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

Working Party No. 2 on Competition and Regulation

**Competition and Regulation in the Provision of Local Transportation Services – Note by
Romania**

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This document reproduces a written contribution from Romania submitted for Item 3 of the 73rd OECD Working Party 2 meeting on 20 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-and-regulation-in-the-provision-of-local-transportation-services.htm>

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Romania

1. Romania includes 41 counties, each one having its own local authorities, plus Bucharest, the capital. In our country, the provision of land passenger transport services is regulated differently, according to the type of distance implied- local bus transport services (inside one territorial jurisdiction), county transport (between two separate jurisdictions belonging to the same county) and transport between points pertaining to different counties.
2. The regulatory bodies are the Ministry of Transport and Infrastructure, as the national regulator, and local authorities each in their jurisdictions.
3. Local road passenger transport is public road passenger transport by regular services carried out within a locality, as well as within the boundaries of an inter-community development association, and is regulated by Law no. 92/2007 on public passenger transport services in administrative-territorial units, with subsequent amendments and additions, Law no. 51/2006 on Community public utility services, republished, with subsequent amendments and additions, and Regulation (EC) No 1370/2007 on public passenger transport services by rail and road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. Local road passenger transport is regulated by each administrative-territorial unit (local council or inter-community development association, as appropriate) within its area of competence.
4. Although the law allows them to choose the method of entrusting the provision of local public passenger road transport services, local public authorities have chosen the method of direct award to their own operator under Law No 92/2007, Law No 51/2006 and Regulation (EC) No 1370/2007. The timetable and routes are drawn up by the local public authorities according to the travel needs of citizens, and compensation and exclusive rights are granted for the periods laid down in the contracts delegating the management of the local passenger transport service.
5. Therefore, the length of concessions is not fixed by law, but specified in each contract. There are no legal provisions concerning the extension of contracts in the case of exceptional quality services. Also, no mechanism set up for rewarding past quality.
6. Given that the direct award of the local public passenger transport service may grant compensation and exclusivity, local public authorities request the opinion of the Competition Council (Law 51/2016, GEO 77/2014).
7. In 2021, the competition authority endorsed, on the observance of the specific provisions in the field of competition and state aid, the administrative measure of direct awarding of the management of the local public passenger transport service, within the administrative-territorial area of the Association for the Intercommunity Development of Public Transport Bucharest Ilfov (AIDPTBI), for a period of 10 years, to 3 regional operators (Societatea de Transport Public București STB SA, Serviciul Transport Voluntari SA and Ecotrans STCM SRL), with the following conditions:
 - The awarding shall be agreed by the National Regulatory Authority for Community Services of Public Utilities – NRACSPU, which shall assess its compliance with the provisions of Regulation (EC) no. 1370/2007 and law nr. 51/2006;
 - Also, the awarding shall be approved by all the administrative territorial units belonging to the Association;

- The Association must verify that the transport routes will be correlated and optimised, to the advantage of the passenger, so that route overlaps are minimised;
 - After the completion of the technical-economic audit report for 2021, the Association will submit to the Competition Council an improved efficiency mechanism, until 30.06.2022, so as to ensure that the operators are genuinely incentivized to streamline their activity, as well as the accordingly revised public service contracts, depending on the conclusions of the audit report;
 - After the first 5 years, the Association shall carry out an assessment of the public service contracts functioning, including an analysis of the achievement of the efficiency indicators. If the efficiency objectives envisaged are not achieved, the Association will revise the compensation calculation method for the next period, so that the coverage of the costs is achieved within the limits of the efficiency targets and will submit it to the Competition Council for approval. In this regard, consideration will be given to the introduction, in each Delegation Agreement, of an express provision regarding the obligation to carry out this assessment.
8. Given that the national competition authority does not have the competence to expertise/certify the costs involved in the provision of public services, including the local public transport service, it is the responsibility of the Association (or of its members) to assess, every year in its technical and economical report, the costs involved in the provision of the local passenger transport service carried out by the regional operators, so that the compensation granted is of an appropriate amount and reflects the efficiency and quality of the services provided.
9. In 2022, the competition authority also endorsed the award to the fourth operator- Regio Serv Transport SRL, under the same conditions and for the same period of 10 years.
10. In Romania, subway transport exists only in Bucharest, being provided by public capital company, Metrorex SA. Metrorex was entrusted with the provision of a service of general economic interest, for which it benefits from compensation and tariff differences from public funds. The length of time he is entrusted with this service is until 2024.
11. With the exception of Bucharest, the capital of the country, there is no possibility to use the same ticket for services used by several providers. In Bucharest, for a 5 lei ticket (approximately 1 euro) one can use both subway and bus, within 90 minutes, or within a whole 24 hours for a 14 lei ticket (approx 3 euros).
12. There is also rail transport in Romania. At present, there are 6 rail operators, CFR Călători SA - a publicly owned operator, the other operators are privately owned. Rail operators organise their services on the basis of public service contracts.
13. "County" road transport means road transport between two localities located in the same county, without going beyond the territory of that county. The county regular passenger transport service is currently considered a public service and is regulated by Law No 92/2007. The competent regulatory authority for county transport is the county council.
14. The county road passenger transport service is a service provided by private operators, with routes/routes with pre-established timetables, according to the transport programme drawn up by the local public authority. The award criteria initially used in 2013 did not concern the fare charged and the operators' licences were extended several times, until 31.12.2022, because of the pandemic situation which made it difficult to organize tender procedures.
15. At the time being, operators have exclusive rights to operate on the routes they have won and the fares charged must be approved by the public authority.

