



POLICY ROUNDTABLES

Competition Issues in Road Transport 2000

Introduction

The OECD Competition Committee debated competition issues in road transport in October 2000. This document includes an executive summary and the documents from the meeting: an analytical note by Mr. Darryl Biggar for the OECD, written submissions from Australia, the Czech Republic, Ireland, Italy, Japan, Korea, the Netherlands, Norway, Poland, Spain, Turkey, the United States, as well as an aide-memoire of the discussion.

Overview

The road transport sector, an essential mode of transport in OECD economies, is conventionally divided into two, largely unrelated, parts – the road freight industry and the road passenger industry. The sectors under discussion – trucking, buses, and taxis – have quite different characteristics and scope for competition, which reflect inter alia differences in the timeliness and economies of scale and scope in operations.

Trucking can sustain high level of competition and to some extent buses as well while there is some debate as to how and what form of competition can be introduced in taxis. As in the air transport industry, international trucking is governed by restrictive bilateral treaties. Most countries have liberalised their domestic trucking sector, removing controls on entry and prices.

In the bus industry, long-distance bus services are liberalised in some countries while intra-city or local buses are very rarely liberalised. The taxi industry appears at first sight to be competitive with many buyers and many sellers.

Related Topics

Structural Reform in the Rail Industry (2005)
Competition Policy and the Deregulation of Road Transport (1990)

Unclassified

DAFFE/CLP(2001)10



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

22-May-2001

English - Or. English

**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY**

**DAFFE/CLP(2001)10
Unclassified**

COMPETITION ISSUES IN ROAD TRANSPORT

JT00108149

Document complet disponible sur OLIS dans son format d'origine
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English - Or. English

FOREWORD

This document comprises proceedings in the original languages of a roundtable on transport road, which was held by the Committee on Competition Law and Policy in October 2000.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of several published in a series entitled "Competition Policy Roundtables".

PRÉFACE

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur les transports routiers, qui s'est tenue en octobre 2000 dans le cadre de la réunion du Comité du droit et de la politique de la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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(Roundtable in October 2000)

DAFFE/CLP(2000)32

32. Competition and Regulation Issues in the Pharmaceutical Industry
(Roundtable in June 2000)

DAFFE/CLP(2000)29

33. Competition Issues in Joint Ventures
(Roundtable in October 2000)

DAFFE/CLP(2000)33

TABLE OF CONTENTS

EXECUTIVE SUMMARY	9
SYNTHÈSE.....	15
BACKGROUND NOTE	21
NOTE DE RÉFÉRENCE	71
NATIONAL CONTRIBUTIONS	
Australia	125
Czech Republic	143
Ireland	151
Italy	165
Japan.....	183
Korea.....	189
Netherlands	195
Norway	209
Poland.....	217
Spain.....	243
Turkey	249
United States	255
AIDE-MEMOIRE OF THE DISCUSSION	271
AIDE-MÉMOIRE DE LA DISCUSSION	289

EXECUTIVE SUMMARY

by the Secretariat

In the light of the written submissions, the background note and the oral discussion, the following points emerge:

- (1) *Road transport is undeniably the most important mode of transport in OECD economies. Over the last fifty years, growth in road transport has accounted for virtually all of the growth in land-based transport modes. Road transport competes with other transport modes, but the extent to which transport modes are substitutes in any given case depends on a number of factors such as the type of goods (or passengers) to be transported, the distances involved, the importance of timeliness, the level of charges for infrastructure use, and so on*

The road transport industry can be divided into many different parts with quite different characteristics and scope for competition. Differences in the scope for competition in these markets reflect, amongst other things, underlying differences in the importance of timeliness and in the economies of scale and scope in operations.

Road transport accounts for a larger share of the total transport industry than all the other transport modes combined, on both the passenger and freight side of this market. Road transport has also been growing at a faster rate than other transport modes. Although there is some competition between transport modes the scope for inter-modal competition depends, amongst other things, on the type of goods (or passengers) being carried, the origin-destination combination, and the importance of timeliness. Charges for the use of infrastructure and the impact on the environment also affect inter-modal competition. Infrastructure and environmental charges should be structured in a way as to not distort inter-modal competition; ideally, each transport mode should pay for its full infrastructure and environmental costs.

The road transport industry consists of many smaller sectors with very different competitive characteristics. The most important distinction is between the passenger and freight markets. In the passenger market, further important distinctions can be made between long-distance and local services, between regular and charter services and between buses and taxis. In the freight market, distinctions can be made between truckload and less-than-truckload services and between “own account” and “for hire or reward” services.

- (2) *The road freight or trucking sector can sustain a high level of competition. Liberalisation of this sector has produced substantial welfare gains through price reductions, service improvements and enhancements in efficiency. The controls that remain focus on maintaining safety and minimising the environmental impact of trucking. At the international level prices, quantities and services are still regulated by international bilateral and multilateral agreements. Although cabotage is permitted within the EU, there remains significant scope for further liberalisation of international trucking.*

The road freight (trucking) industry has traditionally been a heavily regulated sector, often as a device for protecting the rail industry. But, in the last two decades most OECD countries, following the lead of the US, the UK and Australia, have substantially liberalised their road freight market. Very few controls on prices, services or quantities remain. The benefits of that liberalisation have been substantial. Tariffs have dropped between 15 and 25 percent, and have adjusted to better reflect underlying costs. Productivity has significantly increased by enhancing levels of vehicle utilisation and improving backhaul load rates. New services have been developed, such as just-in-time delivery (which, in turn, facilitated a substantial reduction in inventory costs in the US). Fears of destructive competition or a drop in safety standards have not materialised. Provided proper rules and enforcement mechanisms are in place, enhancing competition in trucking does not compromise safety.

Despite these clear benefits, a few countries have not yet liberalised their domestic trucking industry. In at least one OECD country prices set by trucking companies must be reviewed by the government to ensure that they do not trigger “illicit business competition”.

Within the EU, international trucking, including cabotage, has been liberalised since 1 January 1998. Nevertheless, outside the EU, international trucking is still governed by international bilateral and multilateral agreements which often restrict quantities and/or tariffs. Bilateral arrangements may even include mutual exemptions from road charges or taxes, distorting competition with carriers from other countries. In addition, despite provision for a certain degree of liberalisation of international trucking in the 1995 NAFTA agreement, this liberalisation has not yet been fully implemented. There clearly remains significant scope for further liberalisation of international trucking.

Although the market for truckload services remains very unconcentrated, concentration is much higher in the market for less-than-truckload and express freight services. The level of concentration in this market in the US has been rising steadily since deregulation, as companies merge to better exploit economies of scale and scope. The market share of the top four firms was 18 percent in 1977, rising to 37 percent in 1987 and 50 percent in 1997. In Australia, where three companies account for 90 percent of the express freight market, the ACCC has prosecuted anti-competitive collusive tendering and market sharing agreements.

Competition concerns have also, on occasion, arisen in the unconcentrated truckload sector. In the US, residual competition law exemptions permit associations of carriers called “rate bureaux” to negotiate across-the-board generalised rate increases that the Department of Justice fears could act as a focal point for collusive activity. In Ireland, the trucking association organised a blockade of Dublin port to force customers at the port to accept higher charges.

- (3) *Although the long-distance passenger transport sector appears to be basically competitive, economies of scale and scope in network operation seem to have an important influence on this market. In certain countries liberalisation has led to the emergence of just one nation-wide operator. Some countries retain controls on entry and prices, especially in Southern Europe. Competition and efficiency can be enhanced in this sector through a combination of liberalisation and specific pro-competitive actions, such as requiring that entrants have non-discriminatory access to bus terminals and other essential facilities.*

There are certain economies of scale and scope in the operation of long-distance bus networks, giving rise to hub-and-spoke network, analogous to the networks of airline companies. As in the airline industry, there is a tendency towards concentration. The US, the UK and Australia all have only a single nation-wide bus transport operator, although there is often substantial competition

from smaller regional networks and point-to-point competition on certain routes. Because of these economies of scale and scope mergers of bus networks offer both efficiency benefits (in the form of economies of scale and scope) and the threat of reduced competition. This threat is mitigated by the presence of strong inter-modal competition, particularly from rail, air and the private car. As in the airline industry, the promotion of effective competition in the bus sector may require careful attention to preventing predatory behaviour and ensuring that rival operators have access to loyalty schemes or travel-agent incentive schemes of incumbent operators.

In many cities there is limited scope for competition between bus terminals. As a result the development of effective competition will also require that competing bus operators also have non-discriminatory access to existing bus terminals. When the owners of bus terminals also provide bus services they may have a strong incentive to discriminate against rival bus companies. In one case in Turkey, a bus terminal facilitated a horizontal agreement between bus operators by discriminating against firms which did not abide by the agreement.

Several OECD countries still regulate entry and prices in long-distance bus services. In some cases bus prices and services are regulated to prevent competition with the rail industry. Indeed, bus services may be restricted to operate more as a complement (bringing passengers to the nearest mainline station) than as a substitute for rail services. Many countries require an assessment of the need for a new service before a licence can be granted and deliberately prevent new entrants from providing services that compete too closely with existing services.

Other countries maintain monopoly rights on certain routes, but then offer these rights up for tender. The tendering process might specify the frequency of service required, the quality of bus to be provided and so on. Tenderers then bid on the basis of the price of the service that they will charge. This approach limits the monopoly rent that operators can charge, prevents the emergence of a dominant national operator and ensures a minimum level of services on tendered routes. On the other hand, it has the drawback that bus operators are limited in their ability to initiate new services, to withdraw from old services or to rationalise their networks in order to best meet customer demands.

- (4) *Several factors suggest that traditional in-the-market competition in local bus services is likely to be limited. When two or more local buses compete on the same route, bus companies cannot protect the investment they make in their timetable. In addition, economies of network scale and scope are likely to be particularly important, particularly as a result of the tendency of travelcard schemes to lock travellers onto a single transport network.*

Although the UK experiment in local bus deregulation has yielded some benefits, particularly in increasing efficiency, competition in the market remains scarce and the recent UK reforms move away from this model. Most countries, with the objectives of preserve integrated timetabling, co-ordination with other transport services and minimising subsidies have chosen competition for-the-market in the form of competitive tendering.

Transport economists have pointed to certain difficulties with in-the-market competition in local bus services. The investment that one company makes in its bus schedules (e.g., through advertising) is vulnerable to expropriation by a competing company which schedules its services to arrive just before the existing company. In the worst case, buses may race each other to be the first to arrive at the next stop. In this context, bus companies are unlikely to invest in promoting their timetables and are likely to seek to change the timetables often. Some of these problems can be addressed by allowing companies to protect their investment in their timetable, by preventing other bus services from approaching too closely, in time or in distance, to existing stops.

As with long-distance bus networks, there may be substantial economies of scale and scope in network operation. Travellers may prefer to choose a bus company which offers more frequent services or a more extensive network, especially when they have to lock themselves into a single network by purchasing a travelcard. A company with more frequent services and/or a more extensive network is likely to have a substantial advantage when marketing its travelcard. Two or more bus companies may enter into an agreement to offer a combined travelcard, valid on both networks, but such agreements also eliminate competition between the participating companies.

The UK deregulated local bus services in 1985. As a result of this deregulation, the efficiency of local bus services has significantly improved but in-the-market competition has been rare. After an initial period of competition, sometimes involving predatory behaviour, it seems that the market has settled down to a live-and-let-live equilibrium.

Most countries rely on competitive tendering for selecting local bus service providers. Competitive tendering can ensure timetable integration, co-ordination with other transport services and can ensure subsidies are kept to a minimum. The disadvantage of competitive tendering is that services are planned centrally and are not responsive to changes in levels or preferences of consumer demand. Some of these problems can be reduced by not granting exclusivity – i.e., by allowing competing services over existing tendered routes.

- (5) *Despite the large number of competing suppliers several factors contribute to making the taxi market less than perfectly competitive – consumers are often in a hurry, and price comparisons and assessing the quality of the service are often difficult. These factors are particularly a problem in the markets for taxis hailed in the street and for taxis hired from taxi stands, especially where there is a convention that customers take the first taxi on the rank.*

Partially as a result of these concerns, most cities regulate both taxi numbers and taxi fares. In many cities taxi licences are transferable and sometimes change hands for many times the annual income of a taxi driver. This is prima facie evidence of “monopoly rents” in taxi fares. Opposition to the substantial loss in wealth that would result is one of the main sources of opposition to liberalisation of the taxi market.

Some cities have liberalised taxi services, usually resulting in a substantial increase in taxi numbers and with a mixed effect on fares. Sometimes problems arise in special circumstances such as at airport taxi ranks. There remains substantial scope for further liberalisation of taxi services, especially liberalising entry restrictions, particularly when attention is paid to certain competition safeguards.

The market for taxi services can be divided into three parts – the phone-booked taxi market, the taxi stand market and the hailed-taxi market. The level of competition differs in these three markets. In principle, the phone-booked market is competitive – travellers can shop around in the same manner as they would in purchasing other services over the phone. In the taxi-stand market the opportunities for competition depend on whether consumers are required to take the first taxi on the rank (the “first-in-first-out” policy). In the hailed taxi market, the opportunities for choosing between taxis can be limited, especially if taxis arrive infrequently.

Taxi regulation is usually a responsibility of city governments and policies vary. Many cities restrict the numbers of taxis available. In some cases that number has not changed for decades despite substantial population growth over the same time. Although there were around 20 000 taxicabs in operation in New York in the early 1930s, there were only 13 566 in 1937 and

11 787 in the 1990s. One result of such restrictions on numbers is that taxis often earn substantial monopoly rent, as can be seen in the prices at which taxi licences change hands, which often amount to many times a taxi driver's annual income. The welfare implications of these monopoly rents can be important. Evidence from Italy suggests that the elasticity of demand for taxi services is high and that taxis are particularly used by low-income consumers (who cannot afford a car). The substantial value in taxi licences can represent a sizeable component of the wealth of taxi drivers and a primary source of opposition to taxi market reform.

Taxis usually do not operate independently, but belong to groupings that usually include centralised phone booking and dispatch systems. In many cities the number of such independent groupings is very small, allowing such groupings to exercise market power to either limit the supply of taxis (by limiting the number of hours per week a taxi can operate); or to limit the ability of members to leave to set up a rival grouping; or to prevent drivers from accepting bookings except through the central booking facility. Mergers and/or agreements between such groupings have often been opposed by competition authorities.

In some cities certain taxi ranks (particularly at airports and railway stations) can account for an significant proportion of all taxi business. Competition authorities have viewed with suspicion attempts by the owners of such sites to exercise market power by limiting the number of taxi companies or the number of taxis that can serve these ranks.

Several countries have liberalised the taxi market, including Sweden, New Zealand, certain states of Australia and several US cities. Although liberalisation is usually associated with a substantial increase in taxi numbers, and improvements in response times, prices have not always come down, especially at airport stand markets. This has led, on occasions, to long queues at airport ranks, disputes between taxi drivers over place in line and, in some cases, refusal to carry passengers short distances.

These problems have demonstrated that liberalisation needs to be coupled with certain safeguards to promote competition. Possible safeguards include elimination of the first-in-first-out rule at taxi ranks, physical redesign of ranks to allow customers to choose between taxis, requirements that prices be posted outside the taxi to facilitate price comparisons and requirements that taxis operate the same prices in the taxi-stand market and the phone-booked taxi market. Some cities promote competition by distinguishing between taxi services which are allowed to be hailed on the street and taxi services which can only be booked by phone. The latter are subject to little or no regulation (as in London where there is a distinction between taxis and minicabs and in Ireland, where there is a distinction between taxis and hackneys). In those markets where these safeguards prove inadequate (such as the airport stand market) some form of limited price cap may be necessary.

With suitable safeguards in place, there remains substantial scope for further liberalisation of the taxi market. In particular, restrictions on taxi numbers are not necessary. Quantity restrictions should be abolished, while retaining minimum requirements on vehicle safety and driver competence. The erosion of the existing substantial monopoly rents in some cities offers the potential for substantial benefits for consumers.

SYNTHÈSE

par le Secrétariat

Les documents présentés, la note de référence et la discussion permettent de dégager les observations suivantes :

- (1) *Le transport par route est incontestablement le mode de transport le plus important dans les économies de l'OCDE. Au cours des cinquante dernières années, c'est presque exclusivement au transport par route qu'il faut attribuer la croissance enregistrée dans les modes de transport terrestres. Le transport par route est en concurrence avec les autres modes, mais l'interchangeabilité modale dépend, dans chaque cas d'espèce, d'un certain nombre de facteurs tels que le type de marchandises (ou de voyageurs) transportés, la distance, l'importance accordée à la ponctualité, le niveau des redevances d'utilisation des infrastructures.*

La profession routière peut être subdivisée en de nombreux segments dont les caractéristiques sont très différentes et où les possibilités de concurrence varient également beaucoup. S'agissant du degré de concurrence possible, les différences entre ces segments tiennent notamment à l'importance qui est attribuée à la ponctualité dans chacun d'eux, ainsi qu'aux économies d'échelle et au champ d'activité.

La part du transport par route dans l'ensemble du secteur des transports est plus importante que celle de tous les autres modes pris globalement, et ce pour le transport de voyageurs et de marchandises. Le transport routier a également connu une croissance beaucoup plus rapide que les autres modes. Il existe une certaine concurrence intermodale, mais son importance dépend notamment du type de marchandises (ou de voyageurs) transportés, du couple origine-destination, de l'importance accordée à la ponctualité, ainsi que des redevances d'utilisation des infrastructures et de l'impact sur l'environnement. Les redevances d'infrastructures et les taxes de protection de l'environnement devraient être structurées de façon à ne pas fausser la concurrence intermodale. Idéalement, chaque mode devrait assumer l'ensemble de ces coûts infrastructurels et environnementaux.

La profession routière se compose de nombreux petits segments dont les caractéristiques du point de vue de la concurrence sont très différentes. La plus importante distinction est à faire entre le marché voyageurs et le marché marchandises. Dans le premier, on peut de nouveau distinguer les services à grande distance et les services locaux, les services réguliers et les services affrétés, et le transport par autocar/autobus et les services de taxi. S'agissant du transport de marchandises, il peut être subdivisé entre transport de charges complètes et groupage de charges partielles, ainsi qu'entre "transport pour compte propre" et "transport pour compte d'autrui".

- (2) *Le secteur du transport de marchandises par route se prête à une vigoureuse concurrence. La libéralisation s'y est traduite par d'importants gains de bien-être découlant de réductions de prix, et d'une amélioration des services et d'un accroissement de l'efficacité. Les mesures de contrôle qui demeurent en application visent essentiellement à garantir la sécurité et à limiter au*

minimum l'impact du transport routier sur l'environnement. Au plan international, les prix, les quantités et les services sont encore réglementés par voie d'accords bilatéraux et multilatéraux. Bien que le cabotage soit autorisé à l'intérieur de l'UE, il serait fort indiqué de libéraliser davantage le transport international par route.

Le secteur du transport de marchandises par route a toujours été fortement réglementé, souvent afin de protéger le rail. Cependant, au cours des vingt dernières années, la plupart des pays de l'OCDE, suivant en cela l'exemple des Etats-Unis, du Royaume-Uni et de l'Australie, ont considérablement libéralisé leur marché du transport de marchandises. De fait, la réglementation des prix, des services ou des quantités a été grandement allégée. Les avantages de cette libéralisation ont été très importants. Ainsi, les tarifs ont chuté de 15 à 25 pour cent et se sont ajustés pour correspondre plus étroitement aux coûts sous-jacents. La productivité s'est sensiblement améliorée grâce à une augmentation du niveau d'utilisation des véhicules et des taux de chargement retour. De nouveaux services ont vu le jour, tels que la livraison en flux tendus (laquelle a favorisé une réduction sensible des frais de stockage aux Etats-Unis). L'effet destructeur de la concurrence ou la baisse du niveau de sécurité que certains appréhendaient ne se sont pas concrétisés. Si on l'encadre par des règles et des mécanismes d'exécution appropriés, le développement de la concurrence dans la profession routière ne met pas en péril la sécurité.

En dépit de ces avantages évidents, quelques pays n'ont pas encore libéralisé le secteur intérieur du transport par route. Dans au moins un pays de l'OCDE, l'Etat examine les prix établis par les transporteurs routiers afin de s'assurer qu'ils ne déclenchent pas une concurrence commerciale "illicite".

Au sein de l'UE, le transport international par route, y compris le cabotage, est libéralisé depuis le 1er janvier 1998. En revanche, à l'extérieur de l'Union, il demeure régi par des accords bilatéraux et multilatéraux qui limitent souvent les quantités et/ou les tarifs. Les dispositions bilatérales peuvent même comprendre des exemptions mutuelles de redevances ou taxes routières, ce qui fausse la concurrence avec les transporteurs des autres pays. En outre, bien que l'ALENA, entré en vigueur en 1994, prévoit une certaine libéralisation du transport international par route, celle-ci n'a pas encore été véritablement réalisée. Il y aurait tout intérêt à poursuivre l'effort de libéralisation du transport routier international.

Le marché des services de transport de charges complètes est encore très peu concentré, mais celui du transport de charges partielles et des services de messageries express l'est beaucoup plus. Le degré de concentration de ce marché aux Etats-Unis a augmenté de façon soutenue depuis la déréglementation, les entreprises fusionnant afin de mieux profiter des économies d'échelle et de champ d'activité. La part de marché des quatre plus grandes entreprises, qui était de 18 pour cent en 1977, atteignait 37 pour cent en 1987 et 50 pour cent en 1997. En Australie, où trois entreprises contrôlaient 90 pour cent du marché du transport express, l'ACCC a engagé une action pour soumission concertée et accord de partage de marché anticoncurrentiels.

Il est également arrivé que se posent des questions en matière de concurrence dans le secteur du transport de charges complètes, qui n'est pas concentré. Aux Etats-Unis, il subsiste des exemptions à l'application du droit de la concurrence qui permettent à des associations de transporteurs -- les "bureaux d'établissement des tarifs" -- de négocier des hausses de tarifs généralisées, ce qui risque, d'après le ministère de la Justice, de servir de plate-forme pour la collusion. En Irlande, le syndicat des transporteurs routiers a organisé un blocus du port de Dublin pour forcer les clients du port à accepter des tarifs plus élevés.

- (3) *Le secteur du transport de voyageurs à grande distance semble relativement concurrentiel, mais les économies d'échelle et de champ d'activité liées à l'exploitation du réseau semblent également exercer une importante influence sur ce marché. Dans certains pays, la libéralisation s'est traduite par l'émergence d'un seul opérateur d'envergure nationale. Certains pays continuent d'exercer un contrôle sur l'entrée et les prix, surtout en Europe méridionale. La concurrence et l'efficacité peuvent être renforcées dans ce secteur par une combinaison de mesures de libéralisation et de mesures expressément proconcurrentielles, par exemple en exigeant que les entrants bénéficient d'un accès non discriminatoire aux gares routières et à d'autres installations essentielles.*

L'exploitation de réseaux de transport par autocar comporte certaines économies d'échelle et de champ d'activité, qui favorisent la formation de réseaux en étoile, analogues à ceux des compagnies aériennes. Ainsi, comme dans le transport aérien, on note une tendance à la concentration. Aux Etats-Unis, au Royaume-Uni et en Australie, il n'y a qu'un seul opérateur national de transport par autocar, bien qu'il existe souvent une concurrence non négligeable de la part de petits réseaux régionaux et une concurrence point à point sur certains itinéraires. En raison de ces économies d'échelle et de champ d'activité, les fusions de réseaux de transport par autocar offrent des avantages sur le plan de l'efficacité (sous forme d'économies d'échelle et de champ d'activité), mais risquent en même temps de réduire la concurrence. Ce risque est atténué par l'existence d'une vigoureuse concurrence intermodale, en particulier avec le rail, l'avion et la voiture particulière. Comme dans le transport aérien, il sera peut-être nécessaire, pour stimuler une concurrence effective dans le secteur du transport par autocar, de faire preuve de vigilance pour empêcher les comportements prédateurs et veiller à ce que les opérateurs rivaux aient accès aux programmes de fidélité des opérateurs en place ou à leurs programmes de commissions pour les agents de voyage.

Dans de nombreuses villes, les possibilités de concurrence entre les gares routières sont limitées. Pour que s'instaure une concurrence effective, il faudra donc également que les opérateurs concurrents de services d'autocars bénéficient d'un accès non discriminatoire aux gares routières existantes. Lorsque les propriétaires de ces gares sont également des prestataires de services, ils seront fortement tentés d'agir de façon discriminatoire à l'égard des transporteurs rivaux. Ainsi, en Turquie, l'exploitant d'une gare routière a facilité la conclusion d'un accord horizontal entre opérateurs de services d'autocars, pour ensuite exercer une discrimination à l'égard des opérateurs qui ne se conformaient pas l'accord.

Plusieurs pays de l'OCDE réglementent encore l'accès au marché et les prix des services d'autocars à grande distance. Dans certains cas, les prix et services sont réglementés pour éviter la concurrence avec le rail. De fait, les services d'autocars peuvent être limités de façon à servir davantage de complément (en acheminant les voyageurs à la gare ferroviaire la plus proche) que comme un service de substitution. Dans de nombreux pays, la délivrance d'une licence est soumise à l'évaluation préalable de la nécessité du nouveau service concerné, cette condition ayant pour objectif délibéré d'empêcher de nouveaux entrants d'offrir des services qui entreraient trop directement en concurrence avec les services déjà offerts.

Dans d'autres pays, des droits de monopole sont maintenus sur certaines lignes, mais ces droits sont progressivement mis en adjudication. L'appel d'offres spécifie notamment la fréquence du service nécessaire et la qualité des véhicules à utiliser. Les soumissionnaires présentent ensuite leur offre en fonction du prix qu'ils ont l'intention de pratiquer. Cette façon de faire limite la rente de monopole que les opérateurs peuvent tirer de leurs services, empêche l'émergence d'un opérateur national dominant et assure un niveau de service minimum sur les routes faisant l'objet d'une soumission. Elle a d'autre part des inconvénients car elle limite en effet rigoureusement la

capacité des opérateurs de services d'autocars à lancer de nouveaux services, à abandonner des services existants ou à rationaliser leurs réseaux pour mieux répondre à la demande.

- (4) *Plusieurs facteurs donnent à penser que la concurrence traditionnelle dans le marché des services locaux serait limitée. Lorsque deux autobus locaux ou plus sont en concurrence sur la même ligne, les opérateurs ne peuvent pas protéger les ressources qu'ils ont investies dans leurs horaires. En outre, il est probable que les économies d'échelle du réseau et de champ d'activité seront particulièrement importantes, surtout compte tenu du fait que les opérateurs ont tendance à vouloir utiliser un système d'abonnement pour obliger les voyageurs à emprunter un réseau de transport unique.*

L'expérience du Royaume-Uni en matière de déréglementation du transport local par autobus a donné certains résultats favorables, surtout des gains d'efficacité, mais la concurrence dans le marché demeure limitée et les réformes réalisées récemment dans le pays s'écartent de ce modèle. La plupart des pays, dans le but de protéger l'établissement d'horaires intégrés, d'assurer la coordination nécessaire avec les autres services de transport et de limiter les subventions au minimum, ont opté pour la concurrence "pour le marché" en recourant à l'adjudication.

Les économistes des transports ont mis en évidence certaines difficultés qui se posent en ce qui concerne la concurrence dans le marché des services locaux. Ainsi, un opérateur risque de perdre les ressources qu'il investit dans ses horaires (par exemple, en publicité) aux mains d'un concurrent qui programmera ses services pour arriver juste avant lui. Dans le pire des cas, il arrive que les autobus "fassent la course" pour arriver le premier au prochain arrêt. Dans une telle situation, les opérateurs de services d'autobus n'investiront vraisemblablement pas dans la publicité de leurs horaires et il est probable qu'ils modifieront leurs horaires fréquemment. Il est possible d'éviter certains de ces problèmes en autorisant les opérateurs à protéger leur investissement dans leurs horaires, en empêchant les services d'autres opérateurs de trop se rapprocher, dans le temps ou dans l'espace, des arrêts existants.

Comme dans le transport par autocar, il pourrait y avoir d'importantes économies d'échelle et de champ d'activité liées à l'exploitation du réseau. Les voyageurs privilégieront peut-être un opérateur qui leur offre des services plus fréquents ainsi qu'un réseau plus étendu, surtout s'ils doivent s'en remettre à un réseau unique en achetant un abonnement. L'opérateur qui offrira des services plus fréquents et/ou un réseau plus étendu jouira vraisemblablement d'un avantage de taille pour commercialiser son abonnement. Plusieurs opérateurs de services d'autobus peuvent conclure un accord pour offrir un abonnement conjoint, valable sur les réseaux de chacun d'eux, mais cette formule supprime également la concurrence entre les opérateurs participants.

Le Royaume-Uni a déréglementé les services locaux en 1985. L'efficacité des services s'est sensiblement améliorée, mais la concurrence dans le marché est demeurée rare. Après une période initiale de concurrence, pendant laquelle certains ont eu parfois recours à des pratiques d'éviction, le marché semble s'être stabilisé et avoir trouvé un équilibre où la tolérance a sa place.

La plupart des pays procèdent par adjudication pour choisir les prestataires de services locaux d'autobus. L'adjudication permet de s'assurer de l'intégration des horaires et de la coordination avec les autres services de transport, et de maintenir les subventions au minimum. Inconvénient toutefois, la planification des services est centralisée, ce qui ne permet pas de s'adapter rapidement aux variations quantitatives et qualitatives de la demande. Il est possible de résoudre

certains de ces problèmes en n'accordant pas d'exclusivité -- c'est-à-dire en autorisant des services concurrents sur les lignes existantes mises en adjudication.

- (5) *Bien que le marché des taxis se caractérise par un grand nombre de fournisseurs concurrents, plusieurs facteurs contribuent à y maintenir une concurrence imparfaite, car les consommateurs sont souvent pressés, et les comparaisons de prix et l'évaluation de la qualité du service sont souvent difficiles. Ces facteurs constituent surtout un problème dans le marché des taxis hélés en rue et dans celui des taxis pris aux stations de taxis, surtout lorsque l'usage veut que le client prenne le premier taxi de la ligne.*

En partie pour ces raisons, la plupart des villes réglementent le nombre des taxis et les tarifs qu'ils pratiquent. Les licences de taxi sont souvent transférables et changent parfois de main à un prix équivalant à plusieurs fois le revenu annuel d'un chauffeur de taxi. Cela donne à penser que des "rentes de monopole" sont comprises dans les tarifs pratiqués. L'un des principaux obstacles à la libéralisation du marché des taxis est l'opposition à la perte considérable de richesse qui s'ensuivrait.

Certaines villes ont libéralisé les services de taxi, ce qui s'est en général traduit par une augmentation sensible du nombre de taxis et par un effet mitigé sur les tarifs. Des problèmes se posent parfois dans des circonstances particulières, par exemple dans les stations de taxis aux aéroports. Il serait fort indiqué de poursuivre la libéralisation, notamment en ce qui concerne les restrictions visant l'accès à la profession, surtout si l'on prend soin d'appliquer certaines mesures visant à préserver la concurrence.

Le marché des services de taxi peut être subdivisé en trois segments -- celui des taxis réservés par téléphone, celui des taxis pris à une station de taxis et celui des taxis hélés en rue -- dans lesquels le degré de concurrence n'est pas le même. En principe, le marché des taxis réservés par téléphone est concurrentiel, puisque les voyageurs peuvent se renseigner avant de faire leur choix, comme ils le font lorsqu'ils achètent d'autres services par téléphone. Dans le marché des taxis pris à une station de taxis, les possibilités de concurrence varient selon que le client doit prendre ou non le premier taxi de la ligne (système du "premier arrivé, premier parti"). Enfin, dans le marché des taxis hélés en rue, la possibilité de choisir est limitée, surtout si les taxis se font rares.

La réglementation du secteur des taxis relève habituellement des municipalités, dont les politiques varient. De nombreuses villes limitent le nombre de taxis disponibles. Dans certains cas, ce nombre n'a pas changé depuis des décennies, malgré une forte croissance démographique pendant cette période. On comptait environ 20 000 taxis en circulation à New York au début des années 30, tandis qu'ils n'étaient que 13 566 en 1937 et 11 787 dans les années 90. L'une des conséquences de ces restrictions est que les taxis bénéficient souvent d'une rente de monopole substantielle, comme en témoignent les prix pratiqués pour la vente des licences, qui représentent souvent plusieurs fois le revenu annuel d'un chauffeur. Les conséquences de ces rentes de monopole du point de vue du bien-être peuvent être importantes. Les données concernant l'Italie donnent à penser que l'élasticité de la demande de services de taxi est forte et que les taxis sont surtout utilisés par les consommateurs à faible revenu (qui n'ont pas les moyens de s'acheter une automobile). La valeur importante des licences de taxi peut représenter un élément non négligeable du patrimoine des chauffeurs de taxi et par le fait même l'un des principaux motifs d'opposition à une réforme du secteur.

Les taxis ne sont en général pas exploités de façon indépendante, mais appartiennent à des regroupements qui comprennent habituellement des systèmes centralisés de réservation par

téléphone. Dans beaucoup de villes, ces regroupements indépendants sont très peu nombreux, ce qui leur permet d'exercer une puissance de marché soit en limitant l'offre de taxis (le nombre d'heures hebdomadaires de circulation), soit en limitant la capacité des membres de quitter le regroupement pour en former un autre qui lui ferait concurrence, soit en empêchant les chauffeurs d'accepter des réservations à l'extérieur du système centralisé de réservation. Les projets de fusion et/ou d'accord entre ce genre de regroupements ont souvent rencontré l'opposition des autorités de la concurrence.

Dans certaines villes, les stations de taxis (en particulier aux aéroports et aux gares ferroviaires) représentent parfois une proportion considérable de l'activité du secteur. Les autorités de la concurrence ont accueilli d'un œil méfiant les tentatives des propriétaires de ces stations d'exercer un pouvoir de marché en limitant le nombre d'exploitants de taxis ou le nombre de véhicules pouvant desservir ces stations.

Plusieurs pays ont libéralisé le marché des taxis, notamment la Suède, la Nouvelle-Zélande, de même que certains Etats d'Australie et plusieurs villes des Etats-Unis. La libéralisation est en général associée à un accroissement sensible du nombre de taxis et à des améliorations des délais de prise en charge, mais les prix n'ont pas toujours baissé, surtout aux stations des aéroports. Cette situation a parfois donné lieu à la formation de longues files d'attente aux stations d'aéroport, à des différends entre chauffeurs au sujet de leur place dans la ligne et parfois au refus de prendre des clients pour de courtes courses.

Ces problèmes ont démontré que la libéralisation devait s'accompagner de certaines mesures de sauvegarde visant à promouvoir la concurrence. Celles qui peuvent être notamment envisagées sont l'élimination du système du "premier arrivé, premier parti" aux stations de taxis, le réaménagement des stations afin de permettre aux clients de choisir leur taxi, l'obligation d'afficher les tarifs à l'extérieur du taxi pour faciliter les comparaisons, et l'obligation de pratiquer les mêmes tarifs pour les taxis pris aux stations et les taxis réservés par téléphone. Certaines villes encouragent la concurrence en distinguant les services de taxis qui peuvent être hélés en rue et ceux qui ne peuvent être réservés que par téléphone. Ces derniers ne sont pratiquement pas soumis à réglementation (comme à Londres, où il existe une distinction entre taxis et "*minicabs*" et en Irlande, où on distingue les taxis des "*hackneys*"). Dans les marchés où ces mesures de protection se révèlent insuffisantes (par exemple sur le marché des stations de taxis aux aéroports), il pourrait être nécessaire de recourir au plafonnement des prix.

En prenant des mesures adaptées, il est encore largement possible de libéraliser le marché des taxis. La limitation du nombre de véhicules, en particulier, n'est pas nécessaire. Les restrictions quantitatives devraient être levées, tandis qu'il convient de maintenir des normes minimales en ce qui concerne la sécurité des véhicules et la capacité professionnelle des chauffeurs. L'effritement des rentes de monopole importantes qui existent dans certaines villes laisse entrevoir des avantages tangibles pour le consommateur.

BACKGROUND NOTE

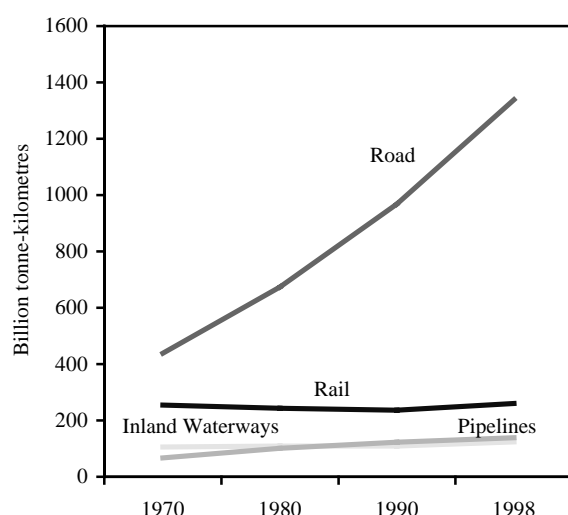
by the Secretariat

1. Introduction

It is hard to over-emphasise the importance of road transport to OECD economies. Transport by road is an essential, ubiquitous and possibly a defining feature of OECD economies at the beginning of the 21st century.

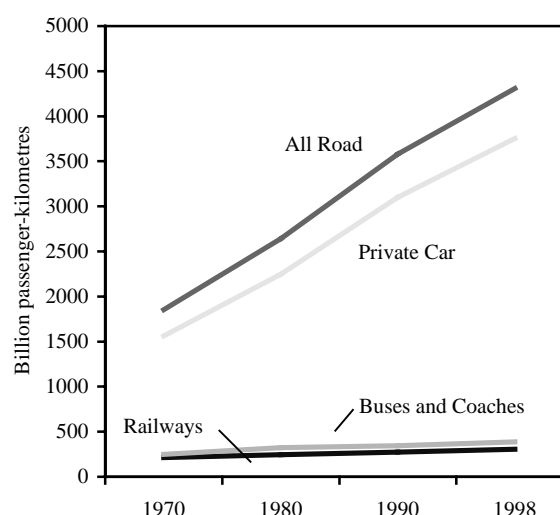
It is conventional to divide the road transport sector into two, largely unrelated, parts – the road freight industry and the road passenger industry. The road freight industry consists of the transportation by road of goods between economic enterprises and between enterprises and consumers, including the transportation of bulk goods and goods requiring special handling, such as refrigerated goods and dangerous goods. This industry merges, at its boundary, with the postal, parcel and express mail services industries. The road passenger industry consists of the transportation by road of passengers whether individually (as in the case of taxis and the private automobile) or collectively (as in the case of buses or coaches) and over long or short distances. Figure 1 and Figure 2 illustrate the growth of road passenger and freight transport relative to other transport modes over the last few decades:

Figure 1: Trends in Freight Transportation 1970-1998 (ECMT countries)



Source: ECMT Trends in the Transport Sector 1970-1998, Data for rail cover 18 countries, road 16 countries, water 10 countries and pipelines 12 countries. Air freight data is not available.

Figure 2: Trends in Passenger Transportation 1970-1998 (ECMT countries)



Source: ECMT Trends in the Transport Sector 1970-1998, Data for rail cover 18 countries, cars and buses 15 countries. Air freight data is not available.

It is common to draw a distinction between the market for self-provided transport services (including the market for leased vehicles) and the market transportation services offered for hire or reward. Self-provided services include “own-account” road freight transportation and passenger transportation in private vehicles. Leased services include charter passenger services such as charter buses (for which seats are not sold to the general public). The markets for self-provided transport services do not raise regulatory concerns and are (with certain exceptions) lightly regulated, if at all. They will not be the focus of this study. We will focus here on the markets for-hire freight services and bus, coach and taxi services.

The road transport industry competes with other transportation modes – particularly air, water and rail. In some cases – especially over longer distances – these other transport modes provide a strong competitive constraint on road transport services and should be included within a broader transport market. In what follows, we will primarily focus on competition within the road transport sector itself.

The provision of road transport services, like all other transport modes, requires two complementary inputs - infrastructure and vehicles which make use of that infrastructure. In the case of the road sector, the infrastructure is the network of major and minor roads that comprise the international road network. For various reasons (unlike, e.g., the rail industry) the ownership and operation of the road infrastructure is almost always separated from the ownership and operation of vehicles which use that infrastructure¹. This raises questions of how to properly charge for the use of the infrastructure and when and how to expand the capacity of the infrastructure. Infrastructure charges are particularly important when considering the nature and extent of inter-modal competition. This paper will not focus on issues related to the provision of infrastructure.

Like other transport modes, the operation of vehicles over the road infrastructure creates risks and nuisances for other vehicles, pedestrians, local residents and the environment. The control of the accidents and public nuisances is the domain of safety and environmental regulations. Although important, such regulations will not be the focus of this paper. Instead, this paper will focus on so-called “economic” regulations which impinge upon the conditions for entry, exit, prices, services and ownership.

The main points of this paper can be summarised in advance:

- The scope for effective competition, and correspondingly, the need for regulation, differs significantly between trucking, buses and taxis. In part, this is due to differences in economies of scale and scope in these industries. Economies of scale and scope are strongest when the demand for timeliness is high and the volumes of traffic flows between any two points are low relative to the efficient size of a transport vehicle. Each of these sectors also has sector-specific features which in some instances limit the scope for competition.
- In the full truckload (“TL”) segment of the road freight sector, timeliness is relatively less important and the volumes of freight are large relative to truck sizes, so economies of scale are small. There is substantial scope for competition in the TL segment of road freight. In practice, liberalisation of the TL segment of the trucking industry has yielded significant benefits including enhancing competition, lowering freight rates and leading to more innovative and responsive industry forms. Substantial scope for liberalisation remains, especially at the international level.
- Economies of scale are more important and competition more limited in the market for consolidated transportation of time-sensitive and/or less-than-truckload (“LTL”) volumes (including express packages, e.g., DHL or UPS). This market has tended to become more concentrated over time. However, here also effective competition can emerge, especially when sustained through vigorous competition enforcement.

- In the case of long-distance passenger transport, timeliness is more important and volumes of traffic flows lighter relative to the size of a coach. Therefore, economies of scale and the consolidation of traffic flows are important. This tends to lead to the emergence of a hub-and-spoke style network. As in the airline industry, network operators with an extensive network are able to exploit their size advantage over smaller rivals. Therefore, competition on certain routes of a hub-and-spoke network is typically limited and large dominant networks can emerge. In addition, incumbent operators on a route can respond vigorously to new entry through rescheduling existing services, enhancing frequency of services and/or matching or undercutting the prices of new entrants. Liberalisation of long-distance bus services has been relatively successful, although there is a risk of increasing concentration and on-going active competition enforcement is essential.
- In the case of local bus services, customers rarely commit themselves to a particular service at a particular time. Instead, customers prefer to turn up at a pre-arranged place and time and purchase their tickets when they get on the bus. Such services are vulnerable to a form of “interloping” – whereby a rival bus arrives immediately before the scheduled time to take the waiting passengers – thereby undermining the incumbent’s investment in publicity and marketing to induce customers out to the curb. The resulting competition does not lead to a stable outcome as operators change their timetables repeatedly, jockeying to be in front of their rival. One possible solution is the definition and enforcement of “curb rights” allowing incumbents a “property right” in passengers waiting for their services.
- In practice, the enforcement of curb rights has not been directly pursued and although on-the-road competition is observed on some routes (especially high-volume inter-city routes) competition in local bus services remains rare. Rather than relying on competition in-the-market, some commentators have argued for reliance on competition for-the-market in the form of competitive tendering for the provision of local bus services. Competitive tendering has been reasonably successful in the case of the London metropolitan area, lowering costs and maintaining network integration, but suffers from service rigidity and unresponsive to customer demand.
- In the case of taxi services, the demand for timeliness is such that there is little or no opportunity for consolidation of traffic flows, so there are no economies of scale. In this case, the scope for competition depends on the extent to which the customer has the ability to select the vehicle of his/her choice. A customer can select from among many services in the market for taxis hired by phone and (to a lesser extent) to taxis chosen from among those at a taxi rank. But the costs of waiting may mean that a customer has little opportunity for choice in the market for taxis hailed on the street. As in other markets where search costs are important, there can be little downward pressure on prices. As a result, in the absence of controls there may be a larger than efficient number of taxis operating in the “hailed-taxi” market, with inefficiently high prices and low quality.
- Liberalisation of taxi markets has almost always led to a substantial increase in the number of taxis available but has not typically led to lower prices. Although controls on the overall quantity of taxis are always unnecessary, certain controls on the prices of hailed taxis and taxis at important rank markets (such as the airport rank) may improve outcomes over unregulated competition.

The remainder of this paper looks at each of these three sectors (trucking, buses and taxis) in more detail. Many authors have described the history of regulation and deregulation in these sectors² in

detail. This will not be covered here. The primary objective of the next few sections of this paper will be to determine the scope for competition in these sectors and any remaining rationale for regulation.

2. Trucking

Can the trucking sector sustain effective competition? As in any sector, this question is equivalent to asking whether we can identify specific “market failures” in the market for trucking services which prevent or limit the effectiveness of competition. Chief among these market failures are the presence of economies of scale and scope. An industry characterised by significant economies of scale and scope will have a strong tendency towards monopoly. Are there economies of scale and scope in the for-hire road transport industry?

2.1 *Why regulate trucking?*

The presence of economies of scale and scope depends on the magnitude of demand relative to the efficient scale of operation in each relevant market. In the road transport industry the relevant markets are the markets for transportation services between two given points or regions³ within a certain period of time. Where the demand for transportation over a given route and within a given timeframe is larger than or equal to the capacity of an efficient transportation vehicle the economies of scale and scope are minimal or non-existent. On the other hand, where the demand for transportation over a given route within a given timeframe is much smaller than the capacity of an efficient vehicle (or when the cost of using a smaller-than-efficient vehicle is high) there can be significant economies of scale and scope reaped through consolidation of flows, for example through the adoption of a hub-and-spoke style network.⁴

In the case of for-hire road freight transport, several factors combine to reduce the presence of economies of scale and scope. First, the maximum size of road vehicle is limited by regulation (due to considerations of wear-and-tear on the infrastructure, safety, noise and emissions). This maximum size is not large relative to the flows of goods on most routes. Second, road freight services are primarily purchased by firms and corporations. The flows of goods between firms are much more concentrated than the flows of goods between individuals or between firms and individuals. Third, the flows of goods between firms are often less time-sensitive than the transportation of passengers (depending upon the products, delays of 24 hours or more may be tolerated without incurring high costs). Since the scales of flows over a typical route and timeframe are large relative to the efficient vehicle size, the economies of scale on most routes are minimal.

On the other hand, in the case of goods which require special handling, are particularly time-sensitive, or goods delivered to individuals, the flows may not be large relative to the minimum efficient vehicle scale. These categories include parcel delivery services (such as UPS), express services (such as DHL) or other less-than-truckload (LTL) services. These markets exhibit both economies of scale and scope – carrying additional goods either to the same destination or to destinations which are close to or on the existing route allows better utilisation of the available capacity. There is therefore a tendency towards hub-and-spoke operation in these services. Fruin (1999,3) notes that in the US:

“LTL carriers specialised in transporting shipments of less than 10 000 pounds. The LTL market requires pickup and delivery, sorting terminals and regional and national networks. Unlike truckload operations, there are significant economies of scale in LTL operations”.

Several empirical studies of trucking in the US show that TL services show constant or decreasing returns to scale (CRS or DRS) while LTL shows slight increasing returns to scale (IRS).

Table 1: Selected Cost Studies of US Trucking Companies

<i>Study</i>	<i>Data</i>	<i>Selected focus or conclusions</i>
Ying (1990)	61 firms, class I and II carriers 1975-1984	Slight DRS, tendency toward CRS after deregulation
Thomas and Callan (1992)	1984, specialised carriers	CRS, measure of shipment composition is important explanatory variable.
Allen and Liu (1995)	Panel of LTL firms 1985-1989	IRS in LTL after controlling for service quality
Harmatuck (1992)	9 LTL firms, 1974-1988	IRS is all variations of specifications

Source: Braeutigam (1999), Table 3-3 (only studies conducted after 1990 using Translog functional form are shown here).³

As discussed more fully in the OECD/CLP study of the airline industry⁶ and in the discussion of inter-city bus services below, competition between hub-and-spoke networks can be limited. In particular, on-the-road competition can be limited on certain routes⁷ and there are strong incentives for networks to expand their geographic scope through mergers or alliances. As a result there are likely to be relatively few competing hub-and-spoke networks in equilibrium. As we will see below, the LTL market is much more concentrated than the TL market.

2.2 *The experience with liberalisation of road freight services*

The analysis above suggests that with certain exceptions, competition is both feasible and effective in the truckload (“TL”) segment of the road freight industry. This prediction is well borne out in practice. Several OECD countries have substantially liberalised the road freight sector.⁸ The results of that liberalisation have been almost uniformly positive. A summary of the results of numerous studies on the effects of liberalisation in the road freight sector is attached as Appendix A.

In brief, liberalisation of regulatory controls in trucking:

- Leads to a reduction in freight rates and the establishment of an efficient structure of cost-based prices

According to McKinnon (X,Y), the liberalisation of trucking led to a reduction of freight rates of between 15 percent (in the case of France) and 25% (in the case of the UK, the US and New Zealand). He concludes that “the available evidence, nevertheless, confirms that, over differing time-scales, the liberalisation of road haulage exerts a downward pressure on freight rates”.

Fruin (1999,3) observes that “the single most important result of deregulation in the US may be the conversion of the transport cost structure facing virtually all industries to be one that is cost-based and linear, tapering with distance. This has replaced the historical ‘value of service’ rate structure that had developed under regulation. This new rate structure has eliminated many regional advantages encouraged and enforced by a public policy of rate and service regulation that established and maintained rates that ... frequently deliberately favoured regions, commodities, ports, etc. ... under the guise of ‘preserving competition’ or ensuring ‘adequate service’”.

- Improves productivity and reduces costs

“The efficiency of [pre-deregulation] operations was impaired both directly and indirectly by regulatory controls. Restrictions on areas of operation, routing and backloading had a direct effect, constraining the level of vehicle utilisation. By suppressing competition within the haulage industry regulation also ‘stifled productivity growth, technological innovation and efficient management’⁹. As a consequence, the freight rates paid by shippers and ultimately the consumers of products were needlessly inflated”. [Citation]¹⁰

Similarly, according to Fruin (1999,4) “another result of deregulation has been to free the private fleets of manufacturers and distributors to look for freight to help balance in-bound and out-bound shipments. These firms have many more vehicles than the traditional for-hire industry. This has blurred the once clean distinction between the for-hire motor carrier industry and operators of private trucking fleets”.

In addition, equipment utilisation has improved substantially. Despite a 78 percent increase in intercity truck ton-miles between 1980 and 1995, the number of tractor units declined over the same period. The total number of trailers increased less than 24 percent over the same period.¹¹

- Facilitates the development of innovative new services

Deregulation “generally enhances the quality of haulage services and gives shippers greater flexibility in the management of their transport operations. It can also promote the development of new types of logistical service. In the UK, for example, where deregulation occurred relatively early, the new competitive conditions were conducive to the growth of distribution contractors providing road haulage as part of an integrated package of logistical services [citation]. This helped the UK to establish a strong international reputation in dedicated contract distribution”.¹²

Many of the new entrants in the US “provide innovative services such as small packages pickup, package express or air cargo, or are subsidiaries of freight forwarders, ocean carriers, brokers or third parties. Deregulation has led to innovations which have completely blurred the distinction between modes and service types that were the result of regulation”.¹³

The total savings to the economy from these new services may be very substantial. Deregulation has led to the development of a “more responsive and dependable service as a result of the new market discipline imposed by competition. This has allowed shippers and customers to develop just-in-time inventory management by transporting smaller shipments more frequently reducing inventories and inventory carrying costs. In 1980 the cost of inventory was nine percent of US GDP; in 1998 it was only 3.9 percent. Total logistics costs (transportation expense plus inventory carrying costs) declined from 16.8 percent of GDP in 1980 to 10.6 percent in 1998”.¹⁴

- Has not led to destructive competition, instability or a reduction in safety standards

“Contrary to industry predictions, deregulation has not brought excessive competition or instability to transport markets. Australia was the first major country to deregulate a significant portion of its road haulage industry. In the 1950s its Supreme Court ruled that the government could not regulate the inter-state transport of goods. The industry is reportedly free of any instability or destructive and wasteful competition yet is quite competitive”.¹⁵

In the case of the US, post deregulation studies show no adverse effects due to deregulation.¹⁶ Higher vehicle operating and safety standards and highway improvements have led to lower fatality and injury rates since deregulation.¹⁷ The number of years of potential life lost (YPLL) declined 32 percent between 1980 and 1995 despite the substantial increase in truck traffic over the same period.

- And has been widely supported after the fact

“Post deregulation studies have detected little pressure to re-regulate, suggesting that both suppliers and users of road freight services are satisfied with free-market conditions in the road haulage industry. In some countries the government retained reserve powers to re-introduce quantitative controls in the event of the haulage market being destabilised. There are no instances of these powers being invoked and, in the case of the UK, they were relinquished in 1982, twelve years after full deregulation”.¹⁸

As regards industry structure, the bulk of the trucking industry is extremely unconcentrated. Despite employing between 0.7 and two percent of the entire workforce¹⁹, the average number of employees per trucking company is greater than 13 in only three OECD countries, and averages 3.9 for the EU as a whole²⁰. According to the OECD International Regulation Database²¹, the three largest companies have a market share of 10.5 percent in Turkey, six percent in the Netherlands, five percent in Finland, 3.8 percent in Canada, Mexico and Portugal and 1.5 percent in France

As expected, concentration is higher in the less-than-truckload (LTL) and express service markets. In a review of those European countries with deregulated trucking markets Cooper (1994) finds “little evidence of concentration of ownership” overall and finds that “only in the express sector is there a marked degree of concentration but this is almost a requirement in a sector that requires extensive networks of terminals and transport links”.²² In the US, Fruin, 1999 finds that following deregulation “the top four LTL firms doubled their market share from 18 percent in 1977 to 37 percent in 1987 and by 1997, three LTL firms had more than 50 percent of the market”.

McKinnon summarises the situation as follows:

“The experience of the past sixty years suggests that the diagnosis of the problems of the freight sector in the 1930s was defective and that the corrective measures adopted probably did more damage than good. As a result of its low entry costs and limited economies of scale, the general road haulage industry is intrinsically very competitive and characterised by lower profitability and higher rates of bankruptcy than many other sectors of the economy. The liberalisation of road freight markets over the past thirty years has shown that, contrary to the claims of those favouring continued regulation, the abolition of quantity licensing does not unleash ‘destructive’ or ‘ruinous’ competition, especially where it is replaced by a system of quality licensing. In a review of the British road haulage industry eight years after deregulation, for example, the Foster Committee concluded that ‘the industry was surprisingly stable’²³.”²⁴

2.3 *Regulation of road freight*

Despite the substantial liberalisation that has occurred in trucking, a substantial amount of regulation remains. Some idea of the extent of the remaining regulation can be obtained through examination of the OECD International Regulation Database²⁵. The information in this database was collected through a survey of OECD country governments in 1998. Some of that information may therefore be out of date and should be treated with caution.

Table 2 summarises the remaining regulatory constraints in trucking as of 1998. In around one third of OECD countries the regulator still has the power to control capacity in the industry. Around 5 OECD countries restrict the number of firms operating in some way. The same number restrict backhauling. Three countries report that they control road freight prices.

Further information on regulation of road freight in OECD countries can be found in Boylaud and Nicoletti, 2001. They rank OECD countries on the strictness of regulation in this sector. According to their indicator, the countries with the most liberal regimes for road freight are Korea²⁶, New Zealand, the UK and the US. The same analysis suggests the countries with the greatest scope for reform are Belgium, Hungary, Greece and Italy.

Table 2: Summary of Regulatory Constraints in Road Freight Transport in OECD Countries, 1998

Regulatory Constraint	Number and Identity of OECD Countries Concerned	
Rights of foreign firms constrained relative to domestic firms	16	US, Germany, France, Italy, Canada, Mexico, Norway, Portugal, Sweden, Turkey, Hungary, Poland, Austria, Belgium, Greece, Switzerland
Of which:		
- Complete prohibition of cabotage	6	France, Belgium, Mexico, Switzerland, Turkey, Hungary
- Domestic carrier requirement for public traffic	5	Greece, Mexico, Norway, Hung., Poland
- Restrictions on the possibilities for foreign firm pick-up	9	US, France, Italy, Canada, Greece, Mexico, Norway, Sweden, Hungary
Criteria other than technical, financial and safety considered in granting a license/permit/concession	12	Germany, France, Italy, Austria, Belgium, Mexico, Norway, Spain, Sweden, Czech R., Korea, Poland
Professional body enforces pricing or entry regulations or guidelines	10	Netherlands, Portugal, Spain, Switzerland, Czech R., Hungary, Poland, Italy, Austria, Greece
Regulator can limit capacity in some way	9	Germany, Italy, Belgium, Greece, Spain, Czech R., Hungary, Korea, Poland
Public ownership/control in road freight	9	Germany, Belgium, Denmark, Finland, France, Australia, Norway, Czech R., Poland
Regulation can restrict the number of competitors in some way	5	Italy, Norway, Turkey, Czech R., Poland
Regulations prevent or constrain backhauling	5	Finland, Greece, Netherlands, Norway, Hungary
Regulations prevent or constrain private carriage	5	Finland, Greece, Mexico, Netherlands, Switzerland
Regulations prevent or constrain contract carriage	3	Mexico, Switzerland, Hungary
Regulations prevent or constrain intermodal operation	3	Finland, Mexico, Hungary
Prices regulated in some way	3	Japan, Italy, Greece
Competition law exemption for road freight in some form	3 (+15)	US, Japan, Turkey (and the EC)
Competition agency not involved in enforcement	2	Switzerland, Greece

Source: OECD International Regulation Database

The most important form of regulatory restrictions remaining relate to the treatment of foreign trucking firms. Around half of all OECD countries restrict the rights of foreign firms in some way, primarily through constraints on cabotage. Six countries reported in 1998 that they prohibited cabotage entirely. Nine countries reported that there were restrictions on the ability for foreign firms to pick up freight. Although the EC has substantially removed obstacles to international trade in trucking services within the EU, outside the EU (and in relations between the EU and other countries) there remain significant regulatory barriers to trade in trucking. In most cases the scope for international trade in

trucking is regulated by a web of (usually secret) bilateral and multilateral arrangements. These arrangements restrict quantity and capacity in various ways.

As one example of the restrictions imposed on international trucking, consider the rules governing US and Mexican trucking firms under NAFTA. Trucks move 80 percent of the freight between the US and Mexico. In 1995 there were 11 000 truck crossings per day between the US and Mexico.

“Under the provisions of the NAFTA agreement the US-Mexican border was to be opened on 19 December 1995 for cross-border operations. Mexican firms were to gain access [only] to and from Texas, New Mexico, California and Arizona. US firms were to gain access to and from the six border states in Mexico. By 1 January 2000 all limits on international cargo were to be phased out. By 1 January 2004 national investment limitations were to be eliminated. However, on 18 December 1995 the US Secretary of Transportation announced that no applications from Mexican firms wishing to engage in cross-border trucking in the border states would be accepted until a complete study of motor-carrier safety and security was completed. By mid-1999 no permits had yet been issued. Although there are some legitimate truck safety and weight issues, many observers feel that the US government action was primarily due to trade union pressure to avoid increased competition from low wage Mexican drivers. Purists would say the US is in violation of that part of NAFTA”.²⁷

It is also worth noting that in federal countries (and the EU), liberalisation of trucking at the federal level does not necessarily imply full deregulation at the state level. For example, in the US, an important remaining vestige of the earlier regulatory regime is the limited antitrust immunity for rate bureaux.²⁸ The US Motor Carrier Act provides antitrust immunity for joint-line rates (routes involving more than one carrier) and for general rate increases (across the board increases in an entire menu of rates) but not on rates for routes handled by a single carrier. In 1995 the US Congress pre-empted remaining state-level economic regulation of trucking.

2.4 Conclusion

In the case of the truckload segment of the road freight transport (in contrast to road passenger transport discussed below), volumes of traffic flow are sufficiently large relative to the efficient vehicle size for all except specific services to make the industry highly competitive. Volumes of traffic are less in the markets for time-sensitive, less-than-truckload goods, but even in these markets several competing networks can co-exist leading to an acceptable degree of competition.

Despite the underlying competitive nature of the industry, trucking has long been subject to a host of regulatory controls on prices, quantities and capacity. The recognition that regulation was unnecessary and was holding prices above the competitive equilibrium led to pressure for reform, starting in the Australia, US and the UK and spreading to other OECD countries. These reforms were highly successful, lowering prices to consumers and increasing productivity, without a significant impact on safety. The evident success of trucking liberalisation provided crucial support for subsequent deregulation in telecommunications and electricity.

“The long and varied experience of commercial liberalisation in the road haulage sector shows that countries can safely abolish all quantitative restrictions on road freight operations without risking either the destabilisation of markets or the concentration of market power in the hands of a small number of large carriers. Deregulation policies have now been implemented in a sufficiently wide range of countries, varying in their size, location, industrial structure, level of economic development and regulatory history, to permit such generalisation. The success of

deregulation is confirmed by the absence of any strong pressure for the re-introduction of quantitative controls”.²⁹

In many OECD countries, particularly Italy and Greece, there is substantial scope for further liberalisation of domestic trucking. Throughout the OECD there remains scope for further liberalisation of international trucking. Existing international arrangements are both restrictive and largely secretive. Important first steps towards reform might include the publishing of these agreements and the establishment of multilateral negotiations on trucking liberalisation. Experience to date with cabotage within the EU suggests that the threat from further liberalisation may be limited – cabotage amounts to no more than a few per cent of any EU domestic market. Lastly, the desire to favour the rail sector need not be an obstacle to further road transport liberalisation. Both rail and road services should be properly charged for their use of infrastructure and their environmental effects. Such charging, however, need not and should not distort the extent of competition within and between these sectors.

3. Buses and coaches

In most OECD countries the use of buses and coaches has been declining for several decades. The rise of other transport modes, and particularly the private car, has reduced reliance on bus and coach services. While in the 1950s buses were the dominant transport mode in the UK, they now account for only 6 per cent of all passenger kilometres.³⁰ Nevertheless buses remain important, particularly for certain segments of the population, such as students, the elderly and commuters. Congestion and pollution in cities has hastened the search for public transport solutions. Buses remain by far the most important form of urban public transportation. Could regulatory reform further enhance the performance of this sector?

It is possible to divide the bus industry into two sectors – long-distance or inter-city buses and local or urban buses. These two sectors will be distinguished by whether or not a ticket is required to be purchased in advance. We will call “long-distance buses” those services where a ticket must be purchased in advance, and “local” buses, those services where a ticket can be purchased on the bus. As we will see, although long-distance and local buses share many economic features, there are sufficient unique features of local buses to merit a distinction being made at the outset. We will look first at the long-distance bus industry.

3.1 Why regulate long-distance Buses?

3.1.1 Economies of scale and scope

As in all transport networks, the extent of economies of scale and scope in passenger transport services depends on the volume of the flows of passengers on any given point-to-point route, the demand for timeliness of service, and the size of the minimum efficient vehicle on that route. Compared to freight traffic, the demand for timeliness is much higher and the passenger traffic volumes much lower relative to the efficient size of a passenger transport vehicle. Most of the traffic in bus services is not for bus-size groups of passengers (the analogy of “truckload” services in freight) but for individual seats on a bus carrying strangers (the analogy of “less than truckload” freight services).

As in LTL services in freight, when the traffic flows on a given route are small there are strong incentives for consolidating flows of traffic on neighbouring routes. One technique for consolidating flows is to adopt a “hub and spoke” network structure.³¹ A hub and spoke structure concentrates traffic on flows to and from one or more hubs. This allows larger, more efficient vehicles to be used; allows a larger

number of destinations to be served; and allows more frequent connections to those destinations which are served.³²

A large incumbent hub-and-spoke operator has several significant advantages over a smaller rival or new entrant. These advantages, which relate both to the demand and cost sides of the market, were discussed in the OECD/CLP study on airline alliances and mergers (OECD, 2000). The effect of these advantages is that (i) the incumbent network is likely to be dominant on the spoke routes it serves; (ii) the incumbent is likely to have a dominant position amongst arrivals and departures at its hub(s); (iii) there are strong incentives for two networks to merge or form alliances; and (iv) the incumbent can respond aggressively to new entry in a manner which is likely to deter equally efficient new entry. The overall effect of these factors is to limit both competition on individual routes and the number of rival networks.

