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

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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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1. General overview

1. Today the issue of the competition development in the public transport market in Ukraine is becoming even more relevant. Accordingly, deregulation of public transport is planned in Ukraine. It is envisaged to modernize outdated provisions and practices in the management system of urban and suburban bus passenger transport, which do not allow to attract investment and ensure the transformation of environmentally friendly public transport with European-level services.
2. Currently the Antimonopoly Committee of Ukraine (hereinafter – the AMCU) has a task to eliminate any anti-competitive barriers to entry this market.
3. Moreover, the AMCU actively counteracts to any barriers to entering the market for services that help find the optimal route with real-time public transport displays.
4. Alternative services, in particular the rental of bicycles or electric scooters, has recently developed rapidly.

2. Regulation in the field of public transport

5. As noted above, new legislation in the field of urban transport is being actively developed in Ukraine. Because the current regulation¹ is quite complicated and does not provide a sufficient level of competition for the market. Recent changes were more fragmentary and did not solve a complex problem - real competition for the market, for quality conditions for consumers and reasonable cost of services (more details below).
6. Thus, today in Ukraine the provision of services by public and private carriers is combined.
7. The organization of passenger traffic is entrusted to the executive authorities and local self-governments, depending on the types of connections, in particular: if the city, suburban and intercity public bus route goes beyond one territorial community – ensuring the organization of passenger traffic on such a route is entrusted to the executive body of the council, representing the interests of the local community;
8. Local self-governments form a network of public bus routes.
9. Determination of the carrier on the public bus route is carried out exclusively on a competitive basis, and the Procedure for the tender is approved by the Cabinet of Ministers of Ukraine².
10. At the same time, the organization of the tender, determination of the conditions of transportation and approval of the terms of the tender are entrusted to bodies of local self-governments.

¹ Current regulation is enshrined in the Law of Ukraine "On Road Transport" (hereinafter - the Law)

² <https://zakon.rada.gov.ua/laws/show/1081-2008-%D0%BF#Text>

11. Routes with approved passports are submitted to the tender, i.e. documents containing the route scheme, traffic schedule, fare table, work and rest schedules of drivers, etc.
12. The mandatory conditions of the tender also include requirements for the fleet of buses that will operate on the public route, terms of passenger capacity, class, technical and environmental indicators.
13. In addition to the mandatory ones, the organizer may approve additional conditions of the tender, such as the presence of the carrier's GPS system installed on vehicles offered for work on the bus route, etc.
14. Also, an additional condition of the tender that is considered to determine the carrier, with other things being equal, is the planned cost of transportation, which will be set for passengers (the price of one transportation).
15. The organizer of transportations shall publish in the print media not later than 30 calendar days before the beginning of the tender the announcement of the tender (in addition to print media, announcements may also be placed in other mass media).
16. The winner or winners of the tender is determined by the organizer of transportation on the basis of the decision of the tender committee separately for each object of the tender.
17. Based on the results of the tender, an agreement on the organization of passenger transportation is concluded between the local self-government and the carrier.
18. The term of the contract (permit), which is concluded based on the results of the tender, is five years and may be extended once every five years by the decision of the organizer of transportation (if the carrier – winner of the previous tender provides information on confirmed investment to purchase newer and/or more comfortable buses).
19. That is, the purchase of new buses by a private carrier at its own expense is the basis for the extension of the contract. On the one hand, this possibility is justified (the need to recoup the costs incurred), on the other hand, it may be a barrier for other participants to enter the market (prolongation of the current market situation).
20. The organizer of transportations is obliged to hold the tender no later than 45 calendar days before the expiration date of the contract (permit) concluded with the previous winner of the tender.
21. Also, the legislation defines the obligation of the organizer of transportation to ensure early termination of the contract (revocation of the permit) with the road carrier – the winner of the tender, in particular, in case of violations of the contract (permit).
22. In case of termination of the contract or revocation of the permit for work on the city bus route, a road carrier, which according to the results of the competition is recognized as the second place, is appointed for the period until the expiration of the contract or permit that was terminated (revoked). In case his refusal or absence – another road carrier, whose vehicles meet the parameters, class, category, comfort and passenger capacity requirements for the relevant type of transport, is appointed for the tender once for a period not exceeding three months.

