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

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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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## *Spain*

### **Introduction: The CNMC's practical experience concerning regulation in the provision of public transport services**

1. In Spain, regulation of passenger transportation services is affected by intervention from national (Central state), regional (Autonomous regions), and local authorities (Municipalities). At national level, the Central state rules overland transport (rail and road) passing through more than one Autonomous region<sup>1</sup>, while at regional level the Autonomous regions can assume powers to regulate transport within their territory<sup>2</sup>. Regarding local transport, Autonomous regions have delegated competences to local authorities through different laws, process that also has a specific legal backing<sup>3</sup>.
2. Municipalities are the basic local entity of the territorial organisation of the State<sup>4</sup> and develop functions of organization, management, promotion and provision of services in different areas such as urban planning, environment, local mobility, tourism, trade, sports, culture or waste management, among others.
3. Therefore, the main regulations of urban transport are:
  - At national level, the Act 16/1987, regulating Land Transport (LOTT in Spanish) and the Royal Decree 1211/1990, of 28 September, implementing the Regulations for the Land Transport Act (ROTT), which regulates the national transportation system and constitutes a benchmark for overland transport regulation by Autonomous regions, but it has by no means a supplementary nature for urban transport regulation<sup>5</sup>.
  - At regional level, each Autonomous region has passed its own laws regulating intra-Autonomous region transport, which a priori would logically comprise local transport, but this has generally been delegated to local authorities.
  - At local level, city councils have passed its own regulation on urban transport, typically municipal ordinances.
4. As a result, in Spain the largest part of urban transport regulation emanates from local and, to a lesser extent, regional authorities. This in turn implies that competition policy activities, particularly competition advocacy efforts, have had to deal with highly fragmented, heterogeneous regulations.
5. In the period 2014 – 2020, the CNMC and the competition authorities of the Autonomous regions of Spain have issued 179 reports related to municipal actions in various areas: professional services, obstacles to the deployment of telecommunications

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<sup>1</sup> See article 149.1.21 of Spain's Constitution.

<sup>2</sup> See article 148.1.5 of Spain's Constitution.

<sup>3</sup> See articles 25.2 and 86.2, Act 7/1985, of 5 April, regulating the Bases of Local Government.

<sup>4</sup> See article 137 of Spanish Constitution, and articles 1 and 11 of Act 7/1985, of 5 April, regulating the Bases of Local Government.

<sup>5</sup> According to the Sentence 118/1996, of 27 June, of the Constitutional Court of Spain.

networks or, restrictions in regulation of local transport services (relevant to the present contribution).

6. There are two areas where CNMC experience is particularly relevant: overcompensation (public aids) and CVT and taxi regulation.

## 1. Overcompensation – public aid

7. In 2018, the CNMC was asked to analyse concessions of local public bus transportation services in two Spanish cities, A Coruña and Cádiz. In both cases, the CNMC analysed whether the traditional way of operating the service in both municipalities had established barriers to free competition, strengthening the position of the incumbent by establishing protection and guarantee clauses<sup>6</sup>.

8. In the case of A Coruña, the incumbent company was initially granted the concession to operate the municipal public bus transportation service from 1986 up to 2024. Nevertheless, in 2016 the municipality took the view that the concession had expired under EU regulation rules<sup>7</sup>. It decided to extend the concession for two more years in order to prepare a new tender.

9. Compensation for the concession included all costs and expenses incurred by the operator, plus an industrial benefit. It also included a mechanism that protected the concessionaire in case of unexpected losses, although it did not lower the compensation in the event of unexpected benefits.

10. In the case of Cádiz, the incumbent company was granted the concession in 1967. Nearly two decades after (in 1994), the incumbent and the city council signed an agreement recognising an industrial benefit up to 15% of the running cost, but in 2018 the city council questioned it and decided to ask the opinion of the CNMC.

11. The CNMC analysis concluded the following:

- EU regulation about passenger transport requires to avoid any overcompensation for the service provision or, alternatively, request prior authorisation to the European Commission in case of State aid.
- The municipalities raised the possibility of introducing modifications in the terms of the service provided to reduce net income of the concessionaire. The CNMC advocated to identify the necessary obligations of public service and, only subsequently, to establish an adequate compensation for them.
- For future awards, municipalities should analyse whether there are less restrictive alternatives to the concession, e.g. granting licences to various operators competing in the market or liberalising the service in some or all urban routes, and only if those are not possible hold a competitive tender to award the contract.

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<sup>6</sup> [INF/CNMC/015/18](#) Applicable tariffs to the urban transportation services in A Coruña city council. [INF/CNMC/153/18](#) Industrial benefit applicable to the contract of provision of urban transportation service in Cádiz city council.

<sup>7</sup> Under Regulation (EC) No 1370/2007 Public Service Obligations in Transport, article 8.3.