The incumbent is likely to be dominant on spoke routes for the following reasons. As explained below, an incumbent can capture a bigger share of the market for through-services (i.e., services not terminating at the hub), leaving the entrant to only compete for “local” services (i.e., services terminating at the hub). In addition, an incumbent’s network, offering more destinations and more frequent service, is more attractive than a small entrant’s, especially for travellers originating at the hub, allowing the incumbent to capture a larger share of the hub-originating traffic on the spoke route. On most spoke routes, an entrant, faced with lower traffic and a less attractive service is unable to match the productivity and price of the incumbent.

The incumbent is able to capture a bigger share of the market for through services for the following reasons. First, passengers prefer completing their journey on a single carrier. This might be for a number of reasons. It might be that the incumbent network offers more convenient connecting services, with arrival and departure times chosen to coincide. It might be that the entrant’s bus terminal is not in close proximity to that of the incumbent, necessitating a difficult connection with heavy luggage.³³ In addition, customers may prefer the security of knowing that one operator is contracted to provide end-to-end service and will take responsibility in the event of delays or lost luggage on one leg of the journey.

Furthermore, the price of an intra-line service (where the passenger travels the whole distance on the incumbent) will generally be less than the price of a connecting or inter-lining service (where the passenger buys tickets from two different carriers). Unless there is perfect competition, the two independent legs of an inter-line service will both include a mark-up of price over cost. The combined journey therefore suffers from the problem known as double-marginalisation. Similarly, if marginal costs are low, tickets are priced according to the elasticity of demand. But the elasticity of demand for service from A-B and from B-C may be much higher than the elasticity from A-C, so the total price of A-B and B-C tickets may be higher than the A-C combined service. An entrant, which only offers an A-B service, will therefore not be able to compete effectively for A-C through customers.³⁴ Finally, if the incumbent enjoys a dominant position on one of the legs the incumbent can price its through-services to ensure that the price of an inter-line service is always more than the price of an intra-line service simply by raising the price for the trip on the leg on which it is dominant.

Since passengers prefer intra-lining rather than inter-lining the incumbent can capture a higher share of the “through” traffic on a route, leaving the entrant to compete for the “local” traffic. This enhances the load factor on the incumbent’s vehicles relative to the entrant. Furthermore, since the incumbent is carrying a higher level of traffic overall, the incumbent can offer more frequent services, further enhancing demand for the incumbent’s services.

Finally, there are many opportunities for the incumbent network to exploit its larger network to its competitive advantage. These opportunities rely on giving the customer (or the agent selling tickets) an incentive to “lock-in” or “remain loyal to” one network in the future. If a customer is put in the position of

having to choose which network to remain “locked-in” to, the customer is more likely to choose a larger network (giving a greater range of future possible travel destinations) and/or with more frequent connections (giving greater flexibility over travel times).

Loyalty or lock-in programmes can take a wide variety of forms. At the simplest level, offering a discount for purchasing a return ticket over a one-way ticket induces a form of lock-in, as the customer is required³⁵ to take the return journey on the same company. The simplest example is the “day pass” or “open return” ticket. A customer which is unsure over his or her return time will prefer a company offering higher frequencies on the return journey than a company offering lower frequencies. A weekly or monthly single-operator travelcard³⁶ will to an even greater extent lock a customer into travelling on a single network. As before consumers will, other things equal, prefer a larger network’s travelcard over a smaller network.

Even where travelcards are not appropriate the transport company can still offer a variety of discounts for frequent travellers that have the effect of generating “loyalty” for the company’s services. It has become standard for airlines, for example, to offer frequent flyer benefits. The loyalty programmes of larger networks are more attractive than the loyalty programmes of small networks and are particularly attractive for travellers located near hubs (which are likely to acquire benefits faster). As a result, the incumbent network is likely to acquire a greater share of the market for travel originating at the hub, reducing demand for the entrant’s network.

As a consequence, networks have a strong incentive to enter into some form of merger or alliance with one other networks, especially networks which are complementary in geographic scope. An alliance benefits both networks by extending the size of each network and enhancing the volume of traffic flows. It also tends to reduce the number of potentially competing networks.

The overall result is that we would not expect to see on-the-road competition on most spoke routes in road passenger transportation networks, with the possible exception of routes between the hubs of two regionally-based networks or on routes with a particularly high density of traffic. In addition, the number of independent networks is likely to be limited. A industry which is fragmented at the time of deregulation could be expected to lead, through mergers and increasing concentration, to the emergence of one or a few regionally-dominant operators.^{37 38}

Some evidence for this analysis can again be seen in the UK experience with bus deregulation. Nash (1993, 1046) observes: “Outright competition on the same or parallel routes ... has remained the exception rather than the rule... In many cases competition has proved short-lived with one or other of the major competitors soon withdrawing; in others some sort of equilibrium with more than one operator seems to have been established”. Where independent operators have survived they have done so where they are not in direct competition with the incumbent or where they provide services under contract or arrangement with the incumbent (see Box 1). In 1985 the dominant carrier in the UK, National Express, accounted for 95 percent of the total passenger revenue.

One study of local bus competition in Stockton (a town in the North of England) found that the incumbent bus operator had ridership 50 percent higher than its rivals following the introduction of competition in 1986. “This difference persisted over time and applied at all sites. The source of [the incumbent’s] advantage is not clear. All the operators had similar access to the main board points; there was a lot of tactical manoeuvring in Stockton High Street, with buses standing at the stops to attract custom (later forbidden by Traffic Regulation Order), but there is no reason why the incumbent should be better placed than entrants in this kind of warfare”³⁹. Evans goes on to conclude that the most likely explanation was that the incumbent had a more widely usable and therefore more attractive travelcard.

In principle, the network advantages of incumbent operators could be eliminated by requiring that they admit smaller operators into loyalty-inducing programs, by, for example, requiring that incumbent operators integrate travelcard schemes with new entrants. Such proposals have been advanced in the airline industry, where the admission of rival airlines into frequent-flyer schemes has been proposed as a condition for mergers. The application of these principles to the bus sector are not straightforward. If competing firms were required to offer a combined travel pass (which offered unlimited free travel on either network), all price competition between the two networks would cease. One solution might be to offer separate travel passes, for the parts of each network which are and are not in direct competition. A combined travel pass could be offered for those regions where the networks are not in competition and separate single-operator travel passes for those routes where the networks are directly competing. In this instance preserving price competition on the competing routes comes at the expense of the benefits of integration on those routes.

3.1.2 *Predation, “Unduly Aggressive Behaviour” and Strategic Barriers to Entry*

The advantages of incumbency and network size discussed in the previous section are further strengthened by consideration of the incumbent’s possible strategic response to new entry. In many markets an incumbent can raise barriers to entry by adopting a policy of responding aggressively to new entry. This sort of behaviour is sometimes referred to as predation. However, under the usual meaning, behaviour is only considered predatory when it involves taking an unprofitable action in the present (such as pricing below cost) with the intention of forcing the rival to exit, leading to the opportunity for recoupment (by pricing above cost). This definition may not be sufficiently broad for the purposes of this paper. In certain contexts (including those explored here) the incumbent may be able to respond aggressively to new entry without taking actions which are strictly in themselves unprofitable⁴⁰. The UK Competition Commission has referred to such actions as “unduly aggressive behaviour”.

There are several ways in which an incumbent can respond aggressively to new entry. One way is simply to adjust the schedule of services so as to capture the business of the entrant, perhaps by scheduling departures either side of the entrant’s scheduled departure time. This strategy is feasible whenever the incumbent offers higher frequency service on a particular route than the entrant. The entrant is forced to respond by either withdrawing from service or offering higher frequencies of its own, raising the cost of entry. (An even simpler strategy is possible in the case of local bus services, discussed in detail below).

In the case of hub-and-spoke networks, the incumbent can respond aggressively to new entry simply by matching the service offering of the entrant. The incumbent’s service benefits from the ability to integrate the route into a wider network, from feeder traffic and from loyalty programmes at the hub. These effects raise the desirability of the incumbent’s network relative to the entrant’s and raise traffic volumes on the incumbent’s network relative to the entrants. In addition, an incumbent operator may also have more supervisors, drivers and buses at its disposal which it can shift to swamp a route where a competitor has entered.⁴¹ Lastly, a larger firm may enjoy lower average costs of publicity and marketing. Faced with these competitive disadvantages an entrant has to be significantly more efficient than the incumbent if it is to survive.⁴²

Even an efficient entrant may be deterred if there are substantial sunk costs – the costs which cannot be recovered on exit from a market. Investment in buses is not sunk – buses are not specialised equipment and there is a well developed used market. The most important form of sunk costs is investment related to publicity and marketing. Firms make specific investments in cultivating knowledge of a route and schedule. These specific investments are lost if a firm withdraws from service.⁴³

Numerous instances of aggressive behaviour were observed following the UK deregulation of inter-urban bus services. Between 1986 and the end of 1989 the Office of Fair Trading received 202 complaints about the UK bus sector. 42 percent of these complaints related to alleged predatory behaviour.⁴⁴ Writing in 1988, Vickers and Yarrow comment:

“Given the nature of its incumbent advantages, it is not surprising that National Express responded aggressively ... before its rivals could build up goodwill and customer awareness. The entrants pockets could not withstand the effects of the incumbents’ sharp price cutting strategy for very long and National Express had good reason to believe that short-run revenue losses would soon be recouped by the return of its market dominance. National Express’s policy bears some signs of a campaign of predatory pricing but, whether or not this is so, the competition authorities stood by and did nothing”.⁴⁵

Similar incidents occurred in the market for local bus services in the UK. The typical pattern was that new entry was met by a very substantial increase in services by the incumbent, with the incumbent often eventually buying out the rival. “It has been observed that frontal assaults – the introduction of a rival network of services against an established operator – failed virtually without exception. Being bought out appears to be the best that can be achieved by such an attack”.⁴⁶

It should also be mentioned that in this market, as in other markets, the possibility of intense competition can be a tool to sustain collusion. In the bus market the possibility of a vigorous response can sustain a explicit or implicit agreement not to enter each others “territories”. Such forms of collusion can be quite stable. Any attempt at new entry is highly transparent and quickly and vigorously punished. The local bus market in the UK has settled down to the point where each bus group has its own territory and there is little attempt to enter another’s territory. The UK Office of Fair Trading has uncovered two explicit agreements to this effect (one in Hull and one in Warrington).

As in other sectors state or local-government ownership can itself raise barriers to entry. If a state or local-government owned firm is not strictly required to maximise profits it may be able to credibly commit to price below costs indefinitely, effectively deterring any threat of new entry.⁴⁷ This might account for the exit of UTB (a large multinational bus services company) from Manchester, where its competitor was a large company owned by the local authority. “UTB was not financially weak, nor apparently did it suffer from the lack of knowledge ... but it still gave up”.⁴⁸ On the other hand, many of the state-owned incumbent bus firms in the UK were high cost. The losses that these companies would have required to run to stay in business were not credible and many were replaced by more efficient private-sector operators.

3.1.3 Access to bus and coach terminals

The provision of regular, scheduled bus and coach services often requires the use of complementary infrastructure and, in particular, bus and coach terminals. Even if competition can be sustained in the provision of bus services, competition may not develop if there are substantial economies of scale and scope in the provision of terminal services and if new entrants are denied entry to the terminals of rivals.

In some cities the establishment of a new bus terminal which rivals an existing terminal may be difficult or impossible. An existing terminal may benefit from a location close to a city centre, well-integrated into local transportation services. It may be slow, costly or, in some cases, impossible for a new entrant to obtain a site large enough, close to the city centre, integrated with other transport links and with the associated permissions necessary to establish a new bus terminal.

More importantly, in the case of a “hub” city, even if the new entrant did develop a new terminal the entrant may still remain at a significant disadvantage. If the incumbent’s network of services from that hub is more extensive than the entrant’s, the entrant can only offer the same range of services through some form of interlining with the incumbent. Yet, if the entrant’s terminal is physically distant from the incumbent’s, interlining will require a difficult and time-consuming change of terminal.

If access to an incumbent’s terminal is essential for an entrant, the ability of an incumbent to deny or restrict access to the terminal allows the incumbent to control and possibly prevent the development of competition. The incumbent may be able to control the development of competition through setting high charges for the use of the terminal, or limiting the routes or times that the rival can operate out of the terminal.

In 1987 the UK Office of Fair Trading investigated a complaint that the major local bus service operator on the Isle of Wight was denying access to its bus station at the major town on the island, Newport. The OFT concluded that this policy restricted competition in that both existing and prospective competitors were prevented from using an essential means of bringing their bus services to passengers’ attention. The investigation was concluded when the company concerned gave undertakings to allow other bus operators to use its bus station.⁴⁹

In 1995 the US Department of Justice initiated legal action against Greyhound Lines, the largest inter-city coach operator in the US. Greyhound operates a network of 200 bus terminals. It grants access to these bus terminals to rivals under agreements known as “Bus Terminal Licences”. In 1993 Greyhound renegotiated these licences to include a clause which prohibited the sale of bus tickets within a 25 mile radius of the terminal. The Department of Justice concluded that this prevented the establishment of rival bus terminals and the establishment of innovative new services such as services from college campuses or train stations. Greyhound eventually agreed to remove this clause from its licences.⁵⁰

3.2 *The experience with liberalisation of long-distance bus services*

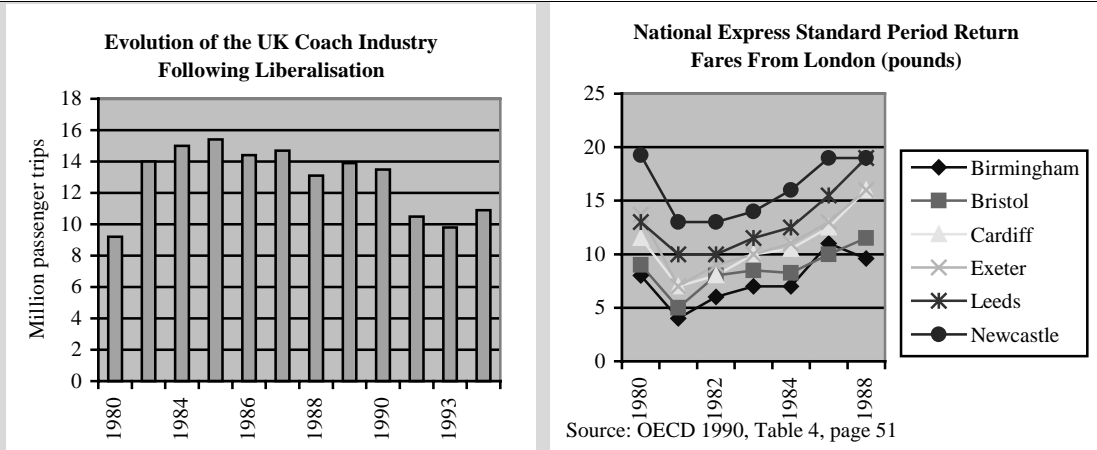
The experience of the UK is set out in Box 1.

Box 1: The UK Experience with The Deregulation of long-distance Coaches

The following material is taken from White, 1997:

The Transport Act of 1980 removed the price and quantity regulations which had applied to express coach, excursion and tour operations in Britain. Taking the scheduled long-distance services as the main element of interest, a dramatic impact could be seen. Total trips rose by about 50 percent by 1985. This was associated with extensive price competition (both between coach operators, and between coach and rail), together with higher frequencies, faster timings making better use of the motorway network, and quality improvements such as on-board refreshments.

However, the extent of the inter-operator coach competition was perhaps less than expected. National Express remained the dominant operator, with 70 to 80 percent of the market. Its share grew further with the take-over of Scottish Citylink in 1993, and no comprehensive competing network exists, although independent competition is significant on certain corridors.



The initial phase of growth in long-distance express travel in the early 1980s was largely explained by a combination of higher frequencies on trunk routes, greater motorway running to raise speeds, and an average fare reduction of about 50 percent immediately upon deregulation, together with an increased public awareness of coach travel.

From the first day of deregulation in October 1980 a rival consortium of independent operators, British Coachways, introduced competing services on the main trunk routes, but was unable to match the higher frequency of service that National was able to offer. National also “saw off” competition by cutting its fares to the same level, notably on trunk routes to London. ... National also made price reductions on major cross-country routes and other London-based services. National clearly benefited from its greater number of sales outlets, and access to coach stations, notably London Victoria. They were already a nationally-known name which could take advantage of the publicity given to coach travel as a whole, whereas British Coachways was not. The independent consortium gradually broke up, and ceased in January 1993. Substantial independent competition has continued in a number of corridors (especially where there is substantial origin-destination traffic, such as London-Oxford), but no single operator has been able to establish a competing network as such. Recent competition has focused on a few major corridors. Even in this sector, the most substantial example (Flights of Birmingham, who operate services to major airports) decided in March 1996 to operate as a contractor to National Express rather than independently.

A somewhat different pattern has applied in Scotland. At the time of deregulation, the Scottish Bus Group (SBG) traditionally operated trunk routes between London and major Scottish cities, while other cities in England were connected by joint National Express/SBG routes. Very little development of express coach services within Scotland had occurred, despite substantial motorway construction. Independent operators took a greater role, both on the London trunk routes, and in setting up new services within Scotland. The Scottish Bus Group subsequently placed its coach services under its ‘Citylink’ company, which played a similar role to National Express in England and Wales. It was established as a separate organisation in 1982, and like National Express, came to contract in from a wider range of operators.

Competition between National Express and Citylink was negligible until 1989, when National Express purchased the long-distance express coach services of the Stagecoach Group, thus competing both within Scotland and on London trunk services. Stagecoach had built up its network from the early 1980s, both by setting up routes in parallel with those of Scottish Bus Group to/from London, and entirely new services within Scotland (such as Aberdeen – Dundee – Perth – Glasgow). A period of very intensive competition between the two major networks then followed. Citylink was privatised through a management and employee buy-out (MEBO) in 1990. However, the degree of competition proved unsustainable. In May 1993, Citylink was acquired by National, and services rationalised. National thus exercises remarkable dominance in a deregulated market.⁵¹

3.3 *Why regulate local bus services?*

3.3.1 *Local bus services and timetable instability*

It is useful to distinguish between two types of passenger services. In the first type of services passengers commit themselves in advance to take a particular service (perhaps by the advance purchase of a ticket). In the second type of service, passengers make no ex ante commitment beyond simply turning up at a particular place, or a particular place at a particular time. Long-distance bus services are more like the first type of service, while local bus services are more like the second.

This second type of service is vulnerable to opportunistic behaviour by rival operators. As soon as one bus company makes an investment in marketing and publicity which causes passengers to assemble at a certain place (or place and time) it is exposed to the possibility that a rival bus operator could arrive and pick-up the passengers, leaving the original bus company unable to recuperate its investment. As a result there is no incentive to invest in a fixed timetable. In the absence of a fixed timetable, potential customers will not know when to assemble and the service may not be able to exist at all.

Even if the service is so frequent that customers arrive in a continuous manner, expecting to get on the first bus that come along, a competitive equilibrium with a stable timetable may not exist. Any stable timetable can be undermined by a rival which schedules its departures just in front of the incumbents. Using the terminology of game theory, this process has no competitive equilibrium in “pure” strategies – i.e., no competitive equilibrium in which all the operators maintain stable departure times. In fact, if there are no costs of changing the departure schedule, the only competitive equilibrium involves totally random departure times - where all departure times occur with equal probability!

This problem has been recognised for decades⁵². Writing in the 1930s shortly after the introduction of regulation of the UK bus industry, Chester notes that “unfettered competition” implies that “the running of vehicles to a regular timetable will become impossible” because “if any operator fixed definite times, rival operators will seek to reach stopping places a few minutes earlier to take the traffic”.⁵³

The 1985 deregulation of local bus services in the UK permitted on-the-road competition in local bus services for the first time since the 1930s. Timetable instability was quickly observed. “Councillor McLellan from Strathclyde, where four large operators and numerous small ones competed, testified that whereas before deregulation timetables were produced at three or six month intervals, since deregulation five timetable changes had been notified to the Strathclyde Traffic Commissioners every working day”.⁵⁴

In addition to timetable instability, competition under these circumstance may also encourage proliferation of services and unsafe driving practices. Since the first vehicle to the bus stop collects all the passengers, for any given number of rival buses, each bus company has an incentive to operate more, smaller buses so as to have a greater chance of getting to the bus stop in front. In addition, since the first bus collects the “prize” of all the customers there is an incentive for buses to race each other to the next stop, encouraging unsafe driving practices.⁵⁵

Furthermore, if each bus company only provides a small fraction of the services on a route and if timetables are uncertain, so that customers do not know when the bus of a certain company will arrive, the scope for price competition between buses is very limited. This is discussed in more detail below in the section on taxi competition. As a consequence, despite the proliferation of services on a route, prices may not come down following deregulation, but may in fact increase.

3.3.2 *Investment in passenger congregations and curb rights*

It may be possible to control these problems by allowing bus companies to protect their investment in assembling groups of customers at a particular place and time. This could be done by preventing rival bus companies from providing a service approaching too closely to that place and time. In effect, the original bus company could be given a “property right” in the passengers which it assembles at a particular place and time. Klein, Moore and Reja refer to these property rights as “curb rights”.⁵⁶ If rival companies can be kept far enough away, either in space or time, from existing firms, competition between rival firms on the same route may be sustainable. “When interloping is both prohibited and effectively controlled, bus companies will invest in establishing routes and schedules, publicising the information and running the service because they can appropriate the value of these efforts to bring people out to the curb”.⁵⁷

The UK Office of Fair Trading has, in effect, imposed a form of curb-rights in the market for local bus services. As a remedy for mergers where there is a significant loss of competition, or as a remedy for predation the OFT has required that incumbents cannot adjust their timetables to be closer to a new entrant than the distance (in time) between the new entrant’s services and the incumbent. Thus, if an entrant chooses to schedule her services ten minutes before the incumbent, the entrant is effectively given the right to prevent any other services operating within a time-slot of ten minutes either side of its service.

A temporal timeslot like this suffers from the drawback that it may be hard in practice to prevent opportunism so that a service which is scheduled to operate ten minutes ahead, is in fact “delayed” to the point where the bus arrives just in front of its rival. It may be difficult to distinguish deliberate slow-running from unplanned traffic delays. It may be easier to define curb-rights geographically, rather than temporally, by requiring different services to use different stopping points which are not within a certain distance of existing services. The distance between the services should be sufficient to prevent passengers waiting at one stop from walking to a bus which has arrived at another stop to pick up passengers.

Once the set of all possible curb rights has been defined, they could be auctioned or put out for tender. Competition law rules could be used to prevent a single firm acquiring a dominant position in such rights. An extreme case is the case where all of the rights go to a single firm. This is the case of a competitively tendered route monopoly. Many cities (including London in the UK) allocate monopoly rights on bus routes through competitive tendering.⁵⁸

The primary advantage of tendering all of the curb rights on a route are that it protects the incumbent’s investment in its timetable with minimal costs of enforcing curb rights. The costs of enforcing curb rights are low because any company operating on the same route is immediately identified as an interloper independent of the time of its service or the location of its pick-up points. The primary disadvantage of competitive tendering is that it limits the scope for innovation and competition, for the following reasons. Because the curb rights are sold as a monopoly, competition cannot be relied on to control prices. As a result, the tendering contract must control prices and therefore services. Since prices and services are specified in advance there is little scope for responding to demand or supply innovations. In contrast, if curb rights were sold separately, with no firm acquiring a dominant position, it might be possible to rely on competition to control prices, freeing the regulator from controlling services – thereby allowing innovation to the full range of possible passenger transport services.

From the perspective of government administration, competitive tendering is not an easy option. As discussed in the OECD/CLP study on waste services⁵⁹, competitive tendering is more akin to on-going regulation than it is to the simple sale of an asset. Once a tender for bus services has been allocated the bus authorities must continually monitor to ensure that the contractual standards are met – that prices are not being exceeded, that buses are operating on time, with appropriate levels of cleanliness and reliability. This

monitoring is particularly important towards the end of the tender period when the licensee may have little incentive to maintain investment in customer service.

The experience of the UK with competitive tendering in London compared with reliance on on-the-road competition outside of London has led some commentators to recommend competitive tendering as the model to be followed in other cities and countries.⁶⁰ It is equally possible, however, that because little or no attempt was made in the UK to fully define and enforce curb rights the full scope for competition in local bus services has not yet been fully tested. Klein, Moore and Reja are optimistic: “Within the property rights framework of curb rights, entrepreneurs would be free, able, and driven to introduce better service, revise schedules and route structures, establish connections among transit providers, introduce new vehicles, and use new pricing strategies. Once the system of curb rights was sensibly implemented, the market process would operate. Within a suitable framework of property rights, the invisible hand will be able to do in urban transit markets what it does so well in other parts of the economy”.⁶¹

3.3.3 *Oversupply of services*

Some economists have argued that competing local bus operators will have an incentive to offer higher-than-efficient frequencies of service.

The incentive to offer a wider-than-efficient range of services is well known in other contexts. Studies of spatial competition or competition in “brand-space” have identified that there can be incentives for “excess entry” or “brand proliferation”.⁶² In the context of passenger transportation, this translates into incentives to provide services of a higher frequency than is efficient. The reason is as follows. From the perspective of overall efficiency a new service should be added if the resulting expansion in market size (from more frequent services) more than offsets the higher costs involved. However, from the perspective of an individual competitor adding a new service both increases the total market size and diverts traffic from a rival. This is clearest in the case when the new services are added on either side of a rival’s service, to bracket the rival and capture his market share. This additional “trade diversion” effect leads each competitor to provide more services than is efficient, using vehicles which are smaller than the optimal efficient size. The travelling public benefits from the enhanced frequency of service but not sufficiently to offset the costs involved. The result is that some of the benefits of competition are dissipated in the form of higher costs.

This has been explicitly modelled in the market for bus services by Evans. According to Evans, 1987, competition in local bus services leads to both higher fares and higher frequencies than those consistent with maximum net economic benefit at all demand levels above the minimum demand necessary to sustain bus service. The overall economic welfare is slightly lower than a theoretical optimum, by a factor of ten-12 percent.⁶³ It is important to recognise that this model does not take into account the incentives generated by competition to reduce costs, which can increase overall welfare by much more than ten-12 percent.

Some evidence for the proliferation of services effect can be seen in the UK. “So far as local urban bus operations are concerned, the evidence suggests that in many cases the main effect of deregulation is to create competition in the form of expanded supply, rather than lower prices”.⁶⁴ Immediately following deregulation in the UK a large number of services were replaced with more frequent minibus services. While in 1985/1986 small buses (less than 35 seats) accounted for only 14 percent of the UK bus stock, by 1998/1999 this number had risen to 32 percent, accounting for virtually all the growth in bus numbers in that period. The total number of bus-kilometres offered has increased significantly since deregulation, but despite significant cost improvements, the cost per passenger journey

has remained stable. In effect the cost reductions have been translated into increased services and not lower costs per passenger (see Box 2).⁶⁵ In contrast, in the London market which was not subject to on-the-road competition, but instead services were put out to tender, cost per passenger journey has declined 38 percent since 1985. Since more frequent services improves the overall quality of bus services, it is possible that outside London service frequency may have adapted to better reflect customer desires.

3.4 *The experience with liberalisation of local Bus services*

This analysis suggests that if the market for local bus services is liberalised without attention to enforcing curb rights there may arise problems with timetable instability and proliferation of services. These effects were observed following deregulation of local bus services in Santiago, Chile:

Following deregulation in Santiago “there was a tendency for the size of vehicles to diminish to the extent that some bus owners took their buses, cut out a chunk in the middle, and soldered the ends back together again. There has been a strong tendency towards smaller and smaller vehicles. ... [Safety] has been a very serious problem in Chile. Here, individual bus owners on a single route try to pass the bus ahead to get to the corner first where passengers are waiting. This has caused very serious safety and accident problems in Santiago. There was a doubling in the number of buses without even a close corresponding increase in ridership. Average ridership per bus has dropped from 1 000 passengers per day to less than 500, which means there are empty buses all over the city at all times of the day. This, in turn, has led to very severe congestion and pollution”.⁶⁶

“Between 1978 and 1984 the number of minibuses increased by more than 50 percent, the number of taxibuses nearly doubled, and the number of taxis providing either shared ride or regular services almost tripled. Fares approximately doubled in real terms on the minibuses and taxibuses, although fares on the shared and regular taxis remained roughly constant in real terms during this period. Ridership appears to have increased dramatically for Santiago’s taxis, whose fares did not increase, but not much on its minibuses or taxibuses”.⁶⁷

The UK experience is outlined in the next box.

Box 2: The UK Experience with the Deregulation of Local Bus Services

The regulatory regime for local bus services in the UK was substantially overhauled with the Transport Act of 1985. Instead of having to apply for a road service license, operators who serve short runs under 15 miles were only required to register the route and timing of their services with a new licensing authority and give 42 days notice of intent to begin, modify significantly, or withdraw from a service.⁶⁸ At the same time, the National Bus Company, a state-owned company which provided most local bus services, was broken into separate companies and sold to the private sector over time. The remaining publicly owned operators in metropolitan counties and municipalities were to be made into “arms length” companies with any subsidies transparent and explicit. The extensive system of cross-subsidies of unremunerative services was abolished. The anomalous exemption of the bus industry from provisions of the competition law was abolished. Finally local authorities were required to tender for the provision of unprofitable services, with companies owned by local authorities competing on an equal footing with companies from the private sector. For various reasons these reforms did not apply to local bus services in the London area. Instead, in London routes were offered for tender. The objectives of these policies were to reduce costs, reduce subsidies to the local bus sector, enhance ridership, enhance competition and encourage the provision of new and innovative services. The effect of these reforms was as follows:

First, there was a large increase in the total volume of services. Total vehicle kilometres increased 15 percent from 1985 to 1989. At the same time the average vehicle size fell, as the number of minibuses in circulation increased rapidly. Subsidies also declined significantly, without a dramatic loss of services. 80 percent of existing services were found to be commercially viable. The overall fall in public expenditure on local buses (excluding London) from 1984-1988 was about 26 percent at constant retail prices. Bus operating costs per vehicle-kilometre fell significantly. From 1985 to 1989 the cost per vehicle-kilometre dropped 30 percent (outside London, excluding depreciation). The total workforce also decreased, suggesting a considerable increase in output per employee. However, due to the shift to smaller vehicles, the cost per seat-kilometre did not fall as significantly.

Fares rose, but by less than might have been expected given the substantial reduction in subsidies. "Fares in metropolitan areas rose by an average of 23 percent in real terms but by only ten percent in the country as a whole"⁶⁹. Glaister concludes: "Reduced costs must be seen as the major success of the 1985 Act. Public expenditure was reduced in the face of rising real labour costs in a labour intensive industry. Yet, physical output increased, fares rose only moderately, and concessions were protected"⁷⁰.

The use of minibuses has increased rapidly. "In 1985, roughly 40 locations were served by 400 minibuses. By 1987, 390 locations were served by 5 600 minibuses. Several benefits have been noted from the use of minibuses. They achieve higher speeds often becoming economically viable without increasing fares. Greater route coverage, better penetration of residential areas, and hail-and-ride operations have all occurred"⁷¹. At the same time, the prediction that minibuses would co-exist with large buses on the same routes, offering a faster, higher-quality, higher-fare service, did not materialise. "There are places where small and large vehicles compete, but their fares are not very different, and it appears to be the result of two different views of how best to cater for the same market rather than creating distinct markets"⁷².

Competition did not increase as much as was expected. "Active competition has occurred on only a minority of routes. About three percent of bus-kilometres were involved in direct 'on the road' competition immediately after deregulation"⁷³. This figure increased about threefold in the following year but was declining by 1990. "Active competition has therefore always been the exception rather than the norm, and now seems set to remain so"⁷⁴. "Companies have generally expanded into areas where they have local knowledge, avoided confrontation, and preferred to compete for tendered routes rather than lodge commercial registrations [i.e., compete head-to-head on routes]. In many areas, operating territories are similar to those before deregulation, and it is possible there has been a

tacit agreement not to trespass on each other's territory. Active competition has been reported in Scotland. ... Price competition did not develop to any great extent, and fare scales remain uniform. In addition, differences remained in average fare levels among apparently similar areas"⁷⁵.

In many cases incumbent operators responded aggressively to new entry. "Moderate or high-demand routes still earn super-normal profits if they are operated by a monopoly operator, as most are. On the other hand, if an entrant competes on such a route, profits are reduced to zero or less so long as competition lasts... the aim of entry must be to gain all or part of the supernormal profits after competition ceases. This requires either driving out the incumbent or reaching an agreement to share the route. The empirical evidence is that entrants have generally failed to do either; they have given up, been driven out, or been bought out."⁷⁶ "Barriers to competitive entry and anti-competitive practices were underestimated"⁷⁷. This could not always be prevented through competition enforcement. "It would appear that the [original deregulation proposals] underestimated the importance of potential failures of competition and that [previous] UK competition law [was] not ideally suited to deal with problems that occur"⁷⁸.

Patronage did not increase. Taking into account the fare increases, patronage declined by an amount consistent with the long-term downward trend in ridership. "One explanation is that the potential benefit of the extra vehicle kilometres was not converted into better service quality. This was because of irregular running, or vehicle bunching, lack of service co-ordination or confusion among passengers because of frequent changes, or some other factor"⁷⁹.

There also appears to have been some loss in co-ordination and integration of services. "Other forms of integration, notably the integrated travel pass, have had a mixed experience. However, after a period in which many schemes were withdrawn, the availability of tickets between modes and operators has been substantially restored. Also, in Tyne and Wear, a separate company was created – jointly owned by the [local bus regulator] and the bus operators – to administer a travelcard scheme, issuing tickets and allocating revenues according to agreements among its members"⁸⁰.

Costs also declined on the tendered London routes, by 14 percent per vehicle-kilometre. “Tendering in London can be considered a success. Results have been good, the administration has run smoothly, and the sensitive situation created by an in-house supplier bidding against outside competitors has been handled satisfactorily. The virtues claimed with regard to tendering have been realised in London. Fares and services have been unified and integrated. Information has been provided to passengers, and change has been transparent from their point of view. There has been no predatory behaviour and no bad-driving behaviour. Tendered routes have been carefully planned without the same slavery to cost and demand conditions as a market solution demands”.⁸¹ However, concerns have been expressed that the tendering process has been too slow, due to the conflict of interest that arises because the authority responsible for tendering is also the owner of the incumbent operator on untendered routes.

3.5 *Regulation of buses and coaches*

In contrast to the road freight industry, few countries have chosen to liberalise road passenger services. The exceptions are the UK, the US, Sweden, New Zealand and certain states in Australia. The UK liberalised long-distance bus services in 1980 and local bus services (outside London) in 1985. These experiences are described above in Box 1 and Box 2. The US largely deregulated inter-city bus services with the passage of the Bus Regulatory Reform Act of 1982. This experience is described further in OECD, 1990⁸² As of 1990 two states in Australia (New South Wales and Queensland) had deregulated intrastate passenger services.⁸³ The New Zealand industry was liberalised in 1983 by legislation which abolished geographic and quantitative limits on licences and controls on rates.⁸⁴ Fare and capacity controls on local bus services were removed from July 1991.⁸⁵

On the other hand, as set out in Table 2, many countries retain highly restrictive controls on passenger services. These controls both restrict the entry of new services (especially where new entry threatens existing services) and control prices. In addition, controls on international trade in bus services are widespread. Even within the EU, the provision of regular scheduled inter-city bus services in another EU country is not permitted.

Table 3: Regulatory Controls on Road Passenger Transport, 1990

Country	Regulatory Controls
Belgium	Regular and specialised regular services are operated directly or contracted out to private operators by the railway company SNCV and by different local transport corporations. As well as satisfying quality controls passenger carriers are subject to fare regulation by the relevant Ministry in the case of domestic services and by agreement with other countries on international services.
Canada	Bus services are primarily regulated by the provinces. New entry is rare because of a strictly applied public convenience and necessity entry test (with the exception of Alberta). Provincial boards generally specify intra- and extra- provincial bus routes, capacity, service quality, safety standards and insurance requirements.
Denmark	The provision of bus services requires a licence from either the local authorities or from the Danish Passenger Transport Council. The prices of scheduled services are controlled by the transport authorities.
France	Urban and inter-urban bus and coach services whether scheduled or non-scheduled are organised solely by the public authorities. The 1982 Act on Inland Transport confers on <i>départements</i> the main task of organising inter-city passenger services. The departmental authorities draw up and keep up-to-date the Departmental Plan which contains the routes and services which have been authorised. The actual operation of these services may be carried out by the department directly or by private firms contracted to do so. Fares must be approved by the organising authority. Urban transport is the responsibility of local authorities who may either operate the services directly or contract them out to a private firm. The local authorities also have the task of approving fares for scheduled local services.
Germany	An authorisation must be obtained for the paid or commercial carriage of passengers in motor vehicles, street cars and trolley buses. Before an authorisation is issued, the public interest in having such services established is considered. The authorisation is refused if (a) the needs can be satisfactorily met by existing services; (b) the services applied for would cover transport tasks already carried out by existing carriers or railroads without providing a significant improvement of transport conditions; (c) existing carriers or railroads that provide such transport are willing to extend their own service. Rates are controlled.
Greece	Public passenger road transport is closely regulated as regards numbers of buses and fares. New buses are licensed for carriage if there is a need for further services. At present the number of buses is considered adequate for present demand.
Ireland	Private bus operators are required to hold licences for scheduled road passenger services. The key statutory requirement to be considered before granting a licence is to have regard to the passenger road services and other forms of passenger transport available to the public on, or in, the neighbourhood of, the route of a proposed service. As a result of the restrictive nature of the legislation, relatively few licences have been issued to private bus operators.
Japan	A new road passenger licence is granted if (a) the proposed service is in line with demand for transport services and (b) the new service will not bring about an imbalance between capacity and demand. All passenger fares must be approved by the Minister of Transport taking into account that the charges or fares would not cause undue competition with other carriers.
Switzerland	An applicant for a licence has to fulfil two conditions: (a) he must prove that there is a need for the service he proposes and (b) the existing transport network must not be subject to significant competition from the new service. Public transport enterprises are free to set their own prices subject to the possibility of intervention by the confederation in the event of abusive fares.
European Union	Scheduled international services within the EU still require a licence from Member States which, until 31 December 1999 could block the opening of a new service if it threatened the viability of a rail service over the same route. Cabotage (carriage of passengers within another Member State) is not permitted except for occasional services (where these are the extension of an international journey) and for special services (provided they do not go outside border areas).

Source: OECD, 1990, chapter 2

3.6 *Conclusion*

Is there a need for regulation of bus services? In the case of long-distance bus services the experience in the US and the UK shows that effective competition can emerge.⁸⁶ Button and Keeler, 1993, conclude “there is a strong body of evidence that regulatory reform has substantially enhanced economic efficiency in the US and UK inter-city transport markets, and that the benefits of efficiency have been passed on to consumers”.⁸⁷ Nevertheless, even in the inter-city market, due to the presence of certain economies of scale and scope, competition may be rather fragile and may require active competition oversight. In the local bus market, competition is further complicated by the need to protect a company’s investment in its timetable. However, with effective protection of curb rights and active competition law enforcement, competition may also flourish in this market.

The above analysis suggests the following principles for guiding regulatory reform in bus services.

- First, the scope for entry restrictions differs between the long-distance and local bus services. In the case of long-distance bus services, entry restrictions are unnecessary. Allowing entry ensures a degree of contestability and provides scope for innovative new services to be offered where feasible. Long-distance bus services are also likely to benefit from inter-modal competition, from rail and air modes.
- In the case of local bus services, entry should be limited as little as possible, consistent with the policy of ensuring that bus companies have the opportunity to recover any investment they incur in attracting congregations of passengers. Permitting entry allows for the development of innovations in the type of services, pricing or payment options or the timing or timeliness of services. Protecting an incumbent’s investment may mean preventing rivals from using an incumbent’s stops or from scheduling services within a certain time of the incumbent. Only if the enforcement of curb rights is impossible or impractical should entry be restricted by granting a route monopoly to an incumbent operator. Such a monopoly right should be granted through competitive tendering. The administrative requirements of competitive tendering should not be underestimated. In addition to substantial care and attention to the design of the services required and the planning of the tendering process, on-going monitoring is essential throughout the life of the tender.
- Second, in some cases, access to certain facilities, such as bus terminals, railway stations or other related infrastructure may be essential. In these cases an incumbent should not be able to restrict access to such facilities.
- Third, action should be taken to limit the ability of an incumbent operator to exploit network size to its competitive advantage. This might involve requiring an incumbent to allow rivals to join existing loyalty schemes, such as schemes which reward or offer discounts to frequent travellers. It might also involve allowing entrants to offer services which integrate with the incumbent’s existing service network on the same terms and conditions as the incumbent’s own services. In the case of local buses this may involve requiring an incumbent to enter into agreements with rivals to offer joint travelcards, or to accept passes sold on a rival’s network, although doing this in a way which preserves competition may be difficult.
- Fourth, bus companies should compete on an equal footing. A bus company should not be able to benefit from state-ownership or subsidies to act anti-competitively. Subsidies should

be allocated through a tendering process. State-ownership should be eliminated wherever possible.

- Fifth, although agreements between bus companies should be closely monitored, industry agreements which foster co-ordination and integration of services (and integration with other transport modes) should be encouraged, perhaps through active regulatory intervention. In the case of local bus services regulatory authorities should also consider taking responsibility for preparing combined route timetables, informing the public about service availability and changes in service and so on, so as to ensure consumers are fully informed and to limit any economies of scope in publicity and marketing.
- Sixth, competition laws must be vigorously enforced. This includes monitoring and prevention of predatory behaviour.

4. Taxi Services

At first sight the taxi market appears to satisfy the conditions for effective, vigorous competition. Barriers to entry are low and there are a large number of competing suppliers. Yet, this sector is one of the most widely and heavily regulated in OECD countries. The Economist, writing in 1991 observed:

“The taxi trade should be a model of text-book economics. It isn’t; throughout the world the trade is distorted. Every country tries to regulate its taxis. [Even] in the bastions of free-market capitalism, such as New York and London, the business is tightly controlled”⁸⁸

Is this regulation evidence of the overwhelming power of special interest groups at obtaining regulation in their favour? Or are there other factors which limit the effectiveness of competition in this market?

4.1 Why regulate taxis?

4.1.1 Economies of scale and scope

If bus and coach services are analogous to less-than-truckload services in the road freight industry, taxi services are the passenger analogy of local courier services. Taxis, like courier services, provide transportation services over routes for which the demand for timeliness is high and volumes are low. When the demand for timeliness is high enough⁸⁹ there is no time for consolidating traffic – each transportation service must be provided by its own transportation vehicle. Economies of scale and scope are non-existent.

For the purposes of this paper we may define taxi service as those transportation services where there is no consolidation of traffic flows. Under this definition the boundaries of the taxi industry are given by those services where some traffic consolidation is possible (such as minibus operators providing door-to-door shared-ride services).

Considerations of economies of scale and scope alone suggest that the taxi market is competitive. However there are certain features of the industry which limit the effectiveness of competition. The following analysis will assess the importance of these features.

It is useful to distinguish between three markets for taxi service:

- (a) the market for taxis that are hailed from the street (the “hailed taxi” or “cruising” market);
- (b) the market for taxis that are hired from a taxi rank (the “rank taxi” or “taxi-stand” market);
and
- (c) the market for taxis that are booked by phone, Internet or some other communications device (the “phone-booked” or “radio-dispatch” taxi market).

4.1.2 *Taxi services as experience goods*

Economists distinguish between two categories of goods: “search” goods and “experience” goods⁹⁰. In the case of search goods, consumers learn the price and quality before the transaction and can select their most desired price/quality ratio accordingly. In the case of “experience” goods, on the other hand, the price and/or quality is only known after the transaction has taken place. As is well-known in economics, producers of experience goods may not have incentives to maintain low prices/high quality. “The main incentive to ensure [low price/high quality] is the possibility of repeat purchases by consumers, which induces firms to sustain quality so as not to hurt their reputation and lose future sales”.⁹¹

In many cases the exact price to be paid for a taxi service is not precisely known to the customer in advance. Taxi services are therefore often better categorised as “experience” goods rather than “search” goods. Furthermore, in certain specific cases the probability of repeat purchases is low, lowering the incentive for the taxi firm to lower the price or raise the quality. Finally, even in those cases where the customer could determine the price to be paid for a particular service in advance, other factors limit the ability of the customer to choose between different taxis.

The exact price to be paid for a taxi ride is typically not known in advance for several reasons. The price for taxi service is not usually a single figure but is expressed as an equation – usually some function of a fixed cost (the “flagfall” charge) together with certain variable costs (such as the time or distance covered) and other factors such as time of day, number of passengers and so on. Such two-part (or multi-part) pricing complicates price comparisons. Unless the customer knows in advance how long the journey will take and the precise distance covered, he/she will not know the precise price to be paid and therefore whether to choose a high-fixed/low-variable charge or the opposite. As an example, Table 4 presents a survey of the taxi fare schedules in Wellington, New Zealand, five years after deregulation. It is clear that there is significant price dispersion and relatively little tendency to concentrate on a single price. Of the six charging dimensions indicated not one company is systematically lower than or equal to some other company on all the dimensions. In other words, it is not possible to say that any one company is cheaper than any other given company under all circumstances.

Table 4: Taxi Fare Schedules in NZ\$, Wellington Urban Area 1994

Fare component	Company						Simple Average	Difference (max-min)
	A	B	C	D	E	F		
Flagfall	2.00	1.40	2.00	2.00	2.00	1.30	1.78	0.70
Phone	0.00	0.70	1.00	1.00	1.00	0.50	0.70	1.00
Tariff 1 (green)	1.31	1.10	1.55	1.52	1.50	1.25	1.37	0.45
Tariff 2 (red)	1.52	1.40	1.55	1.52	1.60	1.42	1.50	0.20
Waiting time	0.35	0.40	0.40	0.35	0.40	0.35	0.38	0.05
Multiple-hire discount	-	20%	10%	10%	20%	20%	15%	10%
Airport	1.00	1.00	1.00	1.00	1.00	2.00	1.17	1.00
Soiling Cab	50.00	-	35.00	35.00	50.00	50.00	36.67	15.00

Source: Wellington Regional Council taxi register, Morrison, 1997, table 2.

To make matters worse, taxi companies may have incentives to choose their pricing structure in such a way as to make price comparisons difficult. Although, in principle, a customer could negotiate a fare with the driver before undertaking the journey, such negotiation takes time. As mentioned above, taxi services are used precisely when timeliness is important. In most cases the cost of negotiation will outweigh the benefits.

Even when the exact price to be paid in advance is not known, taxi fares would still be disciplined by reputation effects if there were a sufficient population of repeat purchasers who are able to detect over-charging and adjust their future purchases accordingly. These factors do not always hold in the taxi market.

In order to detect over-charging, the customer must have some idea of a reasonable fare for the particular journey he has taken. However, most taxi customers are unlikely to take a taxi over the same route frequently enough to obtain a clear idea of a fair price. Most taxi customers simply do not purchase taxi services sufficiently frequently. Gelb reports that in San Diego and Seattle 40 percent of all resident taxi users take a taxi trip once per month or less. In that study respondents reported that they used taxis so infrequently that they had little reason to compare prices.⁹² Taxi use may be more common in the older East-coast cities of New York and Boston, but even where customers take the same journey several times, differences in traffic conditions, road conditions and time of day can lead to legitimate differences in the fare, making precise assessment of a “reasonable” fare difficult.

Even if a customer believes he or she has been overcharged in the past, this will have little effect on the future demand of a taxi company if that company is small relative to the size of the total market and if customers are randomly matched to taxi companies (as is the case in the hailed taxi or rank market).

If the number of repeat purchasers is low a taxi company could charge overly high prices for a long time before suffering from declining demand. In fact, if the population of one-time purchasers is large enough, a taxi company could potentially over-charge indefinitely. Tirole, 1988 observes: “A manufacturer who sells an experience good to one-time consumers and who can neither offer a warranty nor be sued for faulty quality has strong incentives to cut quality to the lowest possible level” or, equivalently, to raise the price to the highest possible level. This might involve, for example, taking an indirect route to the destination. Out-of-town visitors are especially likely to be one-time purchasers. In most taxi markets the airport rank is the most important taxi rank and one of the most profitable services. A proportion of these customers will be completely ignorant as to reasonable prices and the most direct routes.

4.1.2 *The role of search and waiting costs in the hailed taxi market*

Even if customers could determine the price to be paid before getting into a taxi, there are other factors which limit price and quality competition between taxis.⁹³ These arguments apply particularly to the hailed taxi market and the rank market.

The reasoning is based on the costs of searching for the lowest-cost taxi. In hailing a taxi a customer is not selecting the cheapest taxi from amongst those on offer but is merely selecting a random taxi from the total pool of taxis available. If the customer declines the fare offered by the driver he or she must incur the cost of waiting for the next taxi. But the expected price of the next taxi is again equal to the average of the prices of all the taxis in the pool. The customer will therefore accept any price lower than the average of the other taxis plus the expected cost of waiting for the next taxi. So each taxi driver has an incentive to demand a price slightly higher than the average of the price of the other taxis in the pool. There is therefore a continuous pressure towards an upwards movement in the price.⁹⁴

The price for taxi services will rise to the monopoly price. At any lower price, an increase in the price leads to an increase in the profitability of each cab. This, in turn, induces new cabs into the taxi business. The price therefore rises to the point where demand for taxis becomes elastic⁹⁵ or when taxis become sufficiently numerous that they do not arrive one at a time. When several available taxis are passing at any one time, consumers can choose the cheapest taxi amongst those on offer, thus restoring a degree of downward pressure on prices.

This result is an illustration of a more general result on search costs. Stiglitz notes that:

“If all individuals have strictly positive search costs, no matter how small ... [then] if an equilibrium exists, the equilibrium cannot be characterised by a price distribution; [and] the unique price is the monopoly price. Thus the presence of even small costs of information drastically changes the standard results: even with free entry prices rise from the competitive level to the monopoly level; all that free entry does is dissipate the resulting profits by excessive expenditures on fixed costs”.⁹⁶

The same arguments also apply to competition on quality. For example, in the case of hailed taxis, since demand for a taxi does not depend on its quality alone, but only on the average taxi quality, each firm has an incentive to cut the quality of its own cabs. In equilibrium there are inefficiently high prices, low quality and inefficiently high numbers of taxis. Despite the high prices, taxis do not earn excess profits because most cabs are unoccupied most of the time. Since the price of a ride is significantly in excess of the marginal cost, drivers compete vigorously on “non-price” dimensions in an attempt to win customers, leading to “overly aggressive” solicitation by drivers in the search for customers.

This effect might explain why there was a perceived excess of taxis in New York city before and during the great depression leading to demand for price and quantity restrictions on taxis (See Box 3).

Box 3: Regulation of The New York City Taxicab Industry

The following material is drawn primarily from Shreiber, 1975:

“Throughout the [period before 1937] there was a large surplus of cabs. Four public committees, various city officials and numerous *New York Times* editorials all expressed the opinion that the number of cabs was far larger than what was required to meet public demand. In the beginning of 1922, the New York City Traffic Commissioner was quoted as saying that out of the 14 000 cabs at that time, 10 000 would have been sufficient to meet public demand. The *New York Times*, a year later, contained the following colourful description of the excessive number of cabs:

‘These taxicabs come so close to the curb that the buttons are almost taken from your coat. They are so numerous that when you signal a bus, several taxicabs stop and hinder you from getting on the bus’.

A special committee of six members, appointed by the Mayor to study the cab situation in April 1923 expressed the opinion that there was a surplus of cabs and recommended reducing the number of cabs by ordinance to 12 000 from the 15 000 cabs that were in New York City at that time. Despite the surplus of cabs, the industry continued to expand from 15 000 in 1923 to 16 000 in mid-1924. A temporary halt to this expansion came when a price war in July 1924 resulted in about a 27 percent reduction in taxicab rates. The expansion in the number of cabs was resumed between 1927 and 1929 and stopped as a result of the great depression. The surplus of cabs continued to be a problem through all these years, and in 1930 another public committee was appointed by the mayor to study the cab situation. This committee expressed the opinion that 14 000 cabs, out of about 20 000 that were in operation at the beginning of 1930 were sufficient to meet public demand. The surplus became even more severe during the depression.”⁹⁷

“New York City first limited the number of cabs in 1932 under the sponsorship of Mayor Jimmy Walker, but when Walker was forced to resign after it was discovered that he had been bribed by one of the taxi companies, the attempt at regulation failed. Five years later the Haas Act in New York City froze the number of taxi medallions at 13 500”⁹⁸

Shreiber goes on to estimate the time that cabs were active (“live time”) before and after regulation. He finds that “The percentage of live time up to 1930 was somewhere around 30 percent, and it sank to less than 20 percent during the depression. In comparison, in 1961, when cab availability was still considered satisfactory, live time was around 57 percent”.⁹⁹ Taxi fares were very high during the period before regulation. The real price for a ride of 2.4 miles and three minutes waiting time in 1922 was possibly not exceeded again until the 1980s.

4.1.3 *The scope for competition in the rank taxi market*

In the case of the rank market the scope for competition depends on the number of taxis in each rank and whether or not the consumer is allowed to select a taxi. Provided that there is consistently more than one taxi in a rank and provided consumers are allowed to choose their taxi from those at the rank (and are not forced to simply take the taxi at the head of the queue) consumers can, in principle, select the taxi which offers the best price/quality combination. The incentive for customers to shop in this way is weakened by the difficulties of price comparisons and the pressure of timeliness. Nevertheless, provided there is no collusion among taxis waiting at the rank some downward pressure on prices is restored.

In some cases, it might not be possible for consumers to choose the cheapest taxi from the rank. This would be the case if there is rule of “first-in-first-out” or the physical nature of the taxi rank prevents taxis from leaving from the middle of the queue.¹⁰⁰ It might also be the case at busy ranks when demand for taxis is high and where there is a strong expectation that customers will take the first taxi on the rank, such as at an airport rank at peak times. The Australian Productivity Commission writes:

“At major airports – where passenger volumes are high, luggage has to be loaded and some passengers are fatigued and not familiar with usual fare structures – it is a practical necessity to conduct transactions quickly so as to minimise queuing times. In these situations the ‘first cab

off the rank' system may not be just a cultural convention – it may also be the most efficient option from a logistics point of view. However, enforcing a 'first cab off the rank' regime precludes consumers from choosing among cabs at the rank. Consequently, taxis with higher than average posted prices would still be assured of gaining airport trade. Over time, this could encourage a range of 'rogue' cabs to post high prices and concentrate predominantly on the airport rank. This would be unreasonable for those passengers forced to use these higher charging cabs".¹⁰¹

The phone-booked taxi market is different. In most large cities this market is the largest component of the taxi market, accounting for 70 to 80 percent of the overall market for taxi service, and 90 percent or more in smaller cities.¹⁰² In this market the customer is in a similar position to customers in other markets for the purchase of services over the phone. The customer's search costs are relatively low. The customer can obtain price information from a variety of companies, negotiate prices or "use a company which from experience they know offers a price and quality combination which meets their requirements. In this regard, hiring a taxi or hire-car by phone is not unlike purchasing a range of other services commonly organised by phone, such as ordering home delivered pizza or engaging home handy-persons".¹⁰³ Although the establishment of a phone-booking service requires a large fleet of taxis and a certain investment in infrastructure, these do not appear to be significant barriers to entry. This market is therefore competitive.

In many cities the phone-booked taxi market is subject to significantly less regulation and is often formally distinguished from the "taxi" market proper. For example, in London phone-booked taxis, known as "minicabs" are not subject to any restrictions on entry or fares. Irish law distinguishes between taxis and "hackneys" which can only be hired by phone or by going to the hackney outlet.¹⁰⁴

4.1.4 *The difference between The first-best and the second-best in the taxi market*

Economists have at times argued that the first-best efficient outcome cannot be attained in a competitive equilibrium in the taxi market.¹⁰⁵ As in other transport sectors, the costs of operating a taxi include a substantial fixed component (e.g., the driver's salary). Because of this substantial fixed component there is a strong incentive to maintain a high level of utilisation of the taxi over the day. On the other hand, the higher the level of utilisation of each taxi, the longer the average waiting time for any individual customer waiting to be served. Longer waiting times lower demand for taxi services. This interaction between supply and demand gives rise to the possibility of multiple equilibria. One equilibrium might have few taxis, long waiting times and low prices, because consumers are unwilling to pay more for taxi service. Another equilibrium might have a high number of taxis, low waiting times and high prices.

An important question to ask is whether the equilibrium which maximises overall welfare can be achieved through a competitive market. As is always the case in economic theory, the first-best efficient price for a taxi ride is equal to the marginal cost of providing that ride, which includes the cost of the driver's time while engaged on the trip. The resulting revenue is not sufficient to cover all the fixed costs of operation, including the costs of sitting idle waiting for customers. As a result, the first best efficient price is not attainable in a competitive market environment, at least not without explicit subsidies for the taxi industry.

The best outcome that could be achieved in a competitive market without subsidies is known as the "second best" outcome. The second best price is higher than the first-best marginal cost price. The difference reflects a compensation for the idle time necessary to retain a reasonable waiting time. In the taxi industry the difference between the first best outcome and the second best outcome is not likely to be sufficiently large as to warrant price regulation and subsidy of the industry. In any case, taxi companies can

approach the first-best arrangements through more sophisticated pricing schemes, such as two-part tariffs. For example, taxi fleets could enter into contracts with large businesses under which the companies agree to pay a flat annual fee in return for a discount on the fleet cabs. Even individual taxi users may be offered discounts for high usage or lower fares in return for an annual payment.

In principle, if the taxi industry is sufficiently competitive the second best price could be achieved as a competitive equilibrium without regulation.¹⁰⁶ Entry would drive profits down to zero and ensure an efficient waiting time. If, for the reasons described above, some form of price regulation is required, the second-best outcome could, in principle, be achieved through careful choice of the regulated price. According to Toner “given appropriate fare controls and quality regulations, the market will expand to the size consistent with zero excess profits, that is a premium of zero, and so optimal regulation requires only setting the fares correctly”.¹⁰⁷

However, the difficulty of setting the fares correctly should not be underestimated. “Optimal” fares should in many cases vary according to the time of day or night, traffic conditions and possibly even weather conditions. The costs of providing taxi service is likely to be higher at three a.m. and demand is likely to be higher during a snow storm. Optimal fare regulation should correctly reflect these factors. Failure to correctly account for these factors will lead inevitably to excess demand or excess supply of taxis. For example, failure to allow fares to increase at night may lead to shortages of taxis at three a.m. Raising the fares to induce sufficient service at night may lead to excess taxis during the day. Regulators may be tempted to respond to these problems not by adjusting fares but by imposing service obligations – requiring that taxi companies (or individual taxis) provide 24 hour service. Such service obligations must be supported in turn by entry controls. Otherwise part time taxis will “cream skim” - enter during profitable periods, leaving the unprofitable periods for others.

4.2 Regulation of the taxi industry

Because taxi regulation is usually a responsibility of city or regional government, the range of taxi regulation in OECD countries is large.

In Australia, taxi regulation is a responsibility of the individual states. Most Australian states limit the number of taxi licences. An exception in the Northern Territory where the number of taxi licences is not restricted. Taxi licences are generally freely transferable. The price of a taxi licence ranges from about \$A100 000 in Tasmania (where the taxi density is around 13 taxis per 10 000 people) to \$A270 000 in Queensland (with about 8 taxis per 10 000 people). In parts of the New South Wales north coast, licences are valued at around \$A350 000. In South Australia the number of hire-cars is not restricted and these provide strong competition to taxis.¹⁰⁸

Most Australian states regulate maximum and minimum taxi rates. Victoria has a fixed single tariff fare structure. Average fares for a five kilometre journey vary between \$A6.25 in Darwin and \$A7.85 in New South Wales. In all parts of Australia except Canberra, there are minimum vehicle size dimensions for taxis. Some jurisdictions prescribe maximum vehicle age. In most jurisdictions (except Western Australia) taxis must belong to a dispatch service.

In the US, taxi regulation is primarily a city responsibility. Several cities have chosen to limit entry by requiring that, in order to operate, each taxicab must have a medallion. Medallions are issued by the city and are limited in supply. In many cities the number of medallions has not increased over time despite substantial population growth. “13 566 medallions were issued in New York City in 1937. With nearly 2 000 returned to the city around World War II, the supply of medallions today is only 11 787. In Boston, the number of taxicabs has been fixed at 1 525 since 1930. ... The city of Chicago allowed

4 108 taxicabs to operate in 1934, then reduced this number to 3 000 in 1937. Since 1963, 4 600 taxicabs have been allowed to operate".¹⁰⁹

The price of a medallion gives some indication of the present discounted value of the economic rent accruing to taxi drivers due to the entry restrictions. Viscusi et al, 1995 report that medallion prices range from \$400-500 in Indianapolis to \$210 000 in New York City.¹¹⁰ By way of comparison, in the late 1990s, taxi licenses in Ireland were valued at about IR£ 80 000 (US\$86 000), and the aggregate value of licenses outstanding in 1997 exceeded IR£ 150 000 000 (US\$160 500 000).

Substantial entry restrictions, coupled with high prices of licences have led economists to predict quite large benefits from liberalisation. For example Taylor, 1989 estimates that regulation of taxicabs in Toronto, Canada has led to 733 fewer taxis than is efficient and prices 33 percent higher than free market levels.¹¹¹ Gaunt and Black, 1996 conclude that regulation of the taxicab industry in Brisbane has restricted supply relative to the free-market equilibrium by around 228 taxis and has increased the maximum fare for a standard eight kilometre trip by \$A1.47.¹¹²

4.3 *The experience with liberalisation in the taxi industry*

Several OECD countries have at least some experience with liberalisation of the taxi industry. Liberalisation has been tried in several US cities and in certain states of Australia. Only two OECD countries – Sweden and New Zealand – have liberalised the taxi industry on a nation-wide basis.

Overall, the experience with liberalisation has been mixed. As a general rule, liberalisation has substantially increased the number of taxis operating, reducing waiting times. On the other hand, where liberalisation included deregulation of prices, prices have generally not come down. In some markets prices appear to have risen following deregulation. Innovation in the provision of new services has been limited. These studies therefore emphasise the importance of paying particular attention to the characteristics of the taxi market in each city and tailoring regulatory reform to the context.

The first country to liberalise on a national basis was New Zealand. Prior to 1989, entry and fares in the taxi industry were strictly regulated. Applicants for a new licence "were required to appear at a public hearing before a Transport Licensing Authority, where the need for and public good of the proposed service were evaluated. Additional licenses were rarely issued. In fact, the number of taxi licences declined from 3 425 in 1975 to 2 762 in 1989".¹¹³ The Secretary for Transport fixed fare schedules for each licence area, required a taximeter to be fitted in every cab and required the regulated fare to be displayed on the taximeter. The 1989 Transport Services Licensing Act (effective 1 November 1989) removed all quantitative controls over entry and fares. Instead of licensing taxis, taxi drivers must be the holder of a special licence. There are no restrictions on the number of such licences or the number of taxis a licence holder is allowed to operate. "Fares are to be set by individual taxi organisations, with the maximum fare registered with the Secretary of Transport, calibrated on the taximeter and displayed both inside and outside the taxicab. Licence holders must belong to an approved taxi organisation [which] provides a 24 hour/seven day-per-week service and possesses a telephone booking and communication system".¹¹⁴ The taximeter must be tested, sealed and certified every six months.

Following liberalisation in 1989, the number of taxis increased rapidly. From 454 in the Wellington Region in October 1989 to 932 in November 1994, five years later, increasing the number of cabs per thousand inhabitants from 1.49 to 2.43 (see Table 5) and the number of taxi companies from five to 21.

