



Working Party No. 2 on Competition and Regulation

REGULATION AND COMPETITION ISSUES IN ROAD TRANSPORT

-- Norway --

This note is submitted by the Delegation of Norway to the Working Party No. 2 FOR DISCUSSION at its next meeting on 27 October 2000.

96595

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

REGULATION AND COMPETITION ISSUES IN ROAD TRANSPORT

Contribution from Norway

1. The Transport Industry

Introduction

1. In Norway the modes of road transport and the transport licence systems are regulated in the Norwegian Transport Act. With few exceptions, all commercial transport requires a government licence to operate legally. To obtain a licence, the licensee must meet the requirements of a good reputation, a certain financial standard and professional competence. Before granting a licence for transport of goods or occasional passenger transport, only these three requirements are considered. If the requirements for the licence (within the time of the licence period) are no longer met, the authorities have the right to withdraw the licence.

2. Before granting a licence for regular passenger transport and taxi transport, the need/demand for the service is evaluated in addition to the above mentioned requirements. In the licence given for passenger transport where the need/demand is an issue, the licence holder has not only the *right* to run the transport services, but has also the *duty* to perform the transport. The authorities have the right to withdraw the licence, if any of the requirements for the licence are no longer fulfilled.

Regulatory Regime

1.1

3. The Ministry of Transport and Communications is responsible for development and implementation of the local, regional and international transport policy. Norway is obliged to adopt and implement regulations and directives from the EU/EFTA on the transport sector. Due to this the EU has an important impact on the national policy making process in transport. In addition to the Ministry, the Public Road Administration and the county councils administrate the transport regulations, and will always have an influence on policy making through a formal, obligatory hearing.

4. County councils administrate the licence system of *taxi transport* within the county. The licence for the transport is mainly limited to the county. The number of licences in each county/district is limited, based on the need/demand for such transport.

5. For *regular bus transport*, which operate within one county, the county council administrates the licence system. For regular bus transport that covers two or more counties, the Ministry of Transport and Communications administrates the licence system in co-ordination with the counties involved. Licences for regular bus transport are limited, based on the need for this particular route and the expected consequences for existing public transport offers within the same area/on the same route.

6. The licences for *road transport of goods* and *occasional passenger transport* are administered by the council in the county where the company has its seat / the licence holder has his home address. The licences for these modes of transports are not limited to the county, and there is no limitation on the number of licences to be given out.

7. The county council (19 in all in Norway) which administrates most of the transport within its county consists of a political board (chosen for four years at the time) and is supported by an administration. The county council has the responsibility not only for transport within its county, but also (among other things) for comprehensive schools and for hospitals within the county.

8. Industry organisations represent the different modes of transport. “Norges Taxiforbund” represent the taxi transport. “Transportbedriftenes Landsforening” is an organisation for the bus/coach transport, and “Norges Lastebileierforbund” is the organisation for the goods transport industry. Neither of these organisations have any formal influence on the policy-making other than through the obligatory hearings in connection with changes in the regulation (and informal contact).

9. There are examples of both county council ownership and municipal ownership in companies, which offer regular passenger transport. There are examples of both partial and full ownership by the authorities, and these transport companies are mostly structured as joint-stock companies. The purpose of the ownership is in the main to ensure supply of public transport in certain geographical areas within a county/region. Through the Norwegian State Railway NSB BA (fully state owned), the State owns the subsidiary NSB Biltrafikk, which also offer regular passenger transport.

1.2

10. The transport of goods by road was liberalised in 1987, and in 1994 the transport of occasional passenger transport was liberalised. In 1994, the alternative of tender was introduced for granting licences for regular passenger transport. The most recent regulatory developments in Norwegian transport policy are connected to the development of the transport sector policy in the EU, through the EEA agreement. As an example, the three requirements on access to the profession (good reputation, financial standing, professional competence) have been introduced.

