¹¹ <http://www.linja-autoliitto.fi/fi/tietoa-alasta/tietoa-linja-autoalasta/>

¹² <http://www.finlex.fi/fi/laki/ajantasa/2009/20090869>

¹³ <http://www.liikennevirasto.fi/web/en/transport-system/public-transport#.WA8atk27o-U>

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

22. The market-based passenger transport is undergoing a change. The change began in long-distance services, where a new market entrant¹⁷ brought a dynamic pricing model familiar from air traffic to buses. The impacts of the new market entrant and its new business model have been significant. As a result, competition for passengers has spread to rail and air passenger markets.

2.2.1 *Alleged cartel regarding bus companies*

23. In the beginning of 2016, the Finnish Competition and Consumer Authority (FCCA) presented the Market Court with a proposal¹⁸ for a EUR 38 million penalty concerning seven of the sector's major bus companies, the Finnish Bus and Coach Association and Matkahuolto¹⁹. The FCCA has also ordered Matkahuolto to stop anticompetitive actions that are forcing bus companies out of business. The case is pending in the Market Court and the decision is expected in 2017.

24. The FCCA's investigations suggest that major bus companies appear to have formed a cartel. This began no later than autumn 2008 and is still continuing to some extent. The matter was raised due to a legal amendment that came into effect on 3 December 2009 with the purpose of opening the bus market up for competition. Key players joined forces to prevent the markets from opening up and to keep out new competitors.

25. In practice, the parties agreed within the Finnish Bus and Coach Association in restricting competition against each other, and prevented competitors from accessing Matkahuolto's travel and parcel services. The FCCA considers this a serious breach of the Finnish Competition Act and EU competition rules.

26. Transport companies affected by the cartel suffered because consumers were unable to find competitive routes within Matkahuolto's timetable or station services, or to buy tickets for them at the Matkahuolto service points. Another problem for competitors lay in being denied access to the Matkahuolto parcel services, which in certain routes are essential to running a profitable business.

2.3 *Road freight transport*

27. The road freight transport is regulated by the EU Regulation (1071/2009), EU Regulation (1072/2009) and national law (Act on Commercial Freight Transports on the Road 693/2006²⁰). The freight transport of goods on the road against payment requires license. It appears that competition has been workable; competition restrictions have not been detected.

2.4 *Taxis*

28. The Taxi Act (217/2007)²¹, the Government Decree of Maximum Prices and the Act on the Professional Competence of Taxi Drivers (695/2009)²² heavily regulate the price, quantity and quality of the Finnish taxi market. There is an annually defined price ceiling by the Government and maximum

¹⁷ <http://www.onnibus.com/en/index.htm>

¹⁸ <http://www.kkv.fi/globalassets/kkv-suomi/ratkaisut-aloitteet-lausunnot/ratkaisut/kilpailuasiat/2016/esitykset-markkinaoikeudelle/r-2011-00-0192.pdf>

¹⁹ Matkahuolto is the service and marketing company of bus transport. It maintains a nationwide network of bus stations, timetable information and ticket sales system. Matkahuolto is owned by the Finnish Bus and Coach Association and its eight regional associations.

²⁰ <http://www.finlex.fi/fi/laki/ajantasa/2006/20060693>

²¹ <http://www.finlex.fi/fi/laki/ajantasa/2007/20070217>

²² <http://www.finlex.fi/fi/laki/alkup/2009/20090695>

quotas per municipality defined by the ELY Centers restricting market entry and price competition. As a result, competition has been weak in the taxi market. Uber is legal provided that a driver has a taxi license; the Helsinki Court of Appeal²³ has recently confirmed that without a taxi license it is illegal.

2.4.1 *Alleged exclusion of dispatch applications*

29. The Finnish Taxi Owners Federation has introduced its own dispatching application ‘Valopilkku’ to be utilized by the regional taxi centers. This in conjunction with the fact that at least some of the regional dispatching centers (40 regional companies in Finland) have presumably introduced exclusivity contracts to the drivers accessing their services. Allegations have emerged that they aim to deter new rival applications such as Uber and Taxify from penetrating the market. The FCCA has initiated *ex officio* investigations. The case is pending and it is still premature to state conclusions of alleged abuse of dominance and/or prohibited horizontal actions.

2.5 *Driverless cars*

30. The legislation regarding driverless cars testing is up to date in Finland. The current road traffic legislation already permits automated vehicle trials – no amendments will be required. An enterprise, agency or other organization engaged in research on automated vehicles may apply to Finnish Transport Safety Agency Trafi for a test plate certificate. The certificate entitles the bearer to drive vehicles unregistered or decommissioned in Finland, to a limited extent and on a temporary basis, both in road traffic and off-road. Such a vehicle must have test plates and be covered by a valid test plate insurance policy.²⁴

31. Self-driving minibuses have been tested in real traffic in Helsinki. The project is part of Helsinki’s plan to make car ownership obsolete through point-to-point mobility on-demand systems within a decade.²⁵ The system will allow people to use integrated mobile apps to book and pay for any trip by bus, train, taxi, bicycle and car sharing.²⁶

3. **Government proposal for new Transport Code**

32. Transport regulation is under review in Finland and the government proposal for the new Transport Code has been published.²⁷ Legal provisions on the transport market will be brought together under one act, the Transport Code. It will cover all transport modes. Due to its wide-ranging contents, the Transport Code project will be carried out in three phases. In the first phase, the focus has been on road transport, where the need for changes is most significant.

