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Working Party No. 2 on Competition and Regulation

**Competition and Regulation in the Provision of Local Transportation Services –
Summaries of contributions**

This document reproduces summaries of contributions submitted for Item 3 of the 73rd d OECD Working Party 2 meeting on 20 June 2022.

More documentation 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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Summaries of contributions

This document contains summaries of the various written contributions received for the discussion on Disentangling Consummated Mergers – Experiences and Challenges (138th Meeting of the Competition Committee on 22-24 June 2022). 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 *.

Colombia

This contribution is about the interaction between the Colombian regulator (The Ministry of Transport) and the Superintendence of Industry and Commerce (SIC), concerning the competition assessment made by the SIC on the implementation of electronic tolls and the importance of using electronic devices (tags) on vehicles to facilitate going in and out of the city. The document describes the regulatory proposal, the recommendations made by the SIC on interoperability and incentives to compete and the lessons learned.

Czech Republic

Urban transport in the Czech Republic has undergone significant development in the last two decades, which is due to legislative changes related to the liberalisation of public transport, and, more recently, to the significant focus of society on sustainable urban mobility and environmental protection. In April 2022, the Office for the Protection of Competition started a research in the field of urban public passenger transport in the Czech Republic, with the aims of verification of the level of liberalisation in this area, mapping the ways of selection of the urban transport operator including the applied legislation, and researching the degree of development of the implementation of modern technologies in passenger transport.

The Czech legal framework for the provision of public passenger transport is significantly influenced by the EU legislation. It allows the selection of operators of public urban transport mainly in the form of a competition tendering procedure or by direct award. The specific legal regime of competition tendering procedure or direct award depends to a large extent on whether the envisaged contract for public passenger transport services has the character of a concession for service under Czech Act No. 194/2010, or a public procurement contract. In practice, there are two basic types of contracts for public passenger transport services. In the case of concession for services, so-called net cost contracts are concluded under which the operator bears the risk of both costs and revenues. On the other hand, for contracts concluded on the basis of public procurement rules, so-called gross cost contracts are typically used, under which the operator usually bears at least the cost risk and the risk of a decrease in revenue is borne by the purchaser (municipality).

The research carried by the Office has shown that most populated cities generally with more complex transport network provide the urban transport services through the internal operator. Regarding the municipalities outsourcing the transport services, significant part of municipalities selects the urban transport operator by the direct award. Even though the underlying and preferable model for selecting the transport operator is awarding through competitive tendering procedure, direct award is possible mainly due to the exemption related to the short distances or the small amount contracts (therefore using direct award under Regulation (EC) No 1370/2007 of the European Parliament and the Council).

The wide use of direct award contracts can be seen as one of aspects that hinders the competition in the area of urban public transport. Regarding other competition problems, the Office within the scope of its supervisory authority in the area of public procurement supervision conducted several administrative procedures where the rules for the selection of transport operator were breached, for example because of the failure to meet the conditions of the direct award due to an emergency situation. In practice, it is also possible to encounter cases where the incumbent has a potential advantage over others due to its ownership of the infrastructure, e.g. if a private operator owns a bus station or other part of the infrastructure. Some of the municipalities did not hold any competition tendering procedure yet since contracts concluded before adoption of current legal framework are still in force.

The rest of the municipalities usually select the transport operator via the competition tendering procedure using the public procurement rules, mainly through open procedures (in the form of gross cost contracts). The use of competition tendering procedure under regulation no. 1370/2007 is not common (i.e. gross net contracts).

As regards the use of modern technologies in passenger transport, they enhance the competition in the market and some app-based means of transport are being integrated in the urban transport networks. However, MaaS concept or the platforms facilitating inter-modal competition have not been, according to the information gathered by the Office, implemented to the date. Nevertheless, the use of new technologies is one of the ways to contribute to reducing the use of individual car transport, which is why the national Concept of Urban and Active Mobility for the period 2021-2030 envisages use of the new technologies such as the MaaS concept and urban multimodal transportation in general.

Latvia

Largest cities in Latvia¹ (further – State cities) are obliged to organize public transport services in the routes of city significance and have to do it in a way to ensure that the population is provided with the opportunity to visit educational institutions, medical treatment institutions, workplaces, state and municipal institutions. Public authorities can commission public transport services or can grant the right to provide public transport services directly to a service provider if certain preconditions are met.

The most common competition model used to provide public passenger transport services is in the form of a competition for the market. However, tendering procedure is rarely used by municipalities at a local level. Most municipalities choose to authorize the rights to provide public transport services to enterprises owned by the municipalities themselves (in-house).

Intermodal transport services in Latvia are only starting to develop. Some local authorities have concluded or are planning to conclude agreement with the national rail passenger carrier so that the passengers can buy a train ticket and afterwards use the same ticket in the territory of local authority to travel by bus.