1.3

11. In general, a licence is necessary for most of the commercial transport of goods and passengers by road. The requirements to get a licence for transport of goods, regular passengers transport and occasional transport by bus/coach are: good reputation, financial standard and professional competence. The requirements are the same for local transport, longer distance transport and international transport within the EEA. To get a licence for taxi transport, a qualified driver’s licence for commercial transport (issued by the Police) is required, and this latter licence ensures a good reputation, good health and local knowledge.

12. The need/demand for the particular transport service is evaluated before granting a licence for regular passenger transport and taxi transport, whereas this is not the case for transport of goods and for occasional passenger transport with bus/coach. There is no formal time limits for granting or denying a licence, but the Norwegian “Public Administration Act” states that decisions by the public administration is to be made without unfounded delay. The actual time of the procedure will vary from case to case depending on the application to be considered.

13. Licences can be granted a juridical person as well as a physical person, but the licences are not transferable. Licences for regular passenger transport are in general given for 10 years at the time. There

is no limitation in time for the licence on transport of goods, taxi transport or occasional passenger transport. However, the authorities granting the licence will withdraw the licence if the requirements for granting the licence are no longer met.

14. There is no limitation as to whether a company or a person can have several licences for one mode of transport, and one licensee can have licences for different modes (i.e. one company can have licences for transport of goods and for regular passenger transport).

15. The difference between regular and occasional passenger transport is that an evaluation of need/demand is not necessary for the latter. The appropriate local or regional authority governs the co-ordination of time schedules between different routes in passenger transport.

1.4

16. For taxi transport, transport of goods and occasional passenger transport, a licence for each operating vehicle is necessary. For regular passenger transport, the licence is valid for only one route, a set of routes, one defined area, or a combination of these alternatives.

17. The licence is flexible in that the licensee can change the service provided within the definition of what the licence covers. However, to provide services beyond the scope covered by the present licence requires a new licence. The requirements (good reputation, financial standard, professional competence, and need/demand) are controlled for every (new) licence granted.

18. In passenger transport, the licensee has not only the right to run the transport services, but also the duty to perform the transport. If the duty is not performed in accordance with the licence, the authorities have the right to withdraw the licence.

19. A holder of a licence for passenger transport where need/demand is considered, has the right to be heard through a formal hearing in the decision making process of granting/denying a *new* licence within the same area. The municipal authority and the industry involved also have the right to be heard before a new licence is granted/denied.

20. There is no distinction made between taxis that can be hailed on the street, taxis hired by rank, or taxis ordered by phone. Within the defined regional geographical district the taxis can perform transport anywhere. There are national regulations on for instance requirements for taxi licences and on priority of applicants.

21. In rural areas, taxi transport licences with the licence holder's home as a base, can be granted. For these licences, the county council decides the regulation on activities and operations. Other taxi transport licence holders have to belong to a "taxi central", and every taxi central has its own set of regulations on activities and operations (including also the assurance of night and holiday transport). The county council must approve these regulations. Due to this system, the regulations on activity/operation issues can vary from county to county.

1.5

22. There is no government regulation on prices in goods and occasional passenger transport. For regular passenger transport service, prices are regulated. The county council must approve the pricing system for all regular passenger transport. The Norwegian Competition Authority has regulated the

maximum prices for taxi transport. This regulation was withdrawn June 2000 in districts with more than one taxi central.

23. A licence for passenger transport does not ensure monopoly to the licence holder. In transport modes where need/demand is considered, only one or at least very few licences will be issued and in consequence limit the competition severely.

24. For regular passenger transport, the authorities have the possibility of using tender in the process of awarding a licence. Otherwise applications are granted/denied after a general evaluation. For taxi transport, the number of licences within a district is set. If there are more applicants than licences to be distributed the criteria for giving priority are set by national regulations. Priority is mainly based on the taxi driver's seniority within the particular county/district.

