

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Cancels & replaces the same document of 22 November 2016

Working Party No. 2 on Competition and Regulation

INNOVATIONS AND COMPETITION IN LAND TRANSPORT

-- Summaries of Contributions --

28 November 2016

This document contains summaries of contributions received for the discussion on Innovations and Competition in Land Transport (62nd Meeting of Working Part No. 2 on Competition and Regulation on 28 November 2016).

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

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JT03405933

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INNOVATIONS AND COMPETITION IN LAND TRANSPORT

-- *Summaries of Contributions* --

This document contains summaries of the various written contributions received for the discussion on Innovations and Competition in Land Transport (62nd Meeting of Working Party No. 2 on Competition and Regulation on 28 November 2016). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

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BRAZIL

Over the past few years, ridesharing has become an important trend in the field of land transportation in urban areas. The debate on ridesharing platforms in Brazil has been centered in the taxi drivers and taxi associations' argument that online platforms cause unfair competition by opening the market to unlicensed drivers. CADE's Department of Economic Studies released two studies in 2015 which analyzed the effects of disruptive innovations on the individual transportation market.

Regulation is based on the need to address market failures, such as those arising from monopolies and asymmetry of information. Such failures have a direct impact on social welfare. Innovation has the potential to fix market failures and address regulatory concerns in several markets: when a disruptive innovator enters the market, it can break monopolies, provide more even information and match supply and demand more efficiently.

Legal frameworks that tend to restrict innovative services must be submitted to an in-depth analysis and a transparent debate between public authorities, consumers and economic agents. Given the wide set of considerations that go beyond competition matters when assessing the individual transport public policies, the best alternative to accommodate the different concerns at stake is to strengthen the ties between competition authorities, and legislative and regulatory bodies in order to provide a transparent regulatory framework that successfully equates competition concerns and other public interest goals. In this situation, the role of the competition authority is that of advocacy before civil society, government and legislators in order to promote awareness about the benefits of competition in the sector. The competition authority may also engage in advocacy efforts with regulatory agencies in order to assess the need for regulation in the market.

DENMARK*

A wide range of investments in rail infrastructure are currently forecast to take place in Denmark. The goal is to increase the efficiency of the passenger railway in Denmark, while quality with regard to travel time, punctuality and passenger satisfaction is maintained. Overall, there are different ways to try to achieve this. One way could be to try to make the incumbent more efficient through regulation. Another way is to try to achieve more efficiency through competition. And a third way could be a combination of these two possibilities.

When considering the level of competition in the rail sector, there are a number of questions that must be taken into account and are currently being considered – what is the appropriate split between central and local authorities in planning, coordinating, tendering and regulating tariffs and rail services? How should infrastructure and stock be owned and used? What type of contracts should be adopted, and what is the optimal number of contracts? Should there be competition for the market or in the market? What is the role of the rail with vehicle?

The regulation of the commercial road transportation sector has been discussed in Denmark for years. There is a need to simplify and modernise sector regulation along the lines of the reform of bus services and freight services regulation pursued in Denmark in the past decades. There are different models of deregulating the market, which leave more or less room for new and innovative measures. In Denmark the main priorities are that the regulation ensures service availability in the entire country and protects consumer rights. A number of potential options are currently being considered.

FRANCE*

A number of regulatory innovations have been adopted in the land transport sector by the French incumbent, in part to address market developments. These innovations go hand in hand with decisions and advisory reports issued by the Autorité de la Concurrence (“AdC”).

Regarding transportation by bus, the AdC has pursued of its own initiative a sectoral enquiry, which has led to the identification of measures able to remove entry barriers and the issuance of a number of recommendations to open the market for bus transport and offer to consumers the benefit of greater economies and new products. A number of recommendations were incorporated into Loi n° 2015 990 of 6 August 2015 (“Law CAEC”) – including the liberalization of inter-urban transport, the creation of an intermodal regulator for inter-urban transport, and rules regarding slots in transport hubs – leading to a substantial change in the regulation of bus transport in France. Since the law was adopted, the number of bus passengers, the amount of routes offered and employment numbers in the sector increased significantly.