16. Following an investigation by the Romanian competition authority (not under Article 101 or 102, but under national law), the competition authority has issued certain recommendations to local public authorities, focusing on the idea that when designing tender procedures, they should take into account that price is an important criterion.

17. The new awards must be completed by the end of 2022, pursuant to the current legal framework. According to the information available to the competition authority, new tenders are ongoing.

18. By the Decision issued as a result of the completion of the aforementioned investigation, recommendations were sent to the county councils, as follows:

- to carry out studies that evaluate the passenger flows within the county and estimate them for the next years and, at the same time, to assess the needs of travel outside the county for its citizens or for the people who, although not residents of that county, work or learn in it (carry out economic activities / participate in the courses of the educational units, etc. in the county);
- to set a timetable for new awardings, organised by competitive, transparent and non-discriminatory procedures (the timetable shall also take into account possible cases of registered appeals);
- to publish in the Official Journal of the European Union a prior information notice at least one year before an envisaged long-term award; if the notice is not published in a timely manner, the award may be made as a matter of urgency, but only through competitive proceedings;
- to include the possibility to modify the county road passenger transport program by regular flights whenever necessary, by introducing new routes, extending the existing ones, etc., so that it best meets the travel needs of citizens (including by taking into account the program of educational establishments, to ensure safe trips for pupils), and not necessarily the economic interest of operators;
- the tariff level shall constitute the most important evaluation criterion within the attributions made within the County Transport Program; thus, the award is made on the basis of the criterion "the most economically advantageous tender", while setting minimum requirements regarding the quality level offered;
- to approve tariff changes proposed by the economic operators, when there are unforeseen variations in the costs incurred and only to the extent of recovering those costs and a reasonable profit for the transport operators, and only if such a provision has been introduced in the documentation for the award of the service; otherwise, the tariff will have to remain the one bid for the entire duration of the contract;
- to create functional mechanisms (e.g. GPS monitoring, video cameras, etc.) that can verify at all times the compliance of all trips with the transport program and to take, In case of violations, sanctioning measures, including the withdrawal of licenses, shall be imposed on the operators;
- to disseminate the program of road passenger transport through regular flights at county level to the Romanian Road Transport Authority, so that it is correlated with the inter-county one, in order to best serve the movement needs of the citizens of the county.

19. "Inter-county" transport is transport by road between the departure and destination terminals located in the territory of two different counties, with or without transit through one or more counties. Inter-county passenger transport service by regular services is

regulated by OG no. 27/2011, the competent regulator being the Ministry of Transport and Infrastructure.

20. Inter-county road passenger transport service is a service assigned to private operators, on routes/routes with pre-established timetables, according to the transport programme drawn up by the public authority (Romanian Road Authority). The criteria for award were established by secondary legislation, fare not being one of the criteria. The last awardings took place in 2013, later on the duration of the licences was repeatedly extended until 30.06.2023. Operators enjoy exclusivity on the routes operated.

21. The competition authority initiated the abovementioned investigation in order to assess how criteria used in tender procedures impacted competition. The biggest problem identified was the criteria concerning the fact that an operator who already provided services on a route receives a highly significant advantage (number of points used in the award process as an evaluation of the operators). That being said, the operator at issue had good chances of winning the tender procedure and of further providing services on the same route, impairing other transport operators.

22. The competition authority completed its investigation in September 2021 and imposed certain measures on the Ministry of Transport and Infrastructure, having in view mainly to set up new rules on intercounty transport which should include clear, objective, non-discriminatory and proportionate qualification and selection criteria for the award of regular road passenger transport services, without going beyond what is necessary to achieve the objective of the award.

23. In addition to the technical and quality criteria for vehicles (pollution standards, level of safety in traffic, comfort, air-conditioning, accessibility for disabled persons), in cases of exclusivity on routes/routes, the level of the fare charged per route/km must be the evaluation criterion of highest importance.

24. Also, the qualification or selection criteria must not include experience on the route in question or prohibit the participation of operators who will provide the awarded services with leased vehicles.

25. In addition, regardless of the form of award chosen, it must be stipulated that the inter-county transport schedule may undergo changes in the sense of introducing new routes / routes / stations, etc. or changes to existing routes when it is in the interest of passengers, without the operators consent.

26. The Competition Council also imposed to the national regulator to launch the new procedure by publishing a notice of award of the contract for the carriage of passengers by regular road services at intercounty level:

- either by competitive means, in accordance with the provisions of public procurement legislation;
- or by fully opening up the intercounty transport market, by granting route licences to all applicants who meet the qualification and selection criteria and, at the same time, comply with the conditions and timetable laid down by the authority, without being granted exclusive routes and/or journeys.

27. Also, the competition authority requested that the extension, in any form, of the validity of the Inter-County Transport Program and of the corresponding route licenses beyond the maximum term provided in the secondary legislation, respectively 30.06.2023, shall be forbidden.

28. By the same Decision, the recommendations listed above were sent to the Romanian Parliament, the Government and the Ministry of Transport and Infrastructure,

with a request for amending the legislation in the field of inter-county transport, so that "the tariffs related to the road transport are set freely, based on supply and demand, with the exception of fares charged to passengers for the carriage of passengers by road on regular services where operators are granted exclusivity on journeys and/or routes.'

29. The competition authority recommended to the Parliament and Government to no longer prolong transport programmes, irrespective of their county or inter county level.

30. Nevertheless, amendments to the legislation in the field of transport shall expressly provide that the level of tariffs applied by carriers for the performance of the local, county or inter-county passenger transport service by regular flights will be the main criterion of competitive award when operators are granted exclusivity on flights and/or routes.

31. The aforementioned measures aim to create a competitive environment when the tendering procedure is organised, so that the citizens' mobility interests are met as good as possible.