1.6

25. The Police and the Public Road Administration inspect international road freight and international passenger transport. The inspections are held at random places at random times decided by the authority performing the inspection. documents / licences, quantity and the route are controlled. Both Norwegian and foreign companies/ vehicles are inspected and inspections are performed on international transport both to and from Norway, and also on cabotage.

26. Harmonisation of the controls on international road transport would facilitate the trade and cause fewer problems for both the drivers and the control authorities. Enforcement of laws in one country's territory is however considered a national issue. The regulations of international road transport between Norway and other EEA countries have to a great extent been harmonised (if not the control element). International road transport between Norway and countries outside the EEA is however regulated by various bilateral agreements. Since the enforcement provisions vary to a great extent, the harmonisation of controls is a difficult task.

Market Outcomes

1.7

27. The road freight transport sector has a large number of operators, each with a small market share. This is in particular true for the bulk market. However, in the general cargo market there is only a limited number of forwarding agents.

28. The bus/coach sector consists of a great number of rather small companies. However, the market outcomes depend on the regulatory regime exercised by the authorities. Bus companies receiving subsidies from the county councils for offering regular passenger services, are granted local monopoly in return for public fares and route control. In a few cases the markets have been opened up for competition by the use of competitive tender. Regular bus transport covering two or more counties normally does not receive subsidies, but are nevertheless normally granted monopoly on the route concerned. The market for occasional passenger transport by bus/coach, is to a great extent deregulated and a high number of companies presumably take part in the market. The same companies usually operate in the regular as well as the occasional markets.

29. The taxi industry consists of a great number of small taxi-owners. Taxi centrals maintain local monopoly in the non-liberalised part of the sector. In the partly liberalised markets, two or three centrals

are usually granted licence. One central (Norgestaxi) is taking part in several of these partly liberalised markets.

30. Transport companies are often taking part in both the freight and passenger market (bus). In addition the Norwegian State Railways is an important participant in the road freight as well as the road passenger transport market.

31. Foreigners may own transport companies, and there are no formal limitations on the number of vehicles/tons each firm can operate (it requires, however, one licence for each vehicle, see no. 1.4 above). The Norwegian Competition Authority enforces the Competition Act.

1.8

32. There is reason to believe that the road freight sector is strongly competitive. Road transport has for a long time increased its share of transportation of goods at the expenses of rail and sea. Thus transport on road, as measured in ton-kilometres, increased by 271 percent from 1970 to 1998, whereas the numbers for rail and sea were respectively 35 and approximately zero. This development is the outcome of many complex factors. The role played by liberalisation of the road freight market is not clear.

33. Competitive tender has contributed to reducing subsidies and improving efficiency in the passenger transport markets, without altering supply and fares. It is, however, not widely used, leaving the bulk of the market to negotiations between county councils and the operators. Various factors indicate that there is a potential for increased efficiency in the sector. In the unsubsidised bus market deregulation has led to more routes and higher employment. The effect on prices is uncertain.

34. In the course of time the market share of bus transport has been fairly stable, a bit less than 10 percent, suggesting that the steps towards liberalisation has had little influence on the customers choice in mode of transport.

35. What the partly liberalised taxi markets are concerned, the deregulation has led to an increased use of existing capacity. The withdrawal of the regulation of prices has so far led to an increase of some prices in Oslo.

2. Competition Law Enforcement

Introduction

36. The answers hereby submitted by the Norwegian Competition Authority (the "NCA") will be restricted to matters concerning the Competition Act of 1993. This means that cases concerning the parallel set of competition legislation set forth in the treaty of the European Economic Area and subsequently in Norwegian law will not be treated.

1.9

Does the competition law apply to the transport sector without exemption or exception?

37. The Competition Act applies to undertakings in road transport in the same way as undertakings in other sectors in Norway. The NCA has, however, granted exemptions from the prohibitions of section 3-1 to 3-4 in a number of individual cases and by three administrative regulations.

