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

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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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Latvia

1. Legal models for provision of local public transport services

1. In Latvia, the main regulatory enactment that regulates matters related to the local and regional public transport services is the Law on Public Transport Services¹ (Transport Act). In accordance with the Transport Act, the state institution responsible for organization of public transport services on routes of regional importance (incl. routes between different cities and municipalities) is the Road Transport Administration. Municipalities of largest cities in Latvia (further - State cities)² are empowered to organize public transport services on routes within cities.

2. Transport Act determines that administrations of State cities have 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 are entitled to commission public transport services in accordance with the Public Procurement Law³ or Law on Public-Private Partnership⁴ that regulates matters of concessions.

3. But at the same time Transport Act provides exemption from obligation to organize procurement. Public authority can grant the right to provide public transport services directly without complying with the public transport service procurement procedure, in the cases and according to the procedures determined in Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (further – Regulation No 1370/2007). It is determined that public authority can grant the right to provide public transport services directly either where their average annual value is estimated at less than EUR 1 000 000 or where they concern the annual provision of less than 300 000 kilometres of public passenger transport services. In the case of a public service contract directly awarded to a small or medium-sized enterprise operating not more than 23 vehicles, these thresholds may be increased to either an average annual value estimated at less than EUR 2 000 000 or where they concern the annual provision of less than 600 000 kilometres of public passenger transport services.

4. It must be also noted that Public Procurement Law allows to choose a service provider without the tender, i.e., choosing an *in-house* procedure. In this case, the following criteria must be met: (i) enterprise is under such control of the contracting authority that manifests as the rights to influence the strategic objectives and decisions of the activities of the enterprise, or under the control of a person controlled in an abovementioned manner by the contracting authority; (ii) more than 80% of enterprise's activities are comprised of carrying out specific tasks in the interests of the controlling contracting authority or other persons controlled by the abovementioned contracting authority; (iii) there is no direct private capital participation in it, with the exception of such form of private capital

¹ Available in English: <https://likumi.lv/ta/en/en/id/159858-law-on-public-transport-services>

² According to Latvian laws and regulations 10 biggest cities in Latvia are called “The State cities”

³ Available in English: <https://likumi.lv/ta/en/en/id/287760-public-procurement-law>

⁴ Available in English: <https://likumi.lv/ta/en/en/id/194597-law-on-public-private-partnership>

participation, which in accordance with the laws and regulations governing commercial law and the Treaty on the Functioning of the European Union does not entail the rights to influence and control its decisions and does not exert a decisive influence on it. However, if the enterprise owned by the municipality has obtained the rights to provide public transport services via the *in-house* procedure, it cannot take part in competitive tenders concerning the provision of public passenger transport services organized outside the territory of the competent local authority in accordance with Article 5, Section 2, point (b) of Regulation No 1370/2007.

5. The general principle is that Public Procurement Bureau is competent to examine complaints regarding infringements of the procurement procedures and to monitor the conformity of the procurement procedures to laws and regulations. This also applies to the tenders of public transport services. However, in cases when public authority chooses an *in-house* procedure, provisions of Public Procurement Law do not apply, i.e., Public Procurement Bureau does not accept any submissions and evaluate the conformity of an *in-house* procedure to the criteria stipulated in Public Procurement Law.

6. Additionally, to public procurement procedures also Article 14.¹ of Competition Law, prohibiting public bodies and state-owned enterprises to distort competition, e.g., to discriminating market participants by creating different conditions for competition, may be applied. Thereby, in public tenders, the CC may evaluate the justification and proportionality of the qualification requirements of the procurement and their impact on competition.

7. Usually, if restrictions are potentially harmful then, firstly, the CC consults with the Public Procurement Bureau, because its primary task is to supervise the Public Procurement Law and as supervising body it has wider experience assessing different restrictions in public procurements. Secondly, the CC chooses more appropriate tools in its competence to remove restrictions. Although the CC in some exceptional cases may initiate a case and use its enforcement powers according to Article 14.¹ of the Competition Law for breach of competitive neutrality (for example, if procurement is organized by a capital company of public person), predominantly in such cases the CC uses advocacy powers to remove restrictions included in the tender documents by procurement organizers (public bodies).