A second sector to which the AdC has devoted its attention is heavily regulated transport services subject to disruptive innovation, such as passenger services provided by taxis and other private drivers. The AdC has proposed that all services involving individual passenger transport be subject to the same rules, and prepared numerous recommendations with a view to opening competition in this sector. It has also been suggested that data must be collected to ensure that regulations keep pace with developments in individual passenger transport. Lastly, the AdC has commented on a number of legislative proposals regarding these services and the qualifications of its providers.

A third area of concern regarding land transport concerns the opening of rail to competition. The AdC has issued numerous recommendations with a view to ensure that the structure of the rail sector is efficient and allows for the investments necessary for the development and maintenance of rail services while maximizing benefits for consumers. These recommendations have broadly focused on ensuring the autonomy of the undertaking responsible for the management of the rail network and infrastructure, the creation of safeguards regarding the impartiality of the holding society of the railway incumbent, and the reinforcement of the sectoral regulator. The AdC has also pursued enforcement activities regarding strategic immaterial infrastructures, such as the IT systems necessary for reserving and purchasing railway tickets. Consequently, the AdC imposed a fine on the incumbent for granting preferential access to its companies when accessing its ticket reservation interface and obtained commitments that ensure non-discriminatory access to this essential infrastructure by third parties.

FINLAND

The transport sector in Finland has traditionally been tightly regulated and inefficient. Significant system-level innovations have not been created in decades. 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. Regulation has prevented market entry, and the competition process has not been effective. Consequently, there have been few innovations.

In the future it is foreseen that the transport system will consist of interoperable services, information and infrastructure created by utilizing information and digitalization in collaboration between users, the private sector and the public sector. Alongside 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. Legislation should ensure that traditional public transport and new mobility services form an integrated entirety.

Transport regulation is changing and the trend appears to be for liberalization. Thus far, technological developments have not played a substantial role in the rail sector's competition. However, rail markets are not stagnant anymore, since the market entry of inexpensive bus services has improved price competition. These bus services follow legislation opening bus transport to competition

The government proposal for the new Transport Code opens transport markets up to competition and enables new digital services. The Transport Code will promote the introduction of interoperable digital ticket and payment systems by ensuring open information and payment interfaces. 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.

ITALY*

In 2014, Italy adopted legislation fully liberalising the Italian sector for long-haul bus transport services connecting more than two regions. The new framework allows for competition among ex-ante authorized players in any route connecting at least three regions by moving from a system based on exclusive concessions to an authorization regime whereby a license is granted if all the requirements set out in the law are met.

Liberalization has boosted the offer of long-haul bus transport services and facilitated the development of innovative services. The process has resulted in an increase in the number and frequency of routes, the entry of new companies into the market, the provision of new ancillary services improving quality and customer experience, and the creation of new services such as meta-search engines.

In this new context, intermodal competition with rail services is taking off as new bus transport services are developing on many routes covered by long haul rail services. Rail companies sector are also exploring the opportunities provided by liberalization by launching bus services. As in other jurisdictions, car-pooling and bus sharing services are growing as alternative road transport services in areas where rail and coach connections are absent or fares expensive. It can be expected that these services, at least for the medium distance services segment, might boost intermodal competition pressure on other transport services.

The emergence of new players with innovative business models tends to spur increased static and dynamic competition, posing challenges to incumbents, as well as to legislative and regulatory bodies trying to keep pace with rapidly evolving businesses. The Authority's advocacy efforts show how it can play an important role in promoting regulations that achieve public policy objectives and goals in a way that minimises impact on competition.

RUSSIAN FEDERATION

Railways in Russia present a crucial and in some cases even the only means of transport for passengers and cargo. In the period between January and July 2016, the freight turnover by rail transport amounted to 2 928.7 billion ton-kilometers, accounting for 45.7% of the total volume of freight in Russia. Over the same period, passenger turnover by railway amounted to 70 billion passenger-kilometers (27.6% of all passenger transport).

The regulation of competition and innovation in the railway sector in Russia takes place mainly at the governmental level (e.g. the 2001 paper, amended in 2009, "On Structural Reform Program for Railway Transport"). One of this Program's goals was the development of a competitive sector in the field of rail transport, including the creation of commercial companies.