Table 5: Number of Taxis per 10 000 People in Australian States and Wellington, New Zealand

State/Terr.	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Wgtn, NZ
1995	8.6	8.5	7.9	7.4	7.2	12.9	6.9	6.9	24.3

Source: Soon (1999) and Morrison (1997)

The substantial growth in taxi numbers was accompanied by certain innovations in services. “By November 1994, A number of specialised taxi-type services had also started up and several downstream enterprises had also entered the market. Taxi vans were added to fleets, as were executive cabs (with drivers in uniforms); the range and flexibility of company accounts were increased, new taxi-charge credit systems were introduced together with advertising on cabs. Taxi companies began tendering for public bus routes, some successfully. An office-service bureau was set up offering a taxi-service-order brooking service for all taxi companies. Several chauffeur services are now being offered as well as elite taxi services. Some of this differentiation has also been geographical with new smaller companies finding spatial niches. In one case these spatial niches have been complemented by an ethnically-based service when a company was formed to serve the Samoan community”.¹¹⁵

The assessment of fares is made difficult by the proliferation of different fare schedules following liberalisation (as set out above in Table 4). Comparing fares for several hypothetical journeys, Morrison finds that taxi fares have fallen in real terms but not nominal terms. Morrison notes that interviews with taxi-company managers “found a reluctance to lower nominal fares; the feeling was that the public, which showed little awareness of inter-company price differences, would not respond in sufficient numbers to price reductions to compensate any given company for those fare reductions”.¹¹⁶

The experience of the Wellington airport rank market is interesting. Competition in picking up passengers at the lucrative airport market became increasingly intense. This led to fights breaking out. “Short trips after long waits often drew the ire and refusal of some drivers to service passengers who were unfortunate enough to live close to key sites like the airport, even though legislation requires the acceptance by the driver of the first fare offered”.¹¹⁷ In 1996, seven years after liberalisation, the Airport Authority sought greater control by issuing 1 000 licenses and requiring that only these licensees could pick up passengers from the airport. The airport also auctioned five dedicated parking spaces to three taxi companies. One company bought three of these spaces.

The experience of liberalisation of the taxi market in Sweden was similar and perhaps even less favourable. “In July 1991 the Swedish taxi-cab industry was deregulated in five steps. First, the barriers controlling entry were removed. County administrative boards were relieved of their former task of estimating the demand for taxi services in each operating area. At the same time, control of applicant’s suitability became more rigorous and encompassed trade skills as well as personal and economic suitability. Second, fare controls were removed. Taxi-cab companies were thus free to set fares but were required to inform customers about the fare prior to trips. Taxi-cabs must also be equipped with receipt-writing meters. Third, the requirement for all taxi-cabs to belong to a radio-dispatch service was abandoned. Fourth, geographically restricted operating areas were eliminated. Fifth and finally, the strictly regulated operating hours were removed”.¹¹⁸

The result of this liberalisation were as follows. First, the number of taxis and their hours of availability increased sharply, by 15-25 percent. Second, fares increased in real terms, by 30-55 percent. Fares, which were previously regulated to be uniform on a national basis also developed regional differences. The total number of trips taken did not uniformly decline in response to the fare rise. There was no statistically significant difference in the number of trips taken before and after the change. Taxi productivity declined, due to the increase in number of taxis, without a corresponding increase in demand. Finally there was no indication that new types of service had emerged after deregulation.¹¹⁹

The experience of taxi deregulation in several US cities is set out in Box 4.

Box 4: The Effects of Taxicab Deregulation in the US

Teal and Berglund, (“T&B”) 1987, assess the effects of taxi deregulation of the nine large US cities that had undertaken deregulation before 1985, focusing on six – San Diego, Seattle, Phoenix, Tucson, Sacramento, and Kansas City. By 1987 deregulation had not occurred in any of the handful of US cities where the hail market predominates.¹²⁰ Teal and Berglund find the following effects:

- First, *substantial new entry occurred*. The number of taxis in service increased from 18-127 percent with the typical figure being around one third. According to T&B, “most new entry is concentrated on cabstand markets at airports and large hotels, which can be served without radio dispatch capability”¹²¹. In regard to exit “turnover is concentrated among small operators (usually one-cab operators) serving cabstand and street hail markets, which quickly become oversaturated after deregulation”¹²². A substantial increase in taxis was also observed by Frankena and Pautler: “The number of both independent and fleet taxis has increased significantly in most of the cities that deregulated. The median effect was about a 25 percent increase in the number of cabs over the period covered by the literature review”.¹²³
- Second, the evidence on service quality is limited and mixed. The only evidence presented by T&B comes from just one city (San Diego). This data suggests that the average response time declined from ten minutes to eight minutes after deregulation. At the same time the refusal/no-show rate increased from five percent to 18 percent from before to after deregulation.
- Third, taxi fares appear to have risen with deregulation. In all five cities which had been deregulated for at least two years rates increased more rapidly than inflation following deregulation, whereas in no city with regulated taxi prices did prices increase as rapidly as inflation. In addition, T&B compare the rates in the seven deregulated cities with 14 regulated cities of similar size and find that rates are higher in the deregulated cities and have increased at a faster rate. It appears that prices have increased even faster at cabstand markets, particular at airport markets (airports are by far the largest cabstand markets). “Median mileage rates for airport-based cabs in Phoenix range from 17 to 33 percent above the charges of the largest radio dispatch company. In both San Diego and Seattle, airport rates are also above telephone rates, and airport authorities have finally imposed a rate ceiling to control excessive charges by some operators. These ceilings are meant to protect un-informed consumers from excessively high fares when rates vary substantially”.¹²⁴ Frankena and Pautler note: “On the negative side, there have been some problems to the airport and taxi-stand segments, which have caused difficulties in a number of cities. These difficulties appear to be related to high fares for airport trips, which in turn provide an incentive for long lines of cabs at the airport. These, in turn, led to refusal to make short hauls, disputes over the place in the line, and so forth”.¹²⁵

Overall, the effects of deregulation on prices has been disappointing. “Price competition under deregulation has proved to be the exception rather than the rule, in spite of expectations that it would act as a deterrent to higher rates. Seattle and San Diego are the exceptions: the second largest company in each of these cities offers fares at least 15 percent below those of the largest company. These lower prices have not stimulated price reductions by competitors, and the low-price companies have not increased their market shares”.¹²⁶

- Fourth, productivity has declined, with the number of daily trips per taxi dropping 30-40 percent. This is a natural consequence of a large increase in the number of taxis without a corresponding increase in demand for taxi services. As a consequence of the drop in productivity, the earnings of drivers have also declined.

These liberalisation experiences have in common a strong increase in the number of taxis providing service with rather limited downward movement in taxi prices (or even price rises). This evidence does not necessarily imply that liberalisation was not welfare-improving overall. It is, at least in principle, possible that regulation could hold both the number of taxis and the fare level below the long-run equilibrium (so that both would rise following liberalisation).¹²⁷ The evidence is, however, also consistent

with the view that, for the reasons set out above, taxi prices will be higher in a long-run competitive equilibrium than is efficient.

4.4 *Conclusion*

While, on the one hand, regulation may inefficiently reduce the quantity and raise the price of taxis, on the other hand, full deregulation will not necessarily lower fares and enhance price competition. This analysis suggests the following principles for regulatory reform of taxi services.

- First, the scope for competition varies between the different parts of the taxi market. A taxi market which is strongly dominated by the hailed-taxi market is less suitable as a candidate for full deregulation than a market which is dominated by phone-booked taxis. It may be appropriate to separate these markets, establishing a lighter regulatory regime for phone-booked taxis and a heavier regime for taxis which can be hailed in the street (as is done in London and Ireland). A market in which licence or medallion prices are low is likely to have lower benefits from liberalisation than a market where medallion prices are high.
- Second, this analysis has not provided any justification for quantity controls. Controls on the numbers of taxis are harmful and unnecessary.¹²⁸ Liberalising of entry controls (even where price controls are retained) should enhance the quantity of taxis, reduce waiting times and thereby enhance the quality of service. In the London Black Taxi market, for example, fares are fixed but there is no overall limit on the number of cabs permitted to operate.¹²⁹
- Third, practices which hinder the ability of customers to choose between taxis should be eliminated. Customers should be able to choose any taxi off a rank. First-in-first-out rules should be abolished wherever it is feasible for consumers to choose. In some cases, possibly as a transition measure, consumers may need to be educated about their right to select between the available taxis.
- Fourth, regulations should facilitate price comparison as much as possible. This may involve standardising pricing systems or structures (by, for example, establishing a system of common zones or peak/off-peak times). As far as possible the number of variables on which prices depend should be reduced to facilitate comparison. These prices should be clearly displayed outside the cab to facilitate shopping. In the limit, taxi price comparisons could amount to comparing a single number. A situation like this arose in Poland prior to recent reforms when, as a result of rapid inflation, taxis advertised their fares as a simple multiple of the rates given by official meters issued by the taxi regulator. By reducing a range of prices to a single number price comparison is greatly enhanced.¹³⁰ Taxi regulators could also take responsibility for taking surveys of prices and disseminating the resulting information. Regulatory agencies could also facilitate the process of reputation-building by hiring independent experts to assess service quality or collecting information on customer complaints and disseminating this information, perhaps by posting the information at taxi stands.
- Fifth, where the phone-booked market is important, the effects of competition in that market could be imported to the hail market by preventing taxis from charging more for hailed services. This could involve requiring taxis to belong to a phone-dispatch system and requiring that taxis charge no more for hailed rides than for phone-booked rides.

- Sixth, in markets where repeat business is low (e.g., if there are no taxi companies with large market share), customers are largely ignorant and customer selection of taxis on the basis of price is not possible (such as the taxi rank at the airport), it may be necessary to resort to additional forms of regulatory constraints such as a maximum fare cap, coupled with a system of high penalties for overcharging for taking an indirect route. The difficulty of fixing an appropriate fare level should not be underestimated. Higher fares may attract new entry and thereby reduce waiting times. Lower fares may increase waiting times. The efficient fare must balance these considerations. The Australian Productivity Commission argues for retaining a regulated ceiling on fares, at least for a transition period.¹³¹
- Seventh, where taxi licences are currently restricted and valuable, rapid liberalisation could lead to large short-term wealth transfers. In this case, attention may need to be paid to transitional arrangements, such as a phased transition to free entry. This might involve, for example, a phased increase in the number of taxi licences per capita.¹³² During the transition period, proceeds from the sale of extra licences could be distributed to existing licence holders.

5. Conclusion

It is hard to over-emphasise the importance of road transport to OECD economies at the beginning of the 21st century. This study has examined the three principal industries providing road transportation services – trucking in the case of road freight and buses and taxis in the case of passengers. All three of these industries have been subject to substantial regulation in the past. In all three of these industries economists have argued, sometimes strongly, for the removal of a major part of that regulation.

Analysis of these industries shows that the scope for competition and therefore the benefits of deregulation, differ between the industries and between different segments of each of these industries. Although the benefits of liberalisation vary, in each industry careful and targeted liberalisation has the potential for significant economic welfare gains. In each of these industries several OECD countries have already carried out substantial regulatory reform. In some cases the benefits have been substantial.

Nevertheless, substantial scope for regulatory reform remains. Although trucking has largely been liberalised, many regulatory constraints remain, especially at the international level. Long-distance bus and coach services also remain controlled in many countries, again especially at the international level. Many cities still retain numerical restraints on taxi licences. In each of these industries, further careful and appropriately tailored regulatory reform holds the potential for further benefits to users and consumers.

APPENDIX A

Road freight: Product market liberalisation and performance

<i>Author</i>	<i>Country/period</i>	<i>Explanatory variable</i>	<i>Performance variable</i>	<i>Effects found</i>
Burniewicz, 1996	Poland	Privatisation and liberalisation	Traffic	Increases
			Productivity	Increases
			Efficiency	Increases
Haffner and van Bergeijk, 1997	Netherlands	Liberalisation of cabotage, driving periods	Prices	Decline by 1%
Hoj et al, 1995	Australia	Liberalisation of entry and prices (1950 and 1960s)	Prices	Decline
			Quality	Improves
	Canada	Liberalisation of entry and prices	Prices	Decline
			Quality	Improves
	France	Liberalisation of entry and prices (1979 and 1989)	Prices	Decline
	New Zealand	Liberalisation of entry, services and prices (1983)	Quality	Improves
	Norway	Liberalisation of entry, services and prices (1987)	Entry	Positive
	Sweden	Liberalisation of entry (1964)	Entry	Positive
	United Kingdom	Liberalisation of entry, services and prices (1968)	Quality	Improves
Molnar, 1996	Hungary	Privatisation and liberalisation	Traffic	Increases
			Productivity	Increases
			Efficiency	Increases
McKinnon, 1996	United Kingdom (1987-1990)	Road haulage deregulation		Decline by 25%
	United States (1970-1978)		Prices	Decline by 12-25%
	New Zealand (1984-1987)			Decline by 25%
	France (1987-1990)			Decline by 15%
OECD, 1999a	United States	Liberalisation of entry and prices	Prices	Decline by 75% (TL) and 35% (LTL)
			Efficiency	
			Quality	Improves
			Employment	Increases by 16%

Table 5. **Road freight: Product market liberalisation and performance** (continued)

<i>Author</i>	<i>Country/period</i>	<i>Explanatory variable</i>	<i>Performance variable</i>	<i>Effects found</i>
OECD, 1999b	Mexico	Liberalisation of entry and prices	Prices	Decline by 37%
			Quality	Improves
			Employment	Increases by 5%
			Efficiency	Increases
OECD, 1999c	Japan	Liberalisation of entry and prices	Entry	Increases
			Profit	Increases
			Prices	Decline
			Quality	Improves
			Productivity	Increases
Opletal-Ryba, 1996	Czech Republic	Impact of privatisation and liberalisation	Traffic	Increases
			Productivity	Increases
			Efficiency	Increases
Rose, 1997	United States	Labour rent sharing and regulation	Rent sharing	Declines
Winston, 1993	United States	Liberalisation of entry and prices	Consumer welfare	Gain of 16 billion of 1990 US \$
Winston, 1998	United States	Deregulation less than-truckload trucking	Prices	Decline
			Efficiency	Increases
			Quality	Increases
		Deregulation truckload trucking	Prices	Decline
			Efficiency	Increases
Quality	Increases			
Yamauchi, 1995	Japan	Liberalisation of domestic road haulage	Consumer welfare	Gains between 2.5 billion and 8.2 billion of US \$
Ying, 1990	61 firms United States 1975-84	Deregulation	Technological progress	Increases
			Cost	Declines
			Productivity	Increases
Ying and Keeler, 1991	56 firms United States 1975-83	Liberalisation of entry and prices	Prices	Decline by 25% to 35%

NOTES

- 1 There are, of course, also private roads where the ownership of the infrastructure may be integrated with the vehicles which use it.
- 2 See, for example, the overview of Button and Keeler, 1993. In the case of trucking, see for example McKinnon, 1999 and Fruin, 1999.
- 3 The consumer may be able to transport the passengers or goods him/her self within some region around the point of origin and the final destination – this corresponds to the “geographic” dimension of the definition of the relevant market, the route between the origin and destination regions defining the “product” dimension.
- 4 There are other ways to consolidate traffic flows. In particular, local bus services and local postal deliveries consolidate flows by making a large number of stops on a given route in a region.
- 5 Ying, John S., 1990, “The Inefficiency of Regulating a Competitive Industry: Productivity Gains in Trucking Following Reform”, *Review of Economics and Statistics*, 72(2), May 1990, 191-201; Thomas , Janet M. and Seth J. Callan, 1992, “Cost Analysis of Specialised Motor Carriers: An Investigation of Aggregation and Specification Bias”, *Logistics and Transportation Review*, 28(3), September 1992, 217-230; Allen, W. Bruce and D. Liu, 1995, “Service Quality and Motor Carrier Costs: An Empirical Analysis”, *Review of Economics and Statistics*, 77(3), August 1995, 499-510; Harmatuck, Ronald J., 1992, “Motor Carrier Cost Function Comparisons”, *Transportation Journal*, 31(4), Summer 1992, 31-46.
- 6 OECD, 2000.
- 7 This is seen most clearly in the postal sector. As we set out in the OECD/CLP study of the postal sector (OECD, 1999) the economics of final delivery is such that final delivery services are a natural monopoly in most areas.
- 8 More information on the liberalisation of the road freight sector can be found in Gonenc, Maher and Nicoletti, 2000. In particular, see Figure 1 in that paper.
- 9 Adrangi et al, 1995.
- 10 These gains can be substantial. Winston (1990, 1274) reports that trucking deregulation in the US lead to a \$7.8 billion reduction in prices, a \$six billion reduction in costs, improvements in service time and reliability valued at \$1.6 billion and a reduction of profits of trucking companies of \$4.8 billion (all figures in 1990 US dollars). The overall gain to the US economy is estimated at \$10.6 billion per annum.
- 11 Fruin, 1999, page 7.
- 12 McKinnon , 1999, p5.
- 13 Fruin, 1999, page 4.
- 14 Fruin, 1999, page 5.
- 15 Moore 1993, page 12-13.

- 16 Fruin, 1999, citing Teske
- 17 Fruin, 1999, page 8.
- 18 McKinnon, 1999, page 5.
- 19 Except Greece (2.7 percent) and the Czech Republic (4.1 percent). Boylaud and Nicoletti, 2001, Table 1.
- 20 The exceptions are US (22.2), Japan (25.4) and Mexico (50.5). Boylaud and Nicoletti, 2001, Table 2.
- 21 The database is available on the OECD web site at <http://www.oecd.org/subject/regdatabase>.
- 22 Cited in McKinnon, 1999, page 5.
- 23 Foster Committee, "Road Haulage Operators' Licensing", HMSO, London, 1978
- 24 McKinnon (1996, 3). Teske et al observe "The economics of trucking – specifically low set-up costs, minimal asset specificity and near-constant returns to scale – suggest an inherently competitive industry. In a free market the industry could efficiently allocate and price trucking services, leaving no technological justification for government intervention." Teske, Best and Mintrom (1994, 248).
- 25 The database is available on the OECD web site at <http://www.oecd.org/subject/regdatabase>.
- 26 Korea did not eliminate route and rate control and supply-demand entry control until mid-1999, and is still phasing out rules that prevented small-firm entry.
- 27 Fruin, 1999, page 15-16.
- 28 See Daniel and Kleit, 1995, page 8, and OECD (1999), page 205.
- 29 McKinnon, 1999, p13.
- 30 UK Department of the Environment, Transport and the Regions, *From Workhorse to Thoroughbred: A Better Role for Bus Travel*, 1999
- 31 A hub-and-spoke network is not the only way to consolidate flows. Traffic flows are consolidated whenever the same vehicle is used to carry goods or passengers to different destinations. Other examples are local bus routes (which stop every few hundred yards) or package delivery vehicles (which carry parcels intended for several different addresses).
- 32 There are limits to the tendency towards hub-and-spoke operation. The first relates to geography. The geography of a network may not permit the establishment of a suitable hub or hubs. The second is timeliness. Routing traffic indirectly through a hub takes longer than providing a direct service. In services where timeliness is important point-to-point services may be sustainable.
- 33 The incumbent operator, whenever he/she can do so, is likely to seek to make such connections as difficult as possible by refusing access by the entrant to his/her terminal.

- 34 Eric Morrison of the OFT points out that in extreme cases, the A-C price may be lower than the price of A-B. For example, the price of a rail ticket from London to Gatwick is higher than the price of a ticket from London to the station beyond Gatwick. In fact, it is so much higher it is cheaper to travel to the station beyond Gatwick and then to buy another single fare to Gatwick.
- 35 in the absence of agreements or alliances between companies...
- 36 A “travelcard” in this context is any card which is purchased in advance and lowers the marginal cost of travel on a specific company (perhaps as low as zero).
- 37 For example, in the context of Chile, Brown, 1993, page 93 comments “In the inter-urban bus sector, a worrisome aspect of the deregulation of bus services has been the tendency for the larger companies to grow larger and for smaller companies to be taken over or to disappear. Maintaining a competitive market is a major challenge, and there are few neutral policy instruments available for this purpose”.
- 38 Meyer and Gómez –Ibañez, 1993 argue that one of the original arguments for bus regulation was the desire to control the market power of the few dominant firms that emerged following a process of mergers and consolidations.
- 39 Evans (1990), page 265.
- 40 Although the actions may be less profitable than the actions the firm would take in the absence of new entry.
- 41 See Gomez-Ibanez, Jose A. and John Meyer, 1990, “Privatising and Deregulating Local Public Services: Lessons from Britain’s Buses”, *American Planning Association Journal*, 9 (Winter 1990), 9-21
- 42 In Santiago, Chile, fares rose significantly following the deregulation of bus services. This may have been due to the use of predatory behaviour to prevent competition. “Traditionally the small operators pooled themselves in route associations for specific routes, which financed bus terminals and dispatched vehicles on a commonly-agreed route and schedule. After deregulation these route associations set fares and would war on new entrants who chose not to join the association or attempted to set their own schedule and fares. The associations seems to have been relatively effective in defending their fare and schedule policies because the small size of the individual operators made it risk to challenge the associations’ rules”. Meyer and Gómez – Ibañez, 1993, page 78.
- 43 “It appears likely that the large incumbent operator benefits not simply from historic knowledge of their services but also from economies of scale in the provision of information and publicity”. Nash, 1993, page 1045. In the case of the UK, the authorities may have also raised the barriers to exit by requiring six weeks notice of any change of schedule (including withdrawal from service), thus preventing an entrant from responding quickly to aggressive behaviour by immediately withdrawing from the service.
- 44 See OECD, 1990, page 71.
- 45 Vickers, J. and Yarrow, G., 1988, *Privatisation and Economic Analysis*, page 374, cited in Beesley, 1992, p201. The ability of the competition authorities to respond to predatory behaviour

in that period was limited. The Competition Act of 1980 was focused on private undertakings and the bus industry was exempt from the general competition law (the Fair Trading Act) until 1985.

46 Evans (1990), page 275, citing *Bus Business*, 88, 18 October 1989.

47 See Sappington and Sidak (1999).

48 Evans (1990), page 276.

49 OECD, 1990, page 70.

50 See *U.S. v Greyhound Lines, Inc.* 1995

51 In 1990 the OECD commented “The continued dominance of National Express was the unexpected outcome of deregulation of long-distance coaches in the UK. Thus, although it is believed that economies of scale are not significant in the industry there would appear to be some entry barriers caused by the incumbent carrier’s extensive network of services, agents and ability to advertise as well its national timetable of services”. OECD, 1990, page 51.

52 Indeed, the problem may have been recognised last century.

53 Chester, 1936 cited in Oldale, 1997, page 3-4. The same experience also arises in other sectors. In the maritime industry “fighting ships” not only undercut rivals’ fares, but timed their sailings to suck up the freight first too.

54 Oldale, 1997, page 3. Emphasis added.

55 Meyer and Gómez-Ibañez, 1993, page 81 note that “Reports of aggressive driving by highly motivated private bus operators are fairly common, particularly where a large number of small firms or individual own-operators ply the same route”.

56 Klein, Moore and Reja, 1997.

57 Klein, Moore and Reja, 1997, page 39.

58 The policy options and issues to address in competitive tendering are set out in the paper by Gwilliam and Scurfield, 1996.

59 OECD (2000b).

60 The UK government, in a recent white paper, proposes moving away from the system of in-the-market competition for bus services to extend the possibility for tendering a geographic or route franchise. UK Department of the Environment, Transport and the Regions, *From Workhorse to Thoroughbred: A Better Role for Bus Travel*, 1999. White writes: “The experience in London suggests substantial benefits are derived from retaining a comprehensive network planning and marketing organisation, while adopting competitive tendering of services as a means of improving efficiency. It is also possible to privatise all of the operation companies without losing such ‘network benefits’ Other west European countries concerned about high public expenditure and the need to increase efficiency are more likely to follow the London model rather than ...[the model] found elsewhere in Britain”. White, 1997, page 51.

- 61 Klein, Moore and Reja, 1997, page 50-51. Formal public protection of curb rights may also control private efforts at defending against “interlopers”. Such private efforts are particularly common in developing countries. Klein, Moore and Reja give several examples: “Roth, 1987 notes that ‘the methods used by route associations to protect their territory can become criminal, unlawful, perhaps even homicidal’. Sigurd Grava, 1980 describes route enforcement by means ‘considerably beyond the law’ by ‘district strongmen, local bosses, criminal gangs, powerful families, brotherhoods of operators or otherwise legal associations’. De Soto (1989) tells of route associations in Lima appointing ‘dispatchers’ to monitor compliance with rules and bribing the police to accost and harass ‘pirates’ trying to invade their route.” Klein, Moore and Reja, 1997, page 33 citing Gabriel Roth, 1987, *The Private Provision of Public Services in Developing Countries*, Oxford University Press, Sigurd Grava, 1980, “Paratransit in developing countries” in *Transportation and Development Around the Pacific*, New York: American Society of Civil Engineers and Hernando De Soto, 1989, *The Other Path: The Invisible Revolution in the Third World*, Harper and Row.
- 62 See, for example, Tirole, 1988, page 285.
- 63 Evans, 1987, page 32.
- 64 White, 1997, page 50.
- 65 Note that this outcome is not definitive evidence of an inefficient outcome. It is possible that travellers preferred higher-frequency smaller buses and were prepared to pay more for the service.
- 66 Comments by Robert Brown cited on page 69 of *Regulatory Reform in Transport: Some Recent Experiences*, edited by José Cabajo, World Bank, April 1993
- 67 Meyer and Gómez-Ibañez, 1993, page 78.
- 68 See Glaister, 1993, page 50.
- 69 Glaister, 1993, page 52.
- 70 Glaister, 1993, page 53.
- 71 Glaister, 1993, page 59.
- 72 Glaister, 1993, page 58.
- 73 Evans (1990), page 256, citing Gomez-Ibanez, J.A. and J. R. Meyer, 1987, *Deregulating Urban Bus Service: Britain’s Early Experience and the Lessons for the United States*, National Technical Information Service
- 74 Evans (1990), page 256.
- 75 Glaister, 1993, page 57, 58.
- 76 Evans, 1990, page 277, 279.
- 77 Glaister, 1993, page 62.

- 78 Glaister, 1993, page 61.
- 79 Glaister, 1993, page 59.
- 80 Glaister, 1993, page 60.
- 81 Glaister, 1993, page 55, 56.
- 82 See OECD, 1990, pages 37 and 56.
- 83 OECD, 1990, page 42.
- 84 OECD, 1990, page 32.
- 85 White, 1997, page 48.
- 86 Button and Keeler, 1993, observe that “the market power of firms in these markets is nowhere near strong enough to justify regulation”, page 1022.
- 87 Button and Keeler, 1993, page 1022.
- 88 The Economist, “All the world’s a cab”, 5 January 1991, cited in Morrison, 1997, page 913.
- 89 And, the benefits of consolidating flows small enough – as occurs within a region in which passengers can wish to travel in any direction.
- 90 Economists also identify a third category – “credence” goods – for which the quality and/or price is not known even after the good is purchased and consumed.
- 91 Tirole, 1988, page 95. The quote of Tirole has been modified to include a lack of information about price, which is relevant in the taxi context.
- 92 Gelb, P. M. *Effects of Taxi Regulatory Revision in San Diego, California*, US Department of Transportation and Gelb, P. M. *Effects of Taxi Regulatory Revision in Seattle, Washington*, US Department of Transportation
- 93 See Douglas, 1972 and Shreiber, 1975
- 94 In the case where there is a limited number of taxi companies, each with a significant share of the market, there may be some restraint on the tendency towards an upward movement on prices as increasing prices reduces demand for taxi services. If a taxi company has a significant share of the market it may not be able to ignore this effect.
- 95 This result assumes that taxi costs are largely fixed. When costs are largely fixed the monopoly price is close to the price which maximises total revenue. This suggests that the elasticity of demand for taxi services would be one or less. Teal and Berglund, 1987, report that demand for phone-booked taxis is estimated to be one or slightly less: 0.8, page 50. Both Taylor, 1989 and Gaunt and Black, 1996, also assume an elasticity of one in their analysis.
- 96 Stiglitz, 1989, page 779.

- 97 Shreiber, 1975, page 272-274.
- 98 Gorman Gilbert and Robert E. Samuels, *The Taxicab*, 1982, cited in Viscusi et al, 1995 page 342.
- 99 Shreiber, 1975, page 274.
- 100 “The existence of queues of taxis, reinforced by first-in, first-out rules, eliminates the price competition normally expected in markets with large numbers of competitors”. Teal and Berglund, 1987, page 50.
- 101 Productivity Commission, 1999, page 19.
- 102 Teal and Berglund, 1987, page 39.
- 103 Productivity Commission (1999).
- 104 When the Irish government tried to expand the number of hailed-taxi licenses (selling all the new ones to incumbents, of course), the hackneys sued to stop this expansion of competition.
- 105 See, for example, Cairns and Liston-Heyes, 1996.
- 106 This contradicts the results of Cairns and Liston-Heyes, 1996. However their results are based on an error in the derivation of their equation (3) which apparently leads them to draw the wrong conclusions.
- 107 Toner, J.P., 1992, “Regulation in the taxi industry”, Working Paper 381, Institute for Transport Studies, University of Leeds, Leeds, cited in Morrison, 1997, page 916.
- 108 In other jurisdictions, the number of hire-cars is also restricted. In Victoria, entry restrictions give rise to hire-car licence values around \$A 80 000.
- 109 Frankena and Pautler, 1984 cited in Viscusi et al, 1995. A similar story arises in other countries. For example, although the population of Brisbane has increased more than 80 percent between 1960 and 1990, the number of taxi licences only increased by 22 percent over the same period, leading to a 320% increase in the value of taxi licences. Gaunt and Black, 1996.
- 110 By way of comparison, the weighted average price of Australian licences is about \$A 170 000 (1993). Gaunt and Black, 1994, page 155
- 111 Cited in Gaunt and Black, 1996. “He also determined that in 1987 the regulation had resulted in a consumer to producer wealth transfer of \$39.2 million with an additional \$4.9 million of consumer wealth/surplus disappearing as a dead-weight cost”. Gaunt and Black, 1996, p5.
- 112 “The benefits of deregulation of the taxicab industry in Brisbane to the public interest and society generally are obvious, with potential for reduced fares, increased service levels and service innovation. Recent calls for the deregulation of the industry by the Industry Commission and the Trade Practices Commission appear to have gone unheeded by the Queensland Government. This is not surprising given the political might of the cohesive and economically motivated group of existing taxi license holders and the relative political weakness of consumers.” Gaunt and Black, 1996, p57.

- 113 Gaunt 1996, page 103.
- 114 Gaunt, 1996, page 104.
- 115 Morrison, 1997, page 920.
- 116 Morrison, 1997, page 924.
- 117 Morrison, 1997, page 924.
- 118 Gärling, 1995, page 209-210.
- 119 Gärling, 1995, page 211-213.
- 120 Washington, DC is partially deregulated - In Washington there are no entry restrictions, merely restrictions on tariffs.
- 121 Teal and Berglund, 1987, page 40.
- 122 Teal and Berglund, 1987, page 41.
- 123 Frankena and Pautler, 1986, page 4.
- 124 Teal and Berglund, 1987, page 46.
- 125 Frankena and Pautler, 1986, page 4.
- 126 Teal and Berglund, 1987, page 44.
- 127 It is also possible that the observed results were just a transitional phenomenon, which will disappear as consumers become more used to selecting a taxi on the basis of price. T&B cite research from San Diego and Seattle which showed that only half of all resident taxi users were aware that different taxi operators charged different prices and only between one quarter and one eighth reported that they ever compared price in choosing among taxi operators.
- 128 The Australian Productivity Commission notes that it “has been unable to identify benefits to the community that justify restrictions on taxi numbers. Accordingly it considers there is a strong case for the removal of such restrictions”. Productivity Commission, 1999, page ix.
- 129 Beesley and Glaister, 1983, page 598.
- 130 A disadvantage of enhancing price transparency is that it may also facilitate collusion.
- 131 Productivity Commission, 1999, page xi.
- 132 An increase in the number of taxi licences per capita is preferable to a simple regular increase in the number of licences as the annual increase in licences may be insufficient to match the population growth rate of a city. The problem of time-consistency of transition paths is discussed in Kenny and McNutt, 1998.

REFERENCES

- Adrangi, B., G. Chow and K. Raffiee, "Analysis of the Deregulation of the US Trucking Industry: A Profit Function Approach", *Journal of Transport Economics and Policy*, September 1995
- Beesley, Michael E., 1992, "UK Experience with Freight and Passenger Regulation", in *Privatisation, Regulation and Deregulation*, edited by Michael Beesley, Routledge, 1992
- Beesley, Michael E. and Glaister, S., 1983, "Information for Regulating: The Case of Taxis", *The Economic Journal*, 93, 594-615, September 1983
- Boylaud, O., and Giuseppe, Nicoletti, 2001, "Regulatory Reform in Road Freight", OECD Economic Studies, No. 32, forthcoming, 2001
- Braeutigam, Ronald R., 1999, "Learning about Transport Costs" in *Essays in Transportation Economics and Policy*, Brookings Institution Press, 1999
- Brown, Robert T., 1993, "The Political Framework of Regulatory Reform in Transport Enterprises: Bus and Truck Deregulation in Chile", in *Regulatory Reform in Transport: Some Recent Experiences*, edited by José Cabajo, World Bank, April 1993
- Button, Kenneth J. and Theodore E. Keeler, 1993, "The Regulation of Transport Markets", *Economic Journal*, 103, 1017-1027, July 1993
- Cairns, Robert D. and Catherine Liston-Heyes, 1996, "Competition and Regulation in the Taxi Industry", *Journal of Public Economics*, 59, 1996, 1-15
- Cooper, J.C., 1991, "Lessons for Europe from Freight Deregulation in Australia, the United Kingdom and the United States of America", *Transport Reviews*, 11, 1, 1991
- Cooper, J.C., 1994, "Structure of the Freight Transport Sector", Roundtable 99, ECMT, Paris, 1994
- Daniel, Timothy P., and Andrew N. Kleit, 1995 "Disentangling Regulatory Policy: The Effects of State Regulations on Trucking Rates", *Bureau of Economics Staff Report, US Federal Trade Commission*, mimeo, November 1995
- Douglas, G.W., 1972, "Price Regulation and Optimal Service Standards: The Taxicab Industry", *Journal of Transport Economics and Policy*, 6(2), 116-127, May 1972
- Evans, Andrew, 1987, "A Theoretical Comparison of Competition With Other Economic Regimes for Bus Services", *Journal of Transport Economics and Policy*, January 1987
- Frankena, Mark W. and Paul A. Pautler, 1984, *An Economic Analysis of Taxicab Regulation*, Bureau of Economics Staff Report, Federal Trade Commission, May 1984
- Frankena, Mark and Paul Pautler, 1986, "Economic Analysis of Taxicab Regulation", *Transportation Research Record*, 1103, 1986, 2-5
- Fruin, Jerry, "Results of the Regulatory Reform of the Motor Carrier Industry in the United States", mimeo, September 1999

- Gärling, Tommy, Thomas Laitila, Agneta Marell and Kerstin Westin, 1995, "A Note on the Short-Term Effects of Deregulation of the Swedish Taxi-Cab Industry", *Journal of Transport Economics and Policy*, May 1995
- Gaunt, Clive, 1996, "Taxicab deregulation in New Zealand", *Journal of Transport Economics and Policy*, January 1996, 103
- Gaunt, Clive and Terry Black, 1994, "The Unanticipated Effects of the Industry Commission's Recommendations on the Regulation of the Taxi Cab Industry", *Economic Analysis and Policy*, 24(2), September 1994
- Gaunt, Clive and Terry Black, 1996, "The Economic Cost of Taxicab Regulation: The Case of Brisbane", *Economic Analysis and Policy*, 26(1), March 1996
- Glaister, Stephen, 1993, "Bus Deregulation in the United Kingdom", in *Regulatory Reform in Transport: Some Recent Experiences*, edited by José Cabajo, World Bank, April 1993
- Gonenc, Rauf, Maher, Maria and Nicoletti, Giuseppe, 2000, "The Implementation and the Effects of Regulatory Reform: Past Experience and Current Issues", OECD Economics Department Working Paper No. 251, June 2000
- Gwilliam, K. and R. Scurfield, 1996, "Competition in Public Road Passenger Transport", World Bank TWU-24, October 1996
- Kenny, Patrick and McNutt, Patrick, 1998, "Solving Dublin's Taxi Problems", *Competition Authority Discussion Paper No. 6*, Ireland, November 1998, (www.irlgov.ie/compauth/DIS_DOC6.htm)
- Klein, Daniel B., Adrian T. Moore and Binyam Reja, 1997, "Curb Rights: Eliciting Competition and Entrepreneurship in Urban Transit", *The Independent Review*, 2(1), Summer 1997, 29-54
- McKinnon, Alan, 1996, "Privatisation and Regulation of Road Freight Transport: Is Complete Deregulation Possible? Which Regulations Should Be Kept?", ECMT Seminar, Paris, 5 September 1996
- McKinnon, Alan C., 1999, "Privatisation and Regulation of Road Freight Transport: Case Study", ECMT
- Meyer, John R. and José A. Gómez-Ibañez, 1993, "Transit Bus Privatisation and Deregulation Around the World: Some Perspectives and Lessons", in *Regulatory Reform in Transport: Some Recent Experiences*, edited by José Cabajo, World Bank, April 1993
- Morrison, P.S., 1997, "Restructuring Effects of Deregulation: The Case of the New Zealand Taxi Industry", *Environment and Planning*, 29, 1997, 913-928
- Moore, Thomas Gale, 1993, "Regulatory Reform of Transport" in *Regulatory Reform in Transport: Some Recent Experiences*, edited by José Cabajo, World Bank, April 1993
- Nash, C.A., 1993, "British Bus Deregulation", *The Economic Journal*, 103, 1042-1049, July 1993
- Oldale, Alison, 1997, "Local Bus Deregulation and Timetable Instability", London School of Economics Working Papers, 24 July 1997

- OECD, 1990, *Competition Policy and the Deregulation of Road Transport*, OECD, Paris, 1990
- OECD, 1999a, *Promoting Competition in Postal Services*, Roundtables on Competition Policy No. 24, October 1999
- OECD, 1999b, *Regulatory Reform in the United States*, OECD Reviews of Regulatory Reform, 1999
- OECD, 2000a, *Airline Mergers and Alliances*, Roundtables on Competition Policy No. 26, February 2000
- OECD, 2000b, *Competition in Local Services: Solid Waste Management*, Roundtables on Competition Policy No. 28, August 2000
- Productivity Commission (Australia), 1999, *Regulation of the Taxi Industry*, Commission Research Paper, November 1999
- Sappington, David and J. Gregory Sidak, 1999, "Incentives for Anticompetitive Behaviour by Public Enterprises", AEI-Brookings Joint Center for Regulatory Studies Working Paper 99-11, November 1999
- Shreiber, Chanoch, 1975, "The Economic Reasons for Price and Entry Regulation of Taxicabs", *Journal of Transport Economics and Policy*, September 1975, 268
- Stiglitz, Joseph E., 1989, "Imperfect Information in the Product Market", chapter 13 in *Handbook of Industrial Organisation*, volume I, Richard Schmalensee and Robert Willig, eds., North Holland, 1989
- Soon, Jason, 1999, "Taxi!! Reinvigorating Competition in the Taxi Market", *Policy*, Winter 1999, 13
- Taylor, D. W., 1989, "The Economic Effects of the Direct Regulation of the Taxicab Industry in Metropolitan Toronto", *Logistics and Transportation Review*, 25(2), 169-182
- Teal, Roger F. and Mary Berglund, "The Impacts of Taxicab Deregulation in the USA", *Journal of Transport Economics and Policy*, January 1987, 37
- Teske, Paul, Samuel Best and Michael Mintrom, 1994, "The economic theory of regulation and trucking deregulation: shifting to the state level", *Public Choice*, 79, 247-256
- Tirole, Jean, 1988, *The Theory of Industrial Organisation*, MIT Press, 1988
- Viscusi, W. Kip, John M. Vernon and Joseph E. Harrington, Jr., 1995, *Economics of Regulation and Antitrust*, MIT Press, 1995
- White, P., 1997, "The Experience of Bus and Coach Deregulation in Britain and In Other Countries", *International Journal of Transport Economics*, 24(1), February 1997, 35-52
- Winston, Clifford, 1993, "Economic Deregulation: Days of Reckoning for Microeconomists", *Journal of Economic Literature*, 31, September 1993, 1263-1289

NOTE DE RÉFÉRENCE

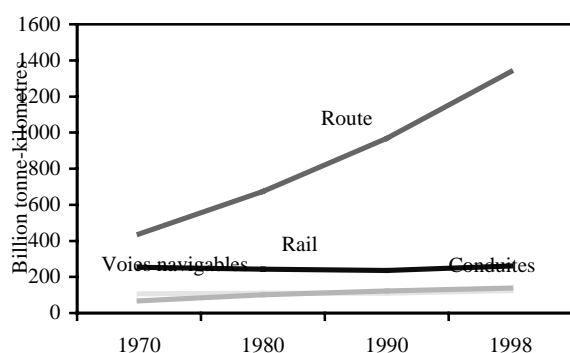
par le Secrétariat

1. Introduction

Il est difficile de surestimer l'importance du transport par route pour les économies de l'OCDE : le transport par route est une composante essentielle, omniprésente et peut-être même déterminante des économies de l'OCDE à l'aube du XXI^e siècle.

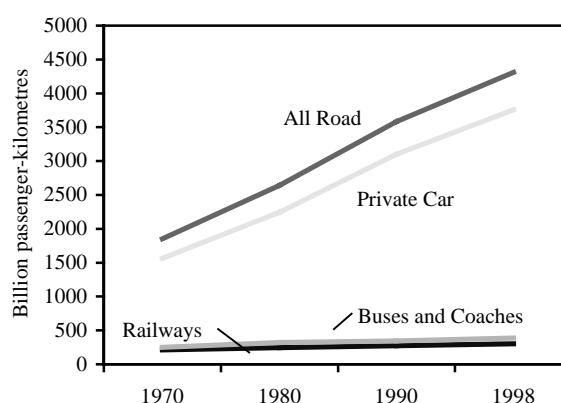
Le secteur du transport par route se divise classiquement en deux sous-secteurs assez nettement dissociés, le transport de marchandises et le transport de voyageurs. Le premier est celui qui assure le transport par route de marchandises entre les entreprises ainsi qu'entre celles-ci et les consommateurs. Il englobe le transport de marchandises en vrac et de marchandises qui, telles que les produits réfrigérés et les marchandises dangereuses, requièrent un traitement particulier. Il intègre, à la marge, les secteurs des services postaux, de transport de colis et de courrier rapide. Le transport de voyageurs englobe les transports individuels (par taxi ou voiture particulière) et collectifs (par autocar et autobus) de voyageurs par route tant à courte qu'à longue distance. Les figures 1 et 2 montrent que le transport de voyageurs et de marchandises par route a davantage progressé que les autres modes de transport au cours des dernières décennies.

Figure 3: Evolution du transport de marchandises de 1970 à 1998 (pays CEMT)



Source : CEMT Evolution des transports 1970-1998. Les données couvrent 18 pays pour les chemins de fer, 16 pays pour la route (15 pour les autocars et les autobus), 10 pays pour les voies navigables et 12 pays pour les conduites. Les données relatives au fret aérien font défaut.

Figure 4: Evolution du transport de voyageurs de 1970 à 1998 (pays CEMT)



Source : CEMT Evolution des transports 1970-1998. Les données couvrent 18 pays pour les chemins de fer, 16 pays pour la route (15 pour les autocars et les autobus), 10 pays pour les voies navigables et 12 pays pour les conduites. Les données relatives au fret aérien font défaut.

Il est d'usage de distinguer les transports effectués (avec des véhicules qui peuvent être loués) au seul bénéfice de celui qui les effectue des transports effectués contre rémunération. Les premiers englobent les transports de marchandises pour compte propre ainsi que les transports de voyageurs effectués au moyen de véhicules privés tandis que les seconds englobent les transports effectués au moyen de véhicules, notamment des autocars, affrétés (sur lesquels les places ne sont pas présentées à la vente au public). Les transports pour compte propre ne soulèvent pas de problème de réglementation et sont (à quelques exceptions près) régis par un arsenal réglementaire assez lâche, voire inexistant. Ils resteront ignorés dans la présente étude qui se focalise plutôt sur les transports pour compte de tiers ainsi que les transports de voyageurs par autocar, autobus et taxi.

Le transport par route est en concurrence avec d'autres modes, dont les principaux sont le transport par air, par eau et par chemin de fer. Ces autres modes exercent une concurrence qui, dans certains cas et notamment sur les longues distances, pèse lourdement sur le transport par route et doivent être englobés dans un marché des transports de plus grande dimension. Les chapitres qui suivent traiteront avant tout de la concurrence qui s'exerce à l'intérieur même du secteur du transport par route.

Le transport par route postule, comme tous les autres modes, la conjonction de deux facteurs de production, en l'occurrence les infrastructures et les véhicules qui en usent. Dans le cas de la route, les infrastructures sont constituées par l'ensemble des grandes et des petites routes qui forment le réseau routier international. Les propriétaires et les exploitants des infrastructures routières ne se confondent, pour diverses raisons (et contrairement à ce qui se passe par exemple dans les chemins de fer), presque jamais avec les propriétaires et les exploitants des véhicules qui circulent sur ces infrastructures¹. Il est dans ces conditions licite de se demander comment tarifier l'usage de ces infrastructures et quand et comment en accroître la capacité. Les droits d'usage des infrastructures revêtent une importance que la nature et l'ampleur de la concurrence intermodale ne font que souligner. La présente étude ne s'arrêtera pas aux questions liées à la mise à disposition des infrastructures.

La circulation des véhicules sur les infrastructures routières est source de risques et de nuisances pour les autres véhicules, les piétons, les riverains et l'environnement. La prévention des accidents et des nuisances publiques est l'affaire des règles de sécurité et de protection de l'environnement. Quelques importantes qu'elles soient, ces règles seront laissées dans l'ombre par l'étude qui se focalisera plutôt sur les règles dites économiques qui pèsent sur les conditions d'entrée et de sortie, les prix, les services et le régime de propriété.

L'étude s'articulera donc autour des grands axes suivants :

- La vigueur possible de la concurrence et, partant, le besoin de réglementation sont, pour des raisons notamment d'économies d'échelle et de champ d'activité, loin d'être égaux pour les camions, les autocars et autobus et les taxis. Les économies d'échelle et de champ d'activité deviennent importantes quand la demande de ponctualité est forte et que les volumes de trafic qui s'écoulent entre deux points sont faibles par rapport à la taille optimale des véhicules de transport. Chacun de ces types de transport a en outre des caractéristiques propres qui peuvent limiter le champ d'action de la concurrence.
- Dans le domaine du transport de "charges complètes" par route, la ponctualité revêt relativement moins d'importance et les volumes à transporter sont considérables par rapport aux dimensions des véhicules, de telle sorte que les économies d'échelles sont minimales. Ce domaine ouvre un champ d'action très vaste à la concurrence. Sa libéralisation a eu des retombées positives importantes puisqu'elle a tonifié la concurrence, fait baisser les prix de

transport et suscité l'émergence de formes d'entreprises plus novatrices et réactives. La libéralisation peut encore aller beaucoup plus loin, au niveau international en particulier.

- Les économies d'échelle sont plus importantes et la concurrence plus limitée dans le domaine du groupage des envois urgents ou des charges partielles (colis express acheminés par exemple par DHL ou UPS). Ce marché se caractérise par sa tendance à la concentration, mais la concurrence peut aussi s'y exercer réellement, surtout si elle est soutenue par une politique résolue d'application des règles de concurrence.
- Dans le transport de voyageurs à longue distance, la ponctualité est plus importante et les volumes de trafic sont moins denses par rapport aux dimensions d'un autocar. Les économies d'échelle et la fusion des flux de trafic sont donc importantes, ce qui tend à donner naissance à des réseaux en étoile. Comme cela se passe dans le transport aérien, les opérateurs maîtres d'un réseau étendu ont la possibilité d'exploiter l'avantage que leur taille leur procure sur leurs concurrents. Il s'ensuit que la concurrence est habituellement limitée sur certaines liaisons d'un réseau en étoile et que de grands réseaux dominants peuvent se créer. En outre, les opérateurs en place peuvent rendre la vie de nouveaux concurrents difficiles en réaménageant les services existants, en augmentant les fréquences de desserte et/ou en ramenant leurs prix à un niveau égal ou inférieur à ceux de ces concurrents. La libéralisation des services d'autocars de grande ligne a donné d'assez bons résultats, avec cette réserve qu'elle présente un risque d'intensification de la concentration et qu'il reste indispensable de faire appliquer les règles de concurrence avec rigueur.
- Les clients des services d'autobus sont rares à emprunter fidèlement un même service aux mêmes heures et préfèrent plutôt se présenter à un lieu et une heure fixés d'avance et acheter leur ticket quand ils montent dans l'autobus. Ces services sont vulnérables au "piratage" pratiqué par des compagnies concurrentes qui font passer leur véhicule juste avant l'heure de passage prévue pour embarquer les voyageurs qui attendent, minant ainsi les investissements en publicité et marketing réalisés par la compagnie en place pour attirer des clients. Cette concurrence n'a pas d'effet durable parce que les opérateurs modifient leurs horaires pour passer avant leurs concurrents. La solution pourrait être de créer des "droits de chargement de voyageurs" qui confèreraient à leur détenteur la "propriété" des voyageurs qui attendent aux points d'arrêt.
- La formule des "droits de chargement" n'a pas été appliquée dans la pratique et la concurrence reste rare sur les lignes d'autobus, même si elle s'exerce parfois sur certaines lignes (notamment sur les relations interurbaines à fort volume de trafic). A la concurrence entre opérateurs présents sur le marché, d'aucuns préfèrent la concurrence "pour le marché", c'est-à-dire l'adjudication des services d'autobus sur appel d'offres. Cette dernière formule a donné d'assez bons résultats à Londres, où elle a fait baisser les coûts et préservé l'intégration du réseau, mais a l'inconvénient de rigidifier les services et de les rendre insensibles aux besoins des usagers.
- Dans le cas des taxis, la demande de ponctualité est telle qu'il n'y a guère ou pas de possibilité de fusion des flux de trafic et, partant, pas d'économies d'échelle. La concurrence ne peut s'exercer que si le client a la possibilité de choisir le véhicule qui va le véhiculer. Les clients ont le choix entre les multiples taxis qu'ils peuvent appeler par téléphone et (dans une moindre mesure) les taxis en attente dans une station de taxis. Etant donné que l'attente a un coût, le client ne peut guère opérer un choix entre les taxis de passage. La pression à la baisse des prix est donc faible, comme sur d'autres marchés où les coûts de recherche sont élevés. Il

s'ensuit qu'en l'absence de garde-fous, le nombre de taxis vagabonds peut dépasser le seuil de l'efficacité, avec des prix trop élevés et une qualité insuffisante.

- La libéralisation du marché des taxis s'est presque toujours traduite par une augmentation substantielle de leur nombre, sans nécessairement faire baisser les prix. Quoiqu'il soit toujours inutile de vouloir limiter le parc, la réglementation des prix des taxis hélés depuis le trottoir et des taxis opérant à partir de stations privilégiées (aéroports, etc.) peut donner de meilleurs résultats qu'une concurrence tout à fait libre.

Les chapitres qui suivent analysent la situation de ces trois secteurs (transport de marchandises, autocars et autobus, taxis) de façon approfondie. Bon nombre d'auteurs ont décrit l'histoire de leur réglementation et déréglementation² en détail et l'étude ne s'y attardera donc pas. Les chapitres suivants visent essentiellement à déterminer jusqu'où la concurrence et la réglementation peuvent aller dans ces secteurs.

2. Transport de marchandises par route

Le transport de marchandises par route peut-il vivre avec une concurrence effective ? Comme dans d'autres secteurs, cette question revient en fait à se demander si des dysfonctionnements de ce marché y inhibent ou restreignent le jeu de la concurrence. Les principaux de ces dysfonctionnements sont les économies d'échelle et de champ d'activité parce que la tendance à la monopolisation est forte dans les branches d'activité où ces économies sont significatives. Il convient donc de se demander s'il y a des économies d'échelle et de champ d'activité dans le transport de marchandises par route pour compte de tiers.

2.1 Pourquoi réglementer le transport de marchandises par route ?

La présence d'économies d'échelle et de champ d'activité est fonction du rapport du volume de la demande au volume d'activité qui permet d'accéder à la rentabilité sur chacun des marchés en cause, c'est-à-dire, dans les transports par route, les marchés des services de transport qui relient entre eux deux lieux ou régions³ en une période de temps donnée. Si la demande de transport à effectuer sur une relation donnée dans des délais donnés égale ou excède la capacité d'un véhicule rentable, les économies d'échelle et de champ d'activité sont minimales ou inexistantes. Si, en revanche, cette demande est très inférieure à la capacité d'un véhicule rentable (ou si le coût d'utilisation d'un véhicule plus petit est élevé), il devient possible de réaliser de sérieuses économies d'échelle et de champ d'activité en fusionnant des flux, ce qui peut se faire par exemple en créant un réseau en étoile⁴.

Dans le cas du transport de marchandises par route pour compte de tiers, plusieurs facteurs se combinent pour réduire les économies d'échelle et de champ d'activité. Il y a d'abord le fait que les dimensions des véhicules routiers sont limitées par la loi (pour des raisons d'usure des infrastructures, de sécurité, de bruit et d'émissions) et que ces dimensions maximales sont plutôt réduites par rapport au volume du trafic acheminé sur la plupart des relations. Il s'y ajoute ensuite que les services de transport de marchandises par route sont principalement achetés par des entreprises et que les flux interentreprises sont beaucoup plus concentrés que les flux de marchandises qui s'écoulent entre des individus ou entre des entreprises et des individus. Il s'y ajoute, enfin, que les transports interentreprises de marchandises sont souvent moins tenus à des horaires que les transports de voyageurs (des retards de 24 heures ou même davantage peuvent, selon les produits, être acceptés sans lourdes pénalités financières). Etant donné que les flux qui parcourent une liaison donnée dans des délais donnés sont importants par rapport à la taille optimale des véhicules, les économies d'échelle réalisables sur la plupart des relations sont minimales.

Dans le cas, par contre, des marchandises qui requièrent un traitement particulier, doivent être transportées dans des délais précis ou sont livrées à des particuliers, la densité des flux peut ne pas correspondre à la taille optimale minimum des véhicules. Ce type de transport englobe les services de transport de colis (assurés par exemple par UPS), les services de courrier rapide (assurés par exemple par DHL) et les services de groupage. Ces marchés autorisent les économies tant d'échelle que de champ d'activité : l'acheminement d'un complément de marchandises vers la même destination ou vers des destinations situées sur la relation desservie ou proches de cette relation permet de mieux utiliser la capacité disponible. La tendance à la configuration des réseaux en étoile est donc active sur ces marchés. Fruin (1999,3) observe qu'aux Etats-Unis :

"les groupeurs se spécialisent dans le transport d'envois de moins de 10 000 livres. Le groupage impose la prise et la remise à domicile, l'aménagement de centres de tri et la constitution de réseaux régionaux et nationaux. Ce type de transport est, contrairement au transport de charges complètes, source d'économies d'échelle importantes".

Plusieurs études empiriques du transport de marchandises par route aux Etats-Unis apprennent que le rendement d'échelle du transport des charges complètes reste constant ou diminue tandis que celui du groupage augmente légèrement.

Tableau 1 : Etudes des coûts d'entreprises américaines de transport de marchandises par route

<i>Etude</i>	<i>Données</i>	<i>Conclusions</i>
Ying (1990)	61 entreprises de transport de 1 ^e et 2 ^e catégories, 1975-1984	Légère diminution du rendement d'échelle, tendance à la constance après déréglementation
Thomas et Callan (1992)	1984, entreprises spécialisées	Constance du rendement d'échelle; la composition du chargement est une variable explicative importante.
Allen et Liu (1995)	Echantillon d'entreprises de groupage, 1985-1989.	Augmentation du rendement d'échelle dans le groupage après contrôle de la qualité du service
Harmatuck (1992)	9 entreprises de groupage, 1974-1988	Augmentation du rendement d'échelle dans tous les cas de figure

Source : Braeutigam (1999), tableau 3-3 (les études réalisées après 1990 en utilisant la forme de fonction Translog sont seules à avoir été prises en compte) ⁵.

L'étude du secteur des transports aériens réalisée par l'OCDE/CLP ⁶ a montré clairement, comme l'analyse des services interurbains d'autocars proposée dans un chapitre suivant le fera aussi, que la concurrence entre des réseaux en étoile peut être limitée. Elle peut ainsi être inactive sur certaines liaisons routières⁷ et les réseaux sont très fortement tentés d'étendre leur aire géographique d'activité par la voie des fusions et des alliances. Il risque en conséquence d'y avoir peu de réseaux en étoile concurrents en équilibre. Le marché du groupage est, comme les paragraphes qui suivent le montreront, beaucoup plus concentré que celui des charges complètes.

2.2 L'expérience en matière de libéralisation du transport de marchandises par route

L'analyse développée dans les paragraphes qui précèdent laisse entendre que la concurrence est, à quelques exceptions près, possible et effective dans le secteur du transport de charges complètes par la

route. Les faits confortent cette conclusion. Plusieurs pays de l'OCDE ont très largement libéralisé le secteur du transport de marchandises par route⁸, avec des résultats presque unanimement positifs. Les conclusions des multiples études consacrées aux effets de la libéralisation du transport de marchandises par route sont résumées dans l'annexe A.

La déréglementation du transport de marchandises par route :

- fait baisser les prix de transport et les aligne sur les coûts.

McKinnon affirme que la libéralisation a fait baisser les prix de transport de 15 pour cent (en France) à 25 pour cent (au Royaume-Uni, aux Etats-Unis et en Nouvelle-Zélande) et arrive à la conclusion que les faits confirment que la libéralisation du transport de marchandises par route exerce, dans des délais plus ou moins longs, une pression à la baisse sur les tarifs de transport.

Fruin (1999,3) allègue que le résultat sans doute le plus important de la déréglementation américaine se situe au niveau des tarifs de transport avec lesquels quasi toutes les branches d'activité doivent compter. Les tarifs assis sur la "valeur du service" auxquels la réglementation avait donné naissance ont en effet été remplacés par des tarifs assis sur les coûts, linéaires et dégressifs en fonction de la distance. Cette nouvelle forme de tarification a mis fin à de nombreux avantages entérinés ou imposés par une politique publique de réglementation des prix et des services qui fixait et faisait pratiquer des prix souvent délibérément favorables à une région, une catégorie de produits, un port, etc. sous prétexte de "sauvegarder la concurrence" ou d'assurer "le maintien d'un niveau de service adéquat" ;

- améliore la productivité et réduit les coûts.

L'exploitation était [avant la déréglementation] pénalisée directement et indirectement par les restrictions imposées par le pouvoir réglementaire. Les restrictions imposées en matière d'exploitation, d'itinéraires et de fret de retour avaient un effet direct en ce sens qu'elles pesaient sur le taux d'utilisation des véhicules. En muselant la concurrence à l'intérieur du secteur du transport de marchandises par route, la réglementation coupait les ailes à l'amélioration de la productivité, à l'innovation technologique et à la volonté de rationalisation de la gestion⁹. Les prix payés par les chargeurs et, en bout de course, les consommateurs étaient donc inutilement gonflés¹⁰.

Fruin (1999,4) explique également que la déréglementation a eu pour autre résultat d'offrir aux entreprises et aux distributeurs qui exploitent des flottes de transport pour compte propre la possibilité de rechercher du fret pour équilibrer leurs mouvements entrants ou sortants. Ces entreprises ont beaucoup plus de véhicules que les entreprises de transport pour compte de tiers. La distinction jadis très nette entre le transport pour compte de tiers et le transport pour compte propre s'en trouve désormais estompée.

L'utilisation des matériels s'est en outre considérablement améliorée : alors que le nombre de tonnes/kilomètre réalisées en trafic interurbain a augmenté de 78 pour cent entre 1980 et 1995, le nombre de véhicules tracteurs a diminué et le nombre de remorques n'a augmenté que de 24 pour cent au cours de la même période¹¹ ;

- facilite la mise en place de services novateurs.

La déréglementation contribue dans l'ensemble à améliorer la qualité du service, permet aux chargeurs de gérer leurs transports avec plus de souplesse et peut aussi susciter l'émergence de

nouveaux types de services logistiques. Au Royaume-Uni par exemple, où la déréglementation a déjà un assez long passé, les nouvelles conditions d'exercice de la concurrence ont conduit au développement d'entreprises de distribution intégrant le transport par route dans une gamme complète de services logistiques. Le Royaume-Uni a ainsi pu se bâtir une solide réputation internationale sur le marché de la distribution sous contrat¹².

Nombreux sont aux Etats-Unis les nouveaux entrants qui fournissent des services novateurs tels qu'enlèvement de petits colis, messageries express ou fret aérien ou sont des filiales de transitaires, de compagnies maritimes, de commissionnaires ou autres tierces parties. La déréglementation a été source d'innovations qui ont complètement estompé la distinction opérée par la réglementation entre les modes et les types de services¹³.

Les économies que ces nouveaux services permettent à l'économie de réaliser peuvent être considérables. La déréglementation a donné naissance à un nouveau mode de fonctionnement du marché dicté par la concurrence qui a rendu les services plus conviviaux et plus fiables. Les chargeurs et les clients ont de ce fait pu gérer leurs stocks en flux tendus en multipliant les envois de plus petites dimensions de façon à réduire le volume et les coûts de manutention des stocks. Le coût des stocks, qui représentait neuf pour cent du PIB américain en 1980, n'en représentait plus que 3.9 pour cent en 1998. Les coûts logistiques totaux (somme des frais de transport et des coûts de manutention des stocks) sont passés de 16.8 pour cent du PIB en 1980 à 10.6 pour cent en 1998¹⁴ ;

- n'a pas engendré de concurrence destructrice, d'instabilité ou de détérioration de la sécurité.

Contrairement aux prévisions des professionnels, la déréglementation n'a pas été synonyme de concurrence excessive ou de déstabilisation pour les marchés de transport. L'Australie est le premier grand pays à avoir déréglementé un segment respectable de ses transports de marchandises par route. Dans le courant des années 50, la Cour suprême d'Australie a décrété que le pouvoir central ne devait pas réglementer le transport de marchandises entre les Etats fédérés et le secteur semble aujourd'hui échapper à tout risque d'instabilité ou de concurrence destructrice et dispendieuse tout en étant parfaitement concurrentiel¹⁵.

Les études réalisées aux Etats-Unis après la déréglementation constatent toutes qu'elle n'y a pas eu d'effet pervers¹⁶. Le renforcement des normes d'exploitation des véhicules et des normes de sécurité ainsi que les aménagements routiers se sont traduits par un fléchissement des taux d'accidents mortels et corporels après la déréglementation¹⁷. Le nombre d'années de vie potentielle perdues a diminué de 32 pour cent entre 1980 et 1995, malgré l'augmentation considérable connue par le trafic routier de marchandises au cours de cette même période ;

- a été largement applaudie après coup.

Les études d'après déréglementation n'ont guère décelé d'appel à la re-réglementation, ce qui semble prouver que tant les fournisseurs que les utilisateurs de services de transport de marchandises par route sont satisfaits de l'ouverture de ce marché au libre jeu de la concurrence. Certains Etats se sont réservé le droit de réimposer des restrictions quantitatives au cas où ce marché se déstabiliserait, mais ce droit n'a jamais été invoqué et a même été abrogé au Royaume-Uni en 1982, douze années après l'achèvement de la déréglementation¹⁸.

Le secteur du transport de marchandises par route est pour sa plus large part extrêmement dispersé. Quoiqu'il emploie de 0.7 à deux pour cent de la population active¹⁹, le nombre moyen de travailleurs par entreprise plafonne à 3.9 dans l'Union européenne et ne dépasse les 13 que dans trois pays

de l'OCDE²⁰. D'après la base de données internationale de l'OCDE sur la réglementation²¹, la part de marché des trois plus grandes entreprises est de 10.5 pour cent en Turquie, six pour cent aux Pays-Bas, cinq pour cent en Finlande, 3.8 pour cent au Canada, au Mexique et au Portugal et 1.5 pour cent en France.