8. Also, the CC in the cases when a public body wants to establish a capital company and enter the market (also, the local public passenger services market), it is obliged to have a prior consultation with the CC in accordance with the requirements of the State Administration Structure Law. The CC afterwards provides an opinion regarding whether there are grounds for a public person to establish a capital company and enter the market, for example, a market failure exists, or goods or services have strategical importance. The above-mentioned opinion must also be provided during the re-evaluation process of the participation in a capital company by the public body in every five years.

2. Competition models in the market of public passenger services

9. The most common competition model used to provide public passenger transport services is in the form of a *competition for the market*. In general, the level of potential competition for the local public transport market tenders (those who may participate in the market) could be considered as sufficient. But essentially main precondition is that the public persons must organize the tenders and give opportunity to private companies to compete in tenders for local public transport market. However, tendering procedure is rarely used by municipalities at local level. Most municipalities choose to authorize the

rights to provide public transport services to enterprises owned by the municipalities themselves (in-house), justifying it with the need to ensure continuity of public transport services. In the opinion of the CC, there is enough private market participants in Latvia with equivalent experience in providing passenger transport services by bus, which, if the municipalities would decide to organize a public procurement, might be interested in offering their services. For example, potential competitors who can participate in the local tenders are those who provide public transport services between cities and participate in tenders organized at state level by the Road Transportation administration

10. Recently one of ten State cities announced procurement in the market of local public transports,⁵ other is planning to organize it soon.⁶ This gives a reason to believe the private market players will be more involved in provision of public transport services in cities. Later this will give the opportunity to compare competition in the market vs. in-house. Active tender is for ten years of concession. There is a possibility to lengthen the contract if it is not possible to conclude the agreement in time for the next period of operation, and it is necessary to ensure the continuity of the provision of the services. The tender hasn't been divided in lots – contracting authority wishes to choose one public transport service provider for whole city.

11. In this tender, not only the price but also the average age of the offered buses is determined as the evaluation criteria. The environmental considerations are considered, determining minimal requirements of clean⁷ and energy-efficient road transport vehicles (22% of light-duty and 35% of heavy-duty vehicles should meet these criteria), and the number of clean and CO₂ emission-free buses is one of the evaluation criteria – participant, who offers more environment friendly busses, gets more points. Environmental criteria are based on minimum procurement targets in the Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending the Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles, implemented in the Cabinet Regulation No. 599 " Procedures for provision and use of public transport services".⁸

12. The CC was informed only about one case when the municipality had organized a tender and had chosen a private company that ensures public transport by bus within the city⁹, in three cases municipalities had organized tenders, however enterprises owned by municipalities themselves have won these tenders. In another case municipality gave the rights to provide public transport services to a private company based on the Article 5, Section 4¹⁰ of the Regulation No 1370/2007 (but now is planning to organize tender).

13. Rights to provide public transport service on routes of regional importance are granted by the Road Transport Administration, which organizes public tenders and ensures competition of the market. The Road Transport Administration when organizing public

⁵ In State city Ventspils

⁶ State city Jurmala

⁷ Term “*clean*” is used in accordance with Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles

⁸ <https://likumi.lv/ta/id/251480-sabiedriska-transporta-pakalpojumu-sniegsanas-un-izmantosanas-kartiba>

⁹ State city Liepaja

¹⁰ State city Jurmala

procurement separates it in lots respective to different regions of Latvia. But as mentioned previously in the contribution some State cities have used or plan to use their rights to choose the public transport service provider in a public procurement. As a public transport carrier might be commercially beneficial only in some route's intercity routes subsidies are granted by the state.

3. Additional (add-on) services local public transport (interconnectivity, app-based services etc.). Intermodality and new technologies in local passenger transport services

14. In Latvia, intermodal transport services 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 one train ticket and afterwards use the same ticket in the territory of local authority to travel by bus. Usually, the bus takes passengers from train station to the city centre or other most populated areas in the city. Mainly the design and planning of public transport services are done by the municipalities themselves¹¹, sometimes in cooperation with a public transport service provider. In Latvia services related to the shared economy – car, scooter etc. sharing - are provided by private entities.

15. In the capital city of Latvia, Riga, public transport is organized by SIA¹² “Rīgas Satiksme”, owned 100% by the Riga municipality. SIA “Rīgas Satiksme” organizes tram, trolleybus, bus, and express-bus services in the Riga’s municipality. Passengers can freely switch between mentioned means of transport as SIA “Rīgas Satiksme” offers the so-called “one hour” ticket. That means one can freely switch between different means of transport within one hour from the time the ticket has been first registered in the transport.