The reforms to enhance competition in the Russian railroads were started long ago with Resolution No. 585 of 18 September 2003 "On Creation of Open Joint Stock Company "Russian Railways" (JSC "RZD"), through which the federal executive authority in the field of railway transport (the Ministry of Communication Lines of the Russian Federation) was abolished. The reform has allowed the division of the activities of JSC "Russian Railways" into suburban passenger transportation and long-distance passenger transportation. It also led to the organisational and legal separation out of the JSC "RZD" of enterprises on rolling-stock repair, the production of spare parts, as well as some other non-core activities.

The principles of competition in railway transport in the Russian Federation include the vertical separation of infrastructure management and transport operations, as well as horizontal competition between interspecific and potentially competitive markets (e.g. the route Moscow - Saint-Petersburg). Further priorities for the development of rail transport based on governmental plans include improving the technological model of freight carriages, increasing the productivity of freight carriages and reducing empty runs, and developing competition in the passenger transportation sphere.

In the beginning of the present decade, liberalisation of the freight transportation market took place in Russia with the transfer of ownership of carriages that before had belonged to JSC "RZD". Currently, 1 700 freight operating companies conduct their activities in Russia. In passenger transportation, intra- and interspecific types of competition have started developing during the recent years.

SINGAPORE

The Competition Commission of Singapore (“CCS”) administers and enforces the Competition Act (“the Act”) in Singapore. One of the key functions of CCS is to maintain and enhance efficient market conduct and promote overall productivity, innovation and the competitiveness of markets in Singapore. One such market where CCS had helped to promote innovation and competition is the road transport industry.

In late 2013, third-party taxi booking apps began to appear in Singapore. CCS viewed these apps as a form of disruptive innovation that could potentially resolve the mismatch between demand and supply of taxi services. While the commercial practices of the taxi industry comes under the purview of the competition law in Singapore, CCS recognized that Land Transport Authority (“LTA”) might be in a better position to address the issues of protecting commuters’ interests and safety as it was about to undertake a review of its regulations of the industry at that point in time.

CCS conducted a market study to better understand the competitive landscape of the industry as well as the potential benefits and concerns that the third-party taxi apps brought about. CCS found that the entry of the third-party taxi booking apps would benefit consumers, taxi drivers and some of the taxi companies in the industry. However, there was a need for greater regulatory certainty to help facilitate such entry, as well as a review of the regulatory requirements imposed on the taxi companies to address their concerns of an uneven playing field. CCS recommended a calibrated light touch approach to the regulations so as not to unnecessarily stifle the entry and growth of these third-party taxi booking apps.

LTA drafted the Third-Party Taxi Booking Service Providers Act, which was passed by the Parliament in May 2015. The regulatory framework seeks to balance the need for commuters’ protection with the flexibility for innovation in the taxi industry. Since then, several third-party taxi booking apps providers have received their certificates to operate in Singapore. There has also been an increased rate of successful matches of taxi supply and passenger demand.

CCS had also looked into a complaint from a third-party taxi booking app provider regarding exclusive dealing arrangements in the market for third-party taxi booking apps in Singapore in 2015. CCS found that the impact of the conduct, if any, was likely to be limited and unlikely to foreclose competition. On the contrary, the evidence suggested that the market appeared to be very dynamic and competition was thriving. CCS concluded that there was a lack of harm to competition from the alleged conduct.

CCS welcomes further disruptive innovation in the road transport industry, but also recognizes that new regulations may have to be introduced to address concerns that may arise from such innovation. In this regard, CCS stands ready to provide its expertise and advice on competition issues to other government agencies to ensure that regulatory actions do not inadvertently or unduly restrict competition. To this end, CCS publishes the *CCS Guidelines on Competition Impact Assessment for Government Agencies*, provides government agencies with advice on competition related matters, undertakes market studies to examine if markets are working well, and monitors innovative developments so that it can address any potential competition issues in the early stages.

SPAIN*

The dynamics of competition in the transport sector are undergoing significant changes. New developments generate opportunities, disruption and a potential paradigm shift in this market, by which both the structure of competition and business dynamics could significantly change. The market is quickly becoming “permissionless” from an economic and technical point of view, but not yet from a legal perspective. To promote competition, it is crucial to further liberalize the transport sector and to boost inter-modality between the different means of transport.