33. The reform aims to support new service models and better respond to the needs of transport users. The Transport Code will make market access easier and promote the interoperability of the different parts of the transport system. For example, passenger, freight and mail transport could be connected by utilizing digitalization. This would lead to significant savings.

²³ https://oikeus.fi/hovioikeudet/helsinginhovioikeus/material/attachments/oikeus_hovioikeudet_helsinginhovioikeus/tiedotteet2014/2016/CqvscnmXJ/Tiedote_R_16-1141_ja_1175.pdf

²⁴ http://www.trafi.fi/filebank/a/1432558916/9d340636ef186b9156af4384d09e3d0a/17598-Koenumerotodistuksen_hakeminen_eng.pdf

²⁵ <https://www.theguardian.com/cities/2014/jul/10/helsinki-shared-public-transport-plan-car-ownership-pointless>

²⁶ <http://money.cnn.com/2016/08/18/technology/self-driving-bus-helsinki-finland/>

²⁷ <http://www.finlex.fi/fi/esitykset/he/2016/20160161.pdf>

34. The Transport Code will build a growth environment for digital business. The transport sector will remove obstacles to the development of new services that utilize digitalization and pave the way for the Mobility as a Service (MaaS) concept. Mobility as a Service implies that the whole transport system is user and service-oriented.

35. The Transport Code will promote the introduction of interoperable digital ticket and payment systems by ensuring open information and payment interfaces. Interoperable information is essential for the use of transport services. Therefore, service providers are obligated to open the relevant data in machine-readable form via an open interface. In practice, it means access to a ticketing and payment system interface.

36. The aim is to enable users to travel the entire travel chain on a single ticket, which means demonstrating the right to travel, for example, by a smart phone. This aim requires that tickets and the right to travel should be stored in the background system and not in the physical travel cards.

37. The proposal will bring about essential changes in the taxi system. The Transport Code facilitates entering the taxi sector. As taxi quotas would be given up, any operator that fulfils the conditions for a licence laid down in the Act could offer taxi services in future. A taxi licence would be operator-specific, and drivers would also need a taxi driver licence. After the reform, a taxi could also remain waiting for passengers outside its registered zone of operation, and taxis from other localities can come and help when demand is high in another locality. The regulation of taxi price ceilings would be discontinued and the markets would determine the prices in the future. Maximum prices could be determined if prices begin to rise unreasonably.

38. The proposal will also bring changes to licenses. In the passenger transport, the requirement of a separate national route traffic licence would be removed from public transport operators. However, the operator would have to inform of the commencement, changes and termination of service that is provided on a regular basis for at least 60 days in advance. Moreover, the compulsory entrepreneurial training requirement will be removed.

39. The total mass threshold of a freight-related licence for vehicles or vehicle combinations will be raised from two tonnes to 3.5 tonnes. This will have an effect on transport driven by vans. A passenger or freight transport license will not be required for the tractors with a maximum authorized speed not exceeding 60 kilometers per hour.

40. The first phase legislative proposals were submitted to the Parliament on 22 September 2016. The Transport Code would enter into force on 1 July 2018. This will allow current operators in the sector enough time to adapt their operations to comply with the new legislation.

41. The Ministry of Transport and Communications has started preparations for the second phase of the reform, in which provisions on air, sea and rail transport markets as well as on transportation services will be included in the Code. The new provisions are to be consistent and in line with the road transport provisions included in the Code in its first phase. The regulation on professional qualifications in the transport sector is also among the subjects to be covered in the reform.

42. The FCCA has supported and promoted the reform of transport legislation.²⁸ The current legislation regulating passenger transport has restricted competition and categorized different transport modes. As a result, the interoperability of the different parts of the transport system has been modest. In

²⁸

<https://www.lvm.fi/lvm-site62-mahti-portlet/download?did=204892>

particular, the FCCA supports the introduction of an open information interface and interoperable digital ticket and payment systems, which can lead to new service models in the near future.

4. Conclusion

43. The transport regulation is changing and the trend appears to be liberalization. Previously, regulation has prevented market entries, and the competition process has not been effective. Consequently, there have been few innovations. However, the government proposal for the new Transport Code opens transport markets up to competition and enables new digital services. Moreover, it is possible that rail passenger transport will be opened up to competition in the near future. It is expected that liberalization creates conditions where new innovations can be created in the future.²⁹ Finally, there appears to be a change at the system level: the private sector will primarily be responsible for providing transport services, and public services are offered when private services are insufficient.

²⁹ New innovative transport services have recently been introduced: see <http://whimapp.com/> and <http://tuup.fi/en/>.