## 2. Chauffeured vehicle transport (CVT) – Taxi regulation

12. On-demand passenger transport- in urban areas is mainly provided by chauffeured vehicle transport (CVT) and taxis. This activity has undergone major transformations in recent years and so has regulation. The CNMC and the competition authorities from Autonomous regions have identified restrictions to taxi and CVT's services through ordinances and municipal regulations (establishment of mandatory breaks, requirements not covered by legal regulations, additional license to the state or autonomous ones, long minimum pre-contracting times).

13. The above-mentioned division of powers has generated tensions regarding the regulation of taxis and chauffeured vehicle transport (CVT). Taxis operate within the Autonomous regions and, in fact, their Statutes of autonomy tend to delegate regulatory powers on municipal governments. Prior to Royal Decree-Law 13/2018, CVTs were authorized for the entire national territory, as the central government had regulatory powers. With the technological and socioeconomic changes, CVTs began to represent direct competition to the taxi sector on urban routes, with different regulations<sup>8</sup>.

14. However, Royal Decree-Law 13/2018 radically changed the framework by restricting the routes of CVTs to the Autonomous region, which placed them under regional regulation. This Royal Decree-Law also limited CVTs to interurban routes, reducing the aforementioned competition between taxis and CVT. These measures will enter into force after a transition period of 4 years.

15. The regulation of the taxi service is eminently municipal and generally consists of a *numerus clausus* system, a fixed price and other restrictions on access and exercise (rest times, quality and safety requirements, restrictions on the accumulation of licenses, etc.). For its part, the regulation of CVTs is currently regional, but can also be delegated to the municipalities, and it may include conditions of pre-contracting, request for services, customer acquisition, minimum and maximum routes, mandatory services or schedules and technical specifications of the vehicle, according to Royal Decree-Law 13/2018.

16. Regarding micromobility (e-scooters, electric bikes and pedal bikes, whether docked or dockless and other forms of light mobility), beyond traffic aspects subject to national regulation (such as the definition of vehicles or traffic restrictions due to safety reasons<sup>9</sup>), the regulation is fundamentally municipal. It is usually carried out through Mobility Ordinances, which establish speed limits, traffic restrictions, etc., based on the Law on Traffic, Circulation of Motor Vehicles and Road Safety (art. 7 of Royal Legislative Decree 6/2015).

17. Recently, some specific regulations of shared micromobility, both docked and dockless, have been passed in several cities. Specifically, most Spanish cities are choosing to limit the number of them, through a system of licenses that are not necessarily assigned competitively, and, sometimes, establish an occupancy rate of the public domain.

18. Therefore, the regulatory approach to urban mobility in Spain is characterized by regulatory heterogeneity, where substitute services (taxis, CVT, or sharing of cars, motorcycles, bicycles or scooters), of public or private ownership, compete with each other subject to different regulations. This differentiated treatment distorts competition and may not be justified based on the externalities of each mode of transport or other reasons of general interest.

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<sup>8</sup> It is worth highlighting the fixed price for the taxi sector and the flexible price for CVTs.

<sup>9</sup> Regulated by Royal Decree 970/2020.

19. The CNMC has analyzed the urban mobility sector from the point of view of both competition enforcement (antitrust) and competition advocacy. From the perspective of antitrust, the CNMC has analyzed the market for intermediation services for the contracting of taxi journeys and CVT (ride-hailing platforms), within the framework of merger control of the companies responsible for the myTaxi and Hailo mobile applications<sup>10</sup>.

20. In the context of competition advocacy, legal appeals<sup>11</sup> stand out. Recent examples of this activity are the decision to appeal several regulations by different subcentral legislative bodies, both Autonomous regions and city councils. Among the former, the CNMC has legally challenged regulations of several Autonomous regions on CVT, namely those in Murcia<sup>12</sup>, and in the Basque Autonomous region<sup>13</sup>. Examples of the latter are the CNMC's legal challenges against provisions (frequently municipal ordinances) dictated by the city councils of Barcelona<sup>14</sup> (metropolitan area, AMB in Spanish) on CVT, and Malaga<sup>15</sup> and Cordoba<sup>16</sup> on taxi. Additionally, the CNMC has issued a legislative and regulatory report (so-called IPN) at the request of Madrid's city council regarding a draft municipal ordinance on CVT.

21. In general, some of those legal provisions were problematic since they distorted competition by discriminating against CVT operators (and in favor of incumbent taxi operators) through different provisions and requirements for CVT operators, such as a minimum pre-booking periods (ranging from 15 to 60 minutes), the prohibition of driving on public roads when not providing a service or the prohibition to geolocate the vehicles available.

22. That notwithstanding, the CNMC's advocacy efforts have also involved central governments regulations. Indeed, the CNMC has also challenged before courts central government regulation on CVT, most recently the legal appeal<sup>17</sup> against the Royal Decree 1076/2017 which prohibits the sale of CVT licenses within two years after their issue and imposes the obligation to report each individual CVT service to an administrative register before its provision.

23. Furthermore, numerous reports on regulations by the central state authorities have been issued to advocate more pro-competitive legislation, especially in the Report on Royal

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<sup>10</sup> See the case [C/0802/16](#).