The recent technological changes and IT technologies, as well as the appearance of the so-called sharing economy, have been felt mostly in the passenger transport segment, surely due to its greater flexibility and lower operational efficient scale as opposed to railway passenger services. These innovations have increased the level of competition in the markets, the choice available for consumers, the level of pressure on prices, and the overall efficiency in the passenger transport market.

Railways are also benefiting from innovations, although at a lesser extent due to its lower flexibility in comparison with road transport, and the high sunk costs to enter the market linked to the infrastructure. New technologies have allowed railway companies to better manage traffic control, and improve punctuality, safety and their overall management and service. Despite this, the main innovation in the railway passenger transport in Spain is the development of the high-speed and long-distance services, and the Spanish rail passenger transport market is almost completely closed to competition.

Public administrations have the responsibility to allow innovation and to increase the level of competition. It is important to foster the entrance of new competitors, eliminate any privilege that incumbent may have, and level the playing field. To that end, authorities might liberalize those markets where liberalization processes have not taken place yet, as well as remove, limit or modify those obsolete regulations that restrict innovation and/or competition and that constitute unjustified barriers to access the market.

In this context of innovation and dynamism, competition and regulatory authorities have an opportunity, particularly in competition advocacy and efficient economic regulation (data based smart regulation), to foster less restrictive regulations that favour dynamic and competitive markets, much to society’s advantage. The CNMC sees these developments as an opportunity to intervene through its enforcement and advocacy powers in order to promote greater competition in the transport sector and maximize consumer welfare through innovation, quality, variety and prices.

SWEDEN

This contribution considers the question of innovations and competition in rail and road transport in Sweden.

The section on rail transport begins by outlining significant milestones of competition in Sweden over the last 25 years, before detailing the level of competition in the rail market today, where more than 25 companies are active on the Swedish rail market. It also discusses conflicts that have arisen in recent years between different market players, and the Swedish Competition Authority's (SCA) enforcement experience in the sector. The section on rail transport concludes by considering innovations and developments towards technological harmonisation, as well as recent government initiatives to analyse the overall organisation of rail transport and address the challenges which are faced in the sector.

The section on road transport outlines examples of technological developments in road transport in Sweden. It then details recent and ongoing government appointed inquiries into the sharing economy which can have significance for road transport, as well as regulatory initiatives regarding issues such as vehicle automation, electrification of the automobile fleet, congestion pricing and other developments.

Finally, the contribution discusses intermodality in freight services and competition between different modes of transport.

TURKEY*

A privatization process was started in 2010 for a number of motorways and bridges, as well as for their maintenance-operation and toll collection units. Having been asked to provide its opinion about the effects of the privatization, the Turkish Competition Board's (TCB) considered that, while there were no competition concerns related to the privatization, the grant of motorway service areas to the the new owner of the motorways could result in leverage of its dominance in access-controlled motorway infrastructure services market to the motorway service areas market.

The TCB has been active in enforcing competition law in the bus market. An example is the decision to fine and impose commitments following an abuse of dominance by the operator of an intercity bus terminal that refused to rent offices to competing undertakings.

The most important recent development related to competition in the railway industry of Turkey is its ongoing liberalization and restructuring process. This has been pursued through the creation of a sectoral regulator with a mandate to promote competition, unbundling infrastructure management from the provision of rail services, and the possibility of entrants into the market for the provision of rail freight and passenger services. The TCB has provided opinions on the legislative drafts effecting this liberalization, which have adopted those and incorporated into the relevant regulations.

UNITED STATES

The market in the US for inter-city bus travel has expanded in recent years in response to the growing demand for low-cost travel alternatives to rail and airline travel. New entrants into the market have generated price competition and spurred innovation around the non-price elements of competition, making bus travel less expensive and more appealing.

In response to these incentives, supplemental services for inter-city bus passengers (i.e. online ticket aggregators) have grown more common and sophisticated. At the same time, government officials in many US cities have begun to test ways to use smartphone-based applications such as Uber to achieve their mass transportation goals.”