38. Most of the individual exemptions granted in road transport have been given to associations of companies that are small with respect to the market, created for the purpose of bidding on large contracts. These exemptions are mostly given with respect to price fixing and market sharing. The exemptions are usually granted, because the co-operation enhances competition or because its impact on competition is negligible.

39. The only exemption granted to regular passenger transport was given to an association of bus companies called Norgesbussgruppen. The proposed co-operation was found to infringe sections 3-1, 3-2 and 3-3 of the Competition Act. The exemption was granted because the agreement enhances competition.

40. One of the regulations granting exemption concerns transport of goods. It was introduced on 1 November 1999, and its scope was limited to companies in road transport excluding taxis. It provides for an exemption from sections 3-1, 3-2 and 3-4 to all central agencies of companies in road transport, so that they may fix the prices. The exemption is only granted on condition that they are organised as a corporation with ownership limited to those participating in the central agency, and that the administration and participants are not members of another central agency. It is also a requirement of the exemption that the central agency will either lead to greater economic efficiency or its effect on competition should be negligible, which are the general requirements for all exemptions.

41. The two other regulations in the transport sector relate to taxi transport. The companies offering taxi transportation are mostly small, frequently consisting of only one car. In granting licences, most counties require that the car owner becomes a member of a central agency. The NCA has thus granted exemptions for such local central agencies, which permits administration and distribution of driving assignments throughout the area of the central agency. As a consequence of this regulation of licences, the central agencies were in many cases local monopolies. Their prices were, however, subject to a quite detailed regulation by the NCA. This changed in June 2000, when the NCA withdrew the regulation on prices in some areas, mostly the cities and towns. The most prominent criteria for withdrawal were the existence of at least two central agencies. A marked feature of this deregulation is therefore its reliance on competition for efficient allocations of resources. It is too early to reach a conclusion on the effects of the deregulation.

What is the nature of and reason for any exemption or exception?

See above

Who administers and enforces the competition law in this sector?

42. The competition authorities as defined by this act are the NCA, the Department of Labour and Government Administration (the "DLGA") and the King. With respect to law enforcement in this sector, the NCA will act in first instance and the DGLA in second.

Does the competition agency have responsibility for enforcing sectoral rules in this sector?

43. The regulation of taxi prices may be viewed as a sectoral rule, but is formally a regulation adopted by the NCA. The NCA has no responsibility for other sectoral rules.

What is the nature of the relationship between the competition authority and the sectoral regulator in this sector?

44. The main sectoral regulator is the Department of Transport and Communication. There are no formal agreements of co-operation.

1.10

Have you considered mergers or concentrations in this sector?

45. The NCA has not intervened against or gone into a more detailed evaluation of any mergers in this sector.

1.11

Have you addressed concerns involving horizontal arrangements in this sector?

46. The NCA has uncovered horizontal arrangements in the road freight, though no formal sanctions have been imposed. One case involved removal companies, allegedly having reached a nation wide agreement on minimum prices. Another case involved a price fixing agreement between three truck drivers situated around the city of Bergen.

47. There have been no cases in passenger transport. In taxi, however, there have been several cases concerning local practises on billing. The prices in this sector have been and are still to some extent regulated by the NCA.

Have anti-competitive arrangements been prosecuted?

48. No.

Have you found cases of collusive tendering or bid rigging?

49. No.

Have you cleared certain horizontal arrangements on the basis of their efficiencies and/or pro-competitive effects?

50. See section 1.9

1.12

What experience do you have with abuse of dominance in this sector?

51. The NCA has not intervened against any abuse of dominant position, essential facility or predatory pricing in this sector. The NCA did however appraise a refusal to deal from a large customer. The case was resolved with a decision not to intervene. The direct effect of the refusal was that the members of the central agency were offered individual contracts, so that the market structure changed from a bilateral monopoly to something resembling a monopsony. The NCA decided however that there was no indication that this structural change would lead to any significant loss in terms of economic efficiency.