While intramodality services are still mostly in their developing phase, municipalities focus on developing public transport that would allow them to meet the targets of the Green Deal – purchase of electric or partly electric buses and extension of tram lines. Some municipalities also are planning to introduce more convenient travel planning systems (real-time data-based).

Restrictions of Covid-19 significantly affected the field of public transport. Restrictions were imposed on the allowed number of passengers in public transport based on the capacity of the vehicle. Some State cities reduced the regularity of local transport trips. Municipalities compensated losses to public transport service providers based on local regulation.²

Legal provisions require for public bodies to provide re-evaluation of their direct participations in capital companies not less than once in five years, which also includes consultation with the CC.

Since 2020 the CC has given six opinions to the State cities on the involvement in commercial activities in the public transport sector. Regarding the public transport services provided by the municipal capital companies on regional routes, in the view of the CC, the municipal capital companies should assess the possibility to discontinue the provision of their services, because the legal basis to provide the services is doubtful.

The CC, other institutions and non-governmental organizations have stated that those private companies that currently provide or will provide public transport services on regional routes could provide public transport services on urban areas, so market failure can't be considered in the State cities, where the municipal capital companies are still operating. CC has considered that there are enough private market participants in Latvia

¹ According to Latvian laws and regulations 10 biggest cities in Latvia are called “The State cities”

² <https://likumi.lv/ta/id/275812-kartiba-kada-nosaka-un-kompense-ar-sabiedrisku-transporta-pakalpojumu-sniegšanu-saistitos-zaudejumus-un-izdevumus-un-nosaka>

with equivalent experience in providing passenger transport by bus. Hence, there is no reason to believe that there is a market failure.

Mexico

Federal Economic Competition Commission (COFECE or the Commission)

The transport sector is a priority for the Federal Economic Competition Commission (COFECE) because of the transversal effect on the national economy and the direct impact on the welfare of consumers. In the provision of local transportation services, COFECE has undertaken actions to promote a procompetitive environment by assessing the competitive effects of regulations and of government interventions and making recommendations to eliminate barriers and unnecessary restraints to competition. For example, it has issued different opinions, of which some of its recommendations have been taken into consideration by the relevant authorities. COFECE has also opened investigations and sanctioned economic agents, all of these in the provision of transportation services at airports. COFECE's efforts in the transport will continue in the following years, in line with its strategic plan for 2022-2025.

Romania

In Romania, road passenger transport services has been lately a focus area for the Competition Council. The road passenger transport services is regulated differently, being divided into local transport, county transport and inter-county transport, and the regulatory authorities being the Ministry of Transport and Infrastructure - at central level and local public authorities - at local level.

South Africa

As part of its mandate of the Competition Commission of South Africa (“CCSA”) seeks to facilitate a growing, deconcentrated and inclusive economy. In pursuit of this mandate, the CCSA has identified the transport sector as one of several priority sectors for its enforcement and advocacy initiatives.

The transport sector is of significance given that unlike in developing countries, over 73% of South Africans spend more than 20% of their disposable income on public transport (as opposed to 10% for developing countries). Moreover, efficient and competitive public transport is also key to sustainable economic growth, particularly for a developing one such as South Africa. Therefore, understanding the identifying of any impediments to competition arising from the regulation of public transport, is likely to have far reaching positive developmental implications for consumers and for the economy at large.

In this paper, the CCSA will share its experiences in navigating the sometimes-contentious arena of competition policy enforcement in markets that are subject to sector specific regulations. There are also various stakeholders with often competing interests, whose buy-in is required. Therefore, enforcement of competition policy in such circumstances is in equal measure, an exercise in stakeholder management.

The paper highlights the several recommendations made by the CCSA to relevant authorities which bring about a more integrated, yet competitive transport sector. The engagements to bring about this transformation are ongoing

The CCSA trusts that this submission adds to the discourse and provides insights on this topic, from the perspective of an agency with a developmental mandate.

Spain

This contribution by the Spanish National Markets and Competition Commission (CNMC)³ addresses the topic of the Roundtable on “Roundtable on Competition and Regulation in the Provision of Local Transportation Services” to be hosted by the OECD in June 2022.

The regulation of local transportation services in Spain has posed important issues from a competition advocacy perspective. Due to the legal division of powers between different levels of administration, Spain’s regulation of local transport has become highly fragmented and heterogeneous.

CNMC’s competition advocacy activities have been especially important in two areas: overcompensation and state aid issues in concessions for urban bus transportation and the potentially discriminatory regulation of chauffeured vehicle transport (CVT) vis-à-vis traditional taxi services. In both cases the CNMC has recommended a more pro-competitive stance of local authorities’ interventions, lowering entry barriers and weighting consumer welfare when establishing restrictions to competition.

³ This contribution has been prepared by the staff of the CNMC and shall not be regarded as the official position of the CNMC unless it refers to CNMC approved documents.