16. Transport development guidelines (2021-2027), carried out by the Ministry of Transport, determine that: “A network of mobility points should be established in the city of Riga and the metropolitan area. It is important to use the opportunities provided by the construction of the “Rail Baltica” railway line, integrating it and linking it with the transport infrastructure of the Riga metropolitan area.¹³” Therefore the municipality of Riga is planning to develop three mobility points within the city, that will allow passengers to easily switch between international and regional passenger train transport, regional and international bus transport and public transport in Riga.

17. 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).

18. In Latvia, there are only a few privately owned enterprises that offer to buy public transport tickets online. For example, it is possible to buy tickets for regional buses, train tickets and “one-hour” tickets in Riga’s city transport via the ticketing platform Mobilly.lv (owned by the private company SIA “Mobilly”). However, this platform does not offer any inter-modal or multi-modal public transport tickets. Additionally, it is planned that in the year 2022 a new public transport ticketing solution maintained by the Road Transport

¹¹ In order to understand the needs of passengers, municipalities conduct surveys, analyze the data of occupancy of passenger transport, take into the consideration the working hours etc.

¹² Limited liability company.

¹³ <https://likumi.lv/ta/id/327053-par-transporta-attistibas-pamatnostadnem-2021-2027-gadam>

Administration will start to operate. In accordance with this new system, all the regional public transport (train and buses) tickets will become available for distribution for every entrepreneur who will meet the criteria stipulated in the Transport Act.

4. The Covid-19 pandemic impact on local mobility

19. In the last two years, Latvia has declared a state of emergency several times, during which significant restrictions in respect of the movement of people were implemented with the aim to reduce people-to-people contact, including curfew at a night-time, ban of gatherings, public activities, retail trade, services, education and other in-person activities. Covid-19 significantly changed the need of passengers to use public transport, because of which the number of passengers decreased.

20. In the field of public transport, restrictions were imposed on the allowed number of passengers in public transport based on the capacity of the vehicle (50% - 80% of total capacity). In State cities the number of passengers on average decreased for 48,39% in 2021 compared to year 2019. Some State cities reduced the regularity of local transport trips.

21. Municipalities compensated losses to public transport service providers based on local regulation.¹⁴

5. CC experience in local public passenger transportation market

22. Since 2016 the State Administration Structure Law¹⁵ determines that a public person for the purpose of effective fulfilment of its functions may establish a capital company or acquire participation in an existent capital company if one of the following criteria is met: 1) a market failure is prevented - a situation where the market is incapable of serving the public interest in the relevant field; 2) the activity of a capital company of a public person results in the creation of goods or services that are strategically important for the development of an administrative territory of the State or a local government or the State security; 3) the properties that are strategically important for the development of an administrative territory of the State or a local government or the State security are administered.

23. Law also determines that a public person prior to establishing a capital company or acquiring a participation in an existent capital company shall carry out the evaluation of the intended activity, also including the economic evaluation to substantiate that effective achievement of objectives is not possible otherwise. Upon performing the evaluation, the public person must consult with the CC and associations or foundations which represent merchants. After receiving the evaluation from a public person, the CC prepares an opinion establishing whether services provided by a public person's capital company meets the criteria established by the State Administration Structure Law. Opinion of the CC is not binding, still it illuminates competition neutrality concerns if there are any.

24. Re-evaluation of each public person's direct participations in a capital company must be done not less than once in five years.

¹⁴ <https://likumi.lv/ta/id/275812-kartiba-kada-nosaka-un-kompense-ar-sabiedrisku-transporta-pakalpojumu-sniegšanu-saistitos-zaudejumus-un-izdevumus-un-nosaka>

¹⁵ Available in English: <https://likumi.lv/ta/en/en/id/63545>

25. Since 2020 the CC has given six opinions to the State cities on the involvement in commercial activities in the public transport sector. While evaluating applications of municipalities and assessing potential new entrants in the local market CC has considered that there are a sufficient number of private market participants in Latvia with equivalent experience in providing passenger transport by bus. Hence, there is no reason to believe that there is a market failure. Therefore, it would be desirable to select a service provider in a competitive tender. Fair and equal tender conditions not only allow a wider number of market participants to participate in the procurement, but also provide the local government as a customer an opportunity to choose the most economically advantageous offer.

26. Also, 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 service, because the legal basis to provide the services is doubtful. Also, the CC and 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.