La concentration est, comme on pouvait s'y attendre, plus forte sur les marchés du groupage et de la messagerie express. Dans une étude des pays européens qui ont déréglementé leurs transports de marchandises par route, Cooper (1994) ne trouve pas beaucoup d'exemples de concentration de l'actionnariat et constate que le secteur des messageries express est le seul où le degré de concentration atteint un niveau notable, mais presque indispensable au regard de l'étendue des réseaux de terminaux et de relations de transport qui lui sont nécessaires²². Fruin (1999) observe qu'après la déréglementation, les quatre plus grandes entreprises américaines de groupage ont doublé leur part de marché en la faisant passer de 18 pour cent en 1977 à 37 pour cent en 1987 et que trois entreprises de groupage contrôlaient plus de la moitié du marché en 1997.

McKinnon résume la situation comme suit :

Les soixante dernières années apprennent que les problèmes du secteur du transport de marchandises avaient été mal diagnostiqués au cours des années 30 et que les mesures correctrices mises en œuvre ont sans doute fait plus de mal que de bien. Le niveau peu élevé des coûts d'accès au secteur et des économies d'échelle réalisables fait du transport de marchandises par route un secteur intrinsèquement très concurrentiel où la rentabilité est faible et le nombre de faillites plus élevé que dans beaucoup d'autres branches d'activité. La libéralisation que le transport de marchandises par route a vécue ces trente dernières années a démontré qu'à l'encontre des prophéties des partisans du maintien en place du cadre réglementaire, l'abandon du contingentement ne donne pas naissance à une concurrence destructrice ou ruineuse, surtout s'il est remplacé par un système d'octroi de licences sur la base de critères qualitatifs. Au terme d'une étude de la situation du secteur du transport de marchandises par route huit années après la déréglementation, le Foster Committee est arrivé à la conclusion que ce secteur est resté étonnamment stable^{23, 24}.

2.3 Réglementation du transport de marchandises par route

Le transport de marchandises par route reste, malgré la libéralisation substantielle qu'il a connue, soumis à un assez grand nombre de lois et de règlements. La base de données internationale de l'OCDE sur la réglementation²⁵ donne un aperçu des lois et règlements qui restent en place, mais certaines de ces informations pourraient être dépassées et ne pouvoir être utilisées qu'avec circonspection étant donné qu'elles proviennent d'une enquête réalisée par l'OCDE auprès des gouvernements nationaux en 1998.

Le tableau 2 dresse l'inventaire des contraintes réglementaires qui continuaient à peser sur le transport de marchandises par route en 1998. Un tiers environ des pays de l'OCDE laissent au pouvoir réglementaire la faculté de limiter la capacité du secteur, cinq pays limitent d'une façon ou de l'autre le nombre d'entreprises autorisées à exercer leur activité, cinq pays limitent les possibilités de chargement de fret de retour et trois pays déclarent réglementer les prix.

Boylaud et Nicoletti (2000) ont rassemblé d'autres informations sur les lois et règlements qui régissent le transport de marchandises par route dans les pays de l'OCDE. En classant ces pays par ordre de rigueur de leur arsenal réglementaire, ils ont trouvé que les plus libéraux sont la Corée²⁶, la Nouvelle-Zélande, le Royaume-Uni et les Etats-Unis et que les pays où le plus de réformes restent à faire sont la Belgique, la Hongrie, la Grèce et l'Italie.

Tableau 2 : Contraintes réglementaires pesant sur le transport de marchandises par route dans les pays de l'OCDE (1998)

Contrainte	Nombre et identité des pays concernés	
Limitation des droits des entreprises étrangères par rapport à ceux des entreprises nationales	16	Etats-Unis, Allemagne, France, Italie, Canada, Mexique, Norvège, Portugal, Suède, Turquie, Hongrie, Pologne, Autriche, Belgique, Grèce, Suisse
- Interdiction d'accès au marché du cabotage	6	France, Belgique, Mexique, Suisse, Turquie, Hongrie
- Réserve des transports publics aux transporteurs nationaux	5	Grèce, Mexique, Norvège, Hongrie, Pologne
- Limitation des possibilités de chargement de voyageurs par les entreprises étrangères	9	Etats-Unis, France, Italie, Canada, Grèce, Mexique, Norvège, Suède, Hongrie
Octroi des licences/autorisations/concessions sur la base de critères autres que techniques, financiers et de sécurité	12	Allemagne, France, Italie, Autriche, Belgique, Mexique, Norvège, Espagne, Suède, République tchèque, Corée, Pologne
Possibilité de limitation de la capacité	9	Allemagne, Italie, Belgique, Grèce, Espagne, République tchèque, Hongrie, Corée, Pologne
Présence d'entreprises publiques/contrôlées par les pouvoirs publics	9	Allemagne, Belgique, Danemark, Finlande, France, Australie, Norvège, République tchèque, Pologne
Mise en œuvre de règles de fixation des prix et d'accès au marché par un organe professionnel	10	Pays-Bas, Portugal, Espagne, Suisse, République tchèque, Hongrie, Pologne, Italie, Autriche, Grèce
Possibilité de limitation du nombre d'opérateurs	5	Italie, Norvège, Turquie, République tchèque, Pologne
Interdiction totale ou partielle de chargement de fret de retour	5	Finlande, Grèce, Pays-Bas, Norvège, Hongrie
Interdiction totale ou partielle du transport pour compte propre	5	Finlande, Grèce, Mexique, Pays-Bas, Suisse
Interdiction totale ou partielle du transport sous contrat	3	Mexique, Suisse, Hongrie
Interdiction totale ou partielle du transport intermodal	3	Finlande, Mexique, Hongrie
Réglementation des prix	3	Japon, Italie, Grèce
Soustraction du secteur à l'application des règles de concurrence	3 (+ 15)	Etats-Unis, Japon, Turquie (et CE)
Mise hors course de l'office de surveillance de la concurrence	2	Suisse, Grèce

Source Base de données internationale de l'OCDE sur la réglementation

Les principales restrictions réglementaires qui subsistent atteignent les routiers étrangers. Près de la moitié des pays de l'OCDE limitent les droits dont jouissent les entreprises étrangères, généralement en les interdisant de cabotage. Six pays ont ainsi déclaré, en 1998, le leur interdire totalement et neuf autres ne l'autorisent que partiellement. La Communauté européenne a levé bon nombre des obstacles qui entravaient les transports intracommunautaires de marchandises, mais le transport de marchandises par route continue à buter sur des obstacles de taille en dehors de l'Union européenne (ainsi que sur les relations qui unissent l'Union européenne à d'autres pays). Le transport international de marchandises par route reste la plupart du temps régi par une multitude d'accords bilatéraux et multilatéraux (généralement secrets) qui restreignent de multiples façons les quantités transportées et les capacités mises en œuvre.

Les clauses de l'ALENA applicables aux entreprises américaines et mexicaines de transport de marchandises par route sont une bonne illustration des contraintes qui pèsent sur le transport international de marchandises par route. La route achemine 80 pour cent du trafic entre les Etats-Unis et le Mexique : plus de 11 000 camions traversaient tous les jours la frontière entre les deux pays en 1995.

La frontière américano-mexicaine devait, en vertu de l'ALENA, s'ouvrir au trafic international le 19 décembre 1995. Les entreprises mexicaines allaient être autorisées à la franchir pour se rendre au Texas, au Nouveau Mexique, en Californie et en Arizona tandis que les entreprises américaines allaient pouvoir la franchir au départ des six Etats fédérés frontaliers. L'accord stipulait également que toutes les restrictions frappant le fret international devaient avoir été levées le 1^{er} janvier 2000 et que les restrictions imposées par les deux pays en matière d'investissement doivent subir le même sort avant le 1^{er} janvier 2004. Le 18 décembre 1995, le ministre américain des transports a toutefois annoncé qu'il ne serait pas donné suite aux demandes introduites par des entreprises mexicaines désireuses d'effectuer du transport international dans les Etats fédérés frontaliers avant qu'une étude approfondie de la sécurité et de la sûreté des transporteurs n'ait été réalisée. Aucune autorisation n'avait donc encore délivrée à la mi-1999. S'il est vrai que la sécurité et les dimensions des véhicules portent légitimement à se poser quelques questions, beaucoup d'observateurs estiment néanmoins que la démarche des autorités américaines s'explique essentiellement par les pressions exercées par des syndicats soucieux de prévenir l'exacerbation de la concurrence des conducteurs mexicains mal payés... Les formalistes auraient plutôt tendance à affirmer que les Etats-Unis violent ces clauses de l'ALENA²⁷.

Il convient également de souligner que la libéralisation du transport de marchandises par route au niveau fédéral (et communautaire) n'emporte pas nécessairement libéralisation pleine et entière au niveau des Etats. Aux Etats-Unis par exemple, l'exemption partielle de l'application de la législation antitrust dont les Tariff Bureaux (bureaux d'établissement des tarifs)²⁸ bénéficient est un vestige important laissé par l'ancien cadre réglementaire. La loi américaine sur le transport par route accorde cette exemption pour les tarifs communs à plusieurs transporteurs desservant une même relation ainsi que pour les hausses uniformes et généralisées de prix, mais non pour les tarifs pratiqués sur des relations desservies par un seul transporteur. En 1995, le Congrès américain a abrogé les derniers règlements de nature économique appliqués par les Etats au transport de marchandises par route.

2.4 Conclusion

Le volume du trafic des charges complètes est (contrairement à ce qui se passe dans le transport de voyageurs par route dont il sera question par la suite et abstraction faite de quelques services spécialisés) suffisamment important par rapport à la taille optimale des véhicules pour en faire un secteur hautement concurrentiel. Les flux de trafic sont moins denses dans le cas des envois groupés urgents, mais la coexistence de plusieurs opérateurs concurrents sur ce marché peut y porter la concurrence à un niveau acceptable.

Quoique le transport de marchandises par route soit un secteur intrinsèquement concurrentiel, il est resté longtemps le fief d'une multitude de réglementations restrictives en matière de prix, de volumes et de capacité. La prise de conscience du fait que ces réglementations n'étaient pas nécessaires et maintenaient les prix au-dessus du niveau d'équilibre concurrentiel a porté à appeler à la réforme d'abord en Australie, aux Etats-Unis et au Royaume-Uni et ensuite dans d'autres pays de l'OCDE. Cette réforme a donné d'excellents résultats puisqu'elle a poussé les prix payés par les consommateurs à la baisse et la productivité à la hausse, sans mettre à mal la sécurité. La réussite indéniable de la déréglementation du transport de marchandises par route a apporté beaucoup d'eau au moulin de la déréglementation subséquente des secteurs des télécommunications et de l'électricité.

L'histoire, longue et diversifiée, de la libéralisation du transport de marchandises par route démontre qu'il est possible d'abolir sans danger toutes les restrictions quantitatives qui l'enserrent sans risquer de déstabiliser les marchés ou de concentrer le pouvoir économique entre

les mains d'un petit nombre de gros transporteurs. Le secteur a aujourd'hui été déréglementé dans un nombre suffisamment grand de pays différents par la taille, la situation géographique, la structure industrielle, le niveau de développement économique et les traditions réglementaires pour autoriser une telle généralisation. La réussite de la déréglementation est confirmée par l'absence de pression à la ré-imposition de restrictions quantitatives²⁹.

La déréglementation du transport intérieur de marchandises par route a encore pas mal de chemin à parcourir dans beaucoup de pays de l'OCDE, notamment en Italie et en Grèce, et celle du transport international de marchandises par route peut encore progresser dans toute l'OCDE. Les accords internationaux en vigueur sont à la fois restrictifs et généralement secrets. Leur publication et l'ouverture de négociations multilatérales sur la libéralisation du secteur pourraient poser des premiers jalons déterminants sur la voie de la réforme. Ce que l'Union européenne a fait jusqu'ici pour le cabotage démontre que les risques présentés par la poursuite de la libéralisation peuvent être minimes (le cabotage ne représente que quelques pour cent des marchés intérieurs des Etats membres) et que la volonté de privilégier le rail ne doit pas faire obstacle à la poursuite de la libéralisation du transport routier. Les services tant ferroviaires que routiers doivent se voir imputer le coût de l'usage qu'ils font des infrastructures et des dommages qu'ils causent à l'environnement à sa juste mesure, mais l'imputation de ce coût ne doit pas perturber la concurrence à l'intérieur de ces secteurs ainsi qu'entre eux.

3. Autocars et autobus

L'utilisation des autocars et des autobus diminue depuis plusieurs dizaines d'années dans tous les pays de l'OCDE parce que d'autres modes de transport, notamment la voiture particulière, ont mis à mal la faveur dont ils jouissaient. Les autocars et les autobus, qui étaient le mode de transport prédominant pendant les années 50 au Royaume-Uni, ne prennent aujourd'hui plus que six pour cent des voyageurs/kilomètre à leur compte³⁰. Ils restent néanmoins indispensables, notamment à certains groupes de la population tels que les étudiants, les personnes âgées et les navetteurs. L'encombrement et la pollution des villes ont intensifié la recherche de solutions du côté des transports publics. Les autobus restant le moyen de transport public urbain de loin le plus important, il est licite de se demander si une réforme réglementaire est de nature à bonifier le fonctionnement de ce secteur.

Le secteur peut être divisé en deux segments, celui des lignes interurbaines à longue distance, d'une part, et celui des lignes locales ou urbaines, d'autre part. Le premier est le domaine des autocars, accessibles avec un titre de transport acheté à l'avance, et le second celui des autobus, sur lesquels les titres de transport peuvent être achetés dans le véhicule même. Les autocars et les autobus ont beaucoup de caractéristiques économiques communes, mais les autobus ont assez de marques distinctives pour que la distinction soit opérée d'entrée de jeu. Le secteur des autocars est le premier à passer sous les feux de la rampe.

3.1 Pourquoi réglementer le transport par autocar ?

3.1.1 Economies d'échelle et champ d'activité

L'ampleur des économies d'échelle et du champ d'activité est fonction, comme dans toutes les autres formes de transport, du nombre de voyageurs empruntant une ligne donnée, de la demande de ponctualité et de la taille minimale que doit avoir le véhicule qui parcourt la ligne pour être rentable. La demande de ponctualité est beaucoup plus forte et le volume de trafic de voyageurs beaucoup plus faible par rapport à la taille "rentable" du véhicule que dans le transport de marchandises. Les flux de trafic ne

suffisent généralement pas pour remplir les autocars (les autocars complets correspondent aux charges complètes du transport de marchandises), mais se composent plutôt de voyageurs isolés achetant leur place séparément (ce qui donne une forme de transport qui correspond au groupage du transport de marchandises).

Comme dans le cas du groupage, la tendance à la fusion des flux de trafic empruntant des relations voisines se fait forte quand le trafic d'une relation est faible. Cette fusion des flux peut se réaliser en configurant le réseau en étoile³¹. Un réseau ainsi configuré concentre le trafic sur les relations qui ont le cœur d'une ou de plusieurs étoiles pour origine ou destination. Il permet d'utiliser des véhicules de plus grandes dimensions et plus rentables, de desservir un plus grand nombre de destinations et d'augmenter la fréquence de desserte de ces destinations³².

Le gros exploitant d'un réseau en étoile jouit d'avantages significatifs vis-à-vis d'un petit concurrent ou d'un nouvel entrant. Ces avantages, liés aux côtés demande et coûts du marché, ont été analysés dans l'étude de l'OCDE/CLP sur les alliances et les fusions dans le secteur du transport aérien (OCDE, 2000). Ces avantages se concrétisent par le fait que l'exploitant en place 1) occupe vraisemblablement une position dominante sur les radiales qu'il dessert, 2) traite vraisemblablement la grande majorité des arrivées et des départs dans son (ses) centre(s), 3) est fortement tenté de fusionner avec d'autres transporteurs ou de s'allier à eux et 4) peut réagir à l'irruption de nouveaux entrants avec une agressivité propre à dissuader d'autres de tenter l'aventure. Ces facteurs ont pour effet de limiter la concurrence sur les différentes relations ainsi que le nombre de réseaux concurrents.

L'exploitant en place occupe vraisemblablement une position dominante sur les radiales parce qu'il peut, comme les paragraphes qui suivent le montreront, capturer une plus grande part du marché des services directs (qui n'ont pas le centre pour origine ou destination) et ne laisser aux entrants que la seule possibilité de le concurrencer sur les relations "locales" (qui ont le centre pour origine ou destination). Comme, en outre, le réseau de l'exploitant en place est plus intéressant que le petit réseau d'un nouvel entrant, surtout pour les voyageurs qui viennent du centre, parce qu'il offre plus de destinations et des plus grandes fréquences de desserte, l'exploitant en place pourra capturer une plus large part du trafic des radiales qui a le centre pour origine ou destination. Sur la plupart des radiales, l'entrant, contraint de composer avec un trafic moins dense et d'offrir des services moins attrayants, ne peut égaler la productivité et s'aligner sur les tarifs de l'exploitant en place.

L'exploitant en place peut capturer une plus grande part du marché des services directs pour diverses raisons. La première en est que les voyageurs préfèrent accomplir tout leur voyage avec le même transporteur, en l'occurrence l'exploitant en place, parce que son réseau donne de meilleures correspondances, sans temps d'attente entre les arrivées et les départs, que la gare d'autocars du nouveau concurrent n'est pas proche de celle de l'exploitant en place et rend le passage de l'une à l'autre pénible avec des bagages lourds³³ et que les voyageurs veulent être sûrs de savoir qu'un seul opérateur assurera sous contrat le transport de bout en bout et assumera la responsabilité des retards et des pertes de bagages subis pendant une partie du voyage.

En outre, le prix d'un service assuré par un seul transporteur (avec lequel le voyageur accomplit la totalité de son voyage) est en règle générale inférieur au prix d'un service avec correspondances (pour lequel le voyageur achète des billets à deux transporteurs). Les deux trajets indépendants qui composent un service en correspondance se payent, à moins que la concurrence ne soit parfaite, d'un prix qui dépasse les coûts d'une certaine marge et le voyage complet pâtit donc d'un problème de "double marginalisation". Si les coûts marginaux sont peu élevés, la fixation des prix tient compte de l'élasticité de la demande. Etant donné toutefois que l'élasticité de la demande dont les services de A à B et de B à C font l'objet peut être beaucoup plus forte que l'élasticité de la demande des services de A à C, la somme des prix demandés pour les trajets A-B et B-C peut excéder le prix du trajet A-C direct. Un entrant, qui ne propose que le seul

service A-B, ne pourra donc pas réellement concurrencer un opérateur qui transporte les voyageurs de A à C³⁴. Enfin, l'exploitant en place qui occupe une position dominante sur un des trajets peut fixer le prix de ses services directs à des niveaux tels que le prix d'un service en correspondance soit toujours supérieur au prix d'un service de bout en bout, tout simplement en majorant le prix demandé sur le trajet sur lequel il occupe la position dominante.

Etant donné que les voyageurs préfèrent accomplir tout un voyage avec le même transporteur plutôt qu'avec des transporteurs différents, l'exploitant en place peut capturer une plus grande part du trafic direct sur une relation et ne laisser au nouvel entrant que du trafic "local" pour exercer sa concurrence. L'exploitant en place peut donc porter le taux de remplissage de ses véhicules à un niveau plus élevé que le nouvel entrant et offrir, du fait que son trafic est plus dense, des fréquences de desserte plus élevées qui ne feront qu'encore amplifier la demande dont ses services font l'objet.

L'exploitant en place a, enfin, la possibilité de tirer un avantage compétitif de son plus grand réseau. Il peut en effet inciter ses clients (ou les agences qui distribuent ses titres de transport) à lui rester fidèle à l'avenir. Un client contraint de choisir le réseau auquel il va rester fidèle optera vraisemblablement pour un réseau plus étendu (qui lui offrira demain un plus large éventail de destinations possibles) ou des fréquences de desserte plus élevées (qui lui permettent de se fixer des horaires de déplacement plus souples).

Les programmes de fidélisation se présentent sous une multitude de formes dont la plus simple est l'octroi de ristournes aux clients qui prennent un billet aller-retour plutôt qu'un aller simple, une formule qui oblige³⁵ à accomplir le retour avec le même transporteur. Le billet "avec retour au choix" est à ranger dans cette catégorie. Un voyageur qui n'est pas sûr de l'heure de son retour préfère un opérateur qui offre des fréquences élevées à un opérateur dont les fréquences sont plus faibles. L'abonnement hebdomadaire ou mensuel³⁶ liera encore plus étroitement un client à un réseau. Les clients préféreront, dans ce cas aussi et toutes autres choses étant égales par ailleurs, l'abonnement d'un grand réseau à celui d'un réseau plus petit.

L'entreprise de transport à qui la formule des abonnements ne convient pas peut aussi proposer aux voyageurs qui recourent fréquemment à ses services des réductions qui ont pour effet de les "fidéliser". Les compagnies aériennes ont ainsi pris l'habitude d'offrir des avantages à leurs clients réguliers. Les programmes de fidélisation des grandes compagnies appâtent davantage que ceux des petites, en particulier les voyageurs établis à proximité des centres des réseaux (qui peuvent accumuler les avantages plus rapidement). L'exploitant en place est donc en mesure de conquérir une plus grande part du marché des déplacements qui ont son centre pour origine, amenuisant d'autant la demande tournée vers les services de l'entrant.

Il s'ensuit que les réseaux sont fortement incités à s'allier à d'autres réseaux, tout particulièrement s'ils leur sont géographiquement complémentaires, ou à fusionner. Une alliance apporte aux deux réseaux l'avantage d'agrandir chacun d'eux et de gonfler le volume des flux de trafic. Elle tend en outre à limiter le nombre de réseaux en concurrence.

Il ne faut dans ces conditions pas s'attendre à voir une concurrence s'exercer sur la plupart des radiales des réseaux de transport de voyageurs par route, sauf peut-être sur les liaisons qui joignent entre eux les centres de deux réseaux régionaux et sur les routes à très forte densité de trafic. Le nombre de réseaux indépendants risque en outre d'être limité. Un secteur fragmenté à l'aube de la déréglementation semble être un secteur dans lequel quelques opérateurs, sinon un seul, vont, à la faveur de fusions et d'une intensification de la concentration, se bâtir une position dominante à l'intérieur d'une région^{37,38}.

La valeur de cette analyse est confirmée par la déréglementation des services britanniques de transport de voyageurs par autocars et autobus. Nash (1993, 1046) observe que la concurrence pure et dure sur les mêmes relations ou sur des relations parallèles est restée l'exception plutôt que la règle. La concurrence s'est souvent éteinte rapidement avec le retrait de l'un ou l'autre gros concurrent tandis qu'ailleurs une espèce d'équilibre semble s'être établie entre plusieurs concurrents. Les opérateurs qui ont survécu doivent leur survie au fait qu'ils n'étaient pas en concurrence directe avec l'exploitant en place ou assuraient des services en sous-traitance pour celui-ci (cf. encadré n°1). En 1985, National Express, le plus gros transporteur britannique, récoltait 95 pour cent de l'ensemble des recettes tirées du trafic voyageurs.

Une étude des conditions d'exercice de la concurrence sur le réseau d'autobus de Stockton, une ville du nord de l'Angleterre, a constaté que l'exploitant en place avait une clientèle dépassant de moitié celle de ses concurrents après l'ouverture du marché au jeu de la concurrence en 1986. L'écart s'est maintenu et s'observait partout. L'origine de l'avantage [de l'exploitant en place] est difficile à déterminer puisque tous les opérateurs avaient les mêmes droits d'accès aux principaux arrêts. Il y avait bien beaucoup de manœuvres tactiques dans la High Street de Stockton (une pratique interdite par la suite par un arrêté municipal), mais rien n'explique pourquoi l'exploitant en place devrait pouvoir mieux se défendre dans une telle guerre³⁹. Evans en conclut que l'explication la plus plausible doit être recherchée dans le fait que le titre de transport proposé par l'exploitant en place était utilisable sur un réseau plus étendu et intéressait donc davantage la clientèle.

Il est en principe possible de mettre fin aux avantages de réseau dont les exploitants en place bénéficient en les obligeant à autoriser les petits opérateurs à participer à des programmes de fidélisation, sous la forme par exemple de systèmes de titres de transport valables sur plusieurs réseaux. Ce genre d'obligation a été envisagé dans le domaine du transport aérien où il a été proposé de subordonner l'approbation des fusions à l'intégration de compagnies concurrentes dans des systèmes d'octroi de primes aux clients réguliers. L'application de ces principes dans le secteur des autocars et autobus ne va pas de soi. En effet, si plusieurs transporteurs concurrents étaient contraints de proposer à leurs clients une espèce de "carte orange" (qui les habilite à circuler librement sur le réseau des uns et des autres), il n'y aurait plus de concurrence par les prix entre ces réseaux. La solution pourrait passer par la délivrance de cartes d'abonnement distinctes pour les parties des réseaux qui sont, d'une part, et ne sont pas, d'autre part, directement en concurrence, c'est-à-dire plus concrètement par la délivrance de "cartes orange" valables pour tous les déplacements effectués dans les zones où les opérateurs ne se font pas concurrence et de cartes d'abonnement propres à un réseau utilisables sur les trajets sur lesquels ils sont en concurrence directe. Dans une telle formule, la préservation de la concurrence sur les liaisons sur lesquelles elle s'exerce se fait aux dépens des avantages que l'intégration procurerait sur ces mêmes liaisons.

3.1.2 *Eviction, comportements indûment agressifs et obstacles stratégiques à l'accès*

Les avantages procurés par la taille du réseau et l'antériorité de la présence sur le marché dont il a été question ci-dessus ne sont qu'amplifiés par la possibilité qu'a l'opérateur en place de barrer l'accès de nombreux marchés aux nouveaux entrants en leur menant la vie dure. Ce type de comportement est parfois qualifié de prédateur, mais un comportement ne peut être qualifié de prédateur au sens habituel du terme que si celui qui l'adopte accepte aujourd'hui de travailler à perte (en pratiquant par exemple des prix qui ne couvrent pas les coûts) dans le but d'obliger un concurrent à jeter l'éponge pour pouvoir ensuite compenser ses pertes (en portant ses prix à un niveau supérieur à ses coûts). Cette définition peut ne pas être suffisamment large pour les besoins de la présente étude. Dans certaines conditions (notamment dans celles qui sont analysées dans ce chapitre), l'opérateur en place peut mener la vie dure aux nouveaux entrants sans mener pour autant une stratégie à strictement parler déficitaire⁴⁰. La "Competition Commission" (office de surveillance de la concurrence) britannique fait de ce genre de stratégie un "comportement indûment agressif".

L'opérateur en place dispose de plusieurs moyens pour mener la vie dure aux nouveaux entrants. Il peut tout simplement réaménager ses horaires de façon à ravir la clientèle d'un nouvel entrant, par exemple en faisant passer ses véhicules juste avant et après les heures de passage annoncées par le nouveau concurrent. Cette stratégie est envisageable si les fréquences de desserte offertes par l'opérateur en place sur une ligne donnée sont supérieures à celles de l'entrant. Celui-ci est alors contraint soit de se retirer, soit d'augmenter la fréquence de ses services, en majorant d'autant ses coûts d'entrée sur le marché. (Une stratégie plus simple encore est envisageable dans le cas des services d'autobus dont il sera question en détail ci-après).

L'exploitant d'un réseau en étoile peut mener la vie dure à un nouvel entrant en alignant simplement son offre sur celle de son concurrent. L'exploitant en place tire avantage de la possibilité d'intégration de la liaison dans un réseau plus étendu, de son trafic de rabattement et des programmes de fidélisation mis en œuvre au centre du réseau. Le réseau de l'exploitant en place devient de ce fait plus attractif et plus fréquenté que celui du nouvel entrant. L'exploitant en place dispose en outre de plus de contrôleurs, conducteurs et véhicules qu'il peut redéployer pour saturer une ligne qu'un concurrent vient d'investir⁴¹. Les coûts moyens de la publicité et du marketing peuvent, enfin, être moindres pour les grandes entreprises. Ainsi handicapés sur le plan de la concurrence, les entrants doivent faire preuve de beaucoup plus d'efficacité que l'opérateur en place pour pouvoir survivre⁴².

Un entrant même performant peut renoncer si les coûts irrécupérables en cas de sortie du marché sont élevés. Les capitaux investis dans les autocars et les autobus ne sont pas irrécupérables puisque ces véhicules ne sont pas du matériel spécialisé et que le marché de l'occasion est très actif. Les principaux coûts irrécupérables sont les investissements en publicité et marketing. Les entreprises investissent pour faire connaître une ligne et des horaires et perdent ces investissements si elles se retirent du marché⁴³.

Beaucoup de comportements agressifs ont été observés au Royaume-Uni après la déréglementation du marché des transports interurbains. Entre 1986 et la fin de 1989, l'"Office of Fair Trading" (Office de surveillance de la loyauté des opérations commerciales) a reçu 202 plaintes relatives au secteur des autocars et autobus, dont 42 pour cent pour motif de comportement prédateur⁴⁴. Vickers et Yarrow ont ainsi pu écrire en 1988 que :

Etant donné la nature des avantages dont il jouit en qualité d'opérateur en place, il n'est pas étonnant que National Express ait adopté une attitude agressive avant que ses concurrents aient pu se faire une réputation et gagner une clientèle. Le portefeuille des entrants n'a pas pu résister très longtemps à la politique de baisse radicale des prix pratiquée par National Express qui avait de bonnes raisons de croire que ses pertes immédiates de revenus allaient rapidement être compensées par la récupération de sa position dominante. La politique menée par National Express a certains des traits d'une campagne de prix d'éviction, mais les autorités chargées de la surveillance de la concurrence n'en ont pas moins simplement laisser faire sans réagir⁴⁵.

Le secteur britannique du transport par autobus a vécu le même genre d'incidents. L'entrée en scène d'un nouvel entrant y était invariablement contrée par un renforcement substantiel des services offerts par l'opérateur en place qui finissait parfois par racheter son rival. Les attaques frontales (mise en place d'un réseau de services concurrençant celui de l'opérateur en place) avortaient virtuellement sans exception. Le rachat semble bien avoir été le meilleur résultat auquel ce type d'attaque a pu aboutir⁴⁶.

Il convient également de rappeler que sur ce marché comme sur d'autres, la possibilité de déploiement d'une concurrence intense peut être motif de collusion. Sur le marché du transport par autobus, l'éventualité d'une réponse musclée peut amener les acteurs en présence à convenir implicitement ou explicitement de ne pas empiéter sur leurs territoires respectifs. Ces formes de collusion peuvent être très stables. Les tentatives d'irruption se décèlent sans difficulté et sont rapidement et vigoureusement

réprimées. Le marché britannique du transport par autobus s'est pacifié à un point tel que chaque compagnie a son territoire et que les tentatives d'empiétement sur celui du voisin sont rares. L'"Office of Fair Trading" britannique a découvert deux accords explicites de ce type (à Hull et à Warrington).

Comme dans d'autres secteurs, la présence d'entreprises d'Etat ou d'entreprises municipales peut en soi constituer une barrière à l'accès au marché. Ces entreprises peuvent en effet, si elles ne sont pas expressément contraintes de maximiser leurs profits, choisir de pratiquer indéfiniment des prix qui ne couvrent pas leurs coûts et lever ainsi tout risque d'arrivée de nouveaux entrants⁴⁷. Ainsi pourrait peut-être s'expliquer le départ d'UTB (une grande société multinationale d'exploitation d'autocars et d'autobus) de Manchester où elle avait comme concurrent une grande entreprise qui appartenait aux autorités locales. UTB n'était pas financièrement faible et ne semblait pas souffrir d'un manque de savoir-faire, mais il n'empêche qu'elle a jeté l'éponge⁴⁸. Par ailleurs, les coûts de beaucoup de compagnies britanniques de transport par autobus qui appartenaient à l'Etat étaient élevés. Comme ces compagnies auraient dû accumuler des pertes indéfendables pour survivre, bon nombre d'entre elles ont été remplacées par des entreprises privées plus rentables.

3.1.3 Accès aux terminaux

L'exploitation de services réguliers de transport de voyageurs par autocar et autobus requiert fréquemment l'utilisation d'infrastructures, en particulier de terminaux, complémentaires. Même si la desserte des lignes peut s'ouvrir à la concurrence, celle-ci peut ne pas se déployer si des économies d'échelle et de champ d'activité substantielles peuvent se réaliser au niveau des terminaux et si les nouveaux entrants se voient refuser l'accès aux terminaux de leurs concurrents.

Il peut, dans certaines villes, s'avérer difficile ou impossible d'installer un nouveau terminal concurrençant un terminal existant proche du centre-ville et bien intégré dans les services locaux de transport. L'entrant peut avoir besoin de temps et d'argent pour trouver, si tant est qu'il puisse y arriver, un terrain suffisamment grand, proche du centre et relié à d'autres liaisons de transport et obtenir les autorisations nécessaires pour construire une nouvelle gare routière.

Il s'y ajoute, et la chose est plus importante encore, que l'entrant qui arriverait malgré tout à installer un nouveau terminal dans une ville située au cœur d'un réseau en étoile resterait quand même sérieusement handicapé vis-à-vis de l'opérateur en place. En effet, si le réseau que ce dernier exploite au départ de cette ville pivot est plus étendu que celui du nouvel entrant, ce dernier ne peut proposer une gamme de services équivalente qu'en programmant des correspondances avec les services de l'opérateur en place. Malheureusement, ces correspondances contraindront les voyageurs à de longs et pénibles changements de terminal si celui du nouvel entrant est éloigné de celui de l'opérateur en place.

Si l'accès au terminal de l'opérateur en place est indispensable au nouvel entrant, la faculté qu'a l'opérateur en place de lui refuser totalement ou partiellement l'accès à son terminal lui permet de freiner et peut-être même de prévenir l'éclosion de la concurrence. Il peut pour ce faire taxer lourdement l'accès à ses installations, limiter le nombre de lignes que l'entrant peut exploiter au départ du terminal ou comprimer les plages horaires pendant lesquelles il y a accès.

L'"Office of Fair Trading" britannique a instruit en 1987 une plainte déposée à l'encontre de la principale compagnie d'autobus de l'île de Wight pour refus d'accès à sa gare routière de Newport, la plus grande ville de l'île. L'office a jugé que cette politique restreignait la concurrence en ce que les concurrents existants et potentiels étaient mis dans l'impossibilité d'utiliser une installation qui leur était indispensable pour sensibiliser les voyageurs à l'existence de leurs services d'autobus. L'affaire a été

classée quand l'entreprise concernée s'est engagée à ouvrir l'accès de sa gare routière à d'autres exploitants⁴⁹.

Le ministère américain de la justice a lancé, en 1995, une action en justice contre Greyhound Lines, la plus grande compagnie américaine d'autocars interurbains. Greyhound possède un réseau de 200 gares routières dont il ouvre l'accès à des concurrents auxquels il a délivré, après signature d'un accord, une autorisation appelée "Bus Terminal Licence". A l'occasion de la renégociation de ces accords en 1993, Greyhound y a inséré une clause interdisant la vente de billets dans un rayon de 25 milles autour de ses gares. Le ministère de la justice a jugé que cette clause faisait obstacle à l'installation de gares routières concurrentes et au lancement de services novateurs tels que la desserte des campus universitaires ou des gares de chemin de fer. Greyhound a finalement accepté de retirer cette clause de ses autorisations⁵⁰.

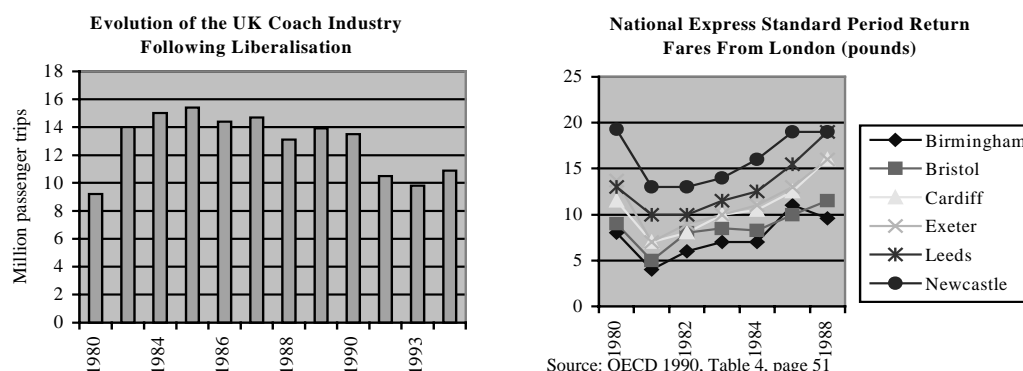
3.2 Libéralisation des services d'autocars

L'encadré n° 1 retrace l'histoire de la déréglementation au Royaume-Uni.

Encadré n° 1 : Histoire de la déréglementation du transport longue distance par autocar au Royaume-Uni (Informations tirées de White, 1997)

La loi sur les transports de 1980 a abrogé les dispositions réglementaires qui régissaient l'exploitation des autocars rapides et des autocars de tourisme au Royaume-Uni. Cette loi a eu des effets spectaculaires, notamment sur les transports réguliers à longue distance, qui se sont concrétisés par le développement d'une très vive concurrence par les prix (entre les compagnies d'autocars, d'une part, et entre ces compagnies et les chemins de fer, d'autre part), d'une augmentation des fréquences, d'un raccourcissement des temps de parcours permis par une meilleure utilisation du réseau autoroutier et par des améliorations qualitatives telles que la distribution de boissons rafraîchissantes à bord.

La concurrence entre opérateurs a cependant été sans doute moins vive que prévu. National Express est resté l'opérateur dominant, en gardant la maîtrise de 70 à 80 pour cent du marché. Il a encore élargi cette part de marché en absorbant Scottish Citylink en 1993 et il n'y a plus aujourd'hui de grand réseau concurrent pour s'opposer à lui, même si quelques entreprises indépendantes lui livrent une vive concurrence sur certaines relations.



Le développement que les déplacements rapides à longue distance ont connu au début des années 80 s'explique en grande partie par la conjonction des effets de l'augmentation des fréquences sur les lignes principales, du relèvement des vitesses permis par la circulation sur autoroute, d'une baisse moyenne de 50 pour cent des tarifs immédiatement postérieure à la déréglementation et d'une prise de conscience des possibilités offertes par l'autocar.

Dès le premier jour de la déréglementation en octobre 1980, un consortium de transporteurs indépendants, British Coachways, a lancé des services concurrents sur les grands axes, mais n'a pas pu égaler les fréquences de desserte offertes par National Express. National Express a en outre coupé l'herbe sous le pied de la concurrence en ramenant ses tarifs au niveau des tarifs de son concurrent, notamment sur les grandes lignes à destination de Londres, et en diminuant ses tarifs sur les grandes lignes interrégionales ainsi que ceux d'autres services

londoniens. National Express tirait aussi manifestement avantage de son plus grand nombre de points de vente ainsi que de ses droits d'accès à certaines gares routières, dont celle notamment de London Victoria. Son nom était déjà connu dans tout le pays et il pouvait donc, contrairement à British Coachways, tirer profit des campagnes publicitaires menées en faveur de l'autocar. Le consortium indépendant s'est progressivement dissous jusqu'à disparaître totalement en janvier 1993. La concurrence est restée active dans quelques couloirs (notamment dans les couloirs à fort trafic tel que Londres – Oxford), mais aucun de ces opérateurs indépendants n'a réussi à créer un véritable réseau concurrent. La concurrence se concentre aujourd'hui sur quelques grands couloirs, mais dans ce secteur aussi, le principal opérateur (Flights of Birmingham qui dessert les grands aéroports) a préféré renoncer à son indépendance pour travailler comme sous-traitant pour National Express.

Les choses se sont déroulées un peu autrement en Ecosse. A l'heure de la déréglementation, les grandes lignes joignant Londres aux grandes villes écossaises étaient exploitées par le Scottish Bus Group tandis que sur les lignes à destination d'autres villes anglaises, le service était assuré conjointement par National Express et SBG. Les services d'autocars rapides ne se sont guère développés en Ecosse, malgré la construction de nombreuses autoroutes. Les opérateurs indépendants se sont taillé une plus large place au soleil sur les grandes lignes à destination de Londres et ont créé de nouveaux services en Ecosse même. Le Scottish Bus Group a par la suite transféré ses services d'autocars à sa filiale "Citylink" qui jouait un rôle comparable à celui de National Express en Angleterre et au Pays de Galles. Constituée en entité indépendante en 1982, elle a, à l'instar de National Express, sous-traité divers services à plusieurs opérateurs extérieurs.

La concurrence entre National Express et Citylink est restée ténue jusqu'au moment où, en 1989, National Express a racheté les services grandes lignes du Stagecoach Group et est ainsi venue concurrencer Citylink tant en Ecosse que sur les liaisons avec Londres. Stagecoach avait bâti son réseau, au début des années 80, en ouvrant des lignes parallèles aux lignes Londres - Ecosse du Scottish Bus Group et en en créant des nouvelles en Ecosse même (par exemple la ligne Aberdeen – Dundee – Perth – Glasgow). La concurrence est alors devenue pendant quelque temps très vive entre les deux grands réseaux. Citylink a ensuite été privatisée à la faveur d'un rachat par son personnel en 1990, mais l'âpreté de la concurrence s'est avérée insoutenable. National Express l'a achetée et a rationalisé ses services en mai 1993. Elle occupe désormais une position éminemment dominante sur un marché déréglementé⁵¹.

3.3 Pourquoi réglementer les services d'autobus ?

3.3.1 Services d'autobus et instabilité des horaires

Il est utile d'opérer une distinction entre deux types de services de transport de voyageurs, en l'occurrence entre les services que la clientèle s'engage à emprunter (par exemple en achetant un billet à l'avance), d'une part, et ceux envers lesquels elle ne s'engage d'aucune façon, se contentant de les attendre en un point donné ou en un point et à un moment donnés, d'autre part. Les services d'autocars à longue distance se rangent plutôt dans la première catégorie et les services d'autobus dans la seconde.

Ce second type de service est vulnérable à l'opportunisme d'opérateurs concurrents. Une compagnie d'autobus qui investit dans la publicité et le marketing pour rassembler les voyageurs en certains endroits (ou en certains endroits à certaines heures) risque de voir un concurrent y passer pour embarquer les voyageurs et de perdre ainsi la possibilité de récupérer sa mise. Rien ne pousse en conséquence à investir dans un horaire fixe, en l'absence duquel les voyageurs ne sauront plus quand se rassembler et le service peut devenir impossible à maintenir en vie.

Même si la fréquence de desserte est telle que les voyageurs viennent se présenter sans discontinuer aux arrêts pour prendre le premier bus qui passe, il n'y a pas d'équilibre concurrentiel avec horaire stable parce qu'un horaire fixe peut être piraté par un concurrent qui fait passer ses véhicules juste avant ceux de l'opérateur qui l'a fixé. En reprenant la terminologie de la théorie des jeux, on peut dire que ce processus n'a pas d'équilibre concurrentiel en stratégies "pures" ou, en d'autres termes, pas d'équilibre concurrentiel entre des opérateurs qui se tiendraient tous à des horaires stables. En fait, s'il ne coûte rien de modifier les horaires, l'équilibre concurrentiel n'est concevable qu'avec des départs totalement aléatoires, c'est-à-dire avec des heures de départ qui présentent toutes le même degré de probabilité.

Le problème est connu depuis des décennies ⁵². Dans un ouvrage publié au cours des années 30, peu après l'entrée en vigueur des textes qui allaient réglementer le secteur britannique du transport par autocar et autobus, Chester écrit qu'une concurrence débridée empêche de faire circuler les véhicules selon un horaire régulier parce qu'il se trouvera toujours, si un opérateur fixe des horaires, un concurrent pour faire passer ses véhicules quelques minutes avant les heures de passage annoncées dans l'horaire pour rafler les clients ⁵³.

La déréglementation du transport par autobus réalisée au Royaume-Uni en 1985 a ranimé une concurrence éteinte depuis les années 30. L'instabilité des horaires s'en est rapidement suivie. M. McLellan, conseiller municipal à Strathclyde, une ville où quatre grands et de nombreux petits opérateurs se faisaient concurrence, a affirmé à l'époque que depuis la déréglementation, cinq modifications d'horaire étaient notifiées aux Strathclyde Traffic Commissioners chaque jour ouvrable alors que les horaires ne changeaient précédemment que tous les trois ou six mois ⁵⁴.

La concurrence peut, dans de telles conditions, non seulement induire une instabilité des horaires, mais aussi pousser à la prolifération des services et à l'adoption de modes de conduite dangereux. Etant donné que le premier véhicule à se présenter aux arrêts embarque tous les voyageurs qui s'y trouvent, toutes les compagnies d'autobus vont tendre à mettre un plus grand nombre de plus petits véhicules en service afin d'avoir plus de chance de se présenter aux arrêts avant les concurrents. Comme, en outre, le premier autobus rafle tous les voyageurs, les conducteurs vont être tentés de faire la course entre les arrêts, avec tous les risques d'imprudence au volant que cela comporte ⁵⁵.

La concurrence par les prix ne peut par ailleurs qu'être limitée entre les compagnies d'autobus si chacune d'elles n'assure qu'une petite partie des services offerts sur une ligne et si les horaires sont à ce point instables que les voyageurs ne peuvent pas savoir quand l'autobus de telle ou telle autre compagnie va passer. Cette situation est analysée plus en détail dans le chapitre relatif à la concurrence entre exploitants de taxis. Il s'ensuit que malgré la prolifération des services, les tarifs peuvent ne pas baisser, mais au contraire augmenter, à la suite de la déréglementation.

3.3.2 *Rassemblement des voyageurs et droits de chargement des voyageurs*

Il est possible de résoudre ces problèmes en autorisant les compagnies d'autobus à protéger les investissements qu'elles réalisent pour rassembler des groupes de voyageurs en certains endroits à certains moments. Cette protection pourrait leur être assurée en interdisant aux compagnies concurrentes d'installer

des points d'arrêt trop près de ces endroits et d'y faire arrêter leurs véhicules à des heures trop proches de ces moments, ce qui reviendrait en fait à conférer aux premières compagnies un "droit de propriété" sur les voyageurs qu'elles rassemblent en ces endroits à ces moments. Klein, Moore et Reja qualifient ces droits de propriété de "droits de chargement des voyageurs"⁵⁶. Si les compagnies concurrentes peuvent être tenues suffisamment éloignées, dans le temps ou dans l'espace, des opérateurs en place, la concurrence entre entreprises concurrentes desservant une même ligne peut être viable. Dès que le piratage est interdit et réellement maîtrisé, les compagnies d'autobus sont prêtes à investir dans l'équipement des lignes et l'établissement d'horaires, la publication d'informations et l'exploitation du service parce qu'elles peuvent faire leur la valeur des efforts qu'elles accomplissent pour amener les voyageurs à leurs points d'arrêt⁵⁷.

L'"Office of Fair Trading" britannique a, dans les faits, conféré une espèce de droit de chargement de voyageurs aux exploitants de services d'autobus. Soucieux d'empêcher les fusions qui ont pour effet de modérer fortement la concurrence et de prévenir les comportements prédateurs, l'office a décrété que les opérateurs en place ne peuvent pas aligner leurs horaires sur ceux d'un nouvel entrant, habilitant ainsi un nouvel entrant qui choisirait de faire passer ses autobus dix minutes avant ceux de l'exploitant en place à empêcher quiconque d'offrir ses services dix minutes avant ou après ses propres heures de passage.

Ce système de plages horaires réservées pâtit du fait qu'il peut dans la pratique s'avérer difficile de faire pièce à l'opportunisme d'opérateurs exclus de ces plages qui ralentiraient la marche de leurs véhicules jusqu'à les faire passer juste avant ceux du concurrent. Il peut en effet être difficile de faire la différence entre un ralentissement volontaire et un ralentissement imprévu provoqué par des encombrements. Il pourrait donc être plus simple de donner aux droits de chargement une validité géographique plutôt que chronologique en imposant aux opérateurs d'implanter leurs points d'arrêt à une distance minimum donnée de ceux des services existants, une distance qui devrait être suffisamment grande pour que les voyageurs qui attendent à un arrêt ne soient pas tentés de marcher jusqu'à l'endroit où un autre autobus s'est arrêté pour charger des voyageurs.

Les droits de chargement pourraient, une fois clairement définis, être mis aux enchères ou en adjudication. Il pourrait alors être fait recours aux règles de concurrence pour empêcher une entreprise d'acquiescer assez de droits pour se bâtir une position dominante. Tous les droits pourraient à l'extrême aller à une seule et même entreprise. Tel serait le cas d'une ligne concédée, au terme d'une procédure d'appel d'offres, à un adjudicataire unique. Beaucoup de villes (entre autres Londres) concèdent ainsi, sur appel d'offres, leurs lignes d'autobus à des exploitants uniques⁵⁸.

La concession du droit de charger à tous les points d'arrêt d'une ligne a comme principal avantage de protéger les investissements réalisés par l'adjudicataire dans ses horaires tout en réduisant au minimum de coût du contrôle du respect des droits de chargement. Ce coût est réduit parce qu'une compagnie qui ferait circuler ses véhicules sur la même ligne pourrait immédiatement être accusée d'intrusion, quels que puissent être ses horaires et le lieu d'implantation de ses points d'arrêt. Elle a en revanche comme principal inconvénient de limiter les possibilités d'innovation et de concurrence, et ce pour diverses raisons. Il y a d'abord le fait que la concurrence ne peut pas devenir un outil de maîtrise des prix puisque les droits de chargement sont vendus en bloc, avec cette conséquence que les prix et, partant, les modalités d'exécution des services doivent être fixés dans le contrat conclu avec l'adjudicataire. Comme les prix et ces modalités sont fixés à l'avance, les possibilités de réaction aux innovations qui interviennent du côté de l'offre ou de la demande sont limitées. Si, en revanche, les droits de chargement sont vendus séparément et qu'aucune entreprise n'acquiesce une position dominante, la fixation des prix peut être laissée à la concurrence et le pouvoir réglementaire être déchargé du contrôle des services, l'innovation pouvant alors s'étendre à toute la gamme possible des services de transport de voyageurs.

L'appel d'offres n'est pas une procédure qui simplifie la tâche des administrations publiques. L'appel d'offres a davantage en commun, comme l'étude de l'OCDE/CLP sur les services des déchets l'a montré⁵⁹, avec la mise en œuvre de dispositions réglementaires qu'avec la simple vente d'un actif. Dès qu'un service d'autobus a été adjugé à un exploitant, les autorités doivent en permanence contrôler le respect des clauses du contrat : elles doivent vérifier si les prix pratiqués n'excèdent pas les prix fixés, si les autobus respectent les horaires, si la propreté et la fiabilité sont suffisantes. Ces vérifications sont d'une actualité toute particulière vers la fin de la période couverte par la concession, moment où l'exploitant peut ne plus guère être tenté d'investir dans le service à la clientèle.

La comparaison des résultats obtenus avec la procédure d'appel d'offres suivie à Londres, d'une part, et l'ouverture des lignes à la concurrence en dehors de Londres, d'autre part, a porté certains spécialistes à élever la première au rang de modèle à suivre dans d'autres villes et pays⁶⁰. Il n'est toutefois pas exclu que l'effort de définition et de mise en application des droits de chargement étant resté modeste, sinon nul, au Royaume-Uni, toutes les formes possibles d'exercice de la concurrence sur le marché des services d'autobus n'ont pas encore été testées. Klein, Moore et Reja affirment, non sans optimisme, que dans le cadre du droit de propriété conféré par les droits de chargement, les exploitants seraient libres, capables et tentés d'améliorer leurs services, de renouveler leur flotte et d'utiliser de nouvelles stratégies tarifaires, que le marché jouerait son rôle si le système des droits de chargement était mis en œuvre avec intelligence et que, dans un cadre approprié de droits de propriété, la main invisible pourrait faire sur les marchés des transports en commun urbains, ce qu'elle fait si bien dans d'autres secteurs de l'économie⁶¹.

3.3.3 *Pléthore de services*

Quelques économistes allèguent que la mise en concurrence de plusieurs exploitants d'autobus les incite à offrir des fréquences de service trop élevées pour être rentables.

Cette incitation à l'élargissement excessif de la gamme des services se retrouve également dans d'autres contextes. Plusieurs études de la concurrence spatiale ou concurrence au niveau des aires de présence des marques ont révélé qu'il peut y avoir tendance au gonflement excessif des entrées ou à la prolifération des marques⁶². Dans le domaine du transport de voyageurs, cette incitation se traduit par l'offre de fréquences qui vont au-delà du seuil de rentabilité. La raison en est que l'aspiration à la rentabilité n'autorise l'addition d'un nouveau service que si l'extension du marché (entraînée par l'augmentation des fréquences) fait plus que compenser l'augmentation des coûts dont elle s'accompagne. Vue avec les yeux du concurrent, l'addition d'un nouveau service élargit par contre son marché et lui permet de ravir des voyageurs à un rival. L'effet est le plus évident dans les cas où les nouveaux services sont programmés avant et après ceux d'un concurrent, pour l'enfermer et accaparer sa part de marché. Tous les opérateurs avides de profiter de cet effet de détournement de trafic seront tentés d'étoffer leur offre de services plus qu'il n'est raisonnable, en faisant circuler des véhicules trop petits pour être rentables. Les voyageurs tirent de l'augmentation des fréquences un avantage qui ne suffit pas à compenser les coûts de l'opération. Certains des avantages procurés par la concurrence se perdent donc en majoration des coûts.

Evans a introduit cette variable dans son modèle du marché des services d'autobus. Evans estime que l'ouverture de ce marché à la concurrence fait grimper les prix et les fréquences jusqu'à des niveaux supérieurs à ceux qui permettent de maximiser l'avantage économique net à tous les niveaux de la demande qui vont au-delà du niveau minimum requis pour maintenir le service d'autobus en vie. La prospérité économique globale est légèrement inférieure, de dix à 12 pour cent, à l'optimum théorique⁶³. Il importe de souligner que ce modèle ne tient pas compte de l'incitation à la réduction des coûts générée par la concurrence, qui peut faire augmenter la prospérité globale de bien plus de dix à 12 pour cent.

Le Royaume-Uni donne quelques exemples de cet effet de prolifération des services. D'aucuns ont ainsi constaté que la déréglementation des services d'autobus a souvent donné naissance à une concurrence qui a pris la forme d'une augmentation de l'offre plutôt que d'une baisse des prix⁶⁴. Aussitôt après la déréglementation, un grand nombre de services ont été remplacés, au Royaume-Uni, par des services plus fréquents assurés au moyen de minibus. Alors qu'en 1985/86, les petits autobus (moins de 35 places) ne représentaient que 14 pour cent du parc britannique d'autobus, la proportion était passée à 32 pour cent en 1998/99 étant donné que quasi toute l'augmentation du parc d'autobus intervenue au cours de cette période est à mettre à leur actif. Le nombre total d'autobus/kilomètre offerts a fortement augmenté depuis la déréglementation, mais le coût d'un déplacement d'un voyageur est resté stable, en dépit d'une diminution significative des coûts. En fait, la diminution des coûts s'est traduite par une augmentation de l'offre de services et non par une diminution du coût par voyageur (cf. encadré n° 2)⁶⁵. A Londres, en revanche, où les services ne sont pas exploités en concurrence, mais mis en adjudication, le coût d'un déplacement d'un voyageur a diminué de 38 pour cent depuis 1985. Etant donné que l'augmentation des fréquences est synonyme d'amélioration de la qualité globale des services d'autobus, il est possible qu'en dehors de Londres, les fréquences aient été programmées de façon à mieux répondre aux attentes de la clientèle.

3.4 *L'expérience en matière de libéralisation des services d'autobus*

Il ressort de l'analyse qui précède que la libéralisation du marché des services d'autobus peut, si elle ne va pas de pair avec la concession de droits de chargements, soulever des problèmes d'instabilité des horaires et de prolifération des services. Telles ont bien été les conséquences de la déréglementation des services d'autobus de Santiago, au Chili.

Après la déréglementation, les autobus de Santiago ont eu tendance à rapetisser, à tel point que certains exploitants ont scié leurs véhicules en trois parties, enlevé celle du milieu et ressoudé les deux autres ensemble. La tendance est clairement aux véhicules de plus en plus petits. La sécurité est devenue un problème très sérieux au Chili. Les exploitants – propriétaires cantonnés sur une seule ligne cherchent à dépasser l'autobus qui les précède pour arriver avant lui à l'arrêt où les voyageurs attendent. Ce genre de comportement a causé de très sérieux problèmes de sécurité et d'accidents à Santiago. Le nombre d'autobus a doublé sans que le nombre de voyageurs augmente dans des proportions ne fût-ce qu'à peu près comparables. Le nombre moyen de voyageurs transporté par un autobus en un jour est passé de 1 000 à moins de 500, de sorte que des autobus roulent à vide un peu partout en ville à toutes les heures du jour, avec tout ce que cela implique en fait de congestion et de pollution⁶⁶.

Entre 1978 et 1984, le nombre de minibus a augmenté de plus de 50 pour cent, le nombre de taxibus presque doublé et le nombre de taxis collectifs ou desservant une ligne régulière presque triplé. Les tarifs des minibus et des taxibus ont presque été multipliés par deux en termes réels tandis que ceux des taxis restaient presque inchangés en termes réels. La clientèle des taxis de Santiago, dont les tarifs n'ont pas augmenté, semble avoir augmenté de façon spectaculaire tandis que celle des minibus et des taxibus n'a guère progressé⁶⁷.

L'encadré ci-après retrace l'histoire de la déréglementation des services britanniques d'autobus.

Encadré n° 2 : Histoire de la déréglementation des services britanniques d'autobus

Le cadre réglementaire des services britanniques d'autobus a été profondément remanié par la loi sur les transports de 1985. En vertu de cette loi, les opérateurs qui exploient des lignes de moins de 15 milles de long ne doivent plus solliciter une autorisation d'exploitation de services routiers et doivent désormais uniquement faire enregistrer le tracé de leurs lignes et les horaires de service auprès d'une nouvelle administration et lui notifier 42 jours à l'avance leur intention d'ouvrir, de modifier profondément ou d'arrêter un service ⁶⁸. Dans le même temps, la National Bus Company, l'entreprise d'Etat qui assurait la plupart des services d'autobus, a été découpée en plusieurs entreprises distinctes vendues l'une après l'autre au secteur privé. Les opérateurs publics maintenus dans les comtés et municipalités de la capitale ont été convertis en sociétés indépendantes qui ne pouvaient recevoir de subventions que transparentes et avouées. Le système très répandu de peréquation des recettes au bénéfice des services déficitaires a été aboli, de même que l'exemption, anormale, de l'application des règles de concurrence dont le secteur des autobus jouissait. Les collectivités locales, enfin, ont été contraintes de mettre les services déficitaires en adjudication, en plaçant leurs propres compagnies sur un pied d'égalité avec les compagnies privées. Ces réformes n'ont toutefois, pour diverses raisons, pas touché les autobus de Londres où les lignes ont au contraire été mises en adjudication. Cette réforme visait à réduire les coûts, à tailler dans les aides accordées aux compagnies d'autobus, à augmenter le nombre d'usagers, à tonifier la concurrence et à encourager l'offre de services novateurs. Ces réformes ont eu plusieurs effets.

Le volume total de services a fortement augmenté. Le nombre total de véhicules/kilomètre a augmenté de 15 pour cent entre 1985 et 1989. La taille moyenne des véhicules s'est réduite sous l'effet d'une augmentation rapide du nombre de minibus en circulation. Les aides ont également fondu, sans perte dramatique de services. Quatre-vingts pour cent des services existants se sont révélés commercialement viables. Les investissements publics dans les autobus (Londres non compris) ont diminué d'environ 26 pour cent, en prix de détail constants, entre 1984 et 1988. Les coûts d'exploitation des autobus au véhicule/kilomètre ont diminué de façon significative. Le coût au véhicule/kilomètre a baissé de 30 pour cent (en dehors de Londres et hors amortissement) entre 1985 et 1989. Les effectifs ont également diminué et la production par membre du personnel a donc considérablement augmenté. La moindre diminution du coût au siège/kilomètre s'explique par la mise en service de véhicules plus petits.

Les tarifs ont augmenté, moins que la fonte des aides ne semblait l'annoncer. Les tarifs ont augmenté, en termes réels, de 23 pour cent en moyenne dans la capitale, mais de dix pour cent seulement dans l'ensemble du pays ⁶⁹. Glaister en tire comme conclusion que la réduction des coûts est bien le principal succès à mettre à l'actif de la loi de 1985. Les dépenses publiques ont diminué alors que les coûts de main-d'œuvre de ce secteur à forte intensité de main-d'œuvre augmentaient. La production a augmenté, les tarifs n'ont augmenté que légèrement et les concessions ont été protégées ⁷⁰.

L'utilisation des minibus s'est rapidement intensifiée. Quelque 40 destinations étaient desservies par 400 minibus en 1985, mais en 1987, 5 600 minibus en desservaient 390. L'utilisation de ces minibus présente plusieurs avantages. Ils peuvent rouler plus vite, ce qui leur permet d'accéder à la viabilité économique sans hausse de leurs tarifs. Ils peuvent aussi parcourir davantage de lignes, circuler dans des zones résidentielles et s'arrêter sur demande ⁷¹. En revanche, ils n'ont pas pu, comme d'aucuns l'avaient prédit, circuler sur les mêmes lignes que des grands autobus en y offrant un service plus rapide, de meilleure qualité et plus cher. Il est des endroits où les petits et les grands autobus se font concurrence, mais leurs tarifs ne diffèrent guère et cette coexistence semble devoir être imputée davantage à une double vision du mode de satisfaction des besoins qui s'expriment sur un seul et même marché qu'à la création de deux marchés distincts ⁷².

La concurrence ne s'est pas intensifiée autant que prévu. Elle ne s'est activée que sur un petit nombre de lignes. Quelque trois pour cent des autobus/kilomètre ont fait l'objet d'une concurrence directe "sur le terrain" après la déréglementation ⁷³. Ce chiffre a plus ou moins triplé l'année suivante, mais s'est remis à diminuer dès 1990. La concurrence active a donc toujours été et semble devoir rester l'exception plutôt que la règle ⁷⁴. La plupart des opérateurs ont eu pour politique de se développer dans des zones qu'ils connaissent, d'éviter la confrontation et de se porter candidat à des lignes mises en adjudication plutôt que de se faire enregistrer officiellement [et donc d'entrer en concurrence directe avec un autre opérateur exploitant la ligne en cause]. Les périmètres desservis

sont, en de nombreux endroits, identiques à ceux d'avant la déréglementation et il est possible qu'il ait été tacitement convenu de ne pas empiéter sur le territoire des uns et des autres. Il y a eu des cas de concurrence active en Ecosse. La concurrence par les prix n'a jamais été vive et la structure des tarifs est restée uniforme. Par ailleurs, les niveaux moyens des tarifs ont continué à différer entre des régions apparemment semblables ⁷⁵.

Beaucoup d'opérateurs en place ont réagi de façon agressive à l'arrivée de nouveaux entrants. Les lignes à trafic moyen ou fort continuent à générer des profits supérieurs à la normale si elles sont exploitées par un opérateur unique, ce qui est au demeurant le cas de la plupart d'entre elles. L'irruption d'un concurrent sur une telle ligne ramène les profits à zéro, ou même moins, tant que dure cette concurrence. Comme le nouvel entrant a pour objectif d'accaparer tout ou partie des super-profits quand la concurrence se sera éteinte, il lui faut soit évincer l'opérateur en place, soit conclure avec lui un accord de partage du marché. Les faits démontrent qu'en règle générale, les entrants ont échoué dans ces deux entreprises et qu'ils ont abandonné la partie, été repoussés ou été rachetés ⁷⁶. La solidité des obstacles à l'entrée en lice de concurrents et aux pratiques anticoncurrentielles a été sous-estimée ⁷⁷. La mise en œuvre des règles de concurrence n'a pas toujours pu l'empêcher. Il semble que les premiers programmes de déréglementation sous-estimaient l'importance des risques d'échec de la concurrence et que le droit britannique [antérieur] de la concurrence ne permettait pas de résoudre les problèmes qui se posent ⁷⁸.

La clientèle n'a pas augmenté. Compte tenu de la hausse des tarifs, la clientèle a diminué dans des proportions égales à celles qu'implique la tendance à long terme à la diminution du nombre d'utilisateurs. L'explication en est peut-être que l'avantage que peut constituer l'augmentation du nombre de véhicules/kilomètre n'a pas été converti en amélioration de la qualité du service par suite de l'irrégularité des circulations, de la brièveté des intervalles entre les passages des véhicules, du manque de coordination des services, de la confusion engendrée par les multiples changements ou d'autres raisons encore ⁷⁹.