Sweden

In 2018, the Swedish Competition Authority published the report “Competition in Sweden 2018”, which analysed competitive conditions across a large number of different industries, and included three chapters dedicated to passenger transport; Public transport⁴, long-distance passenger transport by air and train⁵, and taxi⁶. This contribution is largely based on the study presented in the chapter on public transport. However, while that chapter was based on data for 2012–2016 this contribution has been updated with data for 2017–2020.

This contribution describes the regulation of public transport, which is harmonised within the European Union. It then provides an account for the extent of public and commercial public transport over time. The contribution notes that public transport is above all a procurement market in Sweden, and offers statistics about public transport procurements in Sweden as compared to procurements as a whole. It finally offers reflections on how the conditions for commercially provided public transport can be strengthened in a Swedish context.

⁴ [Konkurrensverkets rapport 2018:1 - Konkurrensen i Sverige 2018 - Kapitel 24 Kollektivtrafik](#) (only in Swedish).

⁵ [Konkurrensverkets rapport 2018:1 - Konkurrensen i Sverige 2018 - Kapitel 25 Långväga persontransporter med flyg och tåg](#) (only in Swedish).

⁶ [Konkurrensverkets rapport 2018:1 - Konkurrensen i Sverige 2018 - Kapitel 26 Taximarknaden](#) (only in Swedish)

*Ukraine**

While Ukraine has recently enacted new legislation in the field of urban transport, such changes are fragmentary and do not solve all competitive issues or concerns linked to service quality and cost.

Competent authorities select public transport operators through competitive tendering, although temporary contracts that precede tenders are quite common, which risks affecting subsequent competition at the tender stage. Moreover, the AMCU has identified several issues at the tender stage, in particular the absence of the cost of transportation as a criterion for selection in the tender notice or the possible extension of contracts for additional five years, which may constitute a barrier to entry for new participants.

To foster competition, the law requires city councils to add real-time open data on the location of public transport into a dedicated web portal. Given the inaction of city councils in this regard, the AMCU intervened to avoid that this negatively affect competition by preventing businesses from providing mobile applications on transport services.

United Kingdom

Public transport in the United Kingdom (UK) is largely delivered by private enterprise, just as it was when the rail network was first built, starting from the 1820s. After a period of public ownership following nationalisation of rail and bus operators by the Transport Act 1947, nearly all of the UK's public transport networks have since reverted to private ownership or operation as a result of government interventions in the 1980s and 1990s.

Government policy on bus and rail has led to periodic, significant changes in regulation and how competition works and this remains the case. In the 1980s, legislation led to local authorities transferring their bus operations to companies owned and operated at an “arm's length” and ultimately sold to private enterprise. Meanwhile by the 1990s, the privatisation of British Rail, led to the introduction of rail franchising and the advent of private enterprises once again operating passenger rail services in Great Britain.

At the time of writing, both local bus and passenger rail services are experiencing further change, impacting on how competition works at a local and national level.

Local bus services are largely operated by a small number of large firms albeit with a large number of small independent firms competing in individual towns and cities, whereas rail franchises have been held by a small number of large transport businesses, which in some cases are subsidiaries or joint-ventures of foreign state-owned enterprises and which also often operate local bus services.

Meanwhile, the impact of innovation, such as through the advent of app-based ‘taxi’ booking platforms has highlighted how existing regulatory frameworks have struggled to keep pace. The rise of ‘*Mobility as a Service*’ (*MaaS*) be that through ride-hailing, ride-sharing, e-bike, e-scooter, automated vehicles and other demand responsive transport is likely to provide the next regulatory frontier as previously separate frameworks collide and create friction to innovation and the benefits of competition.

The COVID-19 pandemic has introduced further uncertainty to local transport markets. Social distancing, closure of non-essential retail and work-from-home requirements and other restrictions all led to sharp reductions in usage. Bus and rail journeys in Great Britain fell by around 60%, and 80% respectively between 2019/20 and 2020/1 and required government to provide additional financial support and in the case of rail to accelerate plans to reform the existing franchise arrangements.

Evidence of the impact of COVID-19 has also been seen in the number of licensed taxi and private hire vehicle (PHV) drivers which decreased significantly between 2019 and 2021.

Amidst these significant operational and regulatory developments, the CMA has taken an active role to advocate for policy measures that so far as possible, preserve competition for the benefit of consumers, while also discharging its sector specific statutory functions in these markets.

Whether it has been on road, rail, sea or air, the CMA has prioritised transport as a focus of its competition and consumer advocacy, developing close links with policymakers across the UK. The CMA's experience is that governments at all levels have implemented transport policy which has the potential to impact on how competition works, and on the economy as a whole. Transport and especially public transport is likely to remain a high priority area in the CMA's advocacy portfolio. Focusing on different modes of public transport – buses, rail, taxis and private hire vehicles – this paper provides insight into the CMA's experience with a particular focus on Great Britain and England.