

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**DISCUSSION ON METHODS FOR ALLOCATING CONTRACTS FOR THE PROVISION OF
REGIONAL AND LOCAL TRANSPORTATION SERVICES**

-- Lithuania --

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The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item V of the agenda at its forthcoming meeting on 25 February 2013.

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1. Description of the industry and regulatory framework

Ownership

1. Local bus services¹ are provided by a combination of public and private operators. There is no regulation at the national level regarding which – public or private – operator can provide bus services. The institution organizing a tendering process cannot give privileges or discriminate operators based on the ownership (see: part 2, “Award of contracts”). Therefore, both public and private operators can be entitled to provide these services. Besides, there are no limitations as to which public-private partnerships could be forbidden from such activity. However, the Competition Council does not possess any information about the existence of such partnerships in practice.

Regulation

2. When a route starts and ends in the territory of the same municipality a license to engage in local carriage of passengers is issued by the municipal institutions or institutions authorized by them. In individual cases the route may be extended, upon agreement with the State Road Transport Inspectorate, along the territories of two neighbouring municipalities (the territories of city municipalities not inclusive).

3. By law, the municipal institutions or institutions authorized by them are responsible for the allocation of contracts and for the supervision if carriers' activities are in compliance with the requirements set for road transport by legal acts. However, more detailed responsibilities of the carriers in order to ensure the provision of these services can be foreseen in the regulations passed by municipality.

4. The officers of the road transport activities control services of municipal institutions or the officers authorized by them have the right to stop and inspect, in their territory and in the territory of the neighbouring municipalities, passenger vehicles operating on local routes as well as the documents of the crew of the vehicles and documents mandatory for the carriage of passengers and luggage, including passenger and luggage tickets, and compliance with the work and rest regimen by the crews. The carriers must pass rules regarding crew's behaviour towards customers. The supervision of the crew's activities, the control of the passengers and their luggage can also be carried out by the carriers themselves or other persons authorized by them.

Consumers' affairs

5. All service operators must provide passengers with information regarding its contact details. In case of disobedience (the requested information is not given or it is incorrect), the officers of the road transport activities control services of municipal institutions must inform the carrier and municipal institutions or the institutions authorized by them about the failure to comply with the rules. Therefore, in case of complaints, consumers could turn to the service provider – the carrier. There are no specific regulatory provisions regarding the consumers' right to turn to the regulator. It is to be assumed that general rules regarding the rights of a person to apply to a public institution are applied in this case. The regulator, accordingly, has the right to request information from the carrier. Under the regulatory framework, infringements may lead to the termination of the contract or it may not be extended.

¹ There are no regional bus services in Lithuania, only local (urban and suburban), long-distance and international bus services. Therefore, the information provided will refer to local bus services only.

2. Tendering process

Award of contracts

6. In practice, institutions responsible for tendering process for the performance of public passenger transport services tend to award public operators directly by granting exclusive rights.

7. However, it must be noted that under the Regulation No 1370/2007, for the performance of the public passenger transport services, the carriers are selected on the basis on competition or directly granting the operator an exclusive right and/or compensation if it is not prohibited by national law. Based on this, the Competition Council takes the view that the provisions of Article 4 of the Law on Competition of the Republic of Lithuania² are to be regarded as such a prohibition to grant exclusive rights without a competitive procedure (the relevant matter is now being forwarded to the Constitutional Court of the Republic of Lithuania). Thus, the Competition Council maintains the position that the municipal institutions or institutions authorized by them must select the carriers for public and non-public local regular transport services based on competitive procedure which must be organized on equal, transparent and non-discriminative terms.

8. In case a tender is organized, the potential bidders compete over price, qualification parameters and other criteria announced in the tender documents. There is no obligation for the institutions organizing the competitive procedure to announce the costs and revenues for a given local area. The institution organizing the tender cannot set conditions which are not necessary and could weaken the competition between potential bidders. Having that in mind, it is questionable whether criteria such as the reputation of the franchisee (in terms of being a cost effective and a high quality service provider) could play an important role in the process of competition because they can be hard to measure.

Pricing and compensation

9. The prices of local transport are regulated by the council of the municipality, with a possibility to set different prices for different routes. The prices must be revised not less than once in a year. Under the regulation the price must be based on the costs, changes of revenues and obligations foreseen in the service contract between the carrier and the institution.

10. Carriers receiving public subsidies are obliged to present information on loss or profit so that there would be no over-subsidization.

11. Even in cases when there is not just one franchisee in the local market the prices usually are the same for all the franchisees. In this case the competition for the market is made operational by granting exclusive rights to service providers in a specific route after the competitive procedure. However, as it was mentioned, the council of the municipality can also decide to set different prices for different routes based on the same criteria already mentioned: costs, changes of revenues and obligations foreseen in the contracts between the carrier and the institution.