3. Consequences of strict regulation

23. So, today, in accordance with current legislation, carriers can compete with each other only at the tender stage.

24. At the same time, there are cases when the organizers of tenders neglect one of the most important evaluation criteria for consumers of services (passengers), namely the planned cost of transportation, which can further negatively affect consumers of services who will have to pay high prices for transportation.

25. Also, inadequate control of responsible local self-governments over the quality of customer service and non-termination of contracts with dishonest carriers leads to the fact that passengers receive poor service.

4. Research by the AMCU on the transportation market.

26. At the end of 2018 and the beginning of 2019, the AMCU received complaints from undertakings (carriers) about the organizers of transportation tenders, in particular, delays in tenders when the contract expired, the introduction of tender conditions prescribed for one carrier, etc.

27. As such actions of traffic organizers could contain signs of violation of competition law, the AMCU instructed its Regional Offices to conduct research on passenger markets by road, in particular on city and suburban public bus routes (hereinafter – Research).

28. During the Research, the Regional Offices of the AMCU identified, in particular, the following problematic issues:

- *At the stage of the tender* – the establishment of requirements prescribed for one participant, or the lack of requirements to submit the planned cost of transportation.

29. For example, the actions of the organizers of transportation, which were to establish requirements for buses, including the class and passenger capacity, which do not meet the requirements established by the legislation of Ukraine, were identified.

30. Some organizers did not require carriers during the competitive selection to determine the cost at which carriers intend to transport passengers on the relevant bus routes, and did not determine the cost of passenger transportation by the terms of the contract, as well as the procedure for changing it.

31. It should be noted that according to the Law, the cost of transportation is not one of the mandatory criteria for evaluating tender proposals when determining the carrier, although in competitive markets it is one of the main indicators of competition, through which businesses compete with each other.

32. Removal of organizers of transportation from the control in the field of road transport in terms of establishing and/or changing the cost of road transport services by road carriers on public buses may lead to unjustified increase in the cost of transport, violation by executive authorities and local self-governments of competition legislation, and, as a consequence, the emergence of social tensions and public outrage.

- *At the stage of contractual relations* – non-termination of contracts in case of violation of their provisions, and/or conclusion of temporary contracts without legal grounds for this, etc.

33. The Regional Offices of the AMCU identified, in particular, cases when the organizers did not terminate contracts with carriers even if they violated the terms of the contract, in particular, due to non-compliance with the schedule and route plan, unsatisfactory sanitary, aesthetic and technical condition of buses.

34. In particular, in case of termination of the contract with the carrier before the tender, another road carrier, whose vehicles meet the parameters, class, category, comfort and

passenger capacity requirements for the type of transport, is appointed by the transport organizer once for a period not exceeding three months (temporary contracts).

35. According to the results of the Research, the Regional Offices of the AMCU found that the provisions of temporary contracts usually contain fewer requirements for carriers than contracts concluded as a result of tenders.

36. There were cases when, after the tender, the carriers with whom a temporary contract had been concluded before, became the only contenders and winners because in fact they had been working on a certain route for some time.

37. At the same time, the simultaneous mass application of temporary contracts that precede tenders promotes the artificial division of the market and leads to the prevention of competition between road carriers at the tender stage, which shows the formality of tenders.

38. For example, the local self-government concluded temporary contracts with individual carriers and this process became systemic, as 53 contracts were concluded in 2018 and 29 in 2019.

39. Temporary contracts, in contrast to those concluded as a result of tenders, did not contain requirements for the carriage of passengers of privileged categories and the provision of reserve vehicles. As such actions of the local authority showed signs of violation of the law on protection of economic competition in the form of anticompetitive actions of the authority to provide certain undertakings with advantages that put them in a privileged position over competitors, which distorts competition, the AMCU Regional Office provided the local authority with recommendations to stop the violation.

40. According to the results of the Research, Regional Offices, in particular, considered several cases of violations of competition law, as well as provided 85 binding recommendations to the organizers of transportation.

5. An option for a systematic solution to the issues raised

41. These and other problematic issues in the field of public transport regulation can be solved by making appropriate changes in current legislation, in particular, to open market access to all carriers who wish to work on the relevant routes. Under such conditions, carriers will compete with each other, including by providing better and more reliable services for the carriage of passengers at a lower price.

42. However, there are routes where passenger transport cannot always provide a sustainable income for carriers. Examples include remote villages with low passenger traffic and poor road surface. In this case, in order to meet the needs of the population, it is necessary to provide at the legislative level for transport organizers possibility to determine such routes, set fares and order/purchase socially important services for passenger transport on such routes.