Il semble aussi que la coordination et l'intégration des services se soient quelque peu détériorées. D'autres modes d'intégration, dont la "carte orange", n'ont reçu qu'un accueil mitigé. Après une phase d'abandon de nombreux systèmes, la distribution de billets "intermodes" et "interopérateurs" a toutefois repris du poil de la bête. A Tyne and Wear, l'office de surveillance des services d'autobus et les opérateurs ont créé une société qu'ils ont chargé de gérer un système d'abonnements communs, de délivrer les billets et de répartir les recettes conformément aux dispositions des accords conclus entre ses membres ⁸⁰.

Les coûts ont également diminué, de 15 pour cent au véhicule/kilomètre, sur les lignes londoniennes concédées sur appel d'offres. Le système de l'appel d'offres est une réussite. Il a donné de bons résultats, les services administratifs ont bien fonctionné et le problème délicat soulevé par l'entrée en compétition de l'opérateur "de la maison" avec des concurrents extérieurs a été réglé de façon satisfaisante. Le système a eu, à Londres, les effets positifs promis. Les tarifs et les services ont été unifiés et intégrés. Les voyageurs ont été informés et le changement a pour eux été transparent. Il n'y a pas eu de comportement prédateur, ni de comportements dangereux au volant. Les lignes concédées ont été planifiées avec soin, sans l'asservissement au diktat des coûts et de la demande imposée par le libre jeu des forces du marché ⁸¹. D'aucuns ont toutefois reproché au système son excessive lenteur due au conflit d'intérêts soulevé par le fait que l'autorité responsable de l'appel d'offres est aussi la propriétaire de l'opérateur qui exploite des lignes qui n'ont pas été mises en adjudication.

3.5 *Réglementation du transport par autocar et autobus*

Le transport de voyageurs par route n'a, contrairement au transport de marchandises par route, pas été libéralisé dans beaucoup de pays. Le Royaume-Uni, les Etats-Unis, la Suède, la Nouvelle-Zélande et quelques Etats australiens sont les seuls à s'être engagés dans cette voie. Le Royaume-Uni a libéralisé le transport par autocar en 1980 et le transport par autobus (en dehors de Londres) en 1985. Les différentes étapes de cette libéralisation sont décrites dans les encadrés n° 1 et 2 ci-dessus. Les Etats-Unis ont largement déréglementé le transport par autocar par le Bus Regulatory Reform Act (loi sur la déréglementation du transport par autocar et autobus) de 1982 dont les principales dispositions sont analysées dans OCDE, 1990⁸². Deux Etats australiens (Nouvelle-Galles du Sud et Queensland) ont déréglementé leurs transports intérieurs de voyageurs par route en 1990⁸³. La Nouvelle-Zélande a libéralisé le secteur en 1983 en mettant fin au contingentement, géographique et quantitatif, des licences

d'exploitation et au contrôle des prix ⁸⁴. Le contrôle des tarifs et de la capacité des services d'autobus a été aboli en juillet 1991⁸⁵.

Beaucoup de pays continuent toutefois (voir tableau 2) à réglementer très strictement le transport de voyageurs par route. Ils limitent les possibilités d'ouverture de nouveaux services (surtout s'ils menacent la survie des services existants) et contrôlent les prix. Le transport international de voyageurs par autocar reste également réglementé un peu partout. Il reste ainsi interdit, même à l'intérieur de l'Union européenne, d'assurer des services réguliers de transport interurbain de voyageurs par route dans un autre Etat membre de l'Union européenne.

Tableau 3 : Contrôles réglementaires imposées au transport de voyageurs par route

Pays	Contrôles réglementaires
Belgique	Les services réguliers et les services réguliers spécialisés sont exploités directement ou sous-traités à des opérateurs privés par la Société nationale des chemins de fer vicinaux et différents groupements locaux de transport. Les exploitants doivent se conformer à diverses normes de qualité et pratiquer les prix fixés par le ministre de tutelle sur les lignes intérieures ou les prix convenus avec d'autres pays sur les lignes internationales.
Canada	Les services d'autocar et d'autobus sont réglementés par les provinces. Les arrivées de nouveaux entrants sont rares parce que les provinces vérifient d'abord (sauf l'Alberta) si elles servent l'intérêt général et répondent à un besoin. Les autorités provinciales définissent le tracé des lignes intra et interprovinciales, les capacités, le niveau de qualité du service, les normes de sécurité et la nature des assurances à souscrire.
Danemark	L'exploitant d'un service d'autocar ou d'autobus doit être titulaire d'une licence délivrée par les autorités locales ou le Conseil danois pour les transports de voyageurs. Les tarifs des services réguliers sont contrôlés par les autorités de tutelle.
France	Les services réguliers et non réguliers d'autocars et d'autobus sont organisés par les autorités publiques. La loi de 1982 sur le transport intérieur confie l'organisation des services interurbains de voyageurs aux départements. Ceux-ci établissent et tiennent à jour le plan départemental des itinéraires et des services autorisés. Les services peuvent être exploités directement par le département ou par des concessionnaires privés. Les tarifs doivent être approuvés par l'autorité organisatrice. Les transports urbains relèvent de la responsabilité des collectivités locales qui peuvent soit les exploiter elles-mêmes soit les sous-traiter à une entreprise privée. Les collectivités locales doivent également approuver les tarifs des services réguliers locaux.
Allemagne	Le transport, à titre onéreux, de voyageurs au moyen de véhicules à moteur, de tramways ou de trolleybus est soumis à autorisation. Cette autorisation ne peut être délivrée que si la création du service en cause sert l'intérêt général. Elle est refusée si <i>a</i>) les besoins peuvent être satisfaits par les services existants, <i>b</i>) les services qui font l'objet de la demande rempliraient des fonctions de transport déjà exercées par des transporteurs existants ou les chemins de fer sans améliorer sensiblement les conditions de transport et <i>c</i>) les transporteurs existants ou les chemins de fer qui assurent ces transports sont disposés à étoffer leur offre de services. Les tarifs sont réglementés.

Grèce	Le nombre d'autocars et d'autobus et les tarifs sont sévèrement réglementés. La mise en service de nouveaux autocars et autobus n'est autorisée que s'il est nécessaire de créer des services supplémentaires. Le nombre actuel d'autocars et d'autobus est jugé suffisant pour répondre à la demande.
Irlande	Les exploitants privés de services réguliers de transport de voyageurs par route doivent être titulaires d'une licence dont l'octroi ou le refus est conditionné par l'existence ou l'absence de services de transport de voyageurs par route ou d'autres formes de transport dont l'itinéraire se confond avec celui du service proposé ou en est proche. Le caractère restrictif de la législation explique pourquoi le nombre de nouvelles licences délivrées à des opérateurs privés est resté relativement limité.
Japon	Les licences de transport de voyageurs par route ne peuvent être accordées que si le service proposé <i>a)</i> répond à une demande et <i>b)</i> ne fait pas apparaître un déséquilibre entre la capacité offerte et la demande. Tous les tarifs doivent être approuvés par le ministre des transports qui ne statue dans un sens favorable que si les tarifs n'entraînent pas une concurrence excessive avec d'autres transporteurs
Espagne	Le transport de voyageurs par route à longue distance (plus de 200 km) effectué au moyen de véhicules de plus de neuf places fait l'objet de restrictions quantitatives. Les tarifs sont réglementés. L'accès au marché peut être limité s'il y a déséquilibre entre l'offre et la demande.
Suisse	Le candidat à une licence doit prouver que le service qu'il propose <i>a)</i> répond à un besoin et <i>b)</i> ne soumettra pas les services existants à une concurrence significative. Les entreprises publiques de transport peuvent fixer librement leurs prix, mais la Confédération peut intervenir si les tarifs sont abusifs
Union européenne	Les services réguliers internationaux intracommunautaires restent toujours soumis à la possession d'une autorisation délivrée par les Etats membres qui pouvaient, jusqu'au 31 décembre 1999, bloquer l'ouverture d'un nouveau service s'il menaçait la viabilité d'un service assuré par les chemins de fer sur le même itinéraire. Le cabotage (transport de voyageurs à l'intérieur d'un autre Etat membre) n'est autorisé que s'il s'agit de services occasionnels (assurés en prolongement d'un transport international) ou de services spécialisés (à l'intérieur des zones frontalières).

Source : OCDE, 1990, chapitre 2

3.6 Conclusion

Est-il nécessaire de réglementer le transport par autocar et par autobus ? L'expérience tentée aux Etats-Unis et au Royaume-Uni démontre que les services d'autocars à longue distance peuvent s'ouvrir à une véritable concurrence⁸⁶. Button et Keeler (1993) estiment que tout tend à prouver que la réforme réglementaire a très nettement amélioré l'efficacité économique des transports interurbains aux Etats-Unis et au Royaume-Uni et que cette amélioration a été répercutée sur le consommateur⁸⁷. Il n'empêche que l'existence d'économies d'échelle et de champ d'activité peut, même sur le marché de ces transports interurbains, fragiliser la concurrence et obliger à contrôler de près les conditions d'exercice de cette concurrence. Sur le marché du transport par autobus, la concurrence est handicapée en outre par le besoin de protection des investissements réalisés par les opérateurs dans leurs horaires. La concurrence peut néanmoins s'épanouir sur ce marché si les droits de chargement sont efficacement protégés et si les règles de concurrence sont mises en œuvre avec la rigueur voulue.

L'analyse ci-dessus amène à conclure que la réforme des lois et règlements qui régissent le transport de voyageurs par autocar et autobus doit s'imprégner de certains principes.

- Les possibilités de restriction de l'accès au marché ne sont pas identiques pour les services d'autocars et d'autobus. Les restrictions d'accès sont inutiles pour les services d'autocars. La liberté d'accès à ce marché l'ouvre à une certaine concurrence et conduit à la création, chaque fois que faire se peut, de nouveaux services novateurs. Les services d'autocars peuvent, en outre, tirer avantage de la concurrence avec d'autres modes de transport, les chemins de fer par exemple.
- Il faut, en premier lieu, que les restrictions d'accès au marché des services d'autobus soient aussi limitées que possible afin que les compagnies puissent récupérer les investissements qu'elles effectuent pour attirer de la clientèle. L'ouverture de l'accès à ce marché pousse les opérateurs à innover dans le domaine des services offerts, des tarifs et des systèmes de paiement ou des horaires et de la ponctualité. La protection des investissements d'un opérateur en place peut contraindre à interdire aux concurrents d'utiliser les points d'arrêt de l'opérateur en place ou de proposer des heures de passage trop proches de celles de ce même opérateur. L'accès ne doit être fermé par octroi d'un monopole de desserte d'une ligne à l'opérateur en place que s'il est impossible ou trop difficile d'imposer le respect des droits de chargement qui lui ont été octroyés. Un tel monopole ne doit être attribué qu'au terme d'une procédure d'appel d'offres. La charge administrative que cette procédure représente ne doit pas être sous-estimée : le processus requiert non seulement qu'un soin minutieux préside à la définition des services requis et à sa planification, mais aussi que les services concédés soient suivis avec attention pendant toute la durée de la concession.
- Il faut, en second lieu, empêcher un opérateur en place de fermer l'accès à certaines installations telles que gares routières, gares de chemin de fer ou autres infrastructures apparentées dans les cas où cet accès est d'importance vitale.
- Il faut, en troisième lieu, faire en sorte qu'un opérateur en place ne puisse pas tirer un avantage concurrentiel de la taille de son réseau. Cela pourrait se faire en le contraignant à autoriser des concurrents à s'intégrer à des systèmes de fidélisation existants, c'est-à-dire des systèmes qui offrent par exemple des primes ou des ristournes à des clients réguliers, en autorisant les concurrents à proposer des services qui complètent, aux mêmes conditions que celles de l'opérateur en place, les services offerts par ce dernier ou, dans le cas des services d'autobus, en contraignant l'opérateur en place à organiser avec un concurrent un système d'abonnement commun ou à accepter les titres de transport délivrés par un concurrent. Il pourrait toutefois s'avérer difficile de mettre ces diverses formules en œuvre sans mal pour la concurrence.
- Il faut, en quatrième lieu, que les exploitants d'autocars et d'autobus soient mis sur un pied d'égalité. Cela implique qu'un opérateur ne doit pas pouvoir profiter de son éventuel statut d'entreprise publique ou d'aides publiques pour casser la concurrence, que les aides doivent être accordées à des entreprises choisies sur appel d'offres et que les entreprises publiques doivent disparaître dans toute la mesure du possible.
- Il faut, en cinquième lieu, que les opérateurs soient encouragés, le cas échéant par le pouvoir réglementaire, à coordonner et intégrer leurs services (éventuellement avec d'autres modes de transport), même si les accords entre compagnies d'autocars et d'autobus appellent à être rigoureusement surveillés. Le pouvoir réglementaire devrait également, dans le cas des services d'autobus, envisager de prendre sur soi d'imprimer des feuilles horaires indiquant les

heures de passage des véhicules de tous les opérateurs et d'informer le public, entre autres choses, de la gamme des services existants et des changements qui leur sont apportés afin de prévenir les rétentions d'informations et de limiter les économies de champ d'activité réalisables au niveau de la publicité et du marketing.

- Il faut, en sixième lieu, que le droit de la concurrence soit mis en œuvre avec vigueur et que tout soit donc fait pour détecter et prévenir les comportements prédateurs.

4. Taxis

Le marché des taxis semble à première vue être un marché où règne une concurrence à la fois réelle et vive. Les obstacles à l'accès ne sont pas difficiles à franchir et le nombre d'offrants concurrents est grand. Ce secteur n'en est pas moins un des secteurs les plus strictement réglementés dans un grand nombre de pays de l'OCDE. En 1991, l'*Economist* écrivait à son sujet que :

Le marché des taxis devrait être un modèle pour les manuels d'économie. Il ne l'est pas. Son fonctionnement est faussé partout dans le monde. Tous les pays s'appliquent à le réglementer. Même dans ces bastions du capitalisme nourri du libre jeu des lois du marché que sont New York et Londres, le secteur est étroitement surveillé⁸⁸.

Il est permis de se demander si ce cadre réglementaire témoigne de la toute-puissance de groupes d'intérêts en quête d'avantages ou si d'autres facteurs limitent le champ d'exercice de la concurrence sur ce marché.

4.1 Pourquoi réglementer les taxis ?

4.1.1 Economies d'échelle et champ d'activité

Si le transport de voyageurs par autocars et autobus a le groupage comme pendant dans le transport de marchandises par route, le secteur des taxis correspond quant à lui aux services de messageries. Les taxis assurent, comme les entreprises de messagerie, des services de transport sur des itinéraires où la demande de ponctualité est forte et les volumes transportés sont faibles. Quand la demande de ponctualité est suffisamment forte⁸⁹, il n'y a pas assez de temps pour fusionner les trafics et chaque service de transport doit être assuré au moyen d'un véhicule distinct. Il n'y a ni économies d'échelle, ni économie de champ d'activité.

Dans la présente étude, il y a lieu d'entendre par service de taxi tout service de transport assuré sans fusion des flux de trafic, ce qui implique que les frontières du champ d'activité des taxis se situent là où une certaine fusion des trafics devient possible (cas des transports de porte à porte effectués par des minibus collectifs).

Les questions d'économies d'échelle et de champ d'activité autorisent à elles seules à affirmer que le marché des taxis est un marché concurrentiel. L'efficacité de la concurrence y est toutefois écornée par certaines particularités de cette branche d'activité dont l'importance sera analysée dans les paragraphes qui suivent.

Il y a trois types de marchés de taxis :

- a) le marché des taxis hélés en rue (taxis hélés du bord du trottoir ou de passage);
- b) le marché des taxis pris à une station de taxis (taxis à poste fixe) et;
- c) le marché des taxis réservés par téléphone, par Internet ou un autre moyen de communication (radio-taxis).

4.1.2 *Services de taxis : biens "d'expérience"*

Les économistes distinguent deux catégories de biens, les biens "de sélection" et les biens "d'expérience" ⁹⁰. Les premiers sont des biens dont le prix et la qualité sont connus du consommateur avant la transaction et parmi lesquels il opère son choix sur la base de leur rapport prix/qualité. Les seconds, par contre, sont des biens dont le prix et/ou la qualité ne sont connus qu'après la transaction. La science économique sait que les producteurs de ces biens "d'expérience" peuvent ne pas être tentés d'en faire baisser le prix et améliorer la qualité. La perspective d'achats multiples est la principale raison qu'ils puissent avoir de proposer des prix peu élevés et une qualité de haut niveau parce qu'ils sont portés à maintenir leur niveau de qualité pour ne pas mettre leur réputation à mal et perdre des ventes à l'avenir ⁹¹.

Comme le client ne connaît souvent pas le prix exact d'une course en taxi à l'avance, il est préférable de classer les services de taxis parmi les biens "d'expérience" plutôt que parmi les biens «de sélection». En outre, la faible probabilité de la multiplication des achats tempère la tendance de l'exploitant des taxis à baisser les prix ou améliorer la qualité. La possibilité qu'a le client de choisir entre plusieurs taxis est, enfin, limitée par divers facteurs même dans les cas où il peut déterminer à l'avance le prix à payer pour un service particulier.

Le prix exact d'une course est en règle générale impossible à connaître à l'avance, et ce pour diverses raisons. Ce prix n'est en effet pas un chiffre simple, mais le résultat, variable en fonction de l'heure de la journée, du nombre de clients, etc., de l'addition d'un coût fixe (prise en charge) et de certains coûts variables (durée de la course ou kilomètres parcourus). Ce mode de fixation des prix par addition de deux (ou de plusieurs) éléments complique leur comparaison. A moins qu'il ne sache à l'avance combien de temps la course durera et quelle sera la distance parcourue, le client ne connaîtra pas le prix exact à payer et ne saura donc pas s'il doit opter pour une combinaison coûts fixes élevés/coûts variables limités ou l'inverse. Le tableau 4 donne, à titre d'exemple, un aperçu des tarifs des taxis de Wellington, en Nouvelle-Zélande, cinq ans après la déréglementation. La dispersion de ces prix est manifestement importante et la tendance à la pratique d'un prix unique manifestement assez faible. Aucune des firmes en cause ne se situe à un niveau systématiquement égal ou inférieur à celui d'une autre pour les six éléments qui interviennent dans le calcul du prix. En d'autres termes, il est impossible de dire qu'une firme est en toutes circonstances moins chère qu'une autre.

Tableau 4 : Tarifs des taxis de l'agglomération de Wellington (Nouvelle-Zélande) en 1994

Élément intervenant dans le calcul du prix	Société de taxis						Moyenne simple	Différence (max – min)
	A	B	C	D	E	F		
Prise en charge	2.00	1.40	2.00	2.00	2.00	1.30	1.78	0.70
Téléphone	0.00	0.70	1.00	1.00	1.00	0.50	0.70	1.00
Tarif 1 (vert)	1.31	1.10	1.55	1.52	1.50	1.25	1.37	0.45
Tarif 2 (rouge)	1.52	1.40	1.55	1.52	1.60	1.42	1.50	0.20
Temps d'attente	0.35	0.40	0.40	0.35	0.40	0.35	0.38	0.05
Réduction courses multiples	-	20%	10%	10%	20%	20%	15%	10%
Aéroport	1.00	1.00	1.00	1.00	1.00	2.00	1.17	1.00
Souillures	50.00	-	35.00	35.00	50.00	50.00	36.67	15.00

Source : Registre des taxis du Conseil régional de Wellington, Morrison, 1997, tableau 2.

Pour compliquer encore un peu les choses, les sociétés de taxis peuvent incliner à structurer leurs prix de façon à les rendre difficilement comparables. Un client peut en principe négocier le prix avec le conducteur avant d'entreprendre son déplacement, mais ce genre de négociation prend du temps et les avantages qu'elle procure seront la plupart du temps plus que contrebalancés par son coût étant donné qu'il est fait appel à un taxi précisément quand les questions de temps passent au premier plan.

Même dans les cas où le prix exact à payer n'est pas connu d'avance, les compagnies de taxis seraient contraintes de fixer leurs tarifs à des niveaux qui leur permettent de préserver leur réputation si le nombre de clients "récidivistes" capables de déceler le caractère abusif d'un tarif et d'adapter leurs achats ultérieurs en conséquence est suffisamment élevé. Il n'en est pas toujours ainsi sur le marché des taxis.

Un client ne peut déceler le caractère abusif d'un tarif que s'il a une idée de ce qu'est le prix raisonnable du déplacement qu'il effectue. La plupart des clients des services de taxis n'y font cependant pas assez souvent appel pour acquérir ce savoir. Gelb signale qu'à San Diego et à Seattle, la plupart des clients des taxis n'en empruntent un qu'une fois par mois ou moins encore. Les répondants à son enquête lui ont ainsi appris qu'ils faisaient si rarement appel à un taxi qu'ils n'avaient guère de raison de comparer les prix⁹². L'utilisation des taxis est sans doute plus courante dans ces vieilles villes de la Côte Est que sont New York et Boston, mais même si les clients y parcourent le même trajet à plusieurs reprises, la variation des conditions de circulation, de l'état des routes et des heures de déplacement peut se traduire par une différenciation légitime des prix qui complique l'évaluation d'un prix "raisonnable".

Même si un client juge avoir été escroqué dans le passé, la décision qu'il prendra n'aura guère d'incidence sur la demande dont la société de taxis fera l'objet à l'avenir si la taille de cette société est

réduite par rapport à la taille de l'ensemble du marché et si les relations entre la société et ses clients sont aléatoires (comme cela se passe sur les marchés des taxis de passage et des taxis à poste fixe).

Si le nombre de clients "récidivistes" est faible, la société de taxis peut pratiquer longtemps des tarifs abusivement élevés avant de pâtir d'un recul de la demande. Elle pourrait d'ailleurs pratiquer de tels tarifs indéfiniment si le nombre de clients uniques est suffisamment élevé. Tirole, 1988, observe qu'un fabricant qui vend un bien "d'expérience" à un client qu'il ne voit qu'une fois sans pouvoir lui offrir une garantie et être poursuivi pour vice de qualité est fortement tenté de ramener la qualité au niveau le plus bas possible ou, ce qui revient au même, à majorer le prix au maximum. Dans le cas des taxis, cela peut se traduire par le choix d'un itinéraire plus long. Les gens qui ne sont pas de l'endroit sont ceux qui risquent le plus d'être des clients d'une fois. Les stations de taxis installées dans les aéroports sont un peu partout parmi les plus importantes et les plus rentables et une grande partie de leurs clients n'ont aucune idée de ce que peuvent être les prix raisonnables et les itinéraires les plus directs.

4.1.3 *Coût de la sélection et de l'attente des taxis de passage*

Même si les clients peuvent déterminer le prix à payer avant de monter dans un taxi, il est d'autres facteurs qui entravent le jeu de la concurrence par les prix et les niveaux de qualité entre exploitants de taxis, en particulier de taxis hélés au passage et de taxis à poste fixe ⁹³.

Ces facteurs sont à chercher du côté du coût de la sélection du taxi le moins cher. Le client qui hèle un taxi de passage ne choisit pas le taxi le moins cher, mais seulement un taxi quelconque parmi tous les taxis possibles. S'il refuse de payer le prix demandé par le chauffeur, le client doit assumer le prix de l'attente d'un autre taxi. Comme le prix qu'il compte se voir demander par cet autre taxi est lui aussi égal à la moyenne des prix pratiqués par tous les taxis du parc, le client acceptera n'importe quel prix inférieur au prix moyen des autres taxis majoré du coût probable de l'attente de cet autre taxi. Tous les chauffeurs de taxi tendent donc à demander un prix légèrement supérieur à la moyenne des prix pratiqués par tous les autres taxis du parc. La tendance est en conséquence à une hausse continue des prix ⁹⁴.

Le prix des services de taxis va grimper jusqu'au niveau du prix de monopole. Si le prix est moins élevé, une augmentation de ce prix induit une amélioration de la rentabilité de chaque taxi, ce qui a pour effet d'induire un étouffement du parc. Le prix va donc monter jusqu'au niveau où la demande de services de taxis devient élastique ⁹⁵, c'est-à-dire jusqu'au niveau où les taxis sont suffisamment nombreux pour ne pas arriver au compte gouttes. Quand plusieurs taxis libres passent en même temps, les clients peuvent choisir le moins cher et réexercer ainsi une certaine pression à la baisse sur les prix.

Cette conclusion rejoint celle d'une étude plus générale des coûts de sélection. Stiglitz écrit à ce propos que :

Si tous les individus ont des coûts de sélection strictement positifs, si réduits soient-ils, l'équilibre, si tant est qu'il existe, ne peut se caractériser par une distribution des prix et le seul prix est le prix de monopole. La présence de coûts même minimes d'information modifie donc radicalement les résultats : même s'il y a libre accès au marché, les prix passent du niveau concurrentiel au niveau de monopole. La liberté d'accès ne fait que diluer les avantages qui en résultent dans l'excès de dépenses sur les coûts fixes ⁹⁶.

Il en va de même de la concurrence par les niveaux de qualité. Dans le cas des taxis de passage, par exemple, chaque firme tendra à rogner sur la qualité de ses taxis puisque la demande dont ils font l'objet ne dépend pas de leur seule qualité, mais de la qualité moyenne de tous les taxis. L'équilibre est atteint avec des prix trop élevés, une qualité faible et un nombre de taxis trop élevé pour qu'ils soient

rentables. Malgré ces prix élevés, les taxis n'engrangent pas de superprofits parce que la majorité restent vides la plupart du temps. Etant donné que le prix d'une course est nettement supérieur au coût marginal, les chauffeurs se livrent une lutte âpre avec des armes autres que les prix, tels par exemple qu'un racolage outrancier, pour gagner des clients.

Cet état de faits pourrait expliquer pourquoi le nombre de taxis new-yorkais a pu paraître pléthorique avant et pendant la grande dépression, au point de faire aspirer à l'instauration d'une réglementation des prix et de restrictions quantitatives (voir encadré n° 3).

Encadré n° 3 : Réglementation du marché new-yorkais des taxis

(Informations tirées de Shreiber, 1975)

Le nombre de taxis était largement excédentaire avant 1937. Quatre commissions publiques, plusieurs fonctionnaires de la ville et de nombreux éditoriaux du *New York Times* défendaient tous l'idée que le nombre de taxis dépassait de loin ce qui était nécessaire pour répondre à la demande. Au début de 1922, le responsable des transports urbains de New York aurait ainsi affirmé que 10 000 des 14 000 taxis de l'époque auraient suffi pour satisfaire cette demande. Un an plus tard, le *New York Times* avait des termes imagés pour décrire la pléthore de taxis :

Les taxis rasant les trottoirs de si près qu'ils vous arracheraient presque les boutons de la veste. Ils sont tellement nombreux que quand vous faites signe à un bus de s'arrêter, plusieurs taxis s'arrêtent et vous empêchent de monter dedans...

Une commission spéciale de six membres chargée par le maire d'étudier la situation du secteur des taxis en avril 1923 est arrivée à la conclusion qu'il y avait trop de taxis et qu'il serait bon de ramener, par voie d'arrêté, leur nombre des 15 000 qu'ils étaient à l'époque à New York à 12000. Le parc a malgré cela continué à gonfler pour passer de 15 000 en 1923 à 16 000 à la mi 1924. La guerre des prix déclenchée en juillet 1924, qui s'est soldée par une baisse de 27 pour cent des tarifs, a arrêté cette croissance pour un temps. La croissance a repris entre 1927 et 1929, date à laquelle elle a été arrêtée par la grande dépression. La pléthore a continué à poser problème pendant toutes ces années et une nouvelle commission a été chargée par le maire, en 1930, d'étudier la situation. Cette commission a estimé que 14 000 des quelques 20 000 taxis en circulation au début de 1930 auraient suffi pour répondre à la demande. La pléthore n'avait fait que s'aggraver pendant la dépression ⁹⁷.

La ville de New York a pour la première fois limité le nombre de taxis en 1932, sous la conduite de son maire Jimmy Walker. Cette tentative de réglementation a fait long feu quand Jimmy Walker a été contraint de démissionner, pour avoir été corrompu par une société de taxis. La loi Haas a, cinq ans plus tard, limité le nombre de licences de taxis à 13500 ⁹⁸.

Shreiber a calculé aussi le temps d'activité des taxis avant et après la réglementation et trouvé que ce temps est tombé d'environ 30 pour cent en 1930 à moins de 20 pour cent durant la dépression. En 1961, époque où la disponibilité des taxis était encore jugée satisfaisante, ce temps d'activité était proche des 57 pour cent ⁹⁹. Les tarifs des taxis étaient très élevés avant la réglementation. Le prix, en termes réels, demandé pour une course de 2.4 milles, avec trois minutes d'attente, en 1922 n'a vraisemblablement pas été dépassé avant les années 80.

4.1.4 Intensité de la concurrence sur le marché des taxis à poste fixe

Sur le marché des taxis à poste fixe, l'intensité de la concurrence dépend du nombre de taxis qui attendent dans la file et de la faculté qu'a, ou n'a pas, le client de choisir son taxi. S'il y a régulièrement plus d'un taxi en attente et si le client est autorisé à choisir parmi les taxis de la file (et n'est pas simplement contraint de prendre le taxi occupant la tête de la file), le client peut en principe choisir le taxi qui offre le meilleur rapport qualité/prix. Sa faculté de choix est écornée par le fait qu'il a peine à comparer les prix et qu'il est pris par le temps. Il n'empêche qu'il s'exercera à nouveau une pression à la baisse sur les prix s'il n'y a pas collusion entre les taxis en attente.

Les clients pourraient dans certains cas ne pas avoir la faculté de choisir le taxi le moins cher de la file. Tel est le cas si la règle appliquée est celle du "premier arrivé, premier parti" ou si la station est conçue de telle sorte qu'il est impossible à un véhicule de s'extraire du milieu de la file¹⁰⁰. Tel pourrait aussi être le cas dans les stations de taxis très fréquentées où la demande de taxis est forte et où, comme dans les aéroports par exemple, il est attendu des clients qu'ils prennent le premier taxi de la file. L'Australian Productivity Commission (Commission australienne de la productivité) note à ce propos que :

Dans les grands aéroports, où il y a beaucoup de voyageurs, où il faut charger des bagages et où certains voyageurs sont fatigués et ne connaissent pas les tarifs, il est quasiment obligatoire de décider rapidement afin de minimiser les temps d'attente. Dans de telles circonstances, le système du "taxi en tête de file" peut ne pas être qu'une simple convention culturelle, il peut aussi être le meilleur sur le plan logistique. Le rendre obligatoire équivaldrait toutefois à empêcher les clients de choisir l'un ou l'autre des taxis de la file et les taxis dont les tarifs excèdent les tarifs moyens affichés auraient quand même l'assurance de charger des clients à l'aéroport. Les taxis "rapaces" pourraient à la longue se trouver encouragés à pratiquer des prix élevés et à se concentrer sur les stations installées dans les aéroports, avec ce que cela comporte de conséquences pour les voyageurs contraints d'emprunter ces taxis plus chers¹⁰¹.

Le secteur des radio-taxis est différent. Il constitue le segment principal du marché des taxis puisqu'il représente de 70 à 80 pour cent de l'ensemble de ce marché dans les grandes villes et 90 pour cent ou même davantage de ce même marché dans les villes plus petites¹⁰². Le client y occupe une position similaire à celle de tous les consommateurs qui achètent des services par téléphone. Ses coûts de sélection sont relativement faibles : il peut s'enquérir des prix pratiqués par plusieurs compagnies différentes, négocier les prix ou faire affaire avec une compagnie qu'il sait d'expérience offrir un rapport prix/qualité qui répond à ses besoins. La réservation d'un taxi par téléphone a donc beaucoup en commun avec la commande d'une pizza à livrer à domicile ou l'appel à un électricien ou un autre dépanneur¹⁰³. La création d'un service de radio-taxis oblige à acheter un grand nombre de véhicules et à investir dans des infrastructures, mais ces contraintes ne semblent pas réellement faire obstacle à l'accès au marché. Ce marché est donc concurrentiel.

Le marché des radio-taxis semble être nettement moins réglementé que le reste du marché des taxis, dont il est en outre souvent formellement séparé, dans de nombreuses villes. A Londres par exemple, les exploitants de radio-taxis (appelés "minicabs") ne sont soumis à aucune restriction en matière d'accès et de tarifs. Le droit irlandais opère une distinction entre les taxis ordinaires et les radio-taxis ("hackneys") qui ne peuvent être réservés que par téléphone ou à leur garage¹⁰⁴.

4.1.5 *Optimums de premier et de second rangs sur le marché des taxis*

Plusieurs économistes prétendent que l'optimum absolu ne peut être atteint sur un marché des taxis en équilibre concurrentiel¹⁰⁵. Le coût d'exploitation d'un taxi comprend, comme celui d'autres moyens de transport, un substantiel élément fixe (dont le salaire du chauffeur) qui pousse fortement à porter le niveau quotidien d'exploitation du taxi aussi haut que possible. Par ailleurs, l'élévation du niveau d'utilisation des taxis conduit à un allongement du temps moyen d'attente des clients qui entraîne une réduction de la demande de services de taxis. Cette interaction entre l'offre et la demande autorise à conclure à l'existence de plusieurs équilibres possibles, dont l'un pourrait s'établir avec peu de taxis, de longs temps d'attente et des prix peu élevés, les clients rechantant à payer le service plus cher, et l'autre avec un grand nombre de taxis, des temps d'attente courts et des prix élevés.

Il importe de se demander si un marché concurrentiel permet d'établir l'équilibre propre à maximiser la prospérité générale. En vertu de la théorie économique, le prix optimum d'une course de taxi est égal au coût marginal de cette course, coût dans lequel est inclus le coût du temps mis par le chauffeur à l'effectuer. Les recettes ainsi obtenues ne suffisent pas pour couvrir intégralement la fraction fixe des coûts d'exploitation, qui comprend notamment le coût du temps non ouvré passé à attendre le chaland. Il s'en suit que le prix optimum ne peut être pratiqué sur un marché concurrentiel, sauf aides explicites au secteur des taxis.

Le mieux à quoi un marché concurrentiel sans aides permet d'arriver est l'optimum dit de second rang. Le prix correspondant à cet optimum de second rang est plus élevé que le prix égal au coût marginal qui constitue l'optimum absolu. La différence correspond à la rémunération du temps non ouvré nécessaire pour maintenir le temps d'attente dans les limites du raisonnable. Dans le monde des taxis, la différence entre l'optimum absolu et l'optimum de second rang n'est vraisemblablement pas assez importante pour justifier une réglementation des prix et l'octroi d'aides au secteur. Quoi qu'il en soit, les exploitants de taxis peuvent tendre vers l'optimum absolu en optant pour des modes plus sophistiqués de fixation des prix tels que les tarifs à deux composantes. Les grosses compagnies de taxis pourraient aussi convenir d'accorder à des grandes entreprises une réduction sur le prix de leurs courses contre paiement d'une redevance annuelle forfaitaire. Les exploitants pourraient aussi accorder des réductions à des clients isolés qui font souvent appel à leurs services ou payent une redevance annuelle.

Si le marché des taxis est suffisamment concurrentiel, les tarifs pourraient en principe se situer au niveau de l'optimum de second rang sans intervention du pouvoir réglementaire¹⁰⁶. L'arrivée de nouveaux entrants ferait tendre les bénéfices vers zéro et ramènerait les temps d'attente à des proportions raisonnables. S'il devait s'avérer nécessaire, pour les raisons décrites ci-dessus, de réglementer les prix d'une façon ou de l'autre, l'optimum de second rang pourrait en principe être atteint en fixant les prix avec soin. Toner déclare à ce propos que si les prix et les normes de qualité sont fixés comme il se doit, le marché va s'élargir jusqu'à atteindre une taille qui ramène les superprofits à zéro. Le mieux, sur le plan réglementaire, est donc de fixer correctement les prix¹⁰⁷.

La fixation de prix corrects est un exercice dont la difficulté ne doit toutefois pas être sous-estimée. Les tarifs optimaux devraient dans de nombreux cas varier en fonction de l'heure de la journée ou de la nuit, des conditions de circulation et peut-être même des conditions météorologiques. Le coût de fourniture d'un service de taxi est vraisemblablement plus élevé à trois heures du matin et la demande plus forte pendant une tempête de neige. Une tarification optimale devrait tenir compte comme il se doit de ces facteurs, parce que la demande ou l'offre de taxis risque dans la négative de devenir excédentaire. L'interdiction de relever les tarifs de nuit pourrait ainsi se traduire par une pénurie de taxis à trois heures du matin, mais leur relèvement jusqu'à des niveaux tels que le service soit suffisant la nuit peut rendre l'offre de jour excédentaire. Le législateur peut être tenté de résoudre le problème non en jouant sur les tarifs, mais en imposant des obligations de service, par exemple en obligeant les exploitants isolés ou les compagnies de taxis d'assurer le service 24 heures sur 24. Ces obligations de service doivent être épaulées par des restrictions d'accès au marché, parce que les taxis "à temps partiel" pourraient autrement écrémer le marché, c'est-à-dire opérer pendant les heures rentables et laisser les heures non rentables aux autres.

4.2 Réglementation du secteur des taxis

La réglementation varie considérablement d'un pays de l'OCDE à l'autre parce qu'elle relève en règle générale de la compétence des collectivités locales ou des autorités régionales.

En Australie, le marché des taxis est réglementé par les Etats. La plupart de ces Etats, à l'exception du Territoire du Nord, limitent le nombre de licences de taxis. Ces licences sont en règle

générale librement aliénables. Le prix d'une licence oscille entre 100 000 dollars (australiens) en Tasmanie (où il y a environ 13 taxis par 100 000 habitants) et 270 000 dollars au Queensland (huit taxis par 100 000 habitants), mais elles valent jusqu'à 350 000 dollars en certains endroits situés le long de la côte septentrionale de la Nouvelle-Galles du Sud. Le nombre de voitures de location n'est pas limité en Australie méridionale, où elles livrent une très vive concurrence aux taxis ¹⁰⁸.

La plupart des Etats d'Australie fixent les maxima et minima entre lesquels les tarifs des taxis doivent se situer. Victoria n'a qu'un tarif unique. Le prix moyen d'une course de cinq kilomètres va de 6.25 dollars à Darwin à 7.85 dollars dans la Nouvelle-Galles du Sud. Les dimensions minimales des taxis sont réglementées partout en Australie, sauf à Canberra. Certains Etats fixent également leur âge maximum autorisé et la plupart des Etats, en dehors de l'Australie occidentale, imposent leur liaison à un service central de réservation.

Aux Etats-Unis, la réglementation relève essentiellement de la responsabilité des autorités municipales. Plusieurs villes ont, pour limiter l'accès au marché, décrété que les taxis ne pouvaient circuler sans plaque officielle délivrée, en nombre limité, par les autorités de la ville. Dans beaucoup de villes, le nombre de plaques n'a pas augmenté depuis un certain temps, malgré l'augmentation de la population. La ville de New York en avait délivré 13 566 en 1937. Comme 2 000 de ces plaques lui ont été rendues pendant la deuxième guerre mondiale, il n'y en a plus aujourd'hui que 11 787. A Boston, le nombre de taxis est limité à 1 525 depuis 1930. A Chicago, le nombre de taxis autorisés à circuler, qui était de 4108 en 1934, a été ramené à 3 000 en 1937 pour être ensuite porté à 4 600 en 1963 ¹⁰⁹.

Le prix d'une plaque donne une idée de la valeur actualisée de la rente que les restrictions à l'accès procurent aux chauffeurs de taxis. Viscusi et al., 1995, signalent que ce prix oscille entre 400 à 500 dollars à Indianapolis et 210 000 dollars à New York ¹¹⁰. A titre de comparaison, une licence de taxi valait environ 80 000 livres en Irlande en 1990 et la valeur cumulée de toutes les licences en circulation y dépassait les 150 millions de livres en 1997.

La sévérité des restrictions d'accès et le prix élevé des licences ont porté les économistes à promettre une issue tout à fait avantageuse à la libéralisation. Taylor, 1989, estime par exemple que sur le marché réglementé de Toronto, au Canada, il manque 733 taxis et il se pratique des prix qui dépassent de 33 pour cent le niveau auquel ils se situeraient sur un marché libre ¹¹¹. Gaunt et Black, 1996, estiment qu'à cause de la réglementation, le parc de taxis de Brisbane est inférieur de 228 unités et le prix maximum d'une course de huit kilomètres supérieur de 1.47 dollar (australien) à ce qu'ils seraient si le libre jeu des forces du marché avait mené le marché à l'équilibre ¹¹².

4.3 *L'expérience en matière de libéralisation du secteur des taxis*

Plusieurs pays de l'OCDE ont libéralisé au moins partiellement le marché des taxis. Plusieurs villes des Etats-Unis et quelques Etats australiens s'y sont essayés. Deux pays seulement de l'OCDE, la Suède et la Nouvelle-Zélande, l'ont libéralisé à l'échelle nationale.

Cette libéralisation a au total donné des résultats mitigés. Elle s'est concrétisée par une augmentation notoire du nombre de taxis et un raccourcissement des temps d'attente, mais n'a, là où elle allait dans le sens de la déréglementation des prix, généralement pas pu les faire baisser. Les prix semblent même avoir augmenté sur certains marchés déréglementés et les nouveaux services innovants sont restés rares. Cela étant, il importe d'être particulièrement attentif aux caractéristiques du marché des taxis des différentes villes et d'adapter la réforme réglementaire à ce contexte.

Le premier pays à avoir libéralisé à l'échelle nationale est la Nouvelle-Zélande. L'accès au marché et les tarifs y ont été strictement réglementés jusqu'en 1989. Les candidats à la licence devaient se présenter devant une Transport Licensing Authority (autorité responsable de la délivrance des licences) qui jugeait si le service proposé répondait à un besoin et servait l'intérêt général. Elle n'a que rarement accordé des licences supplémentaires. En fait, le nombre de licences est tombé de 3 425 en 1975 à 2 762 en 1989¹¹³. Le ministre des transports fixait les tarifs à appliquer dans les différentes zones et imposait le montage sur tous les véhicules d'un taximètre affichant le prix officiel. La loi de 1989 sur les licences de transport (qui est entrée en vigueur le 1^{er} novembre 1989) a levé toutes les restrictions quantitatives qui pesaient sur l'accès au marché et les tarifs. Les chauffeurs de taxis doivent désormais obtenir une licence spéciale. La loi ne limite pas le nombre de ces licences, ni le nombre de taxis que le titulaire d'une telle licence est habilité à exploiter. Les tarifs sont fixés par les organisations sectorielles et les tarifs maximums doivent être approuvés par le ministre des Transports, chargés dans le taximètre et affichés à l'intérieur et à l'extérieur du taxi. Les titulaires d'une licence doivent adhérer à une organisation agréée qui assure le service 24 heures sur 24 et sept jours sur sept et possède un système de réservation et de communication téléphoniques¹¹⁴. Le taximètre doit avoir été testé, être scellé et être contrôlé tous les six mois.

Le nombre de taxis a rapidement augmenté après la libéralisation de 1989. Il est passé en cinq ans, dans la région de Wellington, de 454 en octobre 1989 à 932 en novembre 1994, ce qui a fait grimper le nombre de taxis par millier d'habitants de 1.49 à 2.43 (cf. tableau 5), tandis que le nombre de compagnies passait de cinq à 21.

Tableau 5 : Nombre de taxis par 1000 habitants en Australie et à Wellington (Nouvelle-Zélande)

Etat	NGS	Vic	Qld	AMér	AOcc	Tas	NT	Terr Fed	Well NZ
1995	8.6	8.5	7.9	7.4	7.2	12.9	6.9	6.9	24.3

Source : Soon (1999) et Morrison (1997)

Le développement considérable du parc s'est accompagné de diverses innovations en matière de services. En novembre 1994, plusieurs services de taxis spécialisés s'étaient fait une place au soleil et plusieurs entreprises étaient également entrées sur le marché en aval. Des camionnettes-taxis et des taxis "de maître" sont venus s'ajouter aux flottes, la diversité et la flexibilité des comptes des compagnies se sont accrues, des nouveaux systèmes de paiement des services de taxi à crédit ont vu le jour, les taxis se sont couverts de publicité. Les sociétés de taxis ont commencé à se porter candidates, parfois avec succès, à la concession de lignes d'autocar ou d'autobus. Une centrale de réception et de redistribution des appels offre ses services à toutes les sociétés de taxis. Plusieurs services de location de chauffeurs ainsi que des flottes de taxis de luxe se sont fait une clientèle. La différenciation a aussi été géographique : plusieurs nouvelles compagnies de plus petite taille ont ainsi pu se trouver un marché de niche, qui a parfois reçu aussi une dimension ethnique, comme dans le cas de la compagnie créée pour répondre aux besoins de la communauté samoane¹¹⁵.

L'évaluation des tarifs est rendue difficile par la prolifération qu'ils ont connue après la déréglementation (voir tableau 4 ci-dessus). Comparant les prix de plusieurs courses hypothétiques, Morrison constate qu'ils ont diminué en termes réels, mais non en termes nominaux. Il observe que son enquête lui a fait rencontrer des gestionnaires de compagnies de taxis peu enclins à baisser leurs tarifs nominaux sous le prétexte que la clientèle, ignorante des écarts observables entre les tarifs des différentes compagnies, ne répondrait pas à une telle baisse en nombres suffisants pour compenser la réduction des recettes qui en découlerait¹¹⁶.

Il est intéressant de s'arrêter au cas de la station de taxis de l'aéroport de Wellington, un marché lucratif sur lequel la concurrence n'a cessé de se faire de plus en plus acharnée au point de tourner parfois à

la bagarre. Les petites courses consécutives à de longues attentes avaient parfois le don de déclencher la colère de chauffeurs qui allaient jusqu'à refuser de charger des voyageurs qui avaient le malheur de vivre à proximité de l'aéroport, alors même qu'ils étaient tenus par la loi d'accepter toutes les courses qui leur étaient demandées¹¹⁷. En 1996, sept ans après la libéralisation, l'autorité aéroportuaire a voulu mettre de l'ordre sur ce marché en instaurant un régime de licences et en réservant aux seuls titulaires de ces 1 000 licences le droit de charger des voyageurs à l'aéroport, d'une part, et en adjugeant cinq lignes d'attente à trois compagnies de taxis, dont une en a acheté trois.

La libéralisation du marché suédois des taxis a donné des résultats comparables, si ce n'est moins bons. Décidée en juillet 1991, elle s'est déroulée en cinq étapes. Pendant la première, les barrières à l'accès ont été levées et les administrations des comtés ont été déchargées de l'évaluation de la demande de services de taxis dans les zones d'exploitation, mais l'appréciation de l'aptitude des candidats s'est faite plus sévère en faisant entrer en ligne de compte leur honorabilité et leur solvabilité en plus de leurs capacités professionnelles. La seconde a vu l'abandon du contrôle des prix. Les compagnies sont désormais libres de fixer leurs tarifs à leur guise, mais sont tenues aussi de porter ces prix à la connaissance des clients avant la course et d'équiper leurs véhicules de taximètres imprimeurs de reçus. La troisième a libéré les exploitants de taxis de leur obligation d'appartenance à un "dispatching" radio, la quatrième a mis fin à la limitation géographique des zones d'activité et la cinquième, la dernière, a été celle de l'abrogation des dispositions qui réglaient très strictement les horaires de travail¹¹⁸.

Cette libéralisation a eu pour conséquence de faire augmenter très nettement, de 15 à 25 pour cent, le nombre de taxis et leurs heures de disponibilité. Elle a aussi fait grimper les tarifs en termes réels, de 30 à 55 pour cent. Les tarifs, précédemment identiques dans tout le pays, ont commencé à varier selon les régions. La hausse des tarifs n'a pas entraîné de diminution uniforme du nombre de courses et il n'est pas apparu de différence statistiquement significative entre les nombres de courses d'avant et d'après la déréglementation. La productivité des taxis a fléchi parce que l'augmentation de leur nombre n'a pas été de pair avec une augmentation proportionnelle de la demande. Il ne semble pas, enfin, que la déréglementation ait été suivie de l'émergence de nouveaux types de services¹¹⁹.

L'encadré n° 4 retrace l'histoire de la déréglementation du marché des taxis de plusieurs villes des Etats-Unis.

Encadré n° 4 : Effets de la déréglementation du marché des taxis aux Etats-Unis

Teal et Berglund, 1987, analysent les effets que la déréglementation du marché des taxis a eus dans neuf grandes villes américaines, et plus particulièrement San Diego, Seattle, Phoenix, Tucson, Sacramento et Kansas City, où cette déréglementation avait été lancée avant 1985. En 1987, ce marché n'avait encore été déréglementé dans aucune des quelques villes où les taxis hélés du bord du trottoir occupent une position dominante¹²⁰. Les effets observés par Teal et Berglund peuvent se résumer comme suit.

Le parc de taxis s'est fortement étoffé. Le nombre de taxis a augmenté en moyenne d'un tiers, entre les deux extrêmes de 18 et 127 pour cent. Teal et Berglund constatent que la majorité de ces taxis supplémentaires se retrouvent dans les stations de taxis des aéroports et des grands hôtels où ils peuvent travailler sans devoir être reliés à un central radio¹²¹. Les abandons sont le fait surtout de petits exploitants (généralement des exploitants propriétaires de leur taxi) opérant sur le marché des stations communes de taxis et des taxis hélés du bord du trottoir qui s'est retrouvé rapidement sursaturé après la déréglementation¹²². Frankena et Pautler ont également constaté une augmentation significative du nombre de taxis (exploités tant par des indépendants que par des compagnies) dans toutes les villes qui avaient déréglementé. Ils chiffrent l'augmentation moyenne à 25 pour cent sur la période couverte par leur étude bibliographique¹²³.

L'effet exercé sur la qualité des services est mal connu et semble mitigé. Les seules informations présentées par Teal et Berglund ne concernent qu'une ville (San Diego). Elles font apparaître que le temps moyen d'attente

d'un taxi est revenu de dix à huit minutes après la déréglementation, mais aussi que le taux de refus/non présentation est passé de cinq à 18 pour cent.

Les tarifs ont augmenté. Dans les cinq villes où la déréglementation datait de plus de deux ans, les tarifs ont augmenté plus rapidement que l'inflation après la déréglementation alors qu'ils ont augmenté moins rapidement que l'inflation dans toutes les villes où ils sont restés réglementés. Teal et Bergland ont constaté que les tarifs pratiqués dans sept villes réglementées sont plus élevés et ont augmenté plus rapidement que ceux de 14 villes réglementées de taille comparable. Ils ont constaté en outre que les tarifs des taxis qui opèrent au départ de stations de taxis (celles des aéroports sont de loin les plus grandes) ont grimpé plus rapidement encore. Les prix moyens au kilomètre des taxis stationnés à l'aéroport de Phoenix excèdent de 17 à 33 pour cent ceux de la plus grande compagnie de radio-taxis. A San Diego et à Seattle, les tarifs des taxis de l'aéroport dépassent également ceux des taxis appelés par téléphone et les autorités aéroportuaires ont fini par imposer un tarif maximum afin de mettre fin aux abus de certains opérateurs. Ces tarifs maxima visent à mettre les consommateurs à l'abri des tarifs abusifs dans les cas où les écarts entre les tarifs sont importants¹²⁴. Frankena et Pautler notent que du côté négatif, les taxis qui stationnent dans les aéroports ou opèrent au départ de stations de taxis ont soulevé, dans plusieurs villes, des problèmes qui semblent tenir à la cherté des courses effectuées au départ des aéroports, une cherté qui incite à multiplier le nombre de taxis stationnant dans ces aéroports et porte de ce fait à refuser les petites courses, à se disputer pour une place dans la queue, etc.¹²⁵.

L'effet exercé par la déréglementation sur les prix est désappointant. La concurrence par les prix est devenue, après la déréglementation, l'exception plutôt que la règle alors même qu'on avait espéré un effet dissuasif sur la hausse des tarifs. Seattle et San Diego sont les exceptions. La deuxième compagnie par la taille y propose des prix inférieurs d'au moins 15 pour cent à ceux de la plus grande. Ces prix moins élevés n'ont pas entraîné les concurrents à baisser les leurs et les compagnies bon marché n'ont pas élargi leur part de marché¹²⁶.

La productivité a reculé, en raison d'une diminution de 30 à 40 pour cent du nombre quotidien de courses d'un taxi qui s'explique par le fait que la multiplication du nombre de taxis n'a pas été de pair avec une augmentation proportionnelle de la demande. Le recul de la productivité s'est traduit par une contraction des rentrées des chauffeurs.

La libéralisation a donc débouché partout sur une augmentation considérable du nombre de taxis qui ne s'est accompagnée que d'une baisse assez faible (si ce n'est d'une hausse) des tarifs. Ceci ne veut pas nécessairement dire que la libéralisation n'a pas eu d'effet bénéfique sur la prospérité générale. Il est possible, du moins en principe, que la réglementation ait pu maintenir et le nombre de taxis, et les tarifs sous le niveau d'équilibre à long terme (de telle sorte que l'un et les autres augmentent après la libéralisation)¹²⁷. L'évolution constatée conforte toutefois l'idée que, pour les raisons évoquées ci-dessus, les tarifs des taxis seront plus que raisonnablement élevés dans une situation d'équilibre concurrentiel à long terme.

4.4 Conclusion

La réglementation tend à orienter le nombre de taxis à la baisse et leurs prix à la hausse au delà du seuil de rentabilité, mais la déréglementation ne va pas nécessairement faire baisser ces tarifs et dynamiser la concurrence par les prix. Cela étant, la réforme des lois et règlements qui régissent le monde des taxis doit s'inspirer de certaines vérités.

- Le champ d'action potentiel de la concurrence varie d'un segment du marché des taxis à l'autre. Un marché dominé par les taxis hélés du bord du trottoir offre moins de perspectives à la déréglementation qu'un marché dominé par les radio-taxis. Il eput être approprié de séparer les marchés en établissant un régime plus souple pour les taxis réservés par téléphone et un régime plus lourde pour les taxis hélés au bord du trottoir (comme c'est le cas à Londres

et en Irlande). Un marché sur lequel les licences ou les plaques officielles ne sont pas chères risque de tirer moins d'avantages de sa libéralisation qu'un marché sur lequel ils le sont.

- Aucun argument ne plaide en faveur des restrictions quantitatives. La limitation du nombre de taxis est néfaste et inutile¹²⁸. La levée des obstacles à l'entrée est de nature (même si les prix restent réglementés) à induire une augmentation du nombre de taxis et un raccourcissement des temps d'attente et à faire gagner, partant, les services en qualité. A Londres, par exemple, les tarifs des taxis noirs officiels sont réglementés, mais le nombre de taxis autorisés à circuler n'est pas limité¹²⁹.
- Les pratiques, telles que le système du "premier arrivé, premier parti", qui empêchent les clients de choisir leur taxi doivent être interdites chaque fois que faire se peut. Les clients doivent pouvoir choisir dans une file le taxi qui leur convient. Il faudra peut-être, dans certains cas et à titre sans doute transitoire, informer les voyageurs de l'existence de cette faculté de choix.
- La comparaison des prix doit être rendue aussi facile que possible. Cela peut passer par une normalisation des systèmes de fixation des prix (délimitation unique des zones, des heures creuses et des heures creuses) et un affichage clair des tarifs en dehors des véhicules. La comparaison pourrait à la limite se faire en mettant deux seuls chiffres en balance. Cette situation est celle que la Pologne a connue avant les dernières réformes, époque où une inflation galopante avait amené les chauffeurs à afficher leurs tarifs sous la forme d'un simple multiplicateur des prix indiqués par le taximètre officiel délivré par les autorités. La comparaison des prix se trouve grandement facilitée si tout un éventail de prix est ainsi ramené à un chiffre unique¹³⁰. Les autorités de tutelle du marché des taxis pourraient également effectuer des relevés des prix pratiqués et diffuser largement ces informations. Elles pourraient de même aider les exploitants à se bâtir une réputation en faisant évaluer la qualité de service par des experts indépendants ou en recueillant les plaintes de la clientèle et en diffusant ces informations, éventuellement par voie d'affichage dans les stations de taxis.
- Les effets exercés par la concurrence sur les marchés où les radio-taxis sont très actifs pourraient être étendus au secteur des taxis hélés du bord du trottoir en interdisant de faire payer les services de ces derniers plus cher. Il pourrait pour ce faire être nécessaire d'obliger les taxis à se relier à un central radio et de leur interdire de faire payer les courses demandées depuis le bord du trottoir plus cher que les courses réservées par téléphone.
- Sur les marchés où les clients fidèles sont rares (et où aucune compagnie de taxi n'a une grande part de marché), la plus grande partie de la clientèle ne connaît pas les prix et ne peut pas sélectionner un taxi sur la base des prix (comme cela se passe dans les aéroports). Il peut donc s'avérer nécessaire d'assujettir les taxis à d'autres règles contraignantes, par exemple, de plafonner leurs tarifs et de sanctionner lourdement les "surfacturations" imputables à un allongement injustifié des trajets. La fixation de tarifs appropriés est un exercice dont la difficulté ne doit pas être sous-estimée. Etant donné que les tarifs élevés peuvent attirer des nouveaux entrants et abrégé de ce fait les temps d'attente tandis que les tarifs peu élevés peuvent les allonger, les tarifs appropriés doivent être fixés en tenant dûment compte de ces considérations. La Productivity Commission australienne prône le maintien du plafonnement des tarifs, à tout le moins pendant une période de transition¹³¹.
- La libéralisation rapide d'un marché sur lequel les licences de taxis sont contingentées et sont donc précieuses peut provoquer d'importants transferts à court terme de richesses. Si tel est le cas, il conviendra d'étaler la libéralisation dans le temps, ce qui peut se faire par exemple en

ouvrant l'accès au marché par étapes, en l'occurrence en augmentant progressivement le nombre de licences de taxis par habitant ¹³². Au cours de la période de transition, le produit de la vente des licences supplémentaires peut être redistribué entre les titulaires de licence déjà présents sur le marché.

5. Conclusions générales

Il est difficile de surestimer l'importance que le transport par route revêt pour les pays de l'OCDE en ce début de XXI^e siècle. L'étude a passé les trois principaux segments de ce secteur en revue, à savoir le transport de marchandises par route, le transport de voyageurs par autocars et autobus et les taxis. Les économistes prônent parfois avec insistance l'abandon de la plus grande partie du cadre réglementaire de ces trois types de transport.

L'analyse montre que le champ d'action potentiel de la concurrence et les avantages procurés par la déréglementation varient non seulement d'un de ces trois types de transport à l'autre, mais aussi à l'intérieur de chacun d'eux. Quelle que puisse être la variabilité de ces avantages, une libéralisation sage et ciblée de ces différents types de transport peut ajouter beaucoup à la prospérité économique. Plusieurs pays de l'OCDE ont déjà profondément remanié les lois et règlements qui les régissent et retiré de cet exercice des avantages parfois substantiels.

La réforme réglementaire peut encore aller loin au-delà de ce qu'elle a déjà fait aujourd'hui. Le transport de marchandises par route a été largement libéralisé, mais reste, dans sa composante internationale en particulier, soumis à de nombreuses contraintes réglementaires. Le transport par autocars à longue distance reste également, et lui aussi surtout s'il est international, réglementé dans de nombreux pays. Beaucoup de villes continuent à continger les licences de taxis. Une réforme raisonnée et convenablement ciblée des autres lois et règlements qui régissent ces différents types de transport est porteuse d'avantages supplémentaires pour les usagers et les consommateurs.

NOTES

1. Il existe évidemment aussi des routes privées qui peuvent avoir le même propriétaire que les véhicules qui les empruntent.
2. Voir l'aperçu de Button et Keeler (1993). Pour le transport de marchandises par route, voir Mc Kinnon (1999) et Fruin (1999).
3. Le consommateur peut transporter lui-même des marchandises ou des voyageurs dans un certain rayon autour de leur lieu d'origine ou de destination (dimension "géographique" du marché considéré). L'itinéraire de jonction des régions d'origine et de destination donne la dimension "produit".
4. La fusion des flux de trafic peut aussi s'opérer par d'autres moyens. Les services d'autobus et les postes y arrivent en multipliant les arrêts sur une ligne ou pendant une tournée.
5. Ying John S., 1990 "The Inefficiency of Regulating a Competitive Industry : Productivity Gains in Trucking Following Reform" in *Review of Economics and Statistics*, 72(2), mai 1990, pp. 191 – 201 ; Thomas Janet M. et Seth J. Callan, 1992, "Cost Analysis of Specialised Motor Carriers : An Investigation of Aggregation and Specification Bias" in *Logistics and Transportation Review*, 28(3), septembre 1992, pp. 217 – 230 ; Allen W. Bruce et D. Liu, 1995, "Service Quality and Motor Carrier Costs : An Empirical Analysis" in *Review of Economics and Statistics*, 77(3), août 1995, pp. 499 – 510 ; Harmatuck Ronald J., 1992, "Motor Carrier Cost Function Comparisons" in *Transportation Journal*, 31(4), été 1992, pp. 31 – 46.
6. OCDE 2000.
7. Les services postaux en sont un parfait exemple. L'étude des services postaux réalisée par l'OCDE/CLP (OCDE, 1999) a montré que les caractéristiques économiques de la distribution postale sont telles que ce service est la plupart du temps un monopole naturel.
8. L'ouvrage de Gonenc, Maher et Nicoletti (2000) est plus prodigue d'informations au sujet de la libéralisation du transport de marchandises par route. Il convient de se reporter en particulier à la figure I de cet ouvrage.
9. Adrangi et al., 1995.
10. Ces gains peuvent être substantiels. Winston (1990, 1274) signale que la déréglementation du transport de marchandises par route aux Etats-Unis s'est soldée par une baisse de 7.8 milliards de dollars des prix et de six milliards de dollars des coûts, par une amélioration de la ponctualité et de la fiabilité chiffrée à 1.6 milliard de dollars et par une réduction des bénéfices des entreprises de transport évaluée à 4.8 milliards de dollars (en dollars de 1990). L'économie ainsi réalisée par l'économie américaine est estimée à 10.6 milliards de dollars par an.
11. Fruin, 1999, page 7.
12. McKinnon, 1999, page 5.
13. Fruin, 1999, page 4.

14. Fruin, 1999, page 5.
15. Moore, 1993, pages 12 et 13.
16. Teske cité par Fruin, 1999.
17. Fruin, 1999, page 8.
18. McKinnon, 1999, page 5.
19. Sauf en Grèce (2.7 pour cent) et dans la République tchèque (4.1 pour cent). Boylaud et Nicoletti, 2001, tableau n° 1.
20. Les exceptions sont les Etats-Unis (22.2), le Japon (25.4) et le Mexique (50.5). Boylaud et Nicoletti, 2001, tableau 2.
21. La base de données est accessible sur le site Internet de l'OCDE <http://www.oecd.org/subject/regdatabase>.
22. Cité par McKinnon, 1999, page 5.
23. Foster Committee "Road Haulage Operators' Licensing", HMSO, Londres, 1978.
24. McKinnon (1996,3). Teske, Best et Mintrom (1994, 248) observent que le cadre économique dans lequel le transport de marchandises par route s'inscrit (niveau peu élevé des coûts de démarrage, faible spécificité des actifs et quasi-constance des rendements d'échelle) en fait un secteur intrinsèquement concurrentiel. Il peut, en cas de libre jeu des forces du marché, distribuer et tarifier de façon rationnelle ses services de transport, privant ainsi l'interventionnisme public de toute justification technologique.
25. La base de données est accessible sur le site Internet de l'OCDE <http://www.oecd.org/subject/regdatabase>
26. La Corée n'a pas renoncé à réglementer les itinéraires et les prix ainsi que l'accès au marché avant la mi-1999 et supprime progressivement les obstacles à l'accès des petites entreprises au marché.
27. Fruin, 1999, pages 15 et 16.
28. Voir Daniel et Kleit , 1995, page 8 et OCDE (1999), page 205.
29. McKinnon, 1999, page 13.
30. Ministère britannique de l'environnement, des transports et des régions "*From Workhorse to Thoroughbred : A Better role for Bus Travel*", 1999.
31. La configuration d'un réseau en étoile n'est pas le seul moyen qui soit de fusionner des flux. Il y a ainsi fusion des flux quand un même véhicule est utilisé pour transporter des marchandises ou des voyageurs vers des destinations différentes. Les autobus (qui s'arrêtent toutes les quelques centaines de mètres) et les véhicules des services de messagerie (qui transportent des colis destinés à être déposés à plusieurs adresses différentes) fusionnent eux aussi des flux de trafic.

