PUBLIC PASSENGER TRANSPORT SERVICES BY ROAD_
CNMC VISION

Juan M. Contreras

Head of public aids and draft regulation Unit

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- The **CNMC** is **the independent regulatory body** for the markets that guarantees and **promotes effective competition** in all markets (public transportation by road included)

- **Advocacy approach** (*the carrot and the stick strategy):* competition law enforcement (fines) is not always the most efficient tool for remedying market failures.

- **Advocacy activity implies**:

  o to promote efficient economic regulation (drafting reports)

  o to influence government intervention (addressing proposals)

  o to become a trustworthy adviser

  o to bring actions before the competent jurisdiction against any administrative acts and regulations from which obstacles to the maintenance of effective competition in the markets may be derived

REGULATION (EC) nº 1370/2007

- Object: to guarantee the provision of Services of General Interest (SGI): services supposed to be "*more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed*"

- Ways to provision: 2 options: (i) in-house providing by internal operator; (ii) public service contract by a third party.

- Procedure: competitive tendering procedure, except in some cases: thresholds of PSC average annual value under 1M€ / disruption of services: emergency measures.

- Duration: 3 options: (i) not exceed 10 years. (ii) if necessary, extended by a maximum of 50% (conditions of asset depreciation) or (iii) even longer duration (amortisation of capital in relation to exceptional infrastructure, rolling stock or vehicular investment)

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SPANISH REGULATION (Act 16/1987 on Road Transport)

- Object: To guarantee the provision of public services (*regular* passenger transport by road). Public ownership_ previous administrative resolution

- Ways to provision: 2 options: art. 71 (i) in-house providing by internal operator; (ii) public service contract by a third party.

- Procedure: competitive tendering, except in some cases (art. 73.1: PSC average annual value under 100.000€)

- Duration: not exceed 10 years. If necessary, extended by a maximum of 50% (asset amortisation)

- Temporary monopoly of the service to one only company through a public tender which takes place regularly (competition for the market vs. competition in the market)

- Incumbent preference (art. 74.3)

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Background_ advocacy activity

- 2007 CNC Merger case (C106/07 National Express/Continental Auto/Movelia). A study was commended to analyze the problems and identify the solutions

- 2007 Protocol: agreement Ministry-Operators: to regulate the tenders of those concessions at national level.

- CNC Report on competition in the intercity passenger transport sector. 108 tenders are to take place at national level 2007-2018

- 2010 CNC Report on the sector at national level (2010 Bus report nº 2): follow up report.

- 2010 CNC Report on extensions of the intercity passenger transport sector at regional level

- 2010 CNC actions before the competent jurisdiction against extensions in two regions (Galicia and C. Valenciana). Under High Court Appeal at the moment

- 2012 CNC Report on Draft law to reform Act 16/1987 on Road Transport

- 2014 CNMC Report on framework tender for public service transport contracts

Some of them at the request of the Ministry, others ex officio

Comments on the EU sectorial Regulation

- **Wide variability**: given the diverse ways in which can be implemented, *regulatory practices in member states vary considerably*. Implement does not show a coherent picture (different Public Administrations adopt different practices)

- **Poor Integration of Regulation´s principle in their contracts:** in many states there are still exceptions and the PSC are not awarded according to the general principles of public procurement

Comments on the Spanish sectorial Regulation

- *Automatic qualification as public service:* impossible to evaluate whether the concessions will include routes that would be included under the conditions for a public service as opposed to others that could be offered under a system of free competition (lack of transparency)

- *Incumbent preference (art. 74.3):* in case of similar offer (lack of equal treatment)

- *Duration:* between 2007 and 2009 most regions in Spain passed regulations to extend the timespan of the current concessions, favouring the incumbent. Regional extensions could reach 10 and even 15 years (to avoid abuses_ decision to bring actions before jurisdiction).

Comments on the framework tender (at the request of the Ministry 2014)
elements to be reconsidered

- *Duration: coincide always with the maximum legal limit set? really on the basis of investment amortisation?*
- *Fares: maximum admissible fares for trips: should be set in accordance with the cost structure of each concession*
- *Award criteria (the most economically advantageous tender):*
  - *not based on formula: direct relation with the contract? customer loyalty programme.*
  - *based on formula: criteria for setting fares, poor definition: (i) maximum admissible reference fare has not been defined; (ii) fares will be updated keeping in mind quality and belonging to a group of concessions. (iii) Scoring rules divided in two sections: preference for offers next to the average bids.*

- Other restrictions: to take on the staff of the incumbent; number and age of the vehicles; fee to be paid by the contractor; a provisional guarantee required
- supplementary publicity : specialised international journals

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Thank you