43. Currently, the issue of a new model of urban transport organization is being resolved at the level of the Government of Ukraine. The main idea is to simplify access to the transportation market in the city, in particular. Regulation (tender selection) should remain only in the part of socially significant routes with the provision of appropriate compensation to carriers for the provision of services.

6. Services used on public transport.

44. Today in Ukraine there are many services, such as Easyway, Moovit UA, which help to find the optimal route with public transport displays in real time.

45. The obvious convenience of this service is that anyone can use a smartphone to see the location of public transport in real time (GPS data) on the website of a particular operator or in mobile applications and plan his route. And even better, when there are several such operators and the consumer can choose the service of which operator he likes best.

46. Real-time information on the location of public transport is also important for the local self-government, which can optimize the public transport network.

47. However, competition in this market is not so simple. The requirement of the current legislation of Ukraine is to place information in the form of open data, in particular, data on the location of public transport in real time, on the official websites of local self-governments and on the Unified State Web Portal of Open Data. In addition, any person may freely copy, publish, distribute, use this data, including for commercial purposes.

48. The AMCU found that the official websites of some city councils do not have such information, and their websites redirect inquiries to the website of a third-party organization, which, among other things, has its own real-time public transport service.

49. However, such organization did not provide free and full access to real-time data on the location of public transport, only the review of relevant information was available.

50. Thus, such an organization, which had access to real-time public transport location data, could prevent other businesses from providing similar services.

51. Inaction of some city authorities to not publish real-time public transport location data on their official websites and not upload it to the Unified State Open Data Web Portal may create barriers to entering the market of real-time public transport location information services to new operators.

52. That is, this inaction of city councils may have a negative impact on competition in the market of services for the provision of information on the location of public transport in real time.

53. Therefore, on December 5, 2019, the AMCU recommended to these city councils to stop inaction, which consists in not publishing on its official websites data on the location of public transport in real time and not uploading them to the Unified State Web Portal of Open Data, and which may have a negative impact on competition.

54. As a result, city councils reported the consideration of the recommendations of the AMCU and posting relevant information on their websites.

7. Regarding reforms in the field of public transport, especially in today's conditions (transition to alternative services - bicycles, scooters, etc.)

55. Alternative services (bicycles, scooters) are not fully an alternative to public transport services, as public transport carries a significant number of passengers on appropriate local self-government routes, schedules, transportation conditions (including for people with disabilities), etc. At the same time, bicycles or scooters are means of individual transportation on the route determined by the user of such vehicle.

56. The choice of using bicycles and scooters is also influenced by the maximum distance that the consumer must cover in order to reach the desired location. After all, if the route runs through the whole city and public transport takes an hour or more, it is unlikely that a bicycle or scooter will be an alternative.

57. The use of bicycles and scooters is also affected by safety of movement (arrangement of appropriate bicycle paths for cycling/scooters) weather conditions (rain, snow, etc.), which do not affect the transportation of passengers by public transport.

58. In addition, the cost of renting a bicycle or scooter is much higher than the cost of public transport services, which also has an impact on consumer choice.

59. Thus, the use of bicycles and scooters today can be a partial alternative to public transport only for a limited group of users (usually young people) and for short distances.

60. In addition, Kyiv authorities, for example, called on undertakings who provided pre-war scooter and bicycle rental services to resume their work. Thus, today public transport in the city of Kyiv operates in a limited mode, its movement is organized in those places where it can be done. Scooters and bicycles have become an alternative to travel short distances.

8. Conclusions

61. It should be noted that due to the ongoing large-scale armed aggression of the Russian Federation against Ukraine and the imposition of martial law, significant changes have occurred in the markets of public transport, as well as in the work of real time Internet services of public transport.

62. In some cases, public transport has become an unalterable way to move around the city (given the shortage of fuel in Ukraine). Moreover, the demand for bicycles and scooters for rent has increased significantly.

63. The AMCU constantly monitors that the implementation of changes in the markets of passenger transportation by public bus routes and related markets is carried out in compliance with the requirements of competition law, without creation of administrative barriers for new market participants.

64. Moreover, the trend towards deregulation in Ukraine, in our opinion, will have positive consequences for the creation of a new model of public transport in Ukraine with more intensive involvement of private business in passenger transport, including for raising environmental standards of transportation.