32. Les possibilités de configuration des réseaux en étoile sont limitées par la géographie (la géographie d'un réseau peut rendre l'aménagement d'un ou de plusieurs centres impossibles) et le besoin de ponctualité (Le transport prend plus de temps s'il doit passer par un centre que s'il est direct. Le transport de point à point peut être viable dans les cas où la ponctualité est importante).
33. L'exploitant en place cherchera à compliquer autant que faire se peut ces correspondances en interdisant le nouvel entrant d'accès à son terminal.
34. Eric Morrison, de l'OFT, observe que le prix de A-C peut aller jusqu'à être inférieur au prix de A-B. Le prix d'un ticket de chemin de fer de Londres à Gatwick est ainsi supérieur au prix du ticket de Londres jusqu'à la gare qui suit Gatwick. La différence est même telle qu'il revient moins cher de prendre un ticket jusqu'à cette gare et d'y acheter ensuite un aller simple jusqu'à Gatwick.
35. ...en l'absence d'accords ou d'alliance entre transporteurs...
36. Il y a lieu d'entendre par "abonnement", tout titre de transport acheté à l'avance qui réduit le coût marginal de déplacement (jusqu'à le ramener peut-être à zéro) avec les véhicules d'un transporteur particulier.
37. Brown, 1993, page 93, observe qu'au Chili, la déréglementation des services d'autocars interurbains a eu pour conséquence préoccupante que les grosses entreprises de transport ont eu tendance à grossir encore et les petites à se faire absorber ou à disparaître. Le maintien de la concurrence sur un marché est une entreprise difficile que peu d'instruments politiques neutres permettent de mener à bien.
38. Meyer et Gomez – Ibañez (1993) allèguent que la réglementation du secteur des transports par autocars et autobus était motivée au départ par une aspiration à museler la puissance économique des quelques entreprises dominantes issues d'un processus de concentration et de fusion.
39. Evans, 1990, page 265.
40. La stratégie adoptée peut cependant donner de moins bons résultats que celle que l'entreprise mènerait en l'absence de nouveaux entrants.
41. Voir Gomez-Ibañez Jose A. et John Meyer, 1990 "Privatising and Deregulating Local Public Services : Lessons from Britain's Buses" in *American Planning Association Journal*, 9 , hiver 1990, pages 9 à 21.
42. A Santiago, au Chili, la déréglementation a été suivie d'une hausse significative des tarifs des autocars et des autobus qui pourrait s'expliquer par l'adoption de comportements prédateurs destinés à tuer la concurrence. Les petits opérateurs qui desservaient une ligne commune avaient auparavant l'habitude de se grouper en associations pour financer les gares routières et fixer les horaires. Après la déréglementation, ces associations se sont mises à fixer les tarifs et à faire la guerre aux nouveaux entrants qui refusaient de se joindre à l'association ou voulaient fixer leurs propres horaires et leurs propres tarifs. Elles semblent avoir pu assez facilement imposer leurs tarifs et leurs horaires parce que les opérateurs isolés étaient trop petits pour oser remettre les "règles" des associations en question. Meyer et Gomez-Ibañez, 1993, page 78.

43. Nash, 1993, page 1045, allègue que les grands opérateurs en place semblent tirer avantage non seulement du fait que leurs services sont connus depuis longtemps, mais aussi des économies d'échelle qu'ils peuvent réaliser sur les frais d'information et de publicité. Les autorités britanniques pourraient aussi avoir rendu la sortie du marché plus difficile en exigeant que les changements d'horaires (et l'arrêt des services) leur soient notifiés six semaines à l'avance puisqu'elles empêchent ainsi un entrant de réagir rapidement à un comportement agressif en cessant purement et simplement d'assurer le service.
44. OCDE, 1990, page 71.
45. Vickers J. et Yarrow G., 1988, *Privatisation and Economic Analysis*, page 374, cités par Beesley, 1992, page 201. Les autorités chargées de la surveillance de la concurrence n'avaient à l'époque guère les moyens de faire cesser un comportement prédateur. La loi sur la concurrence de 1980 ne s'adressait qu'aux entreprises privées et le secteur du transport de voyageurs par autocars a échappé à l'application des règles générales de la concurrence (Fair Trading Act) jusqu'en 1985.
46. Evans, 1990, page 275, citant *Bus Business*, n° 88, 18 octobre 1989.
47. Voir Sappington et Sidak, 1999.
48. Evans, 1990, page 276.
49. OCDE, 1990, page 79.
50. US contre Greyhound Lines Inc., 1995.
51. L'OCDE observait en 1990 que "...le résultat inattendu de la déréglementation des autocars à longue distance au Royaume-Uni a été la domination que n'a cessé d'exercer le principal transporteur – National Express. De ce fait, on peut considérer que les économies d'échelle ne sont pas importantes dans cette branche d'activité, mais il semblerait qu'il existe quelques obstacles à l'accès au marché tenant au réseau important de services du transporteur déjà en place, à l'importance de ses effectifs et à ses facultés à faire de la publicité ainsi qu'à son horaire de services au plan national." OCDE, 1990, page 58.
52. Le problème est peut-être même connu depuis le siècle dernier.
53. Chester, 1936, cité par Oldale, 1997, pages 3 et 4. Il en est de même dans d'autres secteurs. Dans le transport par mer, par exemple, les "corsaires" ne se contentent pas d'offrir des prix inférieurs à ceux des concurrents, mais programment en outre leurs départs de façon à accaparer le fret.
54. Oldale, 1999, page 3. Le soulignement est des auteurs.
55. Meyer et Gomez – Ibañez, 1993, page 81, observent que des opérateurs privés très motivés sont assez fréquemment accusés d'agressivité au volant, surtout sur les lignes desservies par un grand nombre de petites entreprises ou d'opérateurs conduisant un véhicule qui leur appartient.
56. Klein, Moore et Reja, 1997.
57. Klein, Moore et Reja, 1997, page 39.

58. Les modalités d'exécution des appels d'offres et les questions qu'ils soulèvent ont été analysées par Gwilliam et Scurfield, 1996.
59. OCDE, 2000b.
60. Le gouvernement britannique propose, dans un livre blanc récent, d'abandonner le système d'ouverture des lignes d'autobus au libre jeu de la concurrence et de généraliser le système de la concession à un adjudicataire unique. Ministère britannique de l'environnement, des transports et des régions, *From Workhorse to Thoroughbred : A Better Role for Bus Travel*, 1999. White affirme que le cas de Londres semble prouver qu'il y a de grands avantages à tirer du maintien d'une organisation de planification et de marketing dont l'aire de compétence s'étendrait à l'ensemble des réseaux, avec en parallèle mise en adjudication des services dans un souci de rationalisation. Il y ajoute qu'il est possible de privatiser toutes les compagnies exploitantes sans perdre ces avantages de réseau et que d'autres pays d'Europe occidentale, préoccupés par l'ampleur des dépenses publiques et soucieux de gagner en efficacité, suivront vraisemblablement le modèle londonien plutôt que le modèle adopté ailleurs en Grande-Bretagne. White, 1997, page 51.
61. Klein, Moore et Roja, 1997, pages 50 et 51. En protégeant les droits de chargement, les pouvoirs publics peuvent également tempérer l'agressivité des mesures prises par les entreprises privées pour se défendre des intrus, comme elles le font très souvent dans les pays en développement. Klein, Moore et Roja en donnent plusieurs exemples cités par divers auteurs. Roth, 1987, note que les moyens utilisés par des groupements d'exploitants pour protéger leur territoire peuvent devenir délictueux, illégaux et peut-être même meurtriers. Sigurd Grava, 1980, évoque les moyens, très peu légaux, de protection des lignes utilisés par des chefs de bandes, des parrains, des gangs, des familles puissantes, des clubs d'exploitants ou autres associations criminelles. De Soto, 1989, parle des groupements d'exploitants de Lima qui dépêchent sur le terrain des "contrôleurs" chargés de surveiller le respect de leurs règles et d'acheter la police pour qu'elle harcèle les "pirates" qui tentent de les évincer d'une ligne. Klein, Moore et Reja, 1997, page 33, citant Gabriel Roth, 1987, *The Private Provision of Public Services in Developing Countries*, Oxford University Press ; Sigurd Grava, 1980, "Paratransit in Developing Countries" in *Transportation and Development Around the Pacific*, New York, American Society of Civil Engineers ; De Soto, 1989, *The Other Path : The Invisible Revolution in the Third World*, Harper and Row.
62. Voir Tirole, 1988, page 285.
63. Evans, 1987, page 32.
64. White, 1997, page 50.
65. Ce phénomène ne prouve pas que la solution n'est pas rentable. Il est possible, en effet, que les voyageurs préfèrent de plus petits bus qui passent plus souvent et sont prêts à payer ce service plus cher.
66. Observations de Robert Brown, citées à la page 69 de *Regulatory Reform in Transport: Some Recent Experiences* édité par José Cabajo, Banque Mondiale, avril 1993.
67. Meyer et Gomez – Ibañez, 1993, page 78.

68. Glaister, 1993, page 50.
69. Glaister, 1993, page 52.
70. Glaister, 1993, page 53.
71. Glaister, 1993, page 59.
72. Glaister, 1993, page 58.
73. Evans, 1990, page 256, citant Gomez – Ibañez J.A. et J.R. Meyer, 1987, *Deregulating Urban Bus Service : Britain's Early Experience and the Lessons for the United States*, National Technical Information Service.
74. Evans, 1990, page 256.
75. Glaister, 1993, pages 57 et 58.
76. Evans, 1990, pages 277 à 279.
77. Glaister, 1993, page 62.
78. Glaister, 1993, page 61.
79. Glaister, 1993, page 59.
80. Glaister, 1993, page 60.
81. Glaister, 1993, pages 55 et 56.
82. OCDE, 1990, pages 42 et 65.
83. OCDE, 1990, page 48.
84. OCDE, 1990, page 48.
85. White, 1997, page 48.
86. Button et Keeler, 1993, page 1022, observent que la position occupée par les entreprises sur ce marché n'est jamais assez forte pour justifier l'intervention du pouvoir réglementaire.
87. Button et Keeler, 1993, page 1022.
88. The Economist "All the World's a Cab", 5 janvier 1991, cité par Morrison, 1997, page 913.
89. Et les avantages procurés par la fusion des flux sont suffisamment réduits, comme cela se passe là où les voyageurs se déplacent dans de multiples directions.
90. Les économistes y ajoutent une troisième catégorie (biens de "réputation") dont le prix et/ou la qualité restent inconnus, même après achat et consommation.

91. Tirole, 1988, page 95. La phrase a été légèrement modifiée par addition d'une référence aux prix.
92. Gelb P. M. *Effects of Taxi Regulatory Reform in San Diego*, ministère américain des transports, et Gelb P. M. *Effects of Taxi Regulatory Reform in Seattle, Washington*, ministère américain des transports.
93. Douglas, 1972, et Shreiber, 1975.
94. Si le marché est partagé entre un petit nombre de sociétés de taxi assez importantes, la tendance à la hausse des prix pourrait s'atténuer quelque peu parce que la hausse des prix fait refluer la demande de services de taxis. Un exploitant de taxis détenant une part notable du marché peut ne pas être en mesure d'ignorer ce risque.
95. Ce raisonnement part de l'idée que la plupart des coûts des taxis sont des coûts fixes. Quand tel est le cas, le prix de monopole est proche du prix qui maximise les recettes, ce qui donne à penser que l'élasticité de la demande de services de taxis est égale ou inférieure à l'unité. Teal et Berglund, 1987, page 50, affirment que l'élasticité de la demande de radio-taxis est égale ou légèrement inférieure à 1, soit 0.8. Taylor, 1989, et Gaunt et Black, 1996, partent également d'une élasticité égale à l'unité dans leur analyse.
96. Stiglitz, 1989, page 779.
97. Shreiber, 1975, pages 272 à 274.
98. Gorman Gilbert et Robert E. Samuels, *The Taxicab*, 1982, cité par Viscusi et al., 1955, page 342.
99. Shreiber, 1975, page 274.
100. Le stationnement des taxis en file et l'application de la règle du "premier arrivé, premier parti" tuent la concurrence que l'on s'attend à voir se développer sur des marchés où le nombre de concurrents est élevé. Teal et Berglund, 1987, page 50.
101. Productivity Commission, 1999, page 19.
102. Teal et Berglund, 1987, page 39.
103. Productivity Commission, 1999.
104. Quand le gouvernement irlandais a voulu augmenter le nombre de licences de taxi ordinaire (en vendant évidemment toutes les nouvelles licences aux exploitants en place), les exploitants de radio-taxis ont engagé une action en recours contre cette intensification de la concurrence.
105. Voir, par exemple, Cairns et Liston-Heyes, 1996.
106. Ceci va à l'encontre des conclusions de Cairns et Liston-Heyes, 1996. Il convient cependant de souligner que leurs conclusions semblent s'expliquer par une erreur dans le calcul de la dérivée de leur équation (3).
107. Toner J.P., 1992, "Regulation in the Taxi Industry", document de travail n° 381, Institute for Transport Studies, Université de Leeds, Leeds, cité par Morrison, 1997, page 916.

108. Le nombre de voitures de location est également limité dans d'autres Etats. Dans l'Etat de Victoria, les restrictions d'accès au marché font monter la valeur des licences de voitures de location à quelque 80 000 dollars australiens.
109. Frankena et Pautler, 1984, cités par Viscusi et al., 1995. L'histoire se répète dans d'autres pays. A Brisbane par exemple, le nombre de taxis n'a augmenté que de 22 pour cent entre 1960 et 1990 pendant que la population y augmentait de 80 pour cent, de telle sorte que la valeur des licences de taxis y progressait de 320 pour cent. Gaunt et Black, 1996.
110. A titre de comparaison, le prix moyen pondéré des licences australiennes s'élève à 170 000 dollars (australiens) environ. Gaunt et Black, 1994, page 155.
111. Cité par Gaunt et Black, 1996. Il a également calculé qu'en 1987, la réglementation a eu pour effet de transférer 39.2 millions de dollars des consommateurs aux producteurs et d'entraîner en outre une perte de surplus du consommateur chiffrable à 4.9 millions de dollars. Gaunt et Black, 1996, page 5.
112. La déréglementation du marché des taxis de Brisbane a procuré à la collectivité des avantages évidents sous la forme d'une baisse des tarifs, d'un relèvement des niveaux de service et de création de services novateurs. Le gouvernement du Queensland semble avoir fait jusqu'ici la sourde oreille à l'appel à la déréglementation lancé récemment par l'Industry Commission et la Trade Practices Commission. Cette attitude n'a pas de quoi surprendre si l'on songe à la force politique du groupe, soudé et économiquement motivé, des détenteurs de licences de taxi et à la relative faiblesse politique des consommateurs. Gaunt et Black, 1996, page 57.
113. Gaunt, 1996, page 103.
114. Gaunt, 1996, page 104.
115. Morrison, 1997, page 920.
116. Morrison, 1997, page 924.
117. Morrison, 1997, page 924.
118. Gärling, 1995, pages 209 et 210.
119. Gärling, 1995, pages 211 à 213.
120. La déréglementation est partielle à Washington D.C. où les seules restrictions maintenues pèsent non pas sur les conditions d'accès, mais sur les tarifs.
121. Teal et Berglund, 1987, page 40.
122. Teal et Berglund, 1987, page 41.
123. Frankena et Pautler, 1986, page 4.
124. Teal et Berglund, 1987, page 46.
125. Frankena et Pautler, 1986, page 4.

126. Teal et Berglund, 1987, page 44.
127. Il est possible aussi que l'évolution observée soit purement transitoire et que tout redevienne normal quand les clients auront pris l'habitude de sélectionner les taxis sur la base de leurs prix. Teal et Berglund citent des études réalisées à San Diego et à Seattle qui révèlent que la moitié à peine des clients des taxis savaient que les tarifs différaient d'un opérateur à l'autre et que de un quart à un huitième d'entre eux seulement avaient comparé les tarifs avant de choisir leur opérateur.
128. La Productivity Commission australienne affirme qu'elle n'a pas pu trouver d'avantage collectif justifiant la limitation du parc de taxis et estime donc que tout plaide en faveur de l'abandon de cette limitation. Productivity Commission, 1999, page IX.
129. Beesley et Glaister, 1983, page 598.
130. L'amélioration de la transparence des prix a pour inconvénient de faciliter la collusion.
131. Productivity Commission, 1999, page XI.
132. Il vaut mieux augmenter le nombre de licences par habitant qu'augmenter simplement le nombre de licences parce que l'augmentation annuelle du nombre de licences peut ne pas suivre le rythme de la croissance démographique d'une ville. Le problème du parallélisme des évolutions a été étudié par Kenny et McNutt, 1998.

ANNEXE A :

Transport de marchandises par route : libéralisation du marché et performance Tiré de Boylaud et Nicoletti, 2000					
<i>Auteur</i>	<i>Pays/période</i>	<i>Variable explicative</i>	<i>Variable de performance</i>	<i>Effet</i>	
Burnewicz, 1996	Pologne	Privatisation et déréglementation	Trafic Productivité Efficience	Augmentation Augmentation Augmentation	
Haffner et van Bergeijk, 1997	Pays-Bas	Déréglementation du cabotage, temps de conduite	Prix	Baisse de 1%	
Hoj et al., 1995	Australie	Déréglementation de l'accès et des prix (1950 et années 60)	Prix Qualité	Baisse Amélioration	
	Canada	Déréglementation de l'accès et des prix	Prix Qualité	Baisse Amélioration	
	France	Déréglementation de l'accès et des prix (1979 et 1989)	Prix	Baisse	
	Nouvelle-Zélande	Déréglementation de l'accès, des services et des prix (1983)	Qualité	Amélioration	
	Norvège	Déréglementation de l'accès, des services et des prix (1987)	Accès	Positif	
	Suède	Déréglementation de l'accès (1964)	Accès	Positif	
	Royaume-Uni	Déréglementation de l'accès, des services et des prix (1968)	Qualité	Amélioration	
	Molnar, 1996	Hongrie	Privatisation et déréglementation	Trafic Productivité Efficience	Amélioration Amélioration Amélioration
McKinnon, 1996	Royaume-Uni (1987-1990) Etats-Unis (1970-1978) Nouvelle-Zélande (1984-1987) France (1987-1990)	Déréglementation du transport de marchandises par route	Prix	Baisse de 25% Baisse de 12-25% Baisse de 25% Baisse de 15%	
OCDE, 1999a	Etats-Unis	Déréglementation de l'accès et des prix	Prix Efficience Qualité Emploi	Baisse de 75% (charges compl.) et de 35% (groupage) Amélioration Amélioration Augmentation de 16%	

Suite du tableau						
OCDE, 1999b	Mexique		Déréglementation de l'accès et des prix	Prix Qualité Emploi		Baisse de 37% Amélioration Augmentation de 5% Augmentation
OCDE, 1999c	Japon		Déréglementation de l'accès et des prix	Efficiencie		Augmentation Augmentation Baisse Amélioration Augmentation
Opletal-Ryba, 1996	République tchèque		Impact de la privatisation et de la déréglementation	Accès Profits Prix Qualité Productivité		Augmentation Augmentation Augmentation
Rose, 1997	Etats-Unis		Partage de la rente du travail et réglementation	Trafic Productivité Efficiencie		Augmentation Augmentation
Winston, 1993	Etats-Unis		Déréglementation de l'accès et des prix	Partage de la rente		Diminution
Winston, 1998	Etats-Unis		Déréglementation du groupage	Bien-être du consommateur		Gain de 16 milliards de dollars (de 1990)
			Déréglementation du transport de charges complètes	Prix Efficiencie Qualité		Baisse Augmentation Augmentation
Yamauchi, 1995	Japon		Déréglementation du transport intérieur de marchandises par route	Prix Efficiencie Qualité		Baisse Augmentation Augmentation
Ying, 1990	61 entreprises des Etats-Unis 1975-1984		Déréglementation	Bien-être du consommateur		Gains de 2.5 à 8.2 milliards de dollars US
Ying et Keeler, 1991	56 entreprises des Etats-Unis 1975-1983		Déréglementation de l'accès et des prix	Progrès technique Coût Productivité		Augmentation
				Prix		Baisse Augmentation
						Baisse de 25 à 35%

BIBLIOGRAPHIE

- Adrangi, B., G. Chow et K. Raffiee, "Analysis of the Deregulation of the US Trucking Industry: A Profit Function Approach", *Journal of Transport Economics and Policy*, septembre 1995
- Beesley, Michael E., 1992, "UK Experience with Freight and Passenger Regulation", in *Privatisation, Regulation and Deregulation*, édité par Michael Beesley, Routledge, 1992
- Beesley, Michael E. et Glaister, S., 1983, "Information for Regulating: The Case of Taxis", *The Economic Journal*, 93, 594-615, septembre 1983
- Boylaud, O. et G. Nicoletti, 2001, "Regulatory Reform in Road Freight and Retail Distribution", OCDE Document de travail n° 255 du Département des affaires économiques, 2000
- Braeutigam, Ronald R., 1999, "Learning about Transport Costs" in *Essays in Transportation Economics and Policy*, Brookings Institution Press, 1999
- Brown, Robert T., 1993, "The Political Framework of Regulatory Reform in Transport Enterprises: Bus and Truck Deregulation in Chile", in *Regulatory Reform in Transport: Some Recent Experiences*, édité par José Cabajo, Banque Mondiale, avril 1993
- Button, Kenneth J. et Theodore E. Keeler, 1993, "The Regulation of Transport Markets", *Economic Journal*, 103, 1017-1027, juillet 1993
- Cairns, Robert D. et Catherine Liston-Heyes, 1996, "Competition and Regulation in the Taxi Industry", *Journal of Public Economics*, 59, 1996, 1-15
- Cooper, J.C., 1991, "Lessons for Europe from Freight Deregulation in Australia, the United Kingdom and the United States of America", *Transport Reviews*, 11, 1, 1991
- Cooper, J.C., 1994, "Structure of the Freight Transport Sector", Table ronde 99, CEMT, Paris, 1994
- Daniel, Timothy P. et Andrew N. Kleit, 1995 "Disentangling Regulatory Policy: The Effects of State Regulations on Trucking Rates", *Bureau of Economics Staff Report, US Federal Trade Commission*, document ronéotypé, novembre 1995
- Douglas, G.W., 1972, "Price Regulation and Optimal Service Standards: The Taxicab Industry", *Journal of Transport Economics and Policy*, 6(2), 116-127, mai 1972
- Evans, Andrew, 1987, "A Theoretical Comparison of Competition With Other Economic Regimes for Bus Services", *Journal of Transport Economics and Policy*, janvier 1987
- Frankena, Mark W. et Paul A. Pautler, 1984, *An Economic Analysis of Taxicab Regulation*, Bureau of Economics Staff Report, Federal Trade Commission, mai 1984
- Frankena, Mark et Paul Pautler, 1986, "Economic Analysis of Taxicab Regulation", *Transportation Research Record*, 1103, 1986, 2-5
- Fruin, Jerry, "Results of the Regulatory Reform of the Motor Carrier Industry in the United States", document ronéotypé, septembre 1999

- Gärling, Tommy, Thomas Laitila, Agneta Marell et Kerstin Westin, 1995, "A Note on the Short-Term Effects of Deregulation of the Swedish Taxi-Cab Industry", *Journal of Transport Economics and Policy*, mai 1995
- Gaunt, Clive, 1996, "Taxicab deregulation in New Zealand", *Journal of Transport Economics and Policy*, janvier 1996, 103
- Gaunt, Clive et Terry Black, 1994, "The Unanticipated Effects of the Industry Commission's Recommendations on the Regulation of the Taxi Cab Industry", *Economic Analysis and Policy*, 24(2), septembre 1994
- Gaunt, Clive et Terry Black, 1996, "The Economic Cost of Taxicab Regulation: The Case of Brisbane", *Economic Analysis and Policy*, 26(1), mars 1996
- Glaister, Stephen, 1993, "Bus Deregulation in the United Kingdom", in *Regulatory Reform in Transport: Some Recent Experiences*, édité par José Cabajo, Banque Mondiale, avril 1993
- Gonenc, Rauf, Maher, Maria et Nicoletti, Giuseppe, 2000, "The Implementation and the Effects of Regulatory Reform: Past Experience and Current Issues", OCDE, document de travail n° 251 du Département des affaires économiques, juin 2000
- Gwilliam, K. et R. Scurfield, 1996, "Competition in Public Road Passenger Transport", Banque Mondiale TWU-24, octobre 1996
- Kenny, Patrick et McNutt, Patrick, 1998, "Solving Dublin's Taxi Problems", *Competition Authority Discussion Paper No. 6*, Irlande, novembre 1998, (www.irlgov.ie/compauth/DIS_DOC6.htm)
- Klein, Daniel B., Adrian T. Moore et Binyam Reja, 1997, "Curb Rights: Eliciting Competition and Entrepreneurship in Urban Transit", *The Independent Review*, 2(1), été 1997, 29-54
- McKinnon, Alan, 1996, "Privatisation and Regulation of Road Freight Transport: Is Complete Deregulation Possible? Which Regulations Should Be Kept?", Séminaire CEMT, Paris, 5 septembre 1996
- McKinnon, Alan C., 1999, "Privatisation and Regulation of Road Freight Transport: Case Study", CEMT
- Meyer, John R. et José A. Gómez-Ibañez, 1993, "Transit Bus Privatization and Deregulation Around the World: Some Perspectives and Lessons", in *Regulatory Reform in Transport: Some Recent Experiences*, édité par José Cabajo, Banque Mondiale, avril 1993
- Morrison, P.S., 1997, "Restructuring Effects of Deregulation: The Case of the New Zealand Taxi Industry", *Environment and Planning*, 29, 1997, 913-928
- Moore, Thomas Gale, 1993, "Regulatory Reform of Transport" in *Regulatory Reform in Transport: Some Recent Experiences*, édité par José Cabajo, Banque Mondiale, avril 1993
- Nash, C.A., 1993, "British Bus Deregulation", *The Economic Journal*, 103, 1042-1049, juillet 1993
- Oldale, Alison, 1997, "Local Bus Deregulation and Timetable Instability", London School of Economics Working Papers, 24 juillet 1997

- OCDE, 1990, *Politique de la concurrence et déréglementation des transports routiers*, OCDE, Paris, 1990
- OCDE, 1999a, *Promoting Competition in Postal Services*, Tables rondes sur la politique de la concurrence No. 24, octobre 1999
- OCDE, 1999b, *La réforme de la réglementation aux Etats-Unis*, Examens de l'OCDE de la réforme de la réglementation, 1999
- OECD, 2000a, *Airline Mergers and Alliances*, Tables rondes sur la politique de la concurrence No. 26, février 2000
- OECD, 2000b, *Competition in Local Services: Solid Waste Management*, Tables rondes sur la politique de la concurrence No. 28, août 2000
- Productivity Commission (Australia), 1999, *Regulation of the Taxi Industry*, Commission Research Paper, novembre 1999
- Sappington, David et J. Gregory Sidak, 1999, "Incentives for Anticompetitive Behaviour by Public Enterprises", AEI-Brookings Joint Center for Regulatory Studies Working Paper 99-11, novembre 1999
- Shreiber, Chanoch, 1975, "The Economic Reasons for Price and Entry Regulation of Taxicabs", *Journal of Transport Economics and Policy*, septembre 1975, 268
- Stiglitz, Joseph E., 1989, "Imperfect Information in the Product Market", chapitre 13 in *Handbook of Industrial Organisation*, volume I, Richard Schmalensee and Robert Willig, eds., North Holland, 1989
- Soon, Jason, 1999, "Taxi!! Reinvigorating Competition in the Taxi Market", *Policy*, hiver 1999, 13
- Taylor, D. W., 1989, "The Economic Effects of the Direct Regulation of the Taxicab Industry in Metropolitan Toronto", *Logistics and Transportation Review*, 25(2), 169-182
- Teal, Roger F. et Mary Berglund, "The Impacts of Taxicab Deregulation in the USA", *Journal of Transport Economics and Policy*, janvier 1987, 37
- Teske, Paul, Samuel Best et Michael Mintrom, 1994, "The economic theory of regulation and trucking deregulation: shifting to the state level", *Public Choice*, 79, 247-256
- Tirole, Jean, 1988, *The Theory of Industrial Organisation*, MIT Press, 1988
- Viscusi, W. Kip, John M. Vernon et Joseph E. Harrington, Jr., 1995, *Economics of Regulation and Antitrust*, MIT Press, 1995
- White, P., 1997, "The Experience of Bus and Coach Deregulation in Britain and In Other Countries", *International Journal of Transport Economics*, 24(1), février 1997, 35-52
- Winston, Clifford, 1993, "Economic Deregulation: Days of Reckoning for Microeconomists", *Journal of Economic Literature*, 31, septembre 1993, 1263-1289

AUSTRALIA

1. Introduction

Road transport regulation in Australia is primarily the responsibility of State and Territory governments, with the Australian Commonwealth Government's role being largely confined to coordination and the development of national harmonised policies. Specific arrangements and titles of organisations vary between these jurisdictions. The following responses have been generalised to cover the range of arrangements applying, and examples have been included from two States (South Australia and Victoria) to provide more detail.

2. Regulatory regime

2.1 *Regulatory agencies*

2.1.1 *Road freight*

The National Road Transport Commission (NRTC) is responsible for developing national policies for regulation of road freight. Individual State and Territory government agencies (road authorities) are responsible for implementing these policies and developing local policies in relation to road freight. In most cases, these road authorities are also responsible for the provision and maintenance of road infrastructure. The Federal government, through the Department of Transport and Regional Services is responsible for implementing national policies as they relate to vehicles registered as only involved in interstate trade. It is also responsible for developing policies solely related to these vehicles which are not covered by the national approaches. Local government does not have a role in regulating road transport.

This structure is a result of the breakdown of powers under the Australian Constitution, under which State and Territory governments are primarily responsible for regulation of road transport. The NRTC receives its powers from an inter-government agreement between the State, Territory and Federal governments. However, this agreement specifically restricts the NRTC from developing economic regulations governing road transport.

The NRTC is responsible to a council of the State, Territory and Federal transport ministers. State, Territory and Federal road departments are each separately responsible to their respective ministers, who are ultimately responsible to the relevant Parliaments.

In broad terms, the objective of these bodies in relation to road freight can be summarised as ensuring that the Australian community has a safe, efficient road freight sector that operates under the lowest possible administrative burden and has minimum environmental impacts. However, State, Territory and Federal government bodies also have objectives relating to the provision and maintenance of road infrastructure and the provision of transport services to other road users, such as private motorists.

There are associations of truck operators in all States and Territories. These associations are members of a peak industry lobby group titled the Australian Trucking Association.

State, Territory, Local and Federal governments do not have any ownership interest in firms providing road freight services, with the exception of some continuing (although reduced) government ownership interest in rail operations, some of which provide a small amount of ancillary road transport services to connect with rail services. The Federal government also has an ownership interest in Australia Post, a wholly government owned corporation, which operates ancillary road freight services as part of its function in delivering mail and parcels.

2.1.2 Passenger and taxi services

Passenger and taxi services are regulated by State and Territory government agencies. Federal and Local governments do not have a role in regulating these services. For example, in South Australia, the Passenger Transport Board is responsible for land passenger transport, including bus services and including the regulation of taxis under the *Passenger Transport Act 1994*. Whereas in Victoria, the Victorian Taxi Directorate (VTD), which is an agency of the State Department of Infrastructure, regulates the taxi industry. The Victorian Department of Infrastructure is also responsible for directly regulating bus passenger services.

These State and Territory government agencies are responsible either to the government department responsible for transport (the titles of which vary between jurisdictions) or directly to the government Minister responsible for transport.

The peak taxi industry body in the State of Victoria is the Victorian Taxi Association Inc. Similar bodies operate in other States and the Territories. There is no national association of taxi operators.

There are bus and coach industry associations in all jurisdictions representing private bus and coach operators. These associations are members of the peak representative body, the Australian Bus and Coach Association. A separate association also represents government owned bus services.

State, Territory, Local and Federal governments have no ownership interest in firms providing taxi services. However, some State and Territory governments have a continuing ownership interest in some bus passenger services, although a combination of private and publicly owned firms provide bus services in all jurisdictions.

2.2 Recent regulatory developments

2.2.1 Road freight

During the 1970s, 80s and 90s Australian governments moved to de-regulate the road freight industry. In the majority of cases, regulation took the form of reservations of specific freights to rail transport. Pockets of economic regulation in the form of operator licensing for road freight operators existed but were not universal. These regulations have now been removed, in almost all cases.

However, there are ongoing concerns about the safety performance of road freight operators, particularly in relation to long distance freight services. These concerns are evidenced by a current inquiry into the long distance road freight operations in the State of New South Wales by the Motor Accidents

Board. Concerns are based on suggestions that economic returns in the long distance road freight sector are so small as to provide significant incentives to operators to violate safety and infrastructure protection regulations such as controls on speed, driving hours and mass limits. As a result, there are some suggestions from within industry to introduce economic regulation in the form of operator licensing or accreditation systems that place controls on industry entry and rate protection, in order to improve safety performance.

2.2.2 *Passenger and taxi services*

In contrast, passenger and taxi services in Australia have been the subject of regulation for a long period. In particular, most States and Territories restrict the total number of taxis by requiring each taxi to have a licence and limiting the number of licences issued.

Some recent changes have included:

- The introduction of bus operator accreditation schemes in some States. These schemes include probity checks, compulsory education programs and controls over bus age and standards.
- The removal of taxi regulation in one state, South Australia.
- The requirement for all jurisdictions to review their regulatory regimes for taxis as part of the National Competition Policy legislation review process.

For example, Victoria is reviewing the *Transport Act 1983* and subordinate legislation relating to small commercial passenger vehicles (seating capacity for up to twelve people including driver) in accordance with the National Competition Principles Agreement between all States and Territories and the Commonwealth Government.

The essence of the Agreement is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs; and the objectives of the legislation can only be achieved by restricting competition.

This principle leads to a presumption under National Competition Policy guidelines that restrictions on competition are not in the public interest and if such restrictions are to be retained, they must be demonstrated to generate public benefits which outweigh their associated costs.

The review process has not yet been completed. Consequently the results, and any recommendations concerning future licensing arrangements for small commercial passenger vehicles including taxis in Victoria, are unlikely to be known until late in 2000 or early in 2001.

In November 1999, the Productivity Commission released a research paper on the Regulation of the Taxi Industry. The paper is intended to complement individual reviews by providing policy makers in different jurisdictions with a common framework for assessing key issues in taxi regulation, including: safety and quality; taxi numbers and fares; and compensation and adjustment assistance in the event of deregulation. The paper is available at <http://www.pc.gov.au/research/otherres/taxiregulation/index.html>.

This research paper built on the work contained in the 1994 Industry Commission Inquiry into Urban Transport. In the TPC's¹ submission to that inquiry, it called for across the board deregulation of

the taxi industry in Australia. It argued that regulation in the industry has resulted in competition being hampered and consumer choice being unduly limited.

The two major instruments of regulation have been strict control over entry and control over both maximum flagfall and distance charges. There are also other regulatory requirements relating to factors such as cab age, safety and cleanliness, and driver training and competence. In defence of regulation it has been argued that in the absence of regulation average prices would be too high, there would be unacceptable risks associated with the mechanical quality of the taxi and the skills of the driver, passengers would not be able to distinguish between good and bad taxis/drivers, standards and quality of service would be lower, average taxi waiting times would be longer, and the number of taxis on the road may be more than is socially optimal.

However while the existing regulations are said to be required to address these potential impediments in the market, the regulations themselves restrict competition in the market and therefore contribute to other costs and inefficiencies which must be borne by taxi passengers.

The TPC therefore recommended in its submission to the inquiry that all regulatory controls by State Government on entry into the taxi industry be removed, with the obvious exception of some remaining regulation regarding driver competence and vehicle safety.

2.3 *Regulatory requirements*

2.3.1 *Road freight*

A firm wishing to provide road freight services is not subject to any specific regulation other than those applying to all businesses and safety and infrastructure protection standards applying to the design and operation of heavy vehicles. No licence is required to operate road freight services.

2.3.2 *Passenger and taxi services*

Regulatory requirements applying to passenger and taxi services differ between the various States and Territories.

Bus operators are required to be accredited in some States (such as New South Wales and Victoria). There are no limits on the number of bus operators that can be accredited under these schemes. Instead the regulations are intended to provide minimum standards of service and business practices. They include limits on the average age of buses operated, compulsory education programs and requirements for probity checks on bus drivers. Existing market operators have no role in approval of new entrants. There is no restriction on what services can be provided once an operator is accredited, and hence no need for operators to hold multiple licenses.

Regulations on taxi services vary considerably between jurisdictions. For example, South Australia has undertaken considerable deregulation of taxi services, to remove requirements for taxi licenses. Regulations remain in most other jurisdictions.

For example, taxi operators in Victoria must hold an operator licence for each taxi vehicle they operate. Licences are issued on the basis of demonstrated public demand. In major population centres, licence issue would be undertaken in consultation with existing licence holders. The quantity of licences to be issued would be predetermined based on public demand for increased service levels. Licence issue can

be by “fixed price” or by tender from eligible applicants. Applications must be determined within twelve months. Licensees are subject to character/probity checks and must be financially stable. Taxi licences are perpetual but may be subject to restrictions on transfer of ownership within the first few years from issue. The majority of licences are transferable on the open market, subject to approval by the Victorian Taxi Directorate of the transferee.

In the case of passenger services no distinction is made between regular or scheduled and occasional passenger services in relation to bus operator accreditation requirements.

No information is available on how the coordination between different routes and time schedules is achieved at the local level.

2.4 *Regulatory restrictions*

In relation to bus passenger services, no specific limits on the provision of new services are believed to exist. However, in a number of cases, bus passenger services are subsidised by State and Territory governments and availability of additional subsidies may influence the provision of new services, where this occurs.

As an example, a description of arrangements applying to provision of new taxi licences in Victoria are included. The details of these arrangements will differ in other jurisdictions.

Licence numbers in Victoria are regulated to match demand with supply and to ensure the ongoing viability of the service provider. Geographic restrictions apply to street/rank hirings, but geographic restrictions generally do not apply to pre-booked/phone hirings. Victoria has one State Regulatory body, not municipal based. Taxis must comply with comfort and quality standards including a mandatory colour/livery scheme, vehicle age limits and frequent inspections for safety and comfort standards compliance. The taxi industry is obliged to provide 24-hour service. There is no restriction on driving hours or other limitations on drivers. Some special (metropolitan) taxi licences have compulsory hours of operation to target late night demand in the CBD.

2.5 *Regulatory controls on prices and/or quality of services*

2.5.1 *Road freight*

No price or quality controls apply to road freight services.

2.5.2 *Passenger and taxi services*

Details of price and subsidy arrangements for bus passenger services are not available, although both price controls and subsidy arrangements of differing forms exist in each of the States and Territories.

As an example of taxi price and subsidy arrangements, the Victorian State government sets taxi fares. Only prescribed rates may be charged for trips within an 80 km radius. Long distance trips (beyond 80 km) must be quoted and agreed in advance. In most cases, the trigger for taxi fare increases are proven increased costs to industry in providing services, eg, increased fuel prices. The Victorian Taxi Association is involved in this process by making submissions to the State government, but there are no restrictions on who may make such submissions.

2.6 *Controls on international trade in road freight/passenger services*

Controls on international trade in relation to road freight and passenger services are not relevant to Australia as, being an island nation, it has no international land borders. However, international harmonisation issues arise in relation to vehicle standards. Harmonisation also occurs within Australia between the various States and Territories in relation to operational regulations intended to protect safety, the environment and infrastructure as well as for heavy vehicle (truck and bus) registration charges. The NRTC develops national regulations and registration charges for approval and implementation within each of the individual States and Territories.

3. Market outcomes

3.1 *Market structure*

3.1.1 *Road freight*

There are approximately 200 000 road freight fleets in Australia operating trucks over 4.5 tonnes. Some firms operate more than one fleet to undertake different tasks. More than 90 percent of fleets comprise only one or two trucks, with around 70 percent of fleets comprising a single vehicle.

More than 60 percent of trucks are operated by businesses whose prime activity is not road transport, and use their trucks to transport their own products or inputs. For example, farmers operate a large proportion of the total Australian truck fleet to transport goods onto their farms and to move their products to market.

The hire and reward transport sector operates only a little over 20 percent of the individual truck fleets, but these fleets comprise around 40 percent of vehicles and undertake around half the freight task. These companies operate as commercial enterprises to transport goods for others. A large proportion (around 80 percent) of hire and reward fleets also only comprise a single vehicle. These vehicles are frequently sub-contracted to larger companies, either on a semi-permanent or casual basis. Complex vertical market structures exist, with links and ownership overlaps between freight forwarders, firms providing warehousing and logistics services, rail operators, prime contractors and sub-contractors. Ownership links between the road freight sector with air, shipping and road passenger services are minimal.

There are no limitations on the market share of any road freight operators. Nor are there limits on foreign ownership.

3.1.2 *Passenger and taxi services*

The passenger transport sector has a much smaller number of operators than the road freight sector, but is similarly predominated by small businesses with one or two vehicles. Overlaps in ownership with other modes are minimal. There are no limits on the market share of passenger transport operators and no limits on foreign ownership.

A similar situation applies in the taxi industry. For example, of the 3 996 taxi licences on issue in Victoria at June 2000:

- 2 372 entities each owned one licence;
- 410 entities owned more than one licence but less than five;
- 58 entities owned between five and nine licences;
- 6 entities owned between ten and 20 licences;
- 2 entities owned between 21 and 25 licences;
- 1 entity owned between 26 and 49 licences;
- 1 entity owned between 50 and 55 licences; and
- 1 entity owned 86 licences.

Melbourne's 3 202 metropolitan taxi-cab licences were held by 2 358 entities, whereas 1 827 metropolitan licences were assigned (leased) to 1 000 entities.

3.2 Outcome of liberalisation

No data is available to assess the impact of liberalisation over the past decade. The market share of road transport compared to air and rail does not appear to have varied significantly. There has been constant growth in the freight market, with significant increases in rail traffic associated with improvements in rail productivity being matched by expansion of the road freight sector in line with economic growth over the period.

4. Competition law enforcement

4.1 Application of Australia's competition law to the road transport sector

Australia's competition law, the *Trade Practices Act 1974* (TPA) applies in full to the road transport sector without exemption or exception. Although specific exemption can be granted under the TPA to conduct that might otherwise breach the law if the public benefits from the conduct would outweigh the anti-competitive detriments also arising from the conduct. The TPA is administered by Australia's national competition regulator - the Australian Competition & Consumer Commission (ACCC).

4.2 Mergers

4.2.1 Toll Holdings/Finemores

In August 2000 the ACCC announced that it would not intervene in the proposed acquisition of Finemore Holdings Limited by Toll Holdings Limited. Toll and Finemores are providers of transport and logistics services. They operate across a broad range of transport segments, including refrigerated transport, bulk liquid transport, car carrying, petroleum transport and general freight. In logistics, they provide warehousing, tracking and inventory control.

The ACCC conducted extensive market inquiries during its investigation and found that there were a large number of small operators providing transport and logistics services but a relatively small number of large, national providers. For example, it is estimated that there are around 40 000 transport providers and of that roughly 70 percent operate a single vehicle. While the merger proposal was considered to result in further concentration at the top tier of providers, there was very little concern among competitors and customers as to the potential lessening of competition as a result of the merger.

The ACCC found that competition among transport and logistics providers is fierce. The reasons for this include the relatively low barriers to small-scale entry and the countervailing power that resides with customers. For example, large customers control substantial volumes of business as well as the option of providing transport and logistics services in-house rather than contracting them out. Small customers do not require the sophisticated logistics services provided by the top tier providers and have access to a large number of small providers.

4.2.2 *McCaffertys/Greyhound Pioneer*

The ACCC announced in March 2000 that it would not intervene in the proposed merger between McCafferty's Holdings Limited and Greyhound Pioneer. The merger involved the combination of the only two national coach operators in Australia. However, market inquiries indicated that there was sufficient scope for smaller operators to enter the interstate coach market and provide competition to the merged entity. The market was defined as that for long distance coach transport.

Further, other modes of transport, such as rail and air travel, were considered by the ACCC to offer effective alternatives for consumers.

The ACCC conducted extensive market inquiries in relation to this matter. It spoke to a number of interstate and intrastate express, tour and charter operators, and industry representatives. These discussions indicated that the merger would be unlikely to result in a significant reduction in competition in the industry.

4.2.3 *Brisbane Cabs/Black & White Cabs*

The ACCC announced in February 1996 that it would not oppose the proposed merger between Brisbane Cabs and Merrywell Pty Ltd (trading as Black & White Cabs).

At the time of the merger proposal, Black & White Cabs operated the second largest taxi depot service in the Brisbane metropolitan area, while Brisbane Cabs operated the smallest.

Regulations are in place in Queensland that require all taxi booking service providers operating in South-East Queensland to enter into service contracts which set minimum service levels. These include a requirement that taxi booking service providers comply with auditing standards which are likely to necessitate the use of computerised dispatch systems.

Inquiries indicated that while Brisbane Cabs was an effective competitor when it first entered five years previously, this competition has not been maintained particularly in the area of dispatch system technology. This had affected its ability to attract taxi operators to its depot and also its ability to satisfy the regulatory requirements. Black & White Cabs had also experienced difficulties in retaining its taxi numbers, losing a significant number of taxis through transfers in the previous year.

It was considered unlikely that individually Black & White Cabs or Brisbane Cabs would have continued to be vigorous and effective competitors in this market in the future. The merged entity would continue to experience strong competition from the largest depot in the market, Yellow Cabs, who has been a vigorous and growing player in the market. The merger was therefore not opposed.

4.2.4 *North Suburban Taxis/Silver Top Taxis*

In 1995 the then Trade Practices Commission (the ACCC's predecessor) opposed an acquisition of North Suburban Taxis by Silver Top Taxis in Melbourne.

At the time of the proposal, Silver Top Taxi Services was the largest Melbourne metropolitan taxi company with around 1 300 taxis using its depot and communications facilities. North Suburban Taxis also operated a depot and communications network, which was used by around 260 taxis. North Suburban was the third largest Melbourne depot and concentrated mainly in the northern suburbs.

Under the acquisition Silver Top would have raised its market share to 50 percent. In the northern suburbs of Melbourne, Silver Top and North Suburban held a very large share of work.

After market inquiries, the ACCC formed the view that the acquisition would adversely affect both consumers and drivers. North Suburban's regional focus was considered a real alternative for consumers in metropolitan Melbourne, especially in the northern suburbs where it was the strongest.

The merger would have reduced patrons' choice about services, such as response times, cleanliness of taxis and passenger safety issues. The ACCC was also of the view that there would be fewer companies competing for, and providing, radio booking services to taxi drivers with the loss of the North Suburban communications network, particularly given the significant barriers preventing a new company seeking to set up a new depot and radio network.

Following the ACCC's refusal to allow the merger, the proposal was abandoned.

4.3 *Horizontal arrangements - Misuse of market power*

4.3.1 *J McPhee & Son²*

On 27 March 1998 the Federal Court of Australia imposed penalties totalling \$A four million against J McPhee & Son (Australia) Pty Ltd and four of the company's executives for breaches of Part IV of the TPA. The Federal Court found that McPhee and its executives had attempted to reach a collusive tendering arrangement with a competitor, Discount Freight Express (DFE), in 1995.

After McPhee had sought to increase the price of its freight services to one of its customers, Just Jeans, the customer sought tenders from other freight companies, including DFE. McPhee approached DFE and attempted to induce them into submitting a tender at prices which would not succeed. DFE did not agree to the approach and ultimately Just Jeans awarded the contract to Ipec, a rival of both companies.

A penalty of \$A three million was ordered against McPhee for this incident. Mr Richard Forde, a Director of the company, was penalised \$A 100 000; Mr Craig Holland, General Manager, was penalised \$A 60 000 and Mr Doug Morton, Business Development Manager, was penalised \$A 80 000.

In another incident the Court found that in 1994 Mr Guy Webb, McPhee's Gippsland Manager, had heard that a DFE manager had approached one of McPhee's customers during a visit to the region. Mr Webb arranged a meeting with the DFE manager and verified that he was intending to submit a quote to the McPhee client (ACI Florapak). Mr Webb asked him to 'cover' the rates which McPhee was charging ACI. The DFE manager was provided with McPhee's quoted rates by Mr Webb and then submitted prices which were calculated to exceed McPhee's rates and be unacceptable to ACI. ACI rejected the offer by DFE and continued to obtain freight services from McPhee.

The Court found McPhee had engaged in price fixing and ordered a penalty of \$A 750 000. Mr Webb was penalised \$A 15 000 for his involvement in the arrangement.

4.3.2 *TNT/Ansett/Mayne Nickless*³

This case involved proceedings against the three major companies in Australia's overnight freight express industry - TNT Australia Pty Ltd ('TNT'), Ansett Transport Industries (Operations) Pty Ltd ('Ansett') and Mayne Nickless Ltd ('Mayne Nickless') and 19 of their current and former senior executives.

In what has become known as 'the freight case', the Commission alleged that TNT, Ansett and Mayne Nickless had formed, and given effect to, an arrangement to fix prices and regulate market shares in the express freight market in contravention of the TPA. Numerous meetings were held to operate the cartel and illegally agree on prices and market sharing arrangements.

The arrangement continued for many years and was held together by meetings between senior executives of each of the companies, ranging from General Manager level to Sales Manager level. Those meetings thrashed out conflict over 'ownership' of particular customers and resolved disputes over which companies had breached the arrangement. Where it was agreed that a customer had been acquired in breach of the agreement, customers were 'offered up' to the other carrier as settlement of the debt. In those cases, the offending carrier would simply raise the prices being charged to that customer (or another customer of equal value) with the result that the customer would try to 'shop around' for a better deal. The acquiring carrier would then approach the customer and offer a seemingly better rate. Thus the debt was cleared.

There were also other even more damaging ways of forcing a customer to return to his original carrier. In one particular case a customer's sensitive freight (which had to be delivered in 24 hours and was packed in ice) was simply placed in the corner of a transport depot until the customer became so dissatisfied about his 'lost' freight that he returned to his original transport carrier. The term in the industry for this conduct was 'burning a customer'. Another example of 'burning' was to routinely delay the delivery of a customer's freight to late in the day and, when the customer complained, to ignore them.

When a carrier sought to increase the prices being generally charged to its customers, they would ring the other carriers to advise them and obtain assurances that, in the event that any of those customers were to approach those other carriers for a competitive quote, they would refuse to quote or would quote rates which exceeded the first carrier's increased prices. The other carriers were even informed of the rates that they needed to quote to ensure that the quote was unacceptable. This practice was known as 'covering', but we know it better as 'collusive tendering'.

As these three companies accounted for approximately 90 percent of all sales in the industry and total industry turnover was estimated at between \$A one to \$A two billion annually, the economic

significance of such an arrangement is obvious. Almost everyone using air and road express freight services during the period of the collusion had been adversely affected.

The Federal Court ordered that TNT pay a penalty of \$A 4.1 million, Ansett \$A 900 000, and Mayne Nickless \$A six million. In addition, a long list of individual executives within the companies were personally fined between \$A 40 000 and \$A 75 000. Total penalties and costs ordered by the Court amounted to over \$A 14.1 million. Just as important, the cartel came to an end.

This case was regarded as a watershed in the history of trade practices law in Australia as it marked the coming of age of competition law as a law requiring the utmost serious compliance by all corporations, large and small. The penalties awarded in this case were based on the scale that applied until the TPA was amended in 1993 – penalties for corporations increased from \$A 250 000 maximum per offence to \$A ten million per offence, and for individuals increased from \$A 50 000 maximum per offence to \$A 500 000 per offence. Prior to this case, the Federal Court had never awarded penalties in excess of \$A 250 000, even where multiple offences occurred.

4.3.3 *Darwin radio taxis*

In June 1997 the Federal Court of Australia issued permanent injunctions to restrain Darwin Radio Taxi Cooperative Limited from making or enforcing anti-competitive agreements, from misusing its market power to hinder or prevent competition, and from attempting to induce its members to make their lessees operate with Darwin Radio Taxis rather than a rival.

The cooperative, through its rules and its power in the Darwin taxi market, put in place and gave effect to, anti-competitive arrangements where members were effectively prevented from leaving Darwin Radio Taxis. This had damaged competition. Members who tried to leave the cooperative to join a rival taxi network were threatened with the loss of up to \$A 10 000 they had paid for their shares, and also with having to pay base fees to the cooperative even though they were no longer using its services.

Darwin Radio Taxis were ordered to allow current members to leave Darwin Radio Taxis without penalty and that it pay the ACCC's legal costs. In addition Darwin Radio Taxis agreed to issue public apologies and implement a trade practices compliance program.

4.3.4 *Lismore Taxis Co-operative Ltd and Radio Cabs (Wagga) Co-operative Society Ltd*

In July 1998 Lismore Taxis Co-operative Ltd provided a court enforceable undertaking over by-laws which the ACCC believed were in breach of ss 45 (anti-competitive agreements) and 46 (misuse of market power) of the TPA. In December 1998 the ACCC also obtained a court enforceable undertaking from Radio Cabs (Wagga) Co-operative Society Ltd after the ACCC expressed concern that its by-laws were also in breach of these sections.

The ACCC was particularly concerned with the cooperatives' ban on privately arranged taxi bookings, the 'point' or 'trip board' systems used to share out of town trips among drivers, and the roster system which rationed work time available to drivers.

Both co-operatives gave undertakings to the ACCC that:

- no taxi operator would be penalised for making a private booking;

- they would not introduce any system which prevents taxi cabs from competing for out of town jobs; and
- they would not introduce a roster system which kept cabs off the road at any particular time; and
- they would introduce a trade practices compliance program to help it comply with the TPA in the future.

4.3.5 *Garden City Cabs*

The ACCC reached a settlement with the Garden City Cabs Cooperative Limited of Toowoomba in October 1997 resolving proceedings in relation to its anti-double shift policy known as the ‘five-day’ rule.

Proceedings were instituted against Garden City Cabs by the-then Trade Practices Commission alleging breaches of sections 45 and 46 of the TPA concerning Garden City Cabs’ implementation of the ‘five-day’ rule.

Under the ‘five-day’ rule, once a driver began to work a taxi, that driver would be the sole person allowed to operate that taxi for a period of five days. This effectively prevented double-shifting of taxis as the taxi was only able to be operated for as long as that one person could drive it. If Garden City Cabs’ taxi operators did not comply with the ‘five-day’ rule, their radio services would be suspended.

The settlement was facilitated by Garden City Cabs’ withdrawal of the ‘five-day’ rule in December 1996. As part of the settlement, Garden City Cabs consented to injunctions restraining it from refusing to supply communication and dispatch services to its members and commission drivers for the reason that its members have engaged a commission driver for a particular number of consecutive days. The consent injunctions effectively restrained Garden City Cabs from re-introducing the ‘five-day’ rule or introducing any rule of similar effect in the future.

Garden City Cabs paid the ACCC’s legal expenses in the matter and also provided the ACCC with an enforceable undertaking to implement a trade practices compliance program.

Radio Cabs of Wollongong Co-operative Society

Rules banning the use of mobile telephones by Wollongong cab drivers was overturned in March 1997 following ACCC intervention. Radio Cabs of Wollongong Co-operative Society had inserted the ban into its rules, stating that any driver found using or carrying a mobile phone in their cab risked suspension from the radio network. In 1990 the-then Trade Practices Commission refused an authorisation to Silver Top Taxis (a Melbourne based company) to ban the use of mobile phones in its taxis.

The ACCC considered that the Wollongong rule was likely to breach s 45 of the TPA, which prohibits contracts, arrangements or understandings that restrict dealings or affect competition. The ACCC considered that giving effect to the mobile phone ban rule and giving effect to the penalty for drivers breaching the rule was a contract, arrangement or understanding that restricted dealings and affected competition.

Radio Cabs of Wollongong, and its directors, undertook to:

- notify all owners and drivers that no action would be taken against them for carrying or using a mobile phone in their cabs;
- ensure that no driver who carried or used a mobile phone in his/her cab would be denied access to the radio network of Radio Cabs of Wollongong by having carried or used a mobile phone;
- arrange for the holding of an Extraordinary General Meeting to rescind the rule; and
- introduce a trade practices compliance program.

ATTACHMENT

Text of Question	Australia
Do national, state or provincial government hold equity stakes in business company : 7112 Urban, suburban and interurban highway passenger transport	Yes
Do national, state or provincial government hold equity stakes in business company : 7113 Other passenger land transport	No
Do national, state or provincial government hold equity stakes in business company : 7114 Road freight	No
Do national, state or provincial government hold equity stakes in business company : 7116 Supporting services to land transport	Yes
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7111 Railways	Yes
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7112 Urban, suburban and interurban highway passenger transport	Yes
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7113 Other passenger land transport	No
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7114 Road freight	No
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7116 Supporting services to land transport	No
7100 Transport, storage (general) : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7100 Transport, storage (general) : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7100 Transport, storage (general) : Is there exclusion or exemption from competition law : Merger	No
7112 Urban passenger transport : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7112 Urban passenger transport : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7112 Urban passenger transport : Is there exclusion or exemption from competition law : Merger	No
7113 Other road passenger transport : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7113 Other road passenger transport : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7113 Other road passenger transport : Is there exclusion or exemption from competition law : Merger	No
7114 Road freight : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7114 Road freight : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No

7114 Road freight : Is there exclusion or exemption from competition law : Merger	No
7116 support services, land transport : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7116 support services, land transport : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7116 support services, land transport : Is there exclusion or exemption from competition law : Merger	No
7100 Transport, storage (general) : Which source sector agencies and laws do refer : Other law	No
7112 Urban passenger transport : Which source sector agencies and laws do refer : Other law	NA
7113 Other road passenger transport : Which source sector agencies and laws do refer : Other law	NA
7114 Road freight : Which source sector agencies and laws do refer : Other law	NA
7116 support services, land transport : Which source sector agencies and laws do refer : Other law	NA
7100 Transport, storage (general) : Which source sector agencies and laws do refer : Government department	Yes
7100 Transport, storage (general) : Which source sector agencies and laws do refer : Independent agency	NA
7112 Urban passenger transport : Which source sector agencies and laws do refer : Government department	Yes
7112 Urban passenger transport : Which source sector agencies and laws do refer : Independent agency	Yes
7113 Other road passenger transport : Which source sector agencies and laws do refer : Government department	Yes
7113 Other road passenger transport : Which source sector agencies and laws do refer : Independent agency	Yes
7114 Road freight : Which source sector agencies and laws do refer : Government department	Yes
7114 Road freight : Which source sector agencies and laws do refer : Independent agency	Yes
7116 support services, land transport : Which source sector agencies and laws do refer : Government department	Yes
7116 support services, land transport : Which source sector agencies and laws do refer : Independent agency	NA
7100 Transport, storage (Is the General) : Is the General Competition agency engaged in: Enforcement	Yes
7100 Transport, storage (Is the General) : Is the General Competition agency engaged in: Price or entry regulation	No
7112 Urban passenger transport : Is the General Competition agency engaged in: Enforcement	Yes
7112 Urban passenger transport : Is the General Competition agency engaged in: Price or entry regulation	Yes
7113 Other road passenger transport : Is the General Competition agency engaged in: Enforcement	Yes
7113 Other road passenger transport : Is the General Competition agency engaged in: Price or entry regulation	Yes

7114 Road freight : Is the General Competition agency engaged in: Enforcement	Yes
7114 Road freight : Is the General Competition agency engaged in: Price or entry regulation	No
7116 support services, land transport : Is the General Competition agency engaged in: Enforcement	No
7116 support services, land transport : Is the General Competition agency engaged in: Price or entry regulation	No
Road freight : Is there a firm in the road freight sector that is publicly-controlled (i.e. national, state or provincial governments hold the largest single share)?	No
Road freight: Is registration in any transport register required in order to establish a new business in the road freight sector?	No
Road freight: In order to operate a national road freight business (other than for transporting dangerous goods or goods for which sanitary assurances are required) do you need to be granted a state concession or franchise by any level of government?	No
Road freight: In order to operate a national road freight business do you need to obtain a license (other than a driving license) or permit from the government or a regulatory agency?	No
Road freight: In order to operate a national road freight business do you need to notify any level of government or a regulatory agency and wait for approval before you can start operation?	No
Road freight: In order to operate a national road freight business (other than for transporting dangerous goods or goods for which sanitary assurances are required) do you need to notify any level of government or a regulatory agency?	No
Road freight: Are criteria other than technical and financial fitness and compliance with public safety requirements considered in decisions on entry of new operators?	No – Not applicable
Road freight: If these entry regulations only apply to shipments above a specified distance, please indicate the threshold.	Not applicable
Road freight: If these entry regulations apply only to shipments above a specified weight, please indicate the threshold.	Not applicable
Road freight: Do these entry regulations apply if a firm wants to transport only for its own account?	No – Not applicable
Road freight: Does an authorisation to operate extend to the entire territory of the country?	Not applicable
Road freight: Is the authorisation to operate limited in duration?	Not applicable
Road freight: What is the longest amount of time that the responsible agency may take to reach a decision about a complete application?	Not applicable
Road freight: What is the minimum number of government levels that are involved in examining the applications?	Not applicable
Road freight: Are authorisations to operate transferable?	Not applicable
Road freight: Does the regulator, through licenses or otherwise, have any power to limit industry capacity?	No
Road freight: Do foreign firms have the same right to operate in the domestic market as domestic firms?	Yes
Road freight: Are any of the following constraints in place : Complete prohibition of cabotage	No

Road freight: Are any of the following constraints in place : Limitations on cabotage	No
Road freight: Are any of the following constraints in place : Domestic carrier requirements for public traffic	No
Road freight: Are any of the following constraints in place : Restrictions on the possibility for foreign firms to pick up freight	No
Road freight: Are any of the following constraints in place : Other	No
Road freight: Are professional bodies or representatives of trade and commercial interests involved in specifying or enforcing entry regulations?	No
Road freight: Are there any regulations setting conditions for driving periods and rests?	Yes
Road freight: If such regulation is in place, does it also apply to transit traffic (e.g., traffic originating from and directed to a foreign country)?	Not applicable
Road freight: Do regulations prevent or constrain : Backhauling?	No
Road freight: Do regulations prevent or constrain : Private carriage?	No
Road freight: Do regulations prevent or constrain : Contract carriage?	No
Road freight: Do regulations prevent or constrain : Intermodal operations?	No
Road freight: Within the last five years, have laws or regulations removed restrictions on: Own-account shipments?	No – no restrictions applied
Road freight: Within the last five years, have laws or regulations removed restrictions on: Commercial, for-hire shipments?	No – no restrictions applied
Road freight: Are retail prices of road freight services in any way regulated by the government?	No
Road freight: Does the government provide pricing guidelines to road freight companies?	No ⁴
Road freight: Are professional bodies or representatives of trade and commercial interests involved in specifying or enforcing pricing guidelines or regulations?	Yes
Road freight: Total number of companies	200 000
Road freight: Combined market share of three largest companies	Approx 3%
Road freight: Total revenues	NA
Road freight: Total operating costs	NA
Road freight: total employees	NA
Road freight: total hours worked per year	NA
Road freight: Fixed investment	NA
Road freight: Capacity : number of trucks operating	406 400
Road freight: Capacity : total tonnes	1 197 million tonnes

NA = Not Available

NOTES

1. The Trade Practices Commission (TPC) was merged with the Prices Surveillance Authority in 1995 to form the Australian Competition & Consumer Commission (ACCC) – Australia’s national competition regulator.
2. *Australian Competition & Consumer Commission v J McPhee & Son (Australia) Pty Ltd* (1998) ATPR 41-628.
3. *Trade Practices Commission v TNT Australia Pty Limited & Ors* (1995) ATPR 41-375.
4. No guidance on pricing is provided, but the Federal government is currently funding a working group of transport operators, transport users and unions to prepare advice of this nature.