² This article forbids the entities of public administration to adopt legal acts or other decisions which grant privileges to or discriminate against any individual undertakings or their groups and which give rise to or may give rise to differences in the conditions of competition for undertakings competing in the relevant market, except where the difference in the conditions of competition cannot be avoided when the requirements of the laws of the Republic of Lithuania are complied with.

Coordination

12. The municipal institutions or the institutions authorized by them must ensure that the system is fully coordinated (in terms of timing/frequencies etc.). The carriers can give suggestions to institutions regarding this question matter.

3. Nature of the contracts awarded

Scope

13. The national regulatory framework does not specify whether routes should be tendered individually, in small or in large blocks.

14. The institution concerned must follow terms of equality, transparency and non-discrimination during the tendering process.

15. The service provider does not have a right to autonomously decide on the service frequency, it is set by the institution responsible for the tendering process.

Duration

16. Under the Regulation No 1370/2007, the contract for public services cannot exceed more than 10 years. The maximum length of the contract is therefore fixed for all local authorities. Each municipality is free to choose the length of the contract within this limit. In case a certain bus service is not regarded as a public service under the Regulation No 1370/2007, there are no specific provisions set by the national legislation as regards the length of the initial contract. The national legislation only explicitly sets limits to the length of extension of a contract: the contract can be extended by a maximum of 5 years if the carrier complied with conditions of contract and other legal acts, regulating the road transport services. The extension must be made on the same conditions as the previous contract.

Renegotiation

17. Any of the parties can initiate the renegotiation of the contract process. The Competition Council does not have data regarding the frequency of how much or how often the contracts are being renegotiated.

18. The national regulatory framework foresees only the process when institutions suggest of making changes in the contract. In case the institution proposes to extend, shorten or make any other changes in the route, to add or cancel the number of bus stops or to make the route more frequent, the carrier must get this proposal in written and answer within 7 days whether it agrees or not (it can also propose a different date when the changes could come into effect). If one does not agree with the proposal, the institution must organize a new competition and within 3 months time must cancel all permits that the carrier had in the route, except when the carrier refuses with the proposal to make the route more frequent. In case the frequency must be changed, the parties must agree with the changes. If the carrier does not agree with the suggested changes, the competition would be organized only for the purpose of picking the carrier for the additional trips.

Costs

19. The legal acts, regulating road transport services, do not foresee which party – the institution or the carrier – is covering costs leaving this issue to be decided based on the contract law. However, in case of the cost increase the rate for the service could be changed by the municipality council.

Incentives

20. The carriers are responsible for the safe and most comfortable trip. A municipality can pass stricter rules regarding transportation of passengers and their luggage if there is an interest of the society. However, the contract itself can regulate this question matter as well. Therefore, it is also for the parties to decide if the carrier is provided with incentives to improve quality or safety of the service. As an example, the parties can agree that in case the carrier will suffer costs in order to improve the quality of public services, the price of 1 km fixed in the contract would be indexed. The quality of service should in any case be not less than parties agreed in the contract, otherwise non-compliance with the contract will lead to refusal to extend it. However, there is no obligation for the institution to extend the contract even if the carrier fulfilled all obligations which could mean that operators are not motivated that much to take initiative and improve the quality of service and safety.

Cooperation

21. The winner of the bid can use facilities, the equipment and the personnel of the existing local company if the contract and the permit issued based on that contract do not say otherwise. The local company's facilities, equipment and the personnel must meet the same requirements as the winner of the bid. The winner and existing local company must have cooperation agreement where parties should agree on investment decisions. However, the cooperation contract cannot oppose the contract made between the winner of the bid and the institution.

4. Execution of the contracts

22. The contract is a mix of rights and obligations meaning that institution's right correspond the carrier's responsibility and *vice versa*. Therefore, it is for the parties to control the execution of the contracts. From the municipality's part, the municipal institutions or the institutions authorized by them must supervise the execution of the contract.

23. In case the contractors do not deliver the service as expected, institution responsible for the supervision of the contract, firstly, sends a claim to another party asking to deliver the services as it was agreed. If the ground for the claim is not eliminated, the institution can unilaterally terminate the contract if it was an essential breach of the contract. The termination of contract means the termination of permits. The carrier which permits were quashed cannot participate in the competitions organized by this institution for a year.

5. Outcome

24. The Competition Council is not in possession of data regarding the outcome in terms of prices, costs, quality and safety of the services provided by the licensees. Moreover, it is not responsible for the formation of policy of road transport services. Therefore, the Competition Council does not have information regarding the expected outcome of the existing allocation mechanism or the plans to change it.