<sup>11</sup> The CNMC is competent to challenge in court administrative acts and regulatory provisions ranking below the level of law when these entail obstacles to effective competition in the markets. The capacity to bring legal actions is set out both in article 5.4 of Law 3/2013 of 4 June on creation of the CNMC and in article 27 of Law 20/2013 of 9 December on Ensuring Market Unity.

<sup>12</sup> See [LA/04/2021](#).

<sup>13</sup> See [LA/01/2020](#).

<sup>14</sup> See [LA/08/2018](#) and [LA/03/2019](#).

<sup>15</sup> See [LA/01/2015](#) and [press release](#) (english).

<sup>16</sup> See [LA/02/2015](#) and [press release](#) (english).

<sup>17</sup> See [LA/01/2018](#).

Decree-Law 13/2018<sup>18</sup> amending the road transport act regarding chauffeured vehicle transport, as well as in other reports concerning local or regional regulations<sup>19</sup>.

24. The report on Royal Decree-Law 13/2018 had two objectives: (i) analyse the reform of regulations applicable to CVT activity in the light of effective competition and the principles of efficient economic regulation and (ii) provide guidance for Autonomous regions and local authorities regarding the impact of potential regulation on operators with state and/or Autonomous region CVT authorisations. The adoption of RD-Law 13/2018 had two main consequences for competition in the sector. First, at the end of the four-year transitional period, current national CVT authorisations will no longer be able to provide services for urban journeys and will only be able to provide interurban services. Second, national CVT authorisations will no longer be able to carry out part of their activity in Autonomous regions other than that of their origin.

25. Those restrictions on competition will have a negative impact on the service provided to end users and were not suitably justified from the perspective of the principles of necessity and proportionality. For this reason, the CNMC recommended the following:

- Develop, as early as possible, regulations based on a global approach to the activity of transport in passenger vehicles and respectful of the principles of necessity and proportionality, so urban CVT services can be provided (avoiding the establishment of requirements that are unnecessarily harmful to end users).
- Review the conditions for CVT services for both national and potential Autonomous region authorisations, avoiding unjustified discrimination in regulation at the Autonomous region and local levels between taxi and CVT authorisations in matters of booking, hours and schedules, vehicle characteristics, driving and parking.
- Establish a flexible scheme regarding the possibility of temporary provision of CVT services in Autonomous regions other than that of origin, to the benefit of end users as well as increase the flexibility of the regulatory scheme for taxi service.
- Carry out the mentioned regulatory reform with the utmost coordination among different Administrations, with the aim of preventing greater compartmentalisation of these activities by territory and requesting technical assistance from the CNMC and the regional competition authorities to minimise the negative impact of their regulations on competition.

26. In terms of regulations of local and regional entities, the CNMC has also detected restrictions in various drafts Orders regulating CVT. The main restrictions on the exercise of the activity are the following: the need of an administrative authorisation issued by the regional/local authority; pre-contracting the service of CVT prior to its effective provision or geolocation limitations and the obligation to dispose of a physical basis in the region<sup>20</sup>.

27. The CNMC made the following considerations:

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<sup>18</sup> [PRO/CNMC/003/2018](#).

<sup>19</sup> [IPN/CNMC/020/19](#) Draft Order regulating vehicles with driver in Madrid and [IPN/CNMC/003/20](#) Draft Order on vehicle hire services with driver in the Region of Murcia.

<sup>20</sup> Geolocation of CVT by potential consumers before the service is prohibited since this practise is considered as customer acquisition.

- Unjustified restrictions coming from local entities will have negative impact in the provision of the service for consumers and final users, in terms of higher prices, lower quality and innovation, fewer supply and longer waiting times.
- In addition, regulation considers that CVT generate negative externalities, as traffic congestion and pollution. However, it does not explain adequately the exact contribution of CVT to the worsening of those levels. It was not demonstrated that the proposed measures were adequate and effective to fight against traffic congestion and pollution. Furthermore, some of the measures are discriminatory against CVT vis-à-vis taxi applicable regime.
- There is a need for a comprehensive reform of the regulation concerning passenger transport on demand in order to foster competition, avoid unjustified discriminations between CVT and taxi and eliminate unjustified restrictions in both sectors.
- There may be less restrictive alternatives to fight against pollution and traffic congestion, such as promoting the use of less contaminating vehicles or promoting sustainable collective public transport.

28. Similar recommendations have been made by a Joint Declaration of the Working Group of Councils of the Competition Authorities<sup>21</sup> (of October 2018) and a letter from the President of the CNMC to all the Councilors of the Autonomous regions responsible for transport and the economy (of March 2019)<sup>22</sup>.

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<sup>21</sup> See [press release](#). The Competition Authority Councils Working Group comprises representatives of the decision-making bodies of the competition authorities of the central state and the autonomous regions (CNMC and competition authorities of Andalusia, Aragón, Castile and Leon, Catalonia, Valencian Community, Galicia, Extremadura and the Basque Country).

<sup>22</sup> See [press release](#).