CZECH REPUBLIC

1. The [Road Freight/Road Passenger/Taxi] Transport Industry

1.1 *Regulatory Regime*

(1.1) *What agency or agencies have responsibility for developing and/or implementing policies relating to local, regional, inter-state or international [road freight/road passenger/taxi] regulation? At what level of government do these agencies operate? What is the broad structure of these agencies? Who are they responsible to? What are their broad objectives? What are the names of the most important industry associations or groupings of industry players? Do national, state, regional or local governments have an ownership interest in firms providing [road freight/road passenger/taxi] services? What is the extent and purpose of that state ownership?*

The central body of the state administration for transport is the Ministry of Transport and Communications. The Ministry is responsible for the preparation of legal regulations, for corresponding tasks in negotiating international agreements, and for carrying out tasks on behalf of the Czech Republic arising from international agreements in the area of transport.

The most important organisations in passenger road transport and road haulage are CESMAD Bohemia association, Sdru ení autodopravcu Cech a Moravy (Association of Carriers in Bohemia and Moravia) and Cech taxikaru (Taxi-drivers' Guild) Praha for taxi drivers. These organisations co-operate directly with central bodies of the state administration (i.e. Ministry of Transport and Communications, Ministry of Industry and Trade and Ministry of Finance) and also, to some extent, with municipal authorities.

The state and municipalities hold shares in several transport companies, especially those that provide public transport in towns and/or surrounding areas. Municipalities hold decisive shares in those companies to retain the possibility to directly influence decision-making processes in those companies because they are directly linked to the municipality's communal strategies. There are a few exceptions of municipalities holding shares in freight companies, parts of as yet unprivatized companies.

(1.2) *Are there important recent regulatory developments that should be noted or important facts in the history of the industry that affect the way it is currently regulated? If so, please give a brief summary of the history of the [road freight/road passenger/taxi] industry.*

Road freight transport and road passenger transport are not regulated. In the case of taxi services, the right of municipalities to pass bylaws setting limits to the rates charged by taxi drivers, or to request special exams that taxi drivers must pass, may be considered as a regulatory feature.

- (1.3) *What are the primary regulatory requirements that must be satisfied by a firm which wishes to provide [road freight/road passenger/taxi] services (whether local, regional, inter-state or international)? Is a license necessary to provide these services? What are the most important license conditions (e.g., financial standing, criminal history, insurance requirements and so on)? Is the quantity of licenses limited in some way? Does the licensing authority take into account “need” or “demand” before granting a license? Is there a time limit within which a license must be granted or denied? Do operators already in the market have any official role to play in the decision making process that leads to new entry? Are separate licenses required for the provision of different services? Which services? Are there limitations on the ability of one firm to hold more than one license? Is licensing restricted to individuals? Are licenses transferable? Can licenses be transferred on a geographic basis? Are there constraints on the ownership, organisational form or operation of the firm which holds the license? Is the validity of a license limited in time?*

In the case of passenger services is a regulatory distinction made between regular or scheduled and occasional services (such as chartered services or one-off excursions)? What are the different regulatory requirements in each case?

How is the coordination between different routes and time schedules achieved at the local level? Is there any coordination at the local level by different companies operating on different routes and by different firms operating different means of transportation?

Those who want to provide transport services need a licence, and applicants must meet basic legal requirements:

- to prove their technical and financial competence (does not apply to freight transport up to 3.5 tonnes total weight); and
- enjoy the so-called "good reputation"¹

There are no limits set to the number of issued licences for individual types of road transport. An application for licences must be submitted, and the matter is decided in an administrative procedure. The Code of Administrative Procedure² sets deadlines by which the administrative body must decide whether the licence can be issued (within 30 or 60 days from the date when the application was submitted). The carriers already operating on the market cannot interfere with the licensing procedure in any way. Licences are issued for three types of road transport: road haulage, road transport of passenger and taxi services. Any carrier may hold more than one licence. Both juristic and natural persons may apply for the licences. A licence cannot be transferred freely to another entity. The period of licence validity is not limited unless the licence holder requests it.

The difference between common carriers (transport regulated by time-tables) and carriers providing transport services irregularly lies in the fact that the former must be holders of a licence issued by the transport department of the district authority in the place where the carrier's route begins or ends, while the latter only need a authorisation issued by the Transport Authority.

- (1.4) *What are primary regulatory restrictions on the provision of new services or the expansion of existing services (whether local, regional, inter-state or international)? Is a license required to provide new services or expand existing services? Are there controls on the quantity of services that can be provided or the routes that they can be serviced? Is the quantity of licenses limited in*

some way? Does the licensing authority take into account “need” or “demand” before granting a license? Do operators already in the market have any official role to play in the decision making process that leads to new licenses being granted? Is there a time limit within which a license must be granted or denied? What other provisions do licenses control (such as capacity, routing, etc.)? What flexibility does a license holder have to change the services that he/she provides? Are there any constraints on withdrawing from the provision of a service? What are the criteria followed for deciding how many new licenses to offer?

In the case of taxi services, is a regulatory distinction made between taxis that can be hailed on the street, taxis hired at ranks and taxis ordered by phone? Are there limitations on the number or identity of taxis that can serve certain locations (such as a limitation on the number/identity of taxis that are allowed to pick up at a major airport)? Does taxi regulation differ municipality from municipality? Is there a national regulatory mechanism in place? Are there quality standards (colour, size, age, comfort etc.) to which a taxi has to comply? Are there limitations on the hours of operation of a taxi or are these limitations placed on each driver? How do you guarantee holiday or night services?

There are no primary limitations in the area of freight transport.

Taxis are not distinguished according to their mode of operation. There are no limitations to the number of taxis in a place. There are no orders defining the colour, size or age of taxis. The maximum time of car driving and the minimum period of rest are defined in the Ministry of Transport and Communications decree 187/1994 in its amended version. The provision of transport services on holidays or at night is not co-ordinated by the state or municipalities.

(1.5) *What are the primary regulatory controls on prices and/or quality of services? Are there limits on the prices that an operator can charge? Do these limits set a price ceiling or a price floor, or both? Is there provision for oversight, registration, rate-filing or approval of the prices charged? What is the objective of these regulations? Do professional bodies or associations have a role in setting the level of prices?*

In the case of passenger services, competition is sometimes restricted in the provision of certain services, granting the incumbent a local monopoly. Is competition restricted for certain services? In these cases how is the service provider chosen? What constraints are placed on the flexibility of the service provider to adjust prices or services? Are some services subsidised? How is the level of subsidy determined?

Neither guilds nor associations exercise any control over the freight transport prices. In the case of taxis, it is possible to set maximum fares. Ceska obchodní inspekce (Czech Trade Inspectorate) and appropriate departments of municipal authorities are responsible for overseeing the compliance with the price regulations. Price regulation was introduced (in the transition period) to ensure adequate range of transport services at affordable prices. The Taxi-drivers Guild plays only a consulting role in this case.

The domestic market of bus passenger transport is mostly regional in character, and the companies that hold a dominant position in individual regions are usually privatised branches of the former state-owned common carrier CSAD. A more competitive environment exists in inter-city and inter-region bus transport. On those routes, transport is usually provided by several carriers with different quality of services and at different prices, which is made possible by the existing price regulatory framework (regulated fares). In bus transport, competition problems have occurred mainly with respect to the operation of bus terminals, and the Office for the Protection of Economic Competition has looked into

some cases of the abuse of a monopoly position on the part of companies operating bus terminals in Prague and Pilsner.

The continuing regulation of fares remains a factor that reduces the interest in operating regular bus services. A more substantial development of the competitive environment is blocked by subsidies paid to routes operating at a loss, which means that no licences to other carriers are issued. Transport authorities may award a licence on the condition that the licensee will also operate some other routes or promises to provide public services whereby his losses would be compensated. The environment is not very competitive. Roads and the infrastructure are fully in the hands of the state.

Taxi services have some special characteristics. Because of negative experience of passengers being overcharged in certain profitable locations, the possibility of a price regulation was introduced, whereby the maximum fares would be set. The ceiling can be regulated by municipalities. A number of regulatory features limited in scope have been introduced, and their implementation helps to gradually increase the quality of services provided. As far as taxis are concerned, competition problems occur mainly in relation to regulatory measures whose objective is to make a rational use of scarce taxi stands for taxi services in some large cities and in particular in spas. The environment is very competitive because of the large number of competitors and low capital investment requirements.

(1.6) What are the primary controls on international trade in road freight/passenger services? Are there controls on foreign ownership of road freight/passenger companies? Are there controls on foreign companies providing services to or from your country? Are there controls on foreign companies providing services within your country (i.e., cabotage)? Are there controls on the quantity, routing or prices of international services? How are these controls determined?

Is it necessary to harmonise certain international regulatory controls in order to facilitate international trade in transport services, or is it sufficient for each jurisdiction to enforce its own laws on its own territory? If harmonisation is necessary, which features should be harmonised? (vehicle weight, dimension and loading rules? driving time rules? emissions standards?) Is it necessary to harmonise vehicle registration charges or taxes?

The Ministry of Transport and Communications does not investigate who owners of Czech transport companies are. Non-domestic road transport operators are treated in compliance with an agreement on road transport between the two corresponding states (provided such an agreement has been made), or according to the domestic law it does not exist. In agreement with those regulations, the length of the driving and resting periods, transport permission, e.g. for cabotage and the maximum permitted dimensions and weight of the vehicle are examined. Goods carriers have the number of trips checked at the national borders before the vehicles enter and exit the Czech Republic.

As a member of the UN European Economic Commission, the Czech Republic actively co-operates in the introduction of uniform regulations for the length of driving periods for drivers of motor vehicles and rules for weights, dimensions and technical parameters (including emission limits of motor vehicles). Regulations passed in this way are incorporated in legal regulations of the Czech Republic. Moreover, the Czech Republic is bound by the European Agreement to ensure a full compatibility of its law with the EU law in that area. In 1999, the Ministry of Transport and Communications prepared the largest number of bills and amendments of existing statutes to date with the objective of harmonising the Czech law with the community law. The Czech Republic expects that the harmonisation of the laws in transport will be completed by the year 2000.

1.2 *Market Outcomes*

- (1.7) *What is the market structure of the [road freight/road passenger/taxi] sector? How many firms are active? What are their market shares and the various relevant markets? Are there any important linkages (such as ownership linkages) between the firms active in this sector, or active in related sectors such as the rail, air, bus or coach sectors? Are there limitations on the number of vehicles (or total tons) each firm operates? Are there limitations on foreign ownership?*

2. **Freight**

New laws passed after 1990 marked the maximum liberalisation of access to the market. In the case of transport, it was particularly true about road transport (the market is now supplied by over 45 000 haulage contractors) and in inland waterway transport (currently about 480 carriers). The number of trucks (excluding special trucks) has shot up by more than 70 percent since 1990 to reach the present figure of almost about 268 thousand vehicles. The proportion of combined transport is low (4 per cent of the total rail transport compared with ten to 30 percent on west European railroads).

3. **Transport of persons**

Taxi services are currently provided by almost 8 000 entities with over 11 000 vehicles. In regular bus services, the turnover has dropped by more than 50 percent since 1990. (The number of buses and minibuses was about 19 thousand at the end of 1999). There are about 35 000 entities providing regular or irregular bus services.

- (1.8) *What was the outcome of liberalisation that has been undertaken in the last ten years? What was the effect on prices, quantities and employment in this sector? Did liberalisation have an effect on the share of “own account” transport or on the modal share (i.e., the share of road transport compared with air or rail)?*

4. **Freight transport**

The turnover of the road transport sector increased 2.5 times at the expense of rail transport, whose turnover dropped by 50 percent. In the same period, the turnover of waterway transport was also almost halved (its share in the transport market is, however, less than two percent). In 1998, road transport turnover dropped for the first time from 1990 (by 15 percent compared with 1997). In the next year, i.e. in 1999, the turnover of road transport began to show an upward swing again (particularly thanks to international transport). The trend continued until the first quarter of 2000. The total growth of the road transport turnover since 1990 has exceeded 120 percent. The rail transport turnover dropped last year by 11 percent, with the overall decrease since 1990 being about 60 percent. In the first quarter of the year 2000, rail transport showed increase for the first time since 1990. The turnover of air transport has been growing steadily.

5. **Passenger transport**

Between 1990 and 1999, the demand for passenger transport dropped by 50 percent, with municipal public transport recording a drop of a quarter of that size (i.e. about 13 percent). From 1990 to 1999, the number of passenger cars increased by about 50 percent to reach a total of almost 3.5 million

automobiles. A particularly critical situation from the environmental point of view is in the country's capital, where there is one automobile per two inhabitants.

Compared with previous years, the utilisation rate of means of transport has decreased significantly, when 87 percent of busses on workdays operate below the break-even point. On weekends and holidays, their utilisation rate is about 80 percent. Rail passenger transport has also decreased significantly (by about 35 percent) since 1990. Growth trends have only been shown in air transport: the number of passengers there increased by over 100 percent compared with 1993.

According to the latest census, the traffic load on the roads in 1995 was 26 percent higher than in 1990. The highest increase was on motorways (an increase of up to 34 percent). Transit transport and the number of vehicles on border crossings increased considerably. Between 1990 and 1997, transport turnover calculated for the transport of goods as a whole increased slightly (by about five percent).

5.1 Competition Law Enforcement

- (1.9) *Does the competition law apply to the [road freight/road passenger/taxi] transport sector without exemption or exception? What is the nature of and reason for any exemptions or exceptions? Who administers and enforces the competition law in this sector? Does the competition agency have responsibility for enforcing sectoral rules in this sector? What is the nature of the relationship between the competition authority and the sectoral regulator in this sector?*

The protection of economic competition in the Czech Republic is governed by Protection of Economic Competition Act 63/1991 Coll., as amended by Acts 495/1992 Coll. and 286/1993 Coll. (the "Act"). The Act is relevant for all types of transport without any limitations or exceptions. Competition in bus transport is excluded by law in cases where transport services on a specific bus route are provided by a subsidised carrier. The institution responsible for the protection of economic competition in the Czech Republic is the Office for the Protection of Economic Competition (the "Office"). The Office is a regulatory body in matters of competition and it is not authorised to implement rules and regulations specific to transport. The Ministry of Transport and Communications is the regulatory body for transport-specific matters. Competencies of the two bodies do not overlap, and if industry-specific rules and the Act are to be used for a specific case in parallel, the former are viewed as a *lex specialis* in relation to the latter.

- (1.10) *Have you considered mergers or concentrations in this sector? What relevant markets were identified? What was the scope of the geographic market? Have you opposed any mergers? What remedies were proposed?*

The Office examined a merger between ICOM transport, a. s. and CSAD Pelhrimov, a. s. The two companies operate on the following relevant markets: regular public transport, road haulage, transport agency (forwarding). From the geographical point of view, their public transport markets were the Jihlava district (ICOM transport) and the Pelhrimov district (CSAD Pelhrimov). The share of the two companies after a merge exceeded 50 percent. Also investigated was the transport of goods, and the result showed that the two merging companies had a less than five percent share on the market of the Czech Republic.

No merger has been banned to date, and no conditions were set in the decisions of the Office.

(1.11) *Have you addressed concerns involving horizontal arrangements in this sector? Have anti-competitive arrangements been prosecuted? Have you found cases of collusive tendering or bid-rigging? Have you cleared certain horizontal arrangements on the basis of their efficiencies and/or pro-competitive effects? Have certain forms of collaboration or joint-ventures emerged in this sector?*

The Office conducted an administrative procedure in the following cases of horizontal agreements of carriers

- Taxicech Karlovy Vary. This voluntary association of carriers of persons and goods from the Karlovy Vary district made an agreement with the city of Karlovy Vary defining conditions for providing services in the centre of the city. In the agreement, the association promised to maintain uniform prices, which the Office characterised as a decision of an association of entrepreneurs that is harmful to economic competition on the market with taxi services in Karlovy Vary.
- In 1996, the Office conducted, on the basis of a complaint submitted to it, an administrative procedure against the Association of Automobile Carriers CESMAD Bohemia. That Association had been authorised to act as the guarantee association for the TIR convention, and to issue TIR passes to carriers. CESMAD applied different terms and conditions when issuing the passes and guarantees members and non-members of the association, and, moreover, CESMAD's Articles of Association stipulated that the membership in the association cannot be claimed by law. The appeal body cancelled the decision because no specific impact on competitive environment was conclusively demonstrated.

The Office has not conducted any procedure to date for collusive tendering or bid rigging. Neither has it conducted any procedure for a permission of a horizontal agreement for road traffic entered into in order to increase the agreement effectiveness or its anti-competitive effects. To the best of the Office's knowledge, there is no co-operation between competitors in the form of joint ventures.

(1.12) *What experience do you have with abuse of dominance in this sector? Have you required access to an "essential facility" such as a bus station in an urban area? What cases or predatory pricing have you addressed? What principles have you followed when determining whether a particular competitive response is predatory?*

The Office has examined the following cases of abuse of dominant position:

- Dopravní podnik hlavního města Prahy, a. s. This company is a monopoly operator of public transport in the national capital, Prague. An administrative procedure against the company was opened because it was alleged that it had been enforcing unreasonable conditions and applying different conditions to different contract carriers that provided regular or substitute transport of passengers and substitute bus services. Having examined the case, the Office found that the prices in the agreements were different, and so were the scopes of services provided under the agreements. The price asked for comprehensive services in providing substitute bus transport in special situations when it was necessary to provide an alternative means of transport instead of suspended transport by rail was higher than that for regular transport of passengers. Neither did the Office agree with the allegation that unreasonable conditions were enforced because the company in question had concluded a number of agreements containing similar conditions and none of the parties, with the exception of the

applicant, considered them unreasonable. The Office also failed in establishing any coercion in making the agreements.

- A company providing bus services and at the same time operating the Central Bus Terminal in Pilsner did not make it possible, without any objectively justifiable reason, for one of the coach operators on the Pilsner – Prague line to use a part of a platform for his coaches that would be comparable in quality to the sites allocated to other operators. In this way, he put the said operator at a distinct disadvantage with other competitors on that line. The Office concluded that that behaviour of the bus terminal operator constituted an application of different conditions for the same or similar scope of services for different players on the market

The following is an example of an abuse of essential facility by the operator of a bus terminal that was also a direct competitor of other carriers:

- CSAD ÚAM Praha Florenc, a. s. is the operator of a large bus terminal in the centre of Prague. An administrative procedure against this company was started because it applied different conditions for the same scope of services, i.e. it charged different prices for the use of platforms to domestic and international operators.

The Office has conducted no administrative procedure for predatory pricing yet.

IRELAND

1 Road Freight Services

1.1 *The Regulatory Regime*

(1.1) Road freight was, until the mid-1980s, subject to considerable restrictions. The Road Transport Act (1933) restricted the operation of road freight for reward, other than in small areas adjoining the major towns and cities, to persons providing such services prior the passage of the legislation. The Act also provided for the acquisition, by compulsory purchase orders if necessary, by railway companies of such hauliers. The Act was specifically designed to restrict competition in order to protect the railways.

Partial liberalisation of road freight began in 1971. Opposition from license holders delayed full liberalisation for more than a decade. The Road Transport Act (1986) provided for the replacement of existing carriers licenses, restricted road freight and road freight certificates by a new Carriers' Licence. The new licenses have no restrictions as to their area of operation, the type of goods carried and the number of vehicles which can be operated by a license holder. The new licenses were phased in over a two-year period with full liberalisation from 30th of September 1988. The number of licensed hauliers increased from 766 in 1985 to 4 208 today.

Only operators wishing to engage in hire and reward are required to obtain a license, own account operators are not. Responsibility for aspects of the own account and hire and reward is split between the Department of Public Enterprise and the Department of Environment and Local Government. Within the Department of Public Enterprise the Road Haulage Division is responsible for road freight services and it operates at departmental level reporting to the Minister for Public Enterprise. The broad objective of the Road Haulage Division is to ensure regulatory compliance. Within the Department of Environment the Vehicle Standards Section deals with policy matters relating to all vehicles not just road haulage, it has a staff of seven and reports to the Minister for the Environment.

The sector database on licensed operators, held by the Department of Public Enterprise, is confined to the hire and reward sub-sector reflecting the current regulatory set up. Of significance is the fact that own account operators are not required to specify the nature of their business when registering vehicles. Thus, there is no check at the time of registration of whether such vehicles may be involved in unlicensed hire and reward activities. Another feature of the Irish regulatory system is that the consignors are responsible in law for ensuring that the hauliers are licensed but they are not responsible for overweight vehicles.

There has been significant investment by commercial semi-state bodies in aspects of the road haulage sector. In general, the market does not see competition from the semi-states as a threat, though this may not be the case in some market sub-sections. Irish Rail operates an express parcel services, a container service and a road freight service. An Post (The Post Office) operates an express parcel service.

The most important industry associations are The Irish Road Haulage Association, The Institute of Freight Forwarders, and the Chartered Institute of Transport in Ireland.

(1.2) The only recent regulatory development in this sector is the recent publication by the Department of Public Enterprise of a strategic review of the Irish road haulage industry, "A Strategy for the Successful Development of the Irish Road Haulage Industry". Amongst the recommendations made is a proposal to change the legal/regulatory/policy environment. While researching the report two aspects of the industry were raised again and again. One is the belief that there are a significant number of unlicensed hauliers who are engaged in hire and reward. Secondly, there is a widely held belief that non-compliance with weight restrictions is extensive. Both issues have implications for the credibility of regulation and for competition.

(1.3) Any organisation wishing to carry goods for hire or reward in a vehicle or combination of vehicles the maximum authorised weight of which is in excess of 3.5 tonnes must obtain a "Road Freight Carrier's License". If the organisation only engages in own account haulage a Carrier's License is not needed. A national road freight carrier's license entitles one to carry on a haulage business within the State only. This type of license lasts for five years and currently costs IR£55 (69.84 euros) plus IR£75 (95.23 euros) per truck. In addition, the organisation transport manager must have a certificate in professional competence. These licenses are not transferable.

An international road freight carrier's license comes with a Community Authorisation and a certified copy of the authorisation for each truck. International Licenses and Community Authorisation are issued for five years and currently IR£55 (69.84 euros) costs plus IR180 (228.60 euros) per truck. In addition, the organisation transport manager must have an international certificate in professional competence. These licenses are not transferable.

Applicants for a carrier's license must (a) be of good repute (b) satisfy professional competence and (c) be of appropriate financial standing. These are EC requirements and they must be satisfied at all times during the currency of the Carrier's License. Failure to satisfy any or all of the conditions can lead to the revocation or suspension of a Carrier's License.

(1.4) Other than the above conditions the market is relatively deregulated. The quantity of licenses is not limited, the Road Haulage Division does not take into account need or demand before granting licenses and incumbents have no role in the decision making process with regard to new licenses. No restrictions are placed on the provision of new services by incumbents or on the routes they can service. Furthermore, there are no constraints on the withdrawal from the provision of services by a license holder.

(1.5 and 1.6)

There are no limits on the price or the quality of the service provided by hauliers. And there are no controls on foreign ownership of road freight companies. Nor are there controls over the provision of services in Ireland by foreign hauliers. We have no comments on the necessity to harmonise international regulations

2. Market outcomes

(1.7) The Competition Authority has not undertaken an examination of the road haulage sector. The Department of Public Enterprise's strategy document concluded that the Irish road haulage

industry is operating in an environment that is characterised by a very competitive market with resultant pressure on margins. The reflect demand and supply side factors.

On the demand side:

- “Time” has become a critical issue in the management of organisations and places ever increasing demands on hauliers for improved response times.
- Increased product ranges and product differentiation are leading to smaller and smaller shipments and higher frequency of deliveries.
- Rationalisation of the logistic chain and the need for specialist logistic services are also squeezing hauliers.

On the supply side:

- The ease of entry into the market reflects national and international deregulation, this one factor is of fundamental importance in understanding the competitive nature of this market.
- The Irish road haulage sector faces intense competition due from Northern Ireland based hauliers.
- Licensed hauliers in Ireland face competitive pressure from non-licensed/illegal hauliers.

These factors have resulted in a situation where freight charges are seen to have remained static despite the fact that input costs are on the rise. This would suggest that liberalisation of the market has created pressure towards greater efficiencies and eliminated monopoly rents.

There has been significant investment by commercial semi-state bodies in aspects of the road haulage sector. In general, most of the market does not see competition from the semi-states as a threat, but this may not be the case in some market sub-sections. It has been noted that this involvement ought to operate on a strictly commercial basis and measures are put in place to ensure that there is no cross subsidisation.

(1.8) The road haulage market in Ireland was fully deregulated in 1991 and greater competition in the road haulage market followed as a natural consequence. Currently there are approx. 4000-licensed road hauliers in operation in the Irish market, in many cases operators may have only truck on the road. As was noted earlier the impact of deregulation was to improve the level of competition in the market to such an extent that price have remained static despite hauliers experiencing a rise in costs. Unfortunately, no records are kept on the impact of deregulation upon the share of own account transport or on the modal share of road transport compared with rail.

Number of licensed hauliers:		
1985	1988	2000
766	1302	4208

The Central Statistics Office carried out the most recent Road Freight Transport Survey in 1994. At that time it was estimated that 84 587 tonnes of goods were move by road in 1994, with goods vehicles

travelling an estimated 829 million kilometres. Total activity in terms of tonne-kilometres (the quantity of work done) was estimated at 5 258 million which corresponds to an estimated 6 410 thousand loaded journeys. Vehicles owned by Transport undertakings carried out 61 percent of activity in this sector measured in tonnes-kilometres. Alternatively one could consider the main use of vehicles classification which showed that vehicles used mainly for own account carriage accounted for 35 percent of tonne-kilometres. This measure is independent of the business of the owner of the vehicle. Looking at the analysis of length of haul it would appear that 46 percent of tonnes carried in 1994 were on trips on less than 25 kilometres. Trips over 150 kilometres accounted for almost ten percent of the total tonnes carried.

Length of Haul	Tonnes Carried 000's	Tonnes Carried %
Up to 10 km	16,846	19.9
11 – 25 km	22,214	26.3
26 – 50 km	17,190	20.3
51 – 150 km	20,027	23.7
151 – 500 km	7,620	9.0
Over 500 km	689	0.8
Total	84,587	100

Information is also provided on the unladen weight of vehicles. Goods vehicles in the ten – 12.5 tonnes unladen weight category carried out approximately 49 percent of total activity.

Unladen Weight	Tonnes-Km Million	Tonnes-Km %
2 - 5 tonnes	337	6.4
5 - 7.5 tonnes	621	11.8
7.5 – 10 tonnes	903	17.2
10 – 12.5 tonnes	2,553	48.6
12.5 tonnes and over	845	16.1
Total	5,258	100

2.1 *Competition law enforcement*

(1.9 and 1.10)

In Ireland competition law applies to the road freight sector without exemption. As with other sectors in the Irish economy the Competition Authority enforces competition law. The Road Haulage Division in conjunction with the Irish police force enforces sectoral rules. The two bodies are unrelated, as their roles do not overlap. The Competition Authority has yet to consider a merger in this sector which is not surprising given the number of licensed hauliers.

(1.11) The only case concerning this sector was in May 1997. The Director of Competition Enforcement began an investigation into a possible cartel in the road haulage industry following complaints that the Irish Road Haulage Association (IRHA) had written to various firms indicating that the IRHA members had agreed minimum rates for the transport of freight to and from Dublin Port and would not provide services to any customer at rates below these levels. On these grounds the Authority officers carried out a search of the IRHA offices on the 22nd of May 1997. In early June

1997 a large number of hauliers began a blockading sections of Dublin Port. The Authority applied for an ex parte injunction against the IRHA and a number of individual hauliers on the 6th of June 1997, because it believed that the blockade was intended to secure customers' agreement to the proposed rates. An injunction was granted and was subsequently lifted when the defendants gave undertakings not to engage in any further blockade, pending a full hearing of the case.

The Authority's case against the IRHA and other defendants began in the High Court on 20th of October 1998. The action was settled on the 27th of October 1998 when the defendants agreed to a Court declaration that they had engaged in a concerted practice to fix prices for road haulage services to and from Dublin Port between January and June of 1997. The defendants also gave undertakings to the court that they would not engage in price fixing contrary to Section 4(1) of the Competition Act and they would not engage in the blockading of Dublin Port and the surrounding areas in order to achieve any increase in process for haulage services. The IRHA also agreed to an order for costs in favour of the Authority.

(1.12) We have no experience of abuse of dominance cases in this sector, nor have we experienced cases of predatory pricing. We have not required access to an essential facility in this sector. Again, this is not surprising given the number of licensed hauliers in operation.

3. Road Passenger Services in Ireland: Municipal Bus Services and Inter-city Bus Services

3.1 The Regulatory Regime

(1.1 and 1.2)

The Road Transport Act of 1932 is the main piece of legislation governing the regulation of bus services in the State. The Act provides for the control and regulation of bus services and created a monopoly for the State owned transport companies. The 1932 Act was designed primarily to protect the railways. In the six years following the passage of the 1932 Act 1 098 independent bus companies were eliminated, mainly by compulsory acquisition powers contained in the Act.

The Road Transport Act of 1950 amalgamated the railways companies and most of the remaining bus companies operating within the State into a single state sponsored company Coras Iompar Éireann (CIÉ). In 1986 CIÉ was restructured as a holding company with three subsidiary companies which operate transport services. The three CIÉ operating companies are:

- Iarnród Éireann (Irish Rail). Irish Rail is responsible for rail services through out the state.
- Bus Éireann (Irish Bus). Irish Bus operates inter-city bus services and municipal bus services in a number of cities except Dublin.
- Bus Átha Cliath (Dublin Bus). Dublin Bus operates bus services in the Greater Dublin Area.

Bus Eireann and Bus Atha Cliath are the dominant bus operators in the State. As CIÉ is fully owned by the State, the State is currently an indirect owner of Bus Eireann and Bus Atha Cliath. CIÉ is mandated with providing a universal transport service but it has the discretion to decide what level of service is required and where. CIÉ uses its protected position on profitable routes to generate revenues with

which to cross subsidise non-commercial routes. At present Dublin Bus and Irish Bus cannot compete for business in each other's territory as they are prevented from doing so under the 1986 Transport Act.

CIÉ falls under the aegis of the Public Transport (Operations) Division within the Department of Public Enterprise and is answerable to the Minister for Public Enterprise. The broad objective of the Public Transport (Operations) Division is to implement policy relating to the road passenger transport market.

Under the Transport Act 1986, Dublin Bus is charged with providing 'a passenger service by road for the city and county of Dublin and contiguous areas'. Generally speaking, the Dublin Bus zone correlates to the metropolitan area as defined in the Strategic Planning Guidelines for the Greater Dublin Area (essentially the built up area of the GDA). However there are some exceptions where Dublin Bus provides service outside that area. CIÉ does not require a licence under the 1932 Road Transport Act to provide its services.

The Road Transport Act of 1932 requires the Minister for Public Enterprise, in considering an application for a licence, to have regard to whether the proposed bus service "is required in the public interest having regard to the passenger road services and other forms of passenger transport available to the public on or in the neighbourhood of the route of the proposed service." The Act does not prohibit the Minister from licensing transport operators other than Dublin Bus and Irish Bus to provide bus services both within and outside Dublin. In practice, however, it has been presumed that Dublin Bus provides an adequate service in the metropolitan area and Dublin Bus therefore operates a de facto monopoly in the provision of bus services. Only seven private operators currently hold valid licences for routes in the Dublin Bus zone.

Outside the Dublin Bus zone but within the GDA, Irish Bus provides services on a number of commuter routes. However, there are also a few instances where Irish Bus provides services on routes which would normally be considered to be part of the Dublin Bus network. Like Dublin Bus, Irish Bus does not require a licence to operate its services. Only ten private operators have been licensed in this part of the GDA, which means that Irish Bus effectively enjoys an effective monopoly in this area.

At present the DOPE is considering issuing further licences under the Road Transport Act 1932. Under the new approach, if an application is made for a route in the GDA which is in line with the network recommended by the Bus Network Review and which is not currently being serviced by either Dublin Bus or Irish Bus or a licences operator, then that license may be granted. Licences are to be restricted to one operator per route.

(1.3) In general a "Road Passenger Transport Operator's Licence" is required to carry passengers by road for hire or reward in vehicles that carry more than nine persons including the driver. Exemptions are made for schools, voluntary organisations and the like. Carriers who operate exclusively within the State need a national license while those who wish to carry passengers abroad must hold a community license. Applicants must (a) be of good repute, (b) satisfy the requirement of professional competence and (c) be of appropriate financial standing. A fee of IR£80 (101.60) is charged per license application. CIÉ is exempt from the licensing procedure. The conditions governing this sector are, in the main, set out in the Road Transport Act 1932. There is no limit on the quantity of licenses. Need is taken into account before granting a license. There is no time limit within which a license must be granted or denied. The incumbent has an indirect role to play in the decision making process that leads to new entry as a license will not be granted for a route if the incumbent already services the route. Regarding inter-city bus services, if the proposed route is scheduled an hour or more away from the existing Irish Bus service the license will be granted. This is of concern as it puts Irish Bus in a position to block entry. Irish

Bus has no input when the DOPE considers routes not serviced by Irish Bus. A separate license is required for each route but there is no limit on the number of licenses an organisation can hold. Licenses are non-transferable and restricted to individuals/organisations. Under the Road Transport Act 1932 constraints may be imposed on organisational form and operational form (terminal points, frequency, daily duration, number of vehicles, etc.) of the firm which holds the license. All licenses are issued and renewable annually. The 1932 Act does draw a distinction between scheduled and occasional services. An occasional service is defined as “a passenger road service which is carried on only one or more specified occasions”. Scheduled services require a license for each given route whereas occasional services only require a single license for a number of specified services. This loophole in the main legislation has allowed for the formation of travel club which enable service providers to side step the 1932 Act. Given that Dublin Bus and Irish Bus are both owned by CIE co-ordination of services is achieved within the organisation.

- (1.4) The primary restriction on the provision of new services is that all organisations bar Irish Bus and Dublin Bus must seek a license for a new service. A license will be refused/granted on the following grounds:
- a) Where the Minister considers the proposed service to be inefficient with due regard to the requirements of the public.
 - b) Where the Minister considers the existing service is not sufficient to meet the requirements of the public. (“Need” is taken in to account).
 - c) Where the Minister considers the organisation making the proposal is not able to meet the conditions of the license.

Given that the 1932 Act allows the Minister to attach conditions to a license the quantity of services may be limited. Furthermore, the quantity of licenses may be limited. The incumbent does not have role to play in the decision making process that leads to the granting of a new license bar the one hour rule. No time limits are attached to the decision making process. The other provisions controlled by licenses are as outlined above. The license holder has no flexibility to change the service once a license is granted. There are no constraints on the withdrawal of services.

- (1.5) The primary regulatory controls on price and/or quantity of services are set out in the 1932 Act. The Minister may impose conditions with respect to “the frequency of a service including variations of such frequency on different days or at different periods of the same day” and “the daily duration of services”. The Act also allows the Minister to impose a scale of maximum charges (a price ceiling). The DOPE must approve price changes. No other body has a role in the setting of prices. CIÉ has a virtual monopoly in the provision of bus services within the GDA and is dominant in the provision of bus services in the state. In the past competition was restricted as there was a presumption that once CIÉ serviced a route it was serviced efficiently. Today the situation is different, as that same presumption is no longer made as licenses may be granted on routes serviced by CIÉ. That said, there have only been a few licenses issued to date. CIÉ is subsidised by the State.
- (1.6) The primary controls on international trade in passenger services are as per domestic services. There are no controls on the foreign ownership of road passenger companies. The same conditions apply as per domestic operators. We have no comments on the need or otherwise to harmonise international regulations.

3.2 *Market Outcomes: Municipal Bus Services*

The model currently applied in the GDA and other municipal areas of the State is that of a regulated monopoly, where a publicly owned company is charged with the effective operation of the entire system in each of the two market zones described. The only forms of competitive pressure are indirect i.e. each company can either compare its current performance with its past performance or it can benchmark itself with other bus operators. (No evidence has been presented that either Irish Bus or Dublin Bus has ever benchmarked its own operations vis-à-vis its sister company.) In any case, these forms of competitive pressures, being less direct, are less likely to incentives optimum efficiency.

Given that the overwhelming majority of public transport services in the GDA are provided by the three CIÉ operating subsidiaries, one would expect a high level of integration between the various services. Unfortunately, apart from some level of integration between Dublin Bus and Irish Rail, considerable scope remains for further co-ordination of services.

A recent DOPE document "Regulation of the Bus Market in the Greater Dublin Area" sets out the Department's vision for the future regulation of municipal bus services in Ireland, not just in the Dublin area. The report favours competitive tendering/franchising. This is defined as "limited competition" where the public authorities define the public transport service to be delivered and invite tenders for its provision by operators tendering on an equal basis. The winning tenderer will either make a payment to the State to operate the specified bus service on an exclusive basis or receive a subvention. Contracts or franchises grant exclusive rights for particular routes or geographic areas to the winning candidate and the contracts are for a fixed duration. Additionally, it will be important to ensure that any statutory restrictions, which unnecessarily inhibit the area of operation of the State-owned companies, are removed, once all operators compete for tenders on an equal basis.

At present, Dublin Bus and Irish Bus have a de facto monopoly in respect of municipal bus services in Dublin and other major cities. It may be that indeed providing the best possible service in exchange for the level of subsidy available. However, as the current model permits little or no competitive pressure to apply, it is very difficult for policy-makers to feel confident that this is indeed the case. Doubt less this situation is reflective of other municipal area in the State

(1.7 and 1.8)

The market is a de facto monopoly. The linkages between the firms active in this market and related markets have been set out above. There are no limitations on foreign ownership of licenses. There may be limits on the number of vehicles a firm can operate on a given route. Only modest liberalisation has been under taken in the past ten years.

3.3 *Market Outcomes: Inter-city Bus Services*

(1.7) The situation in respect of inter-city bus services is rather different to that for municipal bus services. Irish Bus faces competition from only ten licensed small operators. However, this ignores unlicensed travel clubs who can compete effectively against Irish Bus on a large number of routes. It is accepted that private bus operators and travel clubs generally charge much lower fares than CIÉ. Since the 1980s private bus operators, taking advantage of the legal loophole, have emerged to provide growing competition for Irish Bus on long distance services. Today there are many private bus operators offering multiple daily services to and from Dublin, and linking regional centres with one another. No information is kept on market shares. Nevertheless, revealing data is kept on passenger journeys and the number of buses in operation.

Year	Passenger Journeys on Long Distance Scheduled Services ³ (000's)	Total Number of Buses Licensed
1987	43,879	3,519
1988	42,524	3,701
1989	43,060	3,834
1990	43,206	4,047
1991	43,860	4,388
1992	44,434	4,557
1993	44,618	4,835
1994	45,120	4,974
1995	44,452	5,267
1996	44,125	5,522
1997	43,189	5,842

Source: Statistical Abstract 1992 and 1998/9 by the Central Statistics Office of Ireland.

It is clear from the above table that since 1987 the number of passenger trips on long distance schedule service has remained fairly constant but the number of buses in service has actually increased. This is reflective of a growth in private sector operators offering non-scheduled (i.e. travel club) services in direct competition with Irish Bus as the above passenger number do not take into account travel clubs. More revealing still is the dramatic increase in the number of buses in operation with a seating capacity between 21 - 26 and 27 - 32. The number of buses in this category has mushroomed since 1987. Both Irish Bus and Dublin Bus have almost 900 buses each indicating that there are approximately 4 000 buses outside the CIÉ network. Taking the 1997 data it can be seen that there are almost 1 800 buses in operation with a capacity in excess of 21 passengers, an increase of 1 000 in ten years. It can be safely assumed that the vast majority of these additional 1 000 non-CIÉ buses are operating in the non-scheduled (i.e. travel club) services sector.

Year	Capacity 9-14	Capacity 15-20	Capacity 21-26	Capacity 27-32	Capacity Over 32	Total
1987	630	340	77	70	2,402	3,519
1988	717	422	101	61	2,400	3,701
1989	746	496	134	81	2,377	3,834
1990	788	559	168	94	2,438	4,047
1991	868	684	226	108	2,502	4,388
1992	901	772	374	112	2,498	4,557
1993	954	856	339	121	2,565	4,835
1994	945	877	440	129	2,583	4,974
1995	1,030	967	509	174	2,587	5,267
1996	1,049	1,043	587	181	2,662	5,522
1997	1,092	1,175	636	221	2,718	5,842

Source: Statistical Abstract 1992 and 1998/9 by the Central Statistics Office of Ireland.

- (1.8) Only modest liberalisation has been under taken in the past ten years. However, a recent policy document from the Department of Public Enterprise set out the Government's vision for public transport. It is proposed that the public transport market will be opened up to private participation as a way of better exposing it to market forces, improving quality and efficiency, increasing attention to customer requirements and reducing the cost of service provision. Furthermore, financial support from the state will be provided on a contractual basis, specifying the payments to be made for a defined quantity and quality of service. Such contracts will be awarded by competitive tender wherever possible ensuring better transparency and allocation of resources.

3.4 Competition Law Enforcement: Municipal Bus Services and Inter-city Bus Services

(1.9 and 1.10)

Competition law does apply to the bus services sector but the licensing regime as per the Road Transport Act 1932 is exempt. As with other sectors in the Irish economy the Competition Authority enforces competition law. The Public Transport (Operations) Division of the DOPE enforce sectoral rules. The two bodies are unrelated, as their roles do not overlap. The Competition Authority has yet to consider a merger or concentrations in this sector.

(1.11 and 1.12)

Authority has not addressed concerns over horizontal arrangements or collusive tendering in this sector. A complaint has been made to the Competition Authority regarding abuse of dominance in this sector. The complaint is still with the Authority.

4. Public Services Vehicles (Taxis and Hackneys) in Ireland

4.1 Regulatory regime

- (1.1) The Department of the Environment and Local Government (Central Government) has responsibility for developing policies relating to public service vehicle (taxis, limousines and hackneys) regulation. The local (licensing) authorities (Local Government) have responsibility for implementing such policies. The main industry associations are the National Taxi Drivers Union, The Irish Taxi Drivers Federation, SIPTU, the National Hackney Drivers Association and the Irish Cab Drivers Association. There is no ownership interest in firms providing taxi/hackney services by either national, state, regional or local government.

- (1.2) The Minister for the Environment and Local Government has always exercised overall responsibility for policy on small public service vehicles. From 1933 until 1978 the Garda (Police) Commissioner dealt with most aspects of the public service vehicle licensing system in accordance with the provisions of Part VII of the Road Traffic Act, 1933 or regulations made by the Minister under the Road Traffic Acts, 1961 and 1968.

In 1978, responsibility for deciding the number of taxis to be licensed in taximeter areas was vested in local authorities, who were given discretion as to the numbers of new taxi licences to be authorised. Prior to that no restrictions were applied to taxi licence numbers. By the early 1990's almost no new taxi licences had been issued by local authorities under the system.

In 1991, the then Minister decided to suspend the empowerment to Dublin Corporation to determine the number of new public hire vehicle licences which could be granted in the Dublin taximeter

area. The Minister ordered that 200 new licences were to be granted. A criterion was introduced to be used by The Garda Síochána (the Irish Police Force) for the purpose of assessing applications made for the grant of those licences, and any licences to be granted in respect of other taximeter areas. This initiative saw the end of the open lottery system. It was also an attempt to give priority to drivers or those currently employed in the taxi business (other than holders of existing taxi licences).

In September 1995, Regulations (S.I. No. 136 of 1995) were made by the Minister which provided for the devolution back to local authorities of all the significant functions relating to the licensing of taxis, wheelchair accessible taxis and hackneys including:

- the grant and renewal of all licences;
- the creation of new taximeter areas and the alteration of the boundaries of existing taximeter areas;
- the determination of the number of taxis to be licensed in a taximeter area;
- decisions in relation to the maximum fares which may be charged by taxis and the fees to be paid for all licences;
- decisions not to issue hackney licences (moratorium).

Local authorities are responsible for determining the number of taxi and wheelchair accessible taxi licences which may be granted in their functional area, for monitoring the adequacy of the taxi service in their areas and for deciding on action to ensure that the demand for these services is adequately met.

Later a specific recommendation regarding identification of hackneys followed, some means of identifying hackneys was necessary to allow The Garda Síochána to enforce the public service vehicles (PSV) regulations in regard to hackney but also to act as a security measure for the identification of licensed hackneys by the general public.

The revised Action Programme for the Millennium made an explicit commitment to improving the Dublin taxi service through the introduction of measures to increase the number of taxi licences in Dublin as quickly as possible in order to ensure a better balance between supply and demand in the market. The Government determined that a sufficient number of new taxi licences should, as soon as possible, be issued to make good supply shortages in the Dublin taxi service. The proposed measures involve the offer of one additional taxi or wheelchair accessible taxi licence to each individual who held a licence at end 1999, as well as 500 further licences to be granted to applicants.

Court proceedings were initiated by a number of individuals in relation to the Government decision and a number of provisions contained in the PSV regulations. The Court has also granted an interim injunction preventing Dublin Corporation and Dundalk Urban District Council from granting taxi licences. Further implementation of the Government decision must await the outcome of the Court proceedings.

(1.3) The Road Traffic (Public Service Vehicle) Regulations, 1963 to 2000 provide for both the licensing of public service vehicles and of their drivers. Public service vehicles are divided into small public service vehicles (i.e. taxis and hackneys), which have seating accommodation for not more than eight persons excluding the driver, and large public service vehicles, which have seating accommodation for more than eight persons exclusive of the driver.

Local authorities are responsible for the granting of small PSV licences and the Gardaí are responsible for the granting of large PSV licences. A licence to drive public service vehicles, which apply in respect of small public service vehicles only, is granted by the Garda Commissioner.

Local authorities are also responsible for determining the number of taxi and wheelchair accessible taxi licences which may be granted in their functional area, for monitoring the adequacy of the taxi service in their areas and for deciding on action to ensure that the demand for these services is adequately met.

In the above regard they must publish a newspaper notice annually which includes a statement that they are satisfied that the number of taxis and wheelchair accessible taxis is adequate to meet all reasonable demands for such services or a statement of the action proposed to be taken by them to ensure that the demand for those services is adequately met. Operators in the market do not have any official role to play in the decision making process that leads to new entry. A separate licence is required for the operation of taxis, wheelchair accessible taxis, hackneys and limousines. There are no limitations on the number of licences which an individual or company can hold. Licences may be issued to individuals or firms and taxi licences are transferable. However, the transfer of such licences is only permitted within the taximeter area for which that licence was issued. The validity of taxi/wheelchair taxi/hackney/limousine licences is limited in time.

- (1.4) The primary regulatory restrictions on the provision of new services are contained in the Road Traffic (Public Service Vehicle) Regulations, 1963 to 2000 and the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963 to 1998.

In taximeter areas local authorities are empowered to make determinations in relation to the number of new taxi licences which could be granted, amend the licence fees and taxi fares set out in the Regulations, impose conditions on the operation of hackneys and at their discretion to apply a moratorium in relation to the grant of hackney licences. The regulations also provided that hackney licences could not be transferred. Local Authorities are required to publish an annual report on the operation of the 1995 Regulations which must include a statement that the authority is satisfied that the number of taxis and wheelchair taxis is adequate to meet all reasonable demands for such services.

In the context of certain functions, the Regulations require a licensing authority to consult with any other local authority whose area is included wholly or partly in the taximeter area. The functions concerned are the declaration of a taximeter area or the alteration of an existing taximeter area and the making of a determination for the grant of new taxi licences. In the case of an alteration to a taximeter area the agreement of the other local authority or authorities must be obtained.

- (1.5) At present, the taxi fare structure in Dublin is based on the single hire concept. The PSV Regulations provide that an individual "hirer" hires a taxi and that the taxi driver must, subject to certain conditions, comply with the instructions of the hirer (S.I. No. 191 of 1963 as amended by S.I. No. 273 of 1968). In addition, the fare structure is based on the fact that a single person hires the taxi and that additional charges are applied where extra passengers are carried (article 27 of S.I. No. 136 of 1995). However, local authorities are empowered to amend that structure. The maximum fares for taxi operations in Cork, Dublin, Galway and Limerick are set out in the Regulations. The fare is calculated by the time whenever the vehicle is standing or is travelling at not more than 7.5 miles per hour. The fare is calculated by distance whenever the vehicle is travelling at more than 7.5 miles per hour. Extra payments include; additional passengers, luggage, animals, unsociable hours, public holidays, pick-up-charge and a separate pick-up-charge when hiring is initiated at Dublin Airport.

Proposals by the two main taxi representative groups to introduce a taxi-sharing scheme in Dublin over the last Christmas period were not proceeded with. The report of the Dublin Taxi Forum, on which both of the organisations were represented, recommends that the Minister for the Environment and Local Government would consider amending existing regulations to allow for shared taxis. This work will proceed, *inter alia* in consultation with taxi groups. However, it involves relatively complex issues of personal safety, pricing, need to continue to accommodate single hiring, etc.

The criteria for determining the need for new licences are as follows:

- The number of vehicles under current licence as taxis and wheelchair accessible taxis in the specified area.
- The number of hackneys under current licences in the specified area.
- The size of the specified area to be served by taxis and wheelchair accessible taxis.
- Population of the specified area and the contiguous areas with an indication of the growth rate.
- Views expressed by public, by tourist and other interests and operators.
- The level of service available from appointed stands, both generally and at times of peak demand, bearing in mind that service can at any time be conditioned by weather and traffic conditions.
- Regular shortfalls in service at particular times or on particular occasions (e.g. race meetings, festivals, local functions etc.) having regard to the location of appointed stands.
- Tourist promotion.
- The availability of other forms of public transport.

(1.6) There are no controls on international trade in PSV services. The same regulations apply to both domestic and foreign owned PSV companies. We have no comments on the need or otherwise to harmonise international regulations regarding PSV's.

4.2 *Market Outcomes*

(1.7) The PSV market in Ireland is very fragmented with no firm holding a dominant position. No information is kept on the market share. That said, a clear indication that the supply of taxis is totally inadequate is the high price paid for the transfer of existing taxi licenses, which reportedly change hand for as much as £80 000 in Dublin. The high price for taxi license indicates that the business is divided up between a smaller number of suppliers than would be the case in a more competitive environment. In effect, taxi services are rationed and this manifests itself in consumers having to spend a long time waiting and, on occasions, not being able to obtain a taxi. It may be that individuals in the taxi trade are able to secure some share of the monopoly profits to be earned as a result of the restriction on competition. It seems more likely, however, that most of the gains would accrue to those individuals selling taxi licenses who have seen the capital value of the license rise over time as the demand for taxi services exceeded supply. In addition, the failure to increase taxi numbers has resulted in an on-going shortage of taxis at peak times

and has led to friction between taxi and hackney drivers, as the latter have sought to take advantage of the shortage in taxi number by offering competing services. Legally, hackneys cannot ply for hire, operate from taxi ranks or use telephone or radio in vehicles to initiate or facilitate a hire while the vehicle is in a public place. In practice, many hackneys appear to operate freely in a number of taximeter areas in direct competition with taxis. The hire is initiated by way of either a personal or telephone call to the base, while the vehicle remains parked on private property close by. Taxis and hackneys are in direct competition with one another, indicating that it may be time to abolish the distinction between them.

There are no linkages between the firms active in this sector and firms active in related sectors. There are no limits on the number of vehicles a firm can operate outside of the regulations outlined above.

(1.8) The liberalisation that was envisaged in the Action Programme for the Millennium sought to ensure a better balance between supply and demand in the market. However the court proceedings, which were initiated following the change in the PSV regulations, has stymied the liberalisation process.

4.3 *Competition Enforcement*

(1.9 and 1.10)

Competition law does apply to the PSV sector but the regulatory regime is exempt. As with other sectors in the Irish economy the Competition Authority enforces competition law. The Road Traffic Section of the Dept. in association with the relevant local authorities of the Environment and Local Government enforce sectoral rules. The bodies are unrelated, as their roles do not overlap. The Competition Authority has yet to consider a merger or concentrations in this sector.

(1.11 and 1.12)

Authority has not addressed concerns over horizontal arrangements or collusive tendering in this sector. Two complaints have been made to the Competition Authority regarding abuse of dominance in this sector. The complaints are still with the Authority.

ITALY

1. Introduction

The analysis of the legislative framework and the regulatory structure of the road transport sector in Italy is complex. This is due in part to the multiplicity of regulators which take part, at different levels, in the task of governing the sectors concerned, and in part to the fact that the regulatory reform process is far from being completed.

2. Regulatory Regime

2.1 *National road passenger service*

2.1.1 *General rules*

The law establishes that road passenger service providers must have a vehicle with a minimum capacity of 9 passengers⁴. Authorisations to provide the service can be granted only if the firms can prove that they are qualified from a moral, financial and professional standpoint.

2.1.2 *The licensing regime of scheduled and occasional services*

The provision of scheduled and occasional bus services on interregional routes is subject to a public-franchise system⁵. The franchise specifies the characteristics of the service (routes, timetables, tariffs). It also envisages what the possibilities are for the franchise holder to change terms and conditions of service provision and to withdraw from operating the service. It is granted by the Ministry of Transport upon request, following a public preliminary examination, which tends to ascertain, *inter alia*, whether the service is of public interest.

As far as the scheduled services are concerned⁶, the time limit within which a franchise must be granted or denied is 120 days from the request.

The franchise is not exclusive (even though, in practice, for most individual *routes* only one franchise contract is awarded). Before granting the franchise, the Ministry takes into account the interests of incumbent operators. The law does not envisage any limitation on the number of franchise contracts that each operator can be awarded. Service providers have to be granted new franchise contracts in order to serve additional routes, but incumbents have a priority right *vis-à-vis* new entrants⁷. Furthermore, for long-distance services, franchise operators of “neighbour” routes are given preference over other applicants.

2.1.3 *Tariffs*

The franchise contract determines the applicable tariffs for scheduled services on the basis of existing railroad transportation rates, whereas prices of occasional services are privately negotiated by the parties within a range set out by the Treasury Minister.

2.2 *Regional road passenger services*

The provision of scheduled and occasional bus services on regional routes is subject to a public-franchise system⁸. Regions are responsible for regulating occasional road passenger transport services⁹.

Scheduled regional services are franchised for a 500 km route where the potential service area includes at least 300 000 inhabitants¹⁰. Otherwise, Regions may assign the service - through a public contest - to companies which qualify for providing occasional bus services. The Region takes into account "demand", particularly with regard to commuters needs and the integration of different transport networks¹¹.

Regions are also responsible¹² for authorising chartered services (with driver) over routes under their jurisdiction¹³. Each single vehicle has to be granted an authorisation¹⁴. There is no limit on the quantity of authorisations that each operator can be granted¹⁵. However, these operators are not permitted to provide taxi services¹⁶.

2.3 *Local road passenger services*

2.3.1 *The legislative framework for local road passenger services: an overview*

Law No. 142 of 8 June 1990 (Organisation of Local Powers), containing general administrative rules to be followed by local authorities, grants exclusive competence to local authorities (municipalities and provinces) regarding the supply of those public services defined as "having social objectives and aimed at promoting the economic and social development of local communities". Services provided by local authorities include energy, natural gas, water, waste management, education, roads, public lighting, libraries, kindergartens, school cafeterias. Until 1997, local transportation was also included in such list. Legislative Decree 19 November 1997, No. 422¹⁷ - as amended by Legislative Decree 4 August 1999, No. 400¹⁸ - has partially amended Law No. 142/1990¹⁹ by transferring to Regional and municipal authorities the regulation (also via Implementing Regional laws) of regional and local road passenger services. In particular, the Legislative Decree No. 422/1997 vested regional governments with decision-making responsibility over the planning and financing of local services. So far, only 13 Regions have adopted specific Implementing Regional legislation.

The national Government has maintained specific competence for: *a*) agreements concerning international passenger services; *b*) safety controls; *c*) adoption of guidelines to reduce pollution related to road transport²⁰. Furthermore, Regions can transfer to Provinces and Municipalities all those tasks which do not need be co-ordinated at the Regional level²¹.

2.3.2 *Organisation of local road passenger services and ownership of service providers*

2.3.2.1 The current legal framework

As indicated above, Legislative Decree No. 422/1997 has reformed the local transport service sector. Yet, the implementation of the new system is far from being completed and the current organisation of local transport service still shows signs of the old regime under Law No. 142 of 8 June 1990²². According to Law No. 142/1990 local authorities are entitled to perform their public interest functions with respect to the provision of local services in several ways.

First, they can provide specific services directly. A second alternative is to provide local services through enterprises wholly or partially owned. Different forms of such enterprises exist in the current Italian legislative framework. In particular, two main organisational forms, referred to in the law as “institutions”²³ and “special enterprises”²⁴, are employed. Municipalities can also provide local services through consortia of enterprises (joint-ventures of several municipalities) or through enterprises with minority²⁵ or majority²⁶ shareholdings held by private parties companies. According to the law, these two kinds of semi-public can be assigned the task of directly providing the services for which they were incorporated, without taking into account any other possible competitor²⁷. Granting franchises to independent enterprises (“when technical, economic or public interest reasons arise”) represents an additional possibility for the supply of local services and, in the current scenario, a rather residual one.

2.3.2.2 The legislative framework established by the reform

The reform set out by Legislative Decrees No. 422/1997 - as amended by Legislative Decree No. 400/1999 - is going to change radically the above mentioned legal framework. Namely, Legislative Decree No. 400/1999 makes it compulsory to reorganise special enterprises and consortia of enterprises as public limited companies or co-operatives and establishes that service providers must be selected through a public contest. Anyway, it provided for an *interim* period (three years at most) within which current operators can continue providing services under the old regime²⁸.

Competitive public tenders shall take place according to EC and national rules on public procurement, as from the conclusion of the transitional period. The law neither explicitly sets out the organisational forms of the enterprises that can provide local services²⁹, nor specifies whether service provision is subject to a licence or a permit³⁰. However, it establishes that more than one operator can provide the service in the relevant territory.

Only commercial entities qualified from a moral, financial and professional standpoint may participate to a competitive public tender. Enterprises that either in Italy or abroad have been assigned the task of providing the services without any competitive tender are excluded from tenders³¹. The contract is awarded at the most economically advantageous tender, upon comparison of the proposed plans with respect to:

- the development and provision of the services concerned;
- development of the facilities.

Regional and municipal authorities are responsible for defining minimum service requirements (to be paid for by Regions). It is worth noting that, so far, local services have been financed, to a large

extent, through transfers from the national budget as well as local taxes, rather than user charges. As a result, at present, incentives to economic efficiency and fiscal discipline play only a limited role. Furthermore, substantial differences exist across services with respect to the share of total costs that is actually recovered through direct user charges. For most services, indeed, revenues from direct user charges amount to less than 50 percent of total costs. Legislative Decree No. 400/1999³² states that Regions, Provinces and Municipalities, in order to ensure the provision of adequate transport facilities, define public service obligations³³, and the public service contract between the licensing authority and the service provider sets out the corresponding economic compensation to be paid for by public administration.

Regional and municipal authorities are responsible for defining tariffs and intermodal integration³⁴. Legislative Decree No. 400/1999 sets out a price ceiling. In any case, the price charged to the public is defined in the public service contract between service operators and competent authorities³⁵. Price increases are permitted on the basis and within the limits of a price-cap review mechanism³⁶.

3. The Ministry of Transport

Unlike other public services sectors, in Italy no sector-specific regulatory Authority has been assigned the task of developing and implementing policies as regards road passenger services. The Law attributes this responsibility to the Ministry of Transport.

Yet, the above mentioned “Implementing Regional Laws” may provide for “Local Agencies for the Mobility” in charge of planning and co-ordinating the local road passenger services. So far, only the “Implementing Regional Law” of Emilia Romagna provides for the establishment of such an Agency.

4. Market Structure and Competition Issues in road passenger service

4.1 Market structure

According to the 2000 “Piano Generale dei Trasporti e della Logistica” by the Ministry of Transport, the road transport sector in Italy is a small market, even though its importance is growing. Private motorcars are the predominant means of transporting people on routes exceeding 200 km, rails amounting to 20 percent of all passengers transported, buses to 15 percent, airlines to nine percent and maritime transport to 2.3 percent³⁷. According to a 1999 survey carried out by the National Association of the Local Public Service Enterprises (CISPEL), in Italy roughly 70 percent of all road transport takes place in high density urban areas.

4.2 Competition policy

In Italy, the Competition Act applies to all sectors and to all private and public enterprises (section 8(1) of Law 287/1990). However, competition rules do not apply to undertakings which, by law, are entrusted with the operation of services of general economic interest or operate on the market in a monopoly situation, only in so far as this is indispensable to perform the specific tasks assigned to them. In practice, however, this exception, which mirrors article 86(2) of the EU Treaty, has actually been applied only once, in a very minor case.

The Competition Authority has general jurisdiction over issues involving restrictions of competition, abuses of dominant positions and mergers, but has no sector-specific regulatory powers.

However, the law grants the Competition Authority the power to notify Parliament, Government, single Ministers and local authorities cases of particular relevance in which existing legal, regulatory, or general administrative provisions distort competition or the sound operation of the market, without being justified by considerations of general interest. In such cases the Authority may issue public reports and suggest the measures to be adopted in order to eliminate the identified restrictive effects. In addition, the Authority may also express opinions on draft statutes and regulations, as well as on competition and market-related issues, whenever it deems it necessary or it is requested to do so by government departments and agencies.

4.3 Competition Advocacy

4.3.1 Report on Minimum Tariffs for chauffeur-Driven Hired Buses

In the Latium region, municipalities are required to hire buses with a driver for the provision of school transport services. The regional government is responsible for setting minimum charges for hiring buses with a driver, acting on a proposal of the most representative organisations of the vehicle hire market. The Authority highlighted the unjustifiable barriers to competition resulting from setting minimum administrative tariffs. Moreover, the regional legislation contrasted with the EC Directive 92/50, which provides for mandatory competitive tendering, for contracts above 200 000 Ecu, and prescribes two ways of adjudicating tenders, namely the criterion of the lowest price, or the most beneficial economic offer in cases where price is not the only issue at stake.

4.3.2 Report on local public transport

In February 1998, the Italian Competition Authority submitted an opinion on Legislative Decree No. 422/1997 concerning the reform of local public transport services in Italy. Legislative decree No. 422/97 vested regional governments with responsibility for planning and financing expenditure decisions. The Authority emphasised that, in this context, competitive tendering was the most efficient mechanism for selecting service providers. It also recommended a less frequent use of public franchises for local transport services and advocated for a system of licenses or permits. Moreover, it suggested that in markets where competition is not possible, incentive methods be introduced, based on the regular comparison of performances of local monopolists operating in different service areas (s.c. yardstick competition). Lastly, it emphasised that the promotion of intermodal integration, fostered by Legislative Decree No. 422/97, should not lead to a strengthening of the dominant position currently held by the national railway company, Ferrovie dello Stato Spa (FS).

4.4 Competition Enforcement

4.4.1 FS Sogin³⁸

In 1993, the Competition Authority initiated an investigation regarding the proposed acquisition of SOGIN (a regional bus company) by FS. As in Italy the rights to operate bus services in inter-regional and local markets are assigned by public franchise to a single operator, FS holds a dominant position in both rail and, to some extent, bus transport markets. The integration between bus and rail systems could be seen as a tool for achieving a greater internal efficiency by substituting bus for rail when load factors are particularly low. The Italian Competition Authority was concerned that the proposed acquisition would extend the dominant position held by FS in railways, as the markets affected by the merger (inter-regional and local markets) are geographically contiguous, as well as strengthen FS dominant position where bus

and rail routes overlap. Furthermore, the presence of FS, directly or through agreements with other operators, could be extended to the entire logistic and freight sectors. In this case, the Competition Authority pointed out that the advantages of integration, such as the potential savings from service co-ordination must be weighed against the risk of extending FS's dominant position in railways to contiguous sectors. Therefore, the Authority authorised the merger, having FS taken specific measures to prevent the anticompetitive consequences of the proposed operation.

4.4.2 Autobus scolastici comune di Roma - Agreement on the school bus hiring market

In 1996, the Authority carried out an investigation concerning some consortia and companies providing school bus services. It was alleged that they had agreed to share among them the school bus market in the municipality of Rome. The results of the investigation showed that the parties had initially refrained from bidding in a competitive tender for school transport services called for by the municipality of Rome, and subsequently had not competed against each other when contracts were being awarded through a negotiated procedure. It was ascertained that the parties had exchanged a great deal of information on costs and prices. Furthermore, the absence of competitive offers during private negotiations was a sign that each bidder knew other bidders' intentions in advance. In consideration of the serious anticompetitive effects of the parties' conduct, the Authority imposed fines, proportionate to the role played by each company in the collusive tendering conspiracy. CIPAR, the leading participant in the agreement, was fined 226 million lire, (two percent of its turnover), while other parties were imposed fines of one percent of their respective turnovers.

5. Road haulage transport

5.1 Regulatory Framework

Until 1998 road haulage services were mainly regulated by Law, June 6, 1974, No. 298 which established, among others:

- a national register of road haulage contractors for third parties;
- a rate-band system, which provides “minimum” to “maximum” rates for merchandise transported by road³⁹.

Under the law, the task to develop and implement policies affecting road haulage services is attributed to the Ministry of Transport, which avails itself of the following committees:

- a central committee, established by the Ministry itself, which sets up and updates the national register of road haulage contractors, and formulates proposals for determining transport rates; it is worth noting that such a committee is also comprised of delegates from industry associations in the road haulage transport sector⁴⁰;
- provincial committees;
- regional committees, which co-ordinate the activities of provincial committees.

On the basis of a projection of market demand, the Transport Minister determines annually, by decree, the total carrying capacity of the road haulage sector (after consultation with the Regions and the central committee) and establishes the permissible number of new authorisations for each province⁴¹.

Those applying for inscription in the register of road haulage contractors must have (a) honour reference; (b) financial capacity; (c) professional competence (which includes a written examination administered by the provincial committees)⁴². The committees, administered also by already authorised truckers, have 30 days within which to process an application and are obliged to justify their decision. A possible justification can also be a perceived lack in demand. The authorisations granted are issued with limitations on tonnage to each successful applicant⁴³, and have a nine-year renewable term.

Law No. 454/97 has established that the government must take specific measures in order

- to liberalise the sector, in particular: to reform the issuing of authorisations governing third party road haulage activities, in accordance with the existing European Community rules;
- to replace the existing rate-band system.

In particular, decree No. 85 of March 14, 1998, has:

- introduced a transition system of authorisations based on permits to be granted to corporations, rather than to individual vehicles;
- allowed the authorised operators to double the tonnage assigned on their nine-year term license (in order to favour aggregations).

5.2 *Structure of the market*

In Italy, road transport is the predominant means of moving freight, amounting to 74 percent of all merchandise transported. 13 percent is transported by sea, and nine percent by rail. The overall value of the road haulage market is about Lit. 93 000 billion, of which some Lit. 58 000 billion is generated by proprietor road haulage, and about Lit. 35 000 billion from corporate enterprises. According to a 1996 survey by CONFETRA (a confederation comprising representatives of third party road-haulage contractors), the active firms in the road haulage sector were approximately 145 000 of which 123 000 were individual truckers.

The bias in favour of road haulage in the transport sector is increasing due to the growing decentralisation of the corporate productive activities, and the reorganisation of the road haulage transport sector into effective logistic networks to service these diverse sources of business. These transport networks, known as the hub and spoke system, are growing. They use a centralised sorting facility, from which the merchandise is transported to/from outlying depots for end-point delivery. These logistic networks are structured country-wide. The firms with such networks have the required management infrastructure and financial means to implement them on a national scale. Given the different regulations in Italy and abroad, international operators are significantly obstructed.

5.3 *Competition policy*

5.3.1 *The tasks of the Italian Competition Authority*

The Competition Authority has general jurisdiction over issues involving restrictions of competition, abuses of dominant positions and mergers, but has no sector-specific regulatory powers.

However, the law grants the Competition Authority the power to notify Parliament, Government, single Ministers and local authorities cases of particular relevance in which existing legal, regulatory, or general administrative provisions distort competition or the sound operation of the market, without being justified by considerations of general interest. In such cases the Authority may issue public reports and suggest the measures to be adopted in order to eliminate the identified restrictive effects. In addition, the Authority may also express opinions on draft statutes and regulations, as well as on competition and market-related issues, whenever it deems it necessary or it is requested to do so by government departments and agencies.

5.3.2 *Competition Advocacy*

In 1993 the Italian Competition Authority submitted a report to the regulatory bodies of road haulage services stressing that there were no market failures in road haulage and there was no need for limiting entry. Furthermore the existing system of price control (identifying by decree the band for lawful trucking prices) did not serve any useful purpose and was even not respected by truckers.

6. Taxi

6.1 *Introduction*

In Italy, very strict legal provisions regulate entry conditions and pricing decisions in the taxi services sector. For these services, regulatory restrictions are imposed not only at the national level, but also by regional and municipal governments. Municipalities also have some discretionary power in deciding how restrictive their regulation can be. The sector is also characterised by quantitative ceilings to the permissible number of licences. Lastly, regulations and statutory provisions establish minimum fares for the services.

In 1995 the Italian Competition Authority submitted to the relevant regulatory bodies, at the national and local level, a report on the regulation of taxi services⁴⁴. The report advocated for a review of existing regulations and statutory provisions, particularly those that were deemed to place artificial restrictions on price competition to the detriment of consumers. The Authority considered that there were valuable consumer protection reasons for administrative authorities to impose maximum charges, establish service obligations, and set professional standards for taxi drivers, but also argued that there was no justification, in terms of possible consumer benefits, for fixing minimum taxi fares.

6.2 *The Regulatory Authorities*

In Italy, regulatory powers with respect to taxi services are entrusted with:

- the Ministry of Transport; as regards general aspects of the operation of taxi services;

- the Regions; as regards the criteria the municipalities must observe in drafting their regulations;
- the municipalities, as regards the control of taxi services provision within the municipal territory.

6.3 *Regulatory framework*

6.3.1 *Licences*

Law No. 21 of 15 January 1992 sets out the national regulatory framework for taxi services in Italy and provides, *inter alia*, for:

- the allocation of responsibilities between Regions and municipalities; and
- the conditions for the granting of licences; in addition, the Law establishes the general obligations on licence holders and the characteristics of vehicles.

In particular, the Regions identify the criteria to which municipal regulation must conform in order to ensure adequate co-ordination of unscheduled public transport within the local jurisdiction. Regional legislation provides that local governments control the operation of unscheduled public car services by means of specific regulations, which may be harmonised with those of other municipalities for sake of greater rationality and efficiency.

Within these constraints, municipal regulations must ensure that the supply of taxi services within their jurisdiction is adequate, in both quantitative and qualitative terms, to meet and satisfy local demand; to this end, they grant licenses to operators who comply with the formal requirements established by law. The overall number of licences has also to be compatible with safety and environmental standards⁴⁵. Furthermore municipalities must establish, by means of appropriate regulations: *a*) the number and type of vehicles allocated to taxi transport⁴⁶; *b*) the characteristics of service provision (service standards and rules on advertising of rates and service availability, among others)⁴⁷; *c*) the criteria for rate - setting; and *d*) the requirements and conditions for granting a taxi licence⁴⁸. Finally municipalities must ensure that the transport of individuals or small groups of persons is complementary to, and integrated with, the municipal public transport system.

It must be pointed out that the number and type of vehicles for taxi services is established by the Municipality after consultation with a “consulting committee”, whose members are mostly delegates from taxi-drivers associations.

Licences can only be granted, by municipal governments, to individuals; these individuals can associate in co-operatives or *consortia*⁴⁹. Each licence is granted for just one vehicle. Each person cannot hold more than one licence. Licences are awarded, through public contest⁵⁰. In order to be awarded a licence, the applicant must be registered in a List of drivers of vehicles allocated to unscheduled public car transportation services⁵¹. The List is established by the Regions and held by the Chamber of Commerce. The criteria for inclusion in the register are established by the Regions themselves, and requirements usually include a certification of professional skills, as well as prior examination by the appropriate regional commission. Taxi drivers who have operated the service for at least six months as substitute drivers for a licence holder, are entitled to preferential treatment when new licences are being granted.

Entry is also possible through the acquisition of a licence from licence holders who cease to operate.

The licence is granted for an indefinite term.

For connections with airports, holders of unscheduled public service licences issued by the regional and provincial administrations, as well as by the municipality (or municipalities) where the airport is located, are permitted to offer the service.⁵²

6.3.2 *Qualitative Standards*

Law 21/1992 sets out some requirements regarding vehicles⁵³. Cars allocated to taxi service must be equipped with a standard taxi meter, where the corresponding payment is displayed. Every additional rate must be made known to the user through clearly legible notices placed on the dashboard of the vehicle. Under exceptional circumstances, in small municipalities cars allocated to the taxi service are exempted from the obligation to have a taximeter installed. Moreover, the same vehicles used for the taxi service are also permitted to be used for chauffeur-driven rentals. Each car must be of a common colour and must carry a luminous sign on the roof on which “taxi” is written.

6.3.3 *Regulatory Constraints on Service Schedules*

Municipalities set standards for service operation⁵⁴. Each municipality can establish limits to the service schedule of individual vehicles or drivers, in general after consultation and upon agreement with the relevant taxi-drivers associations. Municipalities must set specific service conditions for the transportation of disadvantaged individuals, as well as establish the number and type of cars for the transport of individuals with particularly serious handicaps⁵⁵.

6.3.4 *Price Control*

Law No. 21/1992⁵⁶ establishes that taxi services are provided upon direct request by the person(s) transported, as well as upon payment of charges displayed on a standard taximeter, and based on rates determined by the competent administrative authority. Any additional charge must be made known to the user through clearly legible notices, placed on the dashboard of the motorcar⁵⁷.

6.4 *Municipal Regulation: the case of Rome*

The Municipality of Rome has recently introduced some flexibility in the regulation of taxi services. In particular, some recent Municipal Resolutions reorganised the taxi service reviewing, in particular, the rate and shift setting system.

As a result, fixed shifts were eliminated and substituted by a minimum service requirement of six hours. It has been recently established that working time (of each car, not of each driver!) cannot exceed nine hours per day. Furthermore, the Municipality of Rome has eliminated the system of fixed rates, while maintaining a ceiling for maximum applicable charges.

Finally the municipality introduced⁵⁸ a new collective taxi service, the “taxibus”, something in between the collective service and the individual service provided by traditional taxis. The “taxibus”

intends to supplement the existing public urban transportation network in order to more effectively face the ongoing increase in demand for mobility in the city centre (also in the light of new mobility needs: sport, shopping and so on). Tenders for the provision of taxibus services are restricted to (a) individuals registered in the List of drivers (taxi and car hire) also associated in co-operatives or in *consortia*⁵⁹; (b) enterprises holding charter bus licences or public-franchisees of public line service; (c) individuals, co-operatives and firms in possession of a licence for carrying out non line passenger transport service⁶⁰.

6.5 *Competition policy*

6.5.1 *The jurisdiction of the Competition Authority*

In Italy, the Competition Act applies to all sectors and to all private and public enterprises (section 8(1) of Law 287/1990). The Competition Authority has general jurisdiction over issues involving restrictions of competition, abuses of dominant positions and mergers, but has no sector-specific regulatory powers. Up until now no antitrust case has involved the taxi industry.

6.5.2 *Competition Advocacy*

The law grants the Competition Authority the power to notify Parliament, Government, single Ministers and local authorities cases of particular relevance in which existing legal, regulatory, or general administrative provisions distort competition or the sound operation of the market, without being justified by considerations of general interest. In such cases the Authority may issue public reports and suggest the measures to be adopted in order to eliminate the identified restrictive effects. In addition, the Authority may also express opinions on draft statutes and regulations, as well as on competition and market-related issues, whenever it deems it necessary or it is requested to do so by government departments and agencies.

6.5.3 *Advocacy report on the regulation of taxi services*⁶¹

As mentioned above⁶², in July 1995, the Italian Competition Authority, upon request of the Municipality of Rome, submitted an opinion concerning the competition-restricting effects on the provision of taxi services in Rome, resulting from Law No. 21/1992, the regional implementing legislation⁶³, and the relevant Resolution of the Municipality of Rome⁶⁴.

The Authority considered, among others, that the framework regulation did not adequately take into account the demand for transport. The constraints on the number of licences, grounded on an inaccurate analysis of demand for transport, created an artificial scarcity, to the detriment of taxi users, both in terms of service availability and diversification, and with regard to price of service.

As to the imposition of maximum rates, the Authority deemed that this mechanism originates from the market power each taxi cab can exercise over its users because of the high search cost involved in searching for the most competitive rate. At the same time, however, it was emphasised that the imposition of minimum rates has no justification in terms of consumer protection. Nor were there any sound reasons supporting the provision laid down in Resolution n. 530/1994 of the Municipality of Rome, which prevented operators from offering discounts on the normal rate without prior authorisation from the municipality.

7. Effects of the Partial Liberalization in the Municipality of Rome

As mentioned above, recent Resolutions of the Municipality of Rome repealed the fixed rates system. At present, the municipality is exclusively setting maximum rates; each taxi driver can charge lower rates through conventions and discounts, as well as reduce fixed charges (surcharge and price at the beginning of the trip).

Regarding the new taxibus service, the Municipality of Rome has fixed the maximum rates for each area of its territory and has permitted individual operators to charge lower rates and to offer discounts. Further to the introduction of the “taxibus” service, overall supply has increased. While amendments to Law No. 21/1992 - so as to also permit an increase in the number of licences - remain desirable, taxibuses have nonetheless proved useful to address the growing demand for transport by individuals and small groups.

NOTES

- 1 "Good reputation" means that, e.g., in the past five years the Trade and Handcraft Authority never withdrew the carrier's trade licences at the request of the Transport Authority or the Ministry of Transport and Communications.
- 2 Administrative Procedure Act 71/1967 Sb. and its amendments.
- 3 This data includes only those travelling on Irish Bus and licensed operators services.
4. See Section 1 of Ministerial Decree No. 448 of 20 December 1991.
5. According to Law No. 1822/1939; see also Presidential Decree No. 369 of 22 April 1994; Legislative Decree No. 112 of 31 March 1998 and Legislative Decree No. 400 of 4 August 1999, which transferred to Regions and to local governments the task of regulating local transport services, completed the legislative framework for bus scheduled services on long distance routes. At EC level the liberalisation process is grounded on Regulations 1161/69, n. 2454/92 and n. 684/92.
6. See section 3 of Presidential Decree No. 364/1999.
7. See Section 5 of Law No. 1822/1939.
8. According to Law No. 1822/1939.
9. Law No. 21 of 15 January 1992.
10. See Section 2 of Legislative Decree No. 400/1999.
11. See Section 16 of Legislative Decree No. 400/1999.
12. According to Section 105(2), lett. (a), of Legislative Decree No. 112/1998 - (the Decree which has transferred to Regions and local governments some powers formerly within the competence of the State).
13. On the contrary, Municipalities are responsible for authorising chartered services over local routes: in particular, each single vehicle has to be granted a municipal authorisation.
14. The profession of driver is, in turn, governed by Ministerial Decree No. 488 of 20 December 1991.
15. The driver has to qualify according to Ministerial Decree No. 448 of 20 December 1999 (which implements EC Directive No. 438 of 21 June 1989 and Law No. 21 of 15 January 1992.). Furthermore, more specific requirements can be set out by municipal governments (See Law No. 21/1992).
16. See section 8.2 of Law No. 21/1992

17. In February 1998, the Italian Competition Authority submitted an opinion to Parliament and the Government about Legislative Decree No. 422/1997 on the reform of local public transport services in Italy. Legislative decree No. 422/97 vested regional governments with responsibility for programming and financing expenditure decisions. The Authority emphasised that, in this context, the invitation of public tenders was the most efficient instrument for selecting service providers. It also expressed its preference, from a competition protection viewpoint, for a less frequent recourse to the use of public franchises for local transport services in favour of a system of licenses or permits. Moreover, in markets where competitive equilibria are not feasible, incentive methods should be introduced, based on a regular comparison of the performance of the local monopolist with the performance of other service-providers elsewhere in Italy. Lastly, it was emphasised that the promotion of intermodal integration, fostered by the legislative decree No. 422/97, should not lead to a strengthening of the dominant position currently held by the national railway company, Ferrovie dello Stato Spa.
18. It is worth noting that Legislative Decree No. 400/1999 has adopted most of Authority's recommendations amending some of the anti-competitive provisions of Legislative Decree No. 422/1997.
19. In view of the municipalities' limited incentives to cost minimisation (which led to substantial budget deficits and generally poor services), the government has recently proposed amendments to Law No. 142/90 (Bill of Law No. AC 7042) aimed at introducing greater competition in the supply of local services, particularly for services of "industrial relevance" (supply of energy, gas and water, road transportation and waste management services).
20. Legislative Decree No. 112 of 31 March 1998 has further specified the area of competence maintained by national government.
21. See Section 7 of Decree No. 400/1999.
22. As mentioned above, Law No. 142/1990 should be very soon amended by Bill of Law AC 7042
23. Institutions can be set up for the provision of social services not having "entrepreneurial relevance". These include, for example, the assistance to elderly and disadvantaged people and the running of some cultural events. Institutions do not enjoy financial autonomy, being totally dependent on their respective municipalities for funding.
24. Special enterprises enjoy financial and operational autonomy to a greater extent and are required to balance their budgets (with the municipality providing sufficient resources to ensure the proper fulfilment of social obligations such as universal service provisions).
25. See Section 22.1 lett. e, of Law No. 142/1990.
26. See Section 12.1 of Law No. 498 of 23 December 1992 and Presidential Decree No. 533 of 16 September 1996 which requires the adoption of a public service contract entered into between the competent authority and the transport undertaking in order to provide the public with adequate transport services.
27. In November 1997, the Authority issued a report on various provisions contained in a bill on the reform of local government (Report on local public services). In particular, local governments were required to choose the way in which they intended to manage services "of economic and

entrepreneurial relevance" by comparing the following alternatives: a semi-public company, a franchise to third parties or a local public enterprise. Since there was no explicit indication of the criteria by which these three alternatives were to be compared, the Authority advised following "management cost-effectiveness" as the criterion to be adopted and to make any choice on the direct commissioning of services conditional upon demonstrating the benefits of the choice in comparison with an alternative procedure based on competition. The bill also provided that companies in which several local authorities constituted the majority shareholders could be assigned the task to provide the services for which they were incorporated directly, without any competitive tender. The Authority considered that these procedures should not be used for semi-public companies, which should be governed by the same rules as companies that have no relations with the local authorities. Competitive tenders should be submitted for managing the service and not for identifying the private shareholder in semi-public companies.

28. Section 18.3 *bis* of Legislative Decree No. 400/1999 states that, anyway, the interim period expires on December 31st, 2003. Meanwhile, the public franchisees may go on providing the services assigned; yet, they are obliged to assign some of the services currently provided through competing public tenders.
29. On this matter see also Bill of Law AC 7042.
30. Anyway, the license is fixed term (the permission cannot exceed nine years).
31. On the contrary, law No. 142/1990 does not makes clear if "special enterprises" and controlled enterprises with minority shareholdings held by private parties can provide services beyond the municipal territory, even if section 24 of the law envisages agreements among local authorities in order to co-ordinate the supply of public services provided by each of them. However there are a number of decisions of administrative courts which held unlawful that a controlled enterprise provided a public service beyond the municipal territory. Differently, Bill of Law No. AC 7042 establishes that "institutions" and "special enterprises", cannot provide services beyond the municipal territory. There is no similar regulatory restriction for other kinds of operators.
32. See Section 17.
33. According to section 2 of Regulation (EEC) No 1191/69 as amended by Regulation (EEC) No. 1893/91.
34. See Section 14.3 lett. b, of Legislative Decree No. 400/1999. As far as the intermodal integration is concerned, one can notice that in February 1998, within the above mentioned opinion to Parliament and the Government about Legislative Decree No. 422/1997, the Italian Competition Authority emphasised that the promotion of intermodal integration, fostered by the legislative decree No. 422/97, should not lead to a strengthening of the dominant position currently held by the national railway company, Ferrovie dello Stato Spa. It is also worth noting that, up to now, only two Regions have defined a system of tariff integration.
35. See Section 19.3 of Legislative Decree No. 422/1997.
36. See Section 2,18 of Law No. 481/1995
37. See Ministry of Transport, "Nuovo Piano Generale dei Trasporti e della Logistica", July 2000, para. 6(3).

38. Decision n. 1667, of 20 December 1993
39. The prescription period for credits arising out from the road-haulage transport activity is 5 years (on this subject see Law No. 162/93). This means that, within five years, a road haulage contractor can bring its counterpart before a Court in order to contest the fairness of the rate agreed upon in the contract.
40. The major industry associations in the road haulage transport sector are: UTI (Union of Italian Carriers), CUNA (Unitary Road Haulage Co-ordination), and CONFETRA (a confederation comprising representatives of third party road-haulage contractors).
41. See law No. 298/74.
42. See Legislative Decree No. 84 dated March 14, 1998.
43. Decree No. 85 of March 14, 1998, has allowed the authorised operators to double the tonnage assigned on their 9-year term authorisation.
44. *ervizio di trasporto di persone mediante taxi*, AS053, in *Bullettin* No. 29/1995.
45. See Ministerial Decree no. 572/1992.
46. These quantitative constraints on the number of permissible licences are established by section 5 of Law no. 21/1992
47. Legislative Decree No. 400 of 4 August 1999, which transferred to Regions and local governments the task of regulating local transport services, also provides some further obligations as regards taxi services (rules on pollution control, on advertising, and on connections with airports).
48. In view of the foregoing, local regulations can differ across municipalities.
49. The license holder who confers his licence to an association or a *consortium* retains the ownership of the licence (See Section 7 of Law no. 21/1992).
50. See Section 8 of Law no. 21/1992
51. Art. 6 of Law No. 21/1992 establishes that the inscription in the List of drivers of vehicles allocated to unscheduled public car transportation services is an essential requirement for all operators, including substitutes of licence holders.
52. See Section 14.8 of Law no. 21/1992.
53. See Section 12
54. According to Law no. 21/1992
55. See Section 14 of Law no. 21/1992.
56. See Section 13

57. See Section 14(2) of Legislative Decree No. 400/1999.
58. According to Section 14(5) of Legislative Decree No. 400/1999.
59. See Section 7 of law n. 21/1992
60. Provision of service requires motorcars with a maximum of nine places including the driver.
61. *Servizio di trasporto di persone mediante taxi*, AS053, in *Bullettin* No. 29/1995.
62. See above note No. 1
63. Law No. 58 of 26 October 1993 of the Latium Region.
64. Resolution of 30 April 1966, No. 2860 and 1 March 1994, No. 530

JAPAN

1. Omnibus and taxi businesses

1.1 *Regulatory Regime*

(1.1)

Minister of Transport has the responsibility relating to omnibus and taxi businesses, which are regulated under the Road Transportation Law. This law is enforced at the Ministry of Transport at the national level, and at the local level, at nine District Transport Bureau, the Okinawa General Bureau, and the 47 Road Transport Branch Offices which are located in each prefecture. The authority of the Minister of Transport is partly delegated to the Director of the District Transport Bureau and Road Transport Branch Office.

As the main industrial groups, the Nihon (Japan) Bus Association has been established for omnibus businesses, and the Japan Federation of Taxicab Associations for taxi businesses.

Omnibus businesses are operated by private companies or by municipalities.

(1.2), (1.3), (1.4)

In the Road Transportation Law, the term “omnibus business” is defined as transport services for general passengers by motor vehicles operating on schedule along specific routes, and the term “taxi business” is defined as transport services for general passengers per contract by chartering motor vehicles with a seating capacity of up to ten.

Any person who intends to engage in an omnibus business shall obtain a license for each route from the Minister of Transport. Any person who intends to engage in a taxi business shall obtain a license for each area from the Minister of Transport. In granting a license for these businesses, the Minister of Transport shall determine whether the application meets the following criteria:

- 1) Initiation of the proposed business is appropriate in terms of transport demand.
- 2) Initiation of the proposed business would not cause an imbalance between the supply and demand for transportation in the proposed operation route or area.
- 3) The proposed operation is backed by appropriate planning.
- 4) The applicant is fully capable of performing the proposed operation.
- 5) Initiation of the proposed business is necessary and appropriate in terms of public benefit.

The period necessary for the determination is generally three months for omnibus business, and four to five months for taxi.

A person who has obtained a license for omnibus business or for a taxi business (a “Manager”) shall perform his or her services in conformity with his or her business plans.

An omnibus or taxi business shall not be transferred to or received from another Manager unless such action is approved by the Minister of Transport. If a Manager violates the Road Transportation Law, or is found to be in a disposition pursuant to this law, the Minister of Transport may either order the Manager to suspend his or her business or may revoke the license for the business.

The following measures are taken for the purpose of ensuring the appropriate services in Tokyo and Osaka:

- 1) registration of taxi drivers;
- 2) designation of taxi stands;
- 3) examination of the geographical knowledge as a requirement for registration, etc.

(1.5)

Under the law, a Manager shall decide on the fares, charges and the terms of a contract when initiating their business with a prior approval of the Minister of Transport. The Minister of Transport shall grant according to the examination using the following criteria and using fixed amount:

- 1) The fares reflect a reasonable profit after compensating for a reasonable cost under an efficient business operation.
- 2) The fares do not discriminate against specific passengers.
- 3) The fares and fees are not likely to be too financially burdensome for passengers.
- 4) The fares and fees are not likely to cause illicit competition with other general passenger motor transport business operators.
- 5) The fares and fees, when calculated based on the distance rules, and when the formula is set by the Minister of Transport, comply with such formula.

Local omnibus transportation, which is essential for suburban residents, is subsidised under Cupertino of the Ministry of Transport and the municipalities.

(1.6)

The Road Transportation Law does not discriminate against any foreigner or foreign companies in granting licenses of omnibus and taxi businesses.

1.2 Market Outcomes

(1.7)

Transition of the number of Managers

Fiscal year end	Omnibus			Taxi		
		Privately operated	Publicly operated		Corporate	Individual
1989	372	322	50	54,425	7,204	47,221
1990	377	327	50	54,344	7,204	47,140
1991	390	340	50	54,215	7,185	47,030
1992	393	343	50	54,250	7,163	47,087
1993	398	348	50	54,051	7,108	46,943
1994	405	355	50	53,657	7,070	46,587
1995	404	356	48	53,407	7,030	46,377
1996	404	356	48	53,147	6,994	46,153
1997	406	358	48	53,872	6,993	46,879
1998	414	367	47	53,764	7,000	46,764

In fiscal 1998, the share of the transportation is two percent for omnibus and 0.9 percent for taxi.

(1.8)

Revision of the present regulation:

For the purpose of promoting competition, supply-demand balancing regulation for omnibus and taxi has been eliminated. The law is enacted in May 2000 and will enter into force by the end of fiscal 2001. Outline of the revision is as follows:

Regulation	Omnibus	Taxi
Entry	From: License for each route To: License for each business (supply-demand balancing eliminated)	From: license for each area To: license for each business (supply-demand balancing eliminated)
Price	From: Approval To: Maximum tariff approval	From: Approval To: Approval (revision of criteria)
Discontinuation	From: Approval To: Notification (before 6 months)	From: Approval To: Notification (within 30 days)

2. Road freight transport

2.1 Regulatory regime

(1.1)

Road freight transport regulation is carried out by Ministry of Transport and its branch offices. Ministry of Transport has a road transport bureau, and this bureau has a cargo transport division.

These bodies' objectives are to carry out the proper evolution of cargo transport industry, especially, to decrease traffic accidents. Major industry groups are All Japan Trucking Association, and Japan Freight Line Association.

(1.2) (1.3) (1.4)

Those who intend to engage in road freight transport business shall obtain a license. In granting a license for business, Minister of Transport shall determine whether the application meets the following criteria:

- 1) The business plan must be proper to ensure the safety of transport, for example, by prevention of overwork.
- 2) The business plan must be proper to carry out the business
- 3) They (president and executives) must have proper ability to manage.

It takes about three to four months from application date to get a license. When an operator wishes to quit their trucking business, they have to notify Minister of Transport regarding their retirement.

Minister of Transport takes strict measure to promote safety.

Minister of Transport prohibits business for some period or dissolves licenses if there is a breach of the law.

When the Minister of Transport grants a license, it is required to have at least five trucks, parking lots, an office, a manager for safety and so on.

There is no demand control and no time limit.

Operators already in markets have no role in decisions on new permissions.

License can be allocated to both individuals and firms.

(1.5)

Cargo transport business operators with trucks need to submit the tables of their charges to the Minister of Transport before initiating their business. When this submission does not meet the below criteria, Minister of Transport may order them to change their tariff.

- 1) There should not be an excessive profit.
- 2) It must not be discriminating.
- 3) It must not trigger illicit business competition.

There is no subsidy to trucking business, and industry group has no commitment to fare setting.

(1.6)

There are no differences between a foreign company and a domestic company. There are no limitations on foreign ownership.

2.2 *Market Outcomes*

(1.7)

In Japan, there are 50 thousands companies in cargo transport industry, however, small and medium sized companies (of less than 300 employees and less than 300 million yen in capital) account for more than 99.9 percent of the total number.

(1.8)

Major liberalisation is the abolition of demand-supply management and price control. Due to this deregulation, there has been an increase in new entries.

2.3 *Competition Law Enforcement*

(1.9)

The Antimonopoly Act ("AMA") applies to the road transport sector such as road freight trucking, road passenger transportation and taxi businesses in principle. Exemption to AMA is the Road Transportation Law, which stipulates that AMA does not apply to the certain agreements between bus companies. Namely,

- 1) Agreements on joint operations aimed at securing means of passenger transportation indispensable for the life of local residents; and
- 2) Agreements on joint operations aimed at setting an appropriate bus operation schedule to ensure the convenience for passengers.

These agreements are exempted from the application of AMA provided that it does not unreasonably harm the benefits of passengers, not be unreasonably discriminatory, and to meet other requirements, after going through necessary procedures, such as obtaining permission from the minister for transport and consulting with the Japan Fair Trade Commission ("JFTC"). These agreements are exempted from the application of AMA from the viewpoint of increasing public benefit -- securing bus routes that are indispensable for the life of local residents and increasing the convenience of passengers by setting an appropriate bus schedule.

The Ministry of Transport is responsible for the enforcement of the Road Transportation Law and the relevant law that regulate road traffic business while JFTC administers and enforces AMA which is a competition law in this sector. The chairman and members of the JFTC are independent from sectoral regulator in executing their authority.

(1.10) (1.11)

JFTC has applied AMA to several projects with regard to regulations on the road transportation sector. The JFTC issued a recommendation to the Mie Prefecture Bus Operators Association with regard to fares authorised by the minister for transport in 1990.

The Road Transportation Business Law at the time stipulated that chartered bus operators must obtain permission to change their business plans, such as fares and an increase in the number of vehicles in service from the minister for transport. Furthermore, the law stipulated that such companies could freely set their fares within the framework of the upper and lower limits calculated on the basis of the authorised standards. In order to cope with a decline in bus charter

fares, the Mie Prefecture Bus Operators Association, comprising chartered bus operators and others:

- 1) set the minimum bus charter fare for large-lot customers; and
- 2) fixed the number of chartered buses that its members should apply for permission to increase, and forced its members to abide by the decision.

The action mentioned in 1) restrained price competition in the bus charter business for large-lot customers, and the action described in 2) unfairly restrained the functions and business activities of its member companies. Therefore, the JFTC concluded that the practices constitute AMA violations and issued a recommendation to the association (Decision on Feb. 2, 1990).

(1.12)

There is a case related to an essential facility as follows (“Fukushima District Hire-Taxi Co-operative” Case). The Fukushima District Hire-Taxi Co-operative raised commissions for common taxi tickets imposed on two member companies that lowered their taxi fares, and urged them in a letter to refrain from using taxi stands in the compounds of JR Fukushima Station and other locations in Fukushima. JFTC warned the co-operative that the practices could constitute AMA violations (Oct. 24, 1997).

KOREA

1. Introduction

Road transport served well in Korea as the artery of the economy, underpinning a rapid economic growth during 1960s and 70s when the government drove the economic development. As of 1998, the road transportation sector took up 82 percent and 92.1 percent of total passenger and cargo transits.

Until recently, various government regulations in this area made competition virtually impossible, which gave rise to inefficiencies. The dramatic surge in the number of passenger cars further deteriorated the situation, pushing up logistics costs and thereby significantly undermining the competitiveness of the country. In response to this problem, the government has constantly taken steps to promote competition and achieve regulatory reforms to remove inefficiencies in the road transport sector. Regulations to which regulatory authorities could not offer justifications were either abolished or eased. Regulatory reforms are still pursued in this sector, spearheaded by the Korea Fair Trade Commission (KFTC) and the Regulatory Reform Committee. Among the deregulation tasks at hand, what drew the greatest attention of the KFTC was the road transport, in particular, the road freight service sector.

Many of the regulations in this field remain in place, and it has been only one year since regulatory reforms began in the road freight service sector. Thus, it is premature to render judgement on the outcomes of the regulatory reforms. However, it is expected to make a substantial contribution to sharpening Korea's competitive edge, by enhancing efficiency and quality of service. This paper is intended to shed light on the regulatory regime, market situation, regulatory reforms, and competition issues in the road transport sector.

2. Regulatory Regime

2.1 Agency responsible for developing and/or implementing policies relating to road freight/road passenger/taxi regulation and the current status of related industry associations

The Ministry of Construction and Transportation (MOCT) is responsible for handling regulations in the above fields. The MOCT has been enforcing the Passenger Car Transport Service Act and the Freight Car Transport Service Act.

Industry associations in these fields are formed by enterprises belonging to each sector and are purely private organisations. The government does not have an ownership interest in these groups.

2.2 *Regulatory requirements that must be satisfied by a firm wishing to provide services and the status of regulations involving the granting, time limit, and transfer of licenses*

Since July 1999, only registration, rather than a license, is needed to provide road freight transport services. Thus, meeting certain conditions stipulated under the Freight Car Transport Service Act, such as the number of cars, amount of capital, and the size of car storage place, would be sufficient to initiate operation in these sectors. The shift to the registration requirement itself represents that market supply and demand will be ignored. Therefore, there are no prior limits placed on operators or number of registered cars. In addition, there are no institutional devices that allow incumbent firms to affect the entry of new rivals. Individuals are entitled to register for individual freight and delivery freight car services in addition to ordinary freight. All the transport-related registrations are transferable to other persons and places. There are no time limit placed following the registration.

With respect to buses and taxis, stricter requirements are in place for entry compared to those of the road freight transport, taking into account the public nature of the transportation modes concerned. First, the road passenger sector (buses) can be roughly divided into the regular carrier service following designated routes and demand responsive service rendered within certain zone. The former is subject to rigorous regulations. Market supply/demand is taken into account in granting licenses or registrations with respect to route-based services including inter-city or municipal buses. On the other hand, zone-based services require registration only, ignoring the supply and demand situations and thus allowing for an easier entry. Second, licenses must be obtained to render taxi services, whether the services are provided by corporation or individual. The granting of licenses is subject to stringent regulations. One vehicle operator can receive several licenses and individuals are also entitled to obtain them. There are no time limits placed following the granting of licenses.

2.3 *Regulatory restrictions on the provision of new services or the expansion of existing services and the rendering of taxi services.*

A fresh license is required to provide new services or expand existing services. The licensing authority takes demand into account before granting a license. There are no official procedures for hearing the views of operators already in the market in granting a license. However, in considering the demand, references could be drawn from the financial standing of the existing carriers or the forecast for market demand. Constraints for withdrawing from the provision of a service are less strict than those placed on the entry. Such withdrawal requires administrative procedures, such as the authorization of or reporting to administrative offices.

In the case of taxi services, there is no regulatory distinction made between taxis that can be hailed on the street and taxis ordered by phone. The form of service is determined at discretion by the operator. Taxi regulation involving the fee and the time of service differs municipality from municipality. Based on the size and comfort criteria, taxi services are divided into small-size, middle-size, large-size, comfort, and luxury categories.

2.4 *Regulatory controls on prices and/or quality of services*

Prices in the road freight services sector are liberalised and are voluntarily determined by market supply and demand. There is no price ceiling or floor imposed by the government. When a related industry association set the standard for prices, this can be subject to sanctions pursuant to the provision banning certain acts of trade associations under Korea's competition law.

In the case of passenger services and taxi, taking their public nature into account, prices are determined within the range set by the central government or local autonomous bodies and are reported by the service provider concerned. However, since the rendering of the zone-based bus transport service requires registration only, prices are charged voluntarily by each service provider, given the relatively easy market entry.

2.5 *Controls on international trade in road freight/passenger services*

The Korean Peninsula is surrounded by sea, except its Northern part, and this geographic characteristic makes international trade through the road transport impossible. International transportation of passengers and freights takes place by air and sea. In offering road transport services, foreign companies face no stricter regulations or requirements those imposed on local firms, since this sector is already open to foreigners.

Shares of Maritime and Air Transportation in the Transit of Passenger and Freight in International Trade
(As of 1998)

	Maritime	Air
Passenger	3.7%	96.3%
Freight	99.7%	0.3%

3. **Market Structure**

As of Dec. 1999, there were 5,876 ordinary freight carriers (152 061 vehicles), 36 782 individual freight carriers, 350 delivery freight carriers, and individual operators (38 732 vehicles) in operation. As of Dec. 1999, the number of registered freight vehicles stood at 2.32 million, with 2.09 million private freight vehicles (91 percent) and 0.23 million commercial freight vehicles (nine percent). Private and commercial vehicles accounted for 78 percent and 22 percent of transportation, respectively. Private freight vehicles that have low transportation efficiency are ten times greater in number than commercial ones, primarily due to the entry restriction placed on freight vehicle. Such restriction led to the increase of private freight vehicles owned by ordinary manufacturers or service providers, and has contributed to the inefficient logistics system in Korea. However, the number of new entrants has been on the rise, since registration was newly adopted as the entry requirement in the road freight sector. For example, in the first half of this year, the number of ordinary freight carriers went up from 5 876 to 6 114 (4.1 percent increase), and the number of registered vehicles up from 152 061 to 159 809 (5.1 percent increase).

As of Jan. 2000, the road passenger transit fleet consisted of 251 municipal bus operators (22 949 vehicles), 119 inter-city operators (10 289 vehicles), 163 rural bus operators (7 040 vehicles), 508 mini-bus operators (3 263 vehicles), 874 chartered bus operators (17 818 vehicles), 1 793 taxi companies (90 325 vehicles), and 135 639 individually operated taxis. The growth of private vehicles, traffic congestion, and expansion of subways have led to the annual decrease in the users of road passenger services. More specifically, the portion of bus in passenger transportation in 1999 declined by 27.5 percent compared to the figure in 1990. In the case of taxis, the portion constantly increased until 1992, but has been going down since 1993. In 1998, the portion contracted by 12.4 percent compared to its peak in 1992.

4. Regulatory Reform and Competition Issues

With respect to road freight transit, the licensing requirement was replaced by registration in July 1999 (the service can be rendered if certain conditions are met) in the face of stiff opposition from incumbent road freight operators that already acquired licenses. The KFTC kept a close eye and conducted reviews on this issue and as a part of its deregulation efforts, and made recommendations for reforms several times to regulatory authorities. The licensing requirement prompted some local autonomous bodies to suspend the granting of licenses for several years, citing oversupply. This resulted in the significant premiums on existing licenses and other serious problems of market distortion. Eventually, the regulatory reform plan put forward by the KFTC was accepted by the MOCT and was approved by the Economic Deregulation Committee in Nov. 1995, which led to the amendment of relevant law in 1997. In July 1999, registration was newly adopted as a condition for initiating the business, with a two-year grace period. The types of the road freight services were also streamlined from six to three. Effective from Jan. 1, 2000, the registration condition involving the number of freight vehicles was additionally loosened, from more than 25 to five. As a result, there are in effect no entry regulations in this sector.

Concerning the road passenger and taxi services, regulations are being phased out in each area. In 1993, the requirement for providing chartered bus services shifted from license to registration. In Aug. 1998, the requirement to operate only in new vehicles (in use for six months or less for passenger vehicles, two years for buses) when obtaining new licenses or filing new registrations was repealed. This year also witnessed wide-ranging reforms. Licensing requirement for mini-bus (buses travelling relatively short distances, such as towns in high areas or apartment complexes) operation was replaced by registration. In the past, fees of inter-city buses were subject to the approval of relevant authorities, but now carriers have only to file a report on prices. Regulations related to business operations were abolished as well, such as the Criteria for the Structure, Devices, Facilities, etc. of Vehicle and Acquisition of 20 percent of Reserve Vehicles.

The regulatory reforms implemented to date produced tangible results, in terms of promoted competition, reduced prices, and increased employment thanks to the increase in operators. Taxi services are the case in point. Even though the entry into the sector is severely restricted by the licensing requirement, the policy of expanding the supply of taxis was pursued for the sake of enhancing citizens convenience. As of 1999, the number of population per taxi was significantly low, compared to those of major metropolis in foreign countries. More specifically, the figure for Seoul was 147, while those of Tokyo, Paris, London, and New York stood at 221, 379, 453, and 624, respectively.

In July 1997, the road freight services were fully liberalised. This measure is expected to bring about substantial benefits in terms of market entry, price, quality of service, etc.

4.1 Application of Competition Law in the Road Transport Services Sector

Currently, the Monopoly Regulation and Fair Trade Act (MRFTA), Korea's competition law, does not provide for exemptions in the road transport sector. As such, the services are covered by the MRFTA just as other industries. However, there is in effect little room for the application of the MRFTA, since the MOCT, the regulatory authorities, and local autonomous entities imposed far-reaching regulations regarding the entry, prices, and other business operations in this sector, pursuant to relevant laws. Still, the KFTC is expected to play a growing role in this regard, since rapid regulatory reforms are undertaken, centering around the road freight services, on entry and prices. The KFTC has been paying keen attention to the reforms, focusing on anti-competitive conducts that may arise in the process of liberalisation.

4.2 *Examples of Mergers and Horizontal Arrangements*

Since road passenger vehicles and taxi operators are relatively small in scale, there have been no cases of M&A meeting the reporting condition for business combination under the MRFTA. However, with regard to the road freight services, there were ten M&A review cases in the recent three years, two in 1997, four in the next year and four in 1999. In examining the proposed business combinations, the scope of geographic market was determined to be national. This was because the road freight transit services offer nation-wide coverage without restrictions on operation territories and in effect operate as such. All the M&A cases concerned involved negligible market shares and had no anti-competitive effects. Thus, the KFTC did not ban or propose remedies concerning these business combinations.

In the area of chartered bus service with a liberalized fee regime, a price fixing scheme by four charter bus carriers in the Taejon Metropolitan City was uncovered in July 1999, which led to the corrective order. This involved the increases in bus fees, twice, by the operators concerned, as their situations worsened following the decline in the demand for chartered buses. In addition, the KFTC detected another price fixing by six charter bus associations at the municipal and provincial levels and imposed surcharges accordingly. The cartel involved the fixing of fees for carrying secondary school students on their field trips, based on destination, and imposing voluntary penalties on members that failed to follow this agreement.

NETHERLANDS

1. Introduction

This paper describes the Road transport industry in the Netherlands using the OECD question list as a guideline. The second paragraph will explain the regulatory regime and the market outcomes in the road freight transport industry. In the paragraphs three and four subsequently the road passenger transport industry and the taxi industry will be handled. Finally, in the last paragraph some relevant competition law enforcement-issues of the three industries will be considered.

2. Road Freight Transport

2.1 *Regulatory regime*

2.1.1 *The important agencies and associations*

The Ministry of Transport is the responsible agency for developing and implementing policies in the transport sector. Four government bodies implement these policies:

- The NIWO (Stitching Nationale en Internationale Wegvervoer Organisatie) is the national agency for national and international road transport operators for hire and reward. They are responsible for the provision of licenses and permits. Statistics and market information is their other main activity.
- The SIEV (Stitching Inschrijving Eigen Vervoer) is the organisation for the registration of transport companies which operate on their own account
- The RVI (Rijks Verkeers Inspectie) is the state inspectorate for the enforcement of the Road haulage act and is part of the Ministry of Transport.
- The RDW (Rijks Dienst Wegverkeer) is the state organisation for technical standards and registration of vehicles.

These four bodies have been delegated specific tasks according to the law and are responsible to the Minister of Transport.

The most important industry associations are:

- TLN, Transport & Logistiek Nederland is an organisation with about 6 700 members, mostly small companies.

- KNV, Koninklijk Nederlands Vervoer is an organisation with about 80 members, mostly large companies.
- VERN, Vereniging Eigen Rijders Nederland is an organisation with about 1 000 owner driver companies.
- Wegvervoer Nederland is an organisation with about 80 mid-sized companies.
- EVO, which is an organisation for “own account” shippers and transport companies and has about 30 000 members

About 5 000 operators are not organised in the sense that they are not members of the above-mentioned organisations.

The state has no ownership interest in the transport firms. The industry is completely privatised.

2.1.2 Brief summary of the history of the industry

After the Second World War the road transport industry was strongly regulated by legislation (WAG, De Wet Autovervoer Goederen). The intention was to regulate the capacity in the market by trying to make a balance between supply and demand.

In 1985 an agreement was signed by the government and representatives of the road freight industry to liberalise access to the market. Deregulation was the spirit of the time and legislation of European Union made changes necessary. The regime regulating capacity with licenses was removed with the present Road Haulage act of 1992 (WGW, Wet Goederenvervoer over de Weg) which provides the conditions for the access to the market and offers the preconditions for a level playing field.

Currently discussions are being held with the market parties to decide on the way the Road Haulage act should be revised. The question is whether further self-regulation should be introduced.

2.1.3 Regulatory requirements

When a company wants to enter the road freight market it must fulfil several requirements:

- Companies that operate for hire and reward with vehicles with more than 500 kg payload need a license issued by NIWO.
- The access to the profession is in line with EC Regulation 96/26 as amended by EC Regulation 98/76.
- The company has to be competent, creditworthy and trustworthy.
 - A company is competent when a valid certificate is submitted.
 - A company is creditworthy if the working capital is Euro 9 000,-- for the first permit and Euro 5 000,-- for each next permit. The minimum working capital for a company is Dfl. 40 000.

- A company is trustworthy if the applicant submits a proof of good repute which can be obtained from the mayor of the municipality.
- When a company wants to operate in the international road transport industry it also has to apply for a Euro license. This license will only be issued if a national license is available and besides that an additional certificate for competence must be handed over.
- When the necessary documentation for the application is complete and correct, a decision on admission to the market has to be taken within eight weeks.
- Companies working for own account with vehicles with more than 500 kg have to register at SIEV. There are no further additional conditions for this category.

2.1.4 *Other restrictions*

There are no limitations on expansion of existing services provided creditworthiness is satisfied and the person providing the professional competence is engaged in a management position of a minimum of 20 hours per week, or a full-time position in larger companies (more than five vehicles). Companies do need to establish an actual settlement with an office from which the business is organised and transport is planned. It is not sufficient to have only a P.O.Box address. Besides that the person who is running the business has to have a residence in the Netherlands.

For each additional truck a company has to apply for an additional permit (Dfl 25,-- per document) which should be kept on board the vehicle.

2.1.5 *Price and quality regulation*

The market regulates the prices and quality of services. There is no interference in prices from professional bodies or associations.

2.1.6 *Policy regarding international competition*

Basically foreign operators are free to operate in the road transport market in the Netherlands. Cabotage is not permitted for countries coming from outside the European Union.

The Dutch policy in bilateral relations is flexible and unrestrictive. For example, the Netherlands believe that permits should be issued as the transport operator requires, that the tax system should be fair and use reasonable rates, and that charges and taxes should not apply cumulatively. The Netherlands also seeks to prevent discrimination and ensure that transport operations can be completed unhindered. The new concept of transport needs has led the Netherlands to abandon the use of quotas in granting permits for commercial haulage in most bilateral relations. We aim at freeing own account transport from permits completely, in the same way as non-scheduled bus services. Commercial haulage, along with scheduled bus services, will continue to require permits until another suitable instrument can be introduced (for example, a multilateral European permit). Thus a liberal regime exists de facto in bilateral road transport relations between the Netherlands and almost all non-EU countries.

The Netherlands has also agreed a market share policy with most of these countries, to be invoked if market conditions in bilateral transport relations deteriorate. The affected party can inform the

Joint Committee that such a situation has arisen and ask it to seek an appropriate solution. The market share policy is included in the records of Joint Committee discussions for most countries and is therefore an integral part of bilateral road transport agreements.

The Netherlands has bilateral road transport agreements with most non-EU countries, to govern the transport of goods and persons by road. Using these agreements the Netherlands aims to achieve a level playing field for road transport, acceptable to both sides and compatible with the standards of the integrated European market.

According to the Netherlands the term level playing field means the following:

- membership of the relevant international agreements, such as TIR, CMR, AETR, green card, ATA and ADR;
- a fair tax system, based on non-discrimination, non-cumulation and reasonable rates;
- most vehicles used for cross-border transport are in line with EURO one, two or three or ECMT environmental standards;
- non-discriminatory treatment of vehicles and company offices;
- no restrictions on return freight;
- no other justification for complaint.

2.2 Market Outcomes

2.2.1 Market structure

Since the 1st July 2000, 12 227 licenses for operators for hire and reward were issued. These companies have 100 736 vehicles of which 70 percent have a European license besides the license for national transport. Approximately 60 percent of the companies have one to five employees, 27 percent have five to 15 employees and only two percent have more than 50 employees. The average is ten employees with a turnover of Dfl 1.7 million.

The market share of national transport is 75 percent for road transport, 24 percent for inland shipping and one percent for rail.

National road transport on yearly basis is about 325 million tons of which 85 percent is transported over a shorter distance than 100 kilometres.

International road transport on yearly basis is about 120 million tons. International road transport is growing, since 1992 the volume has increased with 30 percent.

The road transport industry contributes two percent to the National Income and provides jobs to 136 000 people.

2.2.2 *The outcome of liberalisation*

The liberalisation of the market has resulted in a considerable increase in the number of companies, from less than 8 000 operators ten years ago to 12 000 operators in 2000. The growth can be found in the owner driver companies and small companies up to five vehicles. The large companies grow larger by taking over mid-sized companies. Mid-sized companies have trouble surviving. If they do not go bankrupt, they are either split up into smaller entities, closed down or taken over.

Mosts have increased for the road haulage companies. The transport tariffs however have not increased equivalently because of the fierce competition. By improving efficiency the companies have absorbed the higher costs. The sudden recent increase in diesel fuel costs have caused severe problems for most companies. The average returns on investment for national road transport companies is + 1.2 percent and for international road transport companies -/- 0.2.

The transport performance of transport on own account is low compared to the transport for hire and reward. Especially in international transport it has only a minor part. In general small trucks and vans are employed.

The share of own account transport is decreasing because professional transport companies are more efficient and are more and more able to adjust to the specific needs of industry and trading companies.

The Netherlands has the policy to stimulate the growth of the modal share of inland shipping and rail. Road transport is growing but part of the growth is shifted mainly to inland shipping.

3. **Road passenger services**

3.1 *Regulatory regime*

3.1.1 *The important agencies and associations*

The Ministry of Transport has recently developed new governmental policies on passenger transport. The responsibility for developing and implementing policy at local or regional level for public transport rests with local and regional authorities. The Rijksverkeersinspectie (RVI) is the body within the ministry that is responsible for enforcing the Passenger Transport Act 2000.

The operators in public transport and the operators in the transport of passengers by bus, coach or taxi are organised in 'Koninklijk Nederlands Vervoer' (KNV).

Several companies are operating in the public transport industry. At the present, the state owns all the shares of a public transport operator called Connexion. The ownership of the shares does, however, not imply any influence in operational or commercial matters.

3.1.2 *Brief summary of recent regulatory developments*

All passenger transport will be regulated, as from 1 January 2001 by a new act: the Passenger Transport Act 2000. Public transport up to that date is in the hands of a small number of operators. The

new act envisages the introduction of competition and the entry of new passenger transport companies in the public transport industry by putting concessions out for tender. During the concession period the company is allowed to provide all the public transport within a certain area.

3.1.3 Regulatory requirements

In accordance with the law of the European Union any operator in passenger transport must be admitted to the profession by obtaining a licence (for access to the profession of operator in collective passenger transport services). Such a licence can be obtained when the operator shows that he is of good repute, of appropriate financial standing and professional competence.

The number of licences is not limited and is not subject to need or demand.

Entry into the market is free and solely subject to commercial opportunities, but for public transport where on basis of the new Passenger Transport Act 2000 a concession will be required. Local and regional authorities grant the concessions.

The concession gives the operator the sole right to operate the services defined in a concession in a given area. A concession is granted for a maximum period of six years.

Standing operators have no say in the approval of new applicants.

Licences are personal (issued either in the name of an individual or in the name of a company) and not transferable. A licence is valid indefinitely but every five years the licensing authority will investigate whether the licence holder still complies with the three criteria aforementioned. There are no other restraints.

In accordance with the law of the European Union a distinction is made between regular passenger transport services, i.e. a public transport service, and occasional transport services. The latter are completely liberalised, for the former a special permit or concession is required.

Co-ordination between routes and schedules at local level is the responsibility of the local or regional authority. In the New Passenger Transport Act 2000, such co-ordination is compulsory.

3.1.4 Price and quality regulation

The regulation of prices and/or the quality of services for public transport is the responsibility of local and regional government. There is a limit on the prices an operator can charge. A national and integrated fare system sets the maximum price an operator can charge.

The central government subsidises the local governments so they can subsidise local public transport services. These services are subsidised on the basis of the sale of fares realised.

3.1.5 Policy regarding international competition

In accordance with the law of the European Union international transport is regulated as far as access to the market is concerned. There are no requirements with regard to the nationality of the owners of

a company. Cabotage is only permitted with a special permit. There are no controls on quantity, routing or prices for international services.

Discussions on harmonisation and required measures fall within the scope of the European Union.

3.2 *Market Outcomes*

3.2.1 *Market structure*

There are approximately 550 operators in coach transport, operating about 5 000 coaches. In the public transport there are about ten operators operating around 6 000 buses, as well as a number of trams.

The market shares of the three biggest operators are: Connexion 41 percent, BBA and Arriva five percent. The market share of the municipal transport operators (GVB) is 41 percent. (The market is defined as the regional public transport market. The Netherlands Railways hold about 13 percent of this market). Connexion operates both in the market of public transport and in the market of coach transport and taxi transport.

With the entry into force of the new Act it will become possible to limit the relevant market to a maximum percentage. Whether this option will be used is a matter yet to be decided. There are no limits on the number of vehicles a company can operate, nor on the nationality of the owners of the company.

3.2.2 *The outcome of liberalisation*

Liberalisation will be achieved with the Act of passenger transport 2000 entering into force as from 1 January 2001. Previous liberalisation measures have shown an increase in the number of operators and vehicles, without putting undue pressure on the prices.

4. *Taxi services*

4.1 *Regulatory regime*

4.1.1 *The important agencies and associations*

Governmental policies on taxi transport are developed by the Ministry of Transport. The Act on taxi transport is enforced by the RVI (State Traffic Inspectorate), a division of the above-mentioned Ministry. The larger taxi companies are member of an organisation called 'KNV-taxi'; KNV stands for 'Koninklijk Nederlands Vervoer'.

All taxi companies are private owned, though a number of these companies are related to or owned by one of the Public Transport operators.

4.1.2 Brief summary of recent regulatory developments

A new nation-wide taxi regulation (in fact deregulation) has been introduced by the Act on Taxi Transport (Taxiwet) which was implemented on 1 January 2000. With this new act more competition will be possible. The former detailed regulation on capacity and the fixed fares (used to be set by local authorities) will be abolished within the next years in two stages. In the first stage the nation-wide regulation on capacity entrance to the taxi market is made easier; at this moment only a maximum fare is set.

4.1.3 Regulatory requirements

Any taxi operator must be admitted to the profession by obtaining a licence (for access to the profession of operator in taxi transport services). Such licence can be obtained when the operator shows that he is of good repute and professional competence. The number of licences is still limited to a certain level: they are valid in a particular region, although trips can also be to a destination outside that region.

To get a licence the operator should also have a minimum revenue a year (Dfl. 50 000) and a minimum number of operating hours (390 hours within three months). In the final deregulation stage (scheduled for 1/1/2002) those limitations are planned to be abolished.

Licences are not transferable and are issued at cost price (Dfl. 1 400).

Taxi services come in different forms: at taxi ranks, shared taxi (e.g. services for handicapped persons), taxi services based on special contracts etc.

4.1.4 Other restrictions

A licence is valid indefinitely but every five years the licensing authority will investigate whether the licence holder still complies with the two criteria earlier mentioned.

The number of taxicabs under one licence is not limited; so once a taxi company is accepted by issuing a licence, there is no limit in the way they can expand their services.

4.1.5 Price and quality regulation

As stated earlier, there is a temporary regulation on prices, by setting a nation wide maximum fare. In case of taxi services based on special contracts, fares can be negotiated within that contract.

Regular taxi services are not subsidised. Special services that fill in a part of public transport on demand and services for handicapped persons can be subsidised.

4.1.6 Policy regarding international competition

There are no requirements with regard to the nationality of the owners of a company. There are no controls on quantity, routing or prices for international services.

4.2 *Market Outcomes*

4.2.1 *Market structure*

There are approximately 3 000 taxi companies, operating about 22 000 taxicabs. Some of (the larger) companies are related to a public transport operator.

4.2.2 *The outcome of liberalisation*

Liberalisation is achieved with the Act on Taxi Transport which came into force as from 1 January 2000. It is too early to present any effects as yet.

5. **Competition Law Enforcement**

In this paragraph competition law enforcement issues related to the road transport sector will be described.

5.1 *The Dutch Competition Act*

Since there is no special regime for the transport sector the DCA applies to it (agreements, abuse of dominant position and merger control). The following articles are relevant.

Article 6 DCA

Agreements between enterprises, decisions by associations of enterprises and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Dutch market, or a part thereof, are prohibited.

Agreements and decisions prohibited pursuant to Clause 1 are legally null and void.

Article 24 DCA

Enterprises are prohibited from abusing a dominant position.

Article 27 DCA

The term concentration refers to:

- a) the merger of two or more previously mutually independent enterprises;
- b) the acquisition of direct or indirect control by:
 1. one or more natural persons who, or legal persons which already control at least one enterprise, or
 2. one or more enterprises

of the whole or parts of one or more other enterprises, by the acquisition of a participating interest in the capital or assets pursuant to an agreement, or by any other means;

- c) the creation of a joint enterprise which performs all the functions of an autonomous economic entity on a lasting basis, and which does not give rise to co-ordination of the competitive behaviour of the founding enterprises.

The director general may grant individual exemption from the prohibition of Article 6 DCA on different grounds.

Article 11 DCA

Article 6, Clause 1 shall apply to agreements, decisions or practices, within the meaning of that Article, involving at least one enterprise or association of enterprises that is entrusted with the operation of services of general economic interest, by law or by an administrative agency, only as far as the application of that Article does not prevent the performance of the special task entrusted to such an enterprise or association of enterprises.

Article 12 DCA

Article 6, Clause 1 shall not apply to agreements between enterprises, decisions by associations of enterprises and concerted practices by enterprises to which, pursuant to a regulation of the Council of the European Union or to a regulation of the Commission of the European Communities, Article 85, Clause 1 of the Treaty is not applicable.

Article 13 DCA

Article 6, Clause 1 shall not apply to agreements between enterprises, decisions by associations of enterprises and concerted practices by enterprises to which cannot detrimentally affect trade between the Member States of the European Communities, or which cannot appreciably prevent, restrict or distort competition within the common market, and which, if this were the case, would be exempt pursuant to a regulation within the meaning of Article 12.

The director general may issue a decision declaring Article 6, Clause 1 nonetheless applicable to an agreement between enterprises, a decision by associations of enterprises or a concerted practice by enterprises which, pursuant to Clause 1, are not subject to Article 6, Clause 1 if circumstances arise which, pursuant to the relevant regulation, could lead to the declaration of the inapplicability of that regulation.

The director general shall notify interested parties of his intention to issue a decision within the meaning of Clause 2, in writing, stating the reasons.

By way of departure from Section 4.1.2 of the General Administrative Law Act, the director general shall afford interested parties an opportunity to state their views, orally or in writing, before applying Clause 2.

A decision within the meaning of Clause 2 shall not take effect until six weeks after the date on which it is announced.

Article 14 DCA

Article 6, Clause 1 shall not apply to agreements between enterprises, decisions by associations of enterprises and concerted practices by enterprises for which dispensation has been granted pursuant to Article 85, Clause 3 of the Treaty.

Article 15 DCA

By general administrative order, subject to conditions and restrictions if necessary, Article 6, Clause 1 may be declared inapplicable to such categories of agreements, decisions or practices, within the meaning of that Article, as defined in that order, which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which do not:

- a) impose on the enterprises concerned restrictions which are not indispensable to the attainment of these objectives, or
- b) afford such enterprises the possibility of eliminating competition in respect of a substantial part of the products and services in question.

A general administrative order, within the meaning of Clause 1, may stipulate that the director general may issue a decision declaring Article 6, Clause 1 nonetheless applicable to an agreement, a decision or a concerted practice which, by that decision, are not subject to Article 6, Clause 1, if the requirements laid down in that general administrative order are satisfied.

The director general shall notify interested parties of his intention to issue a decision within the meaning of Clause 2 in writing, stating the reasons.

By way of departure from Section 4.1.2 of the General Administrative Law Act, the director general shall afford interested parties an opportunity to state their views, orally or in writing, before applying Clause 2.

A decision within the meaning of Clause 2 shall not take effect until six weeks after the date on which it is announced.

Article 16 DCA

Article 6, Clause 1 shall not apply to agreements, decisions or concerted practices, within the meaning of that Article, which are subject to the approval of, or can be declared invalid, prohibited or nullified by an administrative agency pursuant to the provisions of any other Act, or which have arisen pursuant to any statutory requirement.

Article 17 DCA (individual exemption)

Clause 1 for agreements, decisions or concerted practices, within the meaning of that Article, which contribute to improving the production or distribution or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which do not:

- a) impose on the enterprises concerned restrictions which are not indispensable to the attainment of these objectives, or

- b) afford such enterprises the possibility of eliminating competition in respect of a substantial part of the products and services in question.

The Netherlands Competition Authority enforces the Dutch competition law for cartel agreements or abuse of dominant position which affects the competition on the Dutch territory but can also apply article 81.1 and 82 EC Treaty.

The Dutch competition agency has not a responsibility for enforcing sector rules in this sector. It is only competent for enforcing Competition Law.

There is no sector regulator in the transport sector.

6. Enforcing the DCA in the road transport industry

Regarding the orders issued by the Concentration Control department of the Netherlands competition authority (NMa), various decisions have been taken during the reporting phase regarding transport by road. To date, there has not been any concentration in the field of road transport necessitating a licence. The decisions can be divided broadly into two categories: freight/parcel transport and passenger transport.

6.1 Road Freight Transport

The various decisions¹ issued by the director general of the NMa distinguish between parcel delivery (transport of objects weighing up to approximately 50 kilo) and freight transport (transport of objects weighing approximately 50 kilo and upward) as different markets. For both markets, a further distinction can be made between domestic transport and overseas transport, where national transport is primarily conducted over land.² Within the markets for national parcel delivery, international parcel delivery, national freight transport and international freight transport, a further distinction can be made between express services and standard services. For all the above markets, it can be said that the geographic scope is at least national. In one decision³, a national market for freight transport by road was defined.

6.2 Road passenger services

In *NoordNed*⁴, a market for private modes of transport (bicycles and cars) and a (regional) market for public transport services was distinguished. It was also considered that a further distinction could be made between public passenger transport by bus and public passenger transport by train. In a previous decision⁵, a (regional) city bus and a regional bus transport market had already been distinguished. In the same decision, private bus transport was also distinguished as a separate market.

6.2.1 Relevant cases involving horizontal arrangements

The NMa only has a few cases in this sector.

Case 1539 (still under consideration)

The NMa has received an exemption application for a co-operation agreement between Schiphol Airport and two taxi bases. In this co-operation agreement, Schiphol has entered into a co-operation agreement with two taxi bases for an indefinite period of time, the intention being to uphold/effect certain quality standards regarding taxi transport from Schiphol airport.

6.2.2 *Co-operation agreement*

The agreement in question concerns the regulation of access to the so-called ‘Opstelstrook’; this is the first lane located alongside the exit of the air terminal (arrivals level). About 90 percent of taxi transport commence from this lane. The Opstelstrook is only accessible to those taxis belonging to companies associated with the taxi bases. The parties have indicated that the remaining ten percent of taxi transport at Schiphol are conducted from locations other than the Opstelstrook.

The parties indicate that the agreement will not lead to any noticeable competition restriction, as taxi transport competes with all other forms of transport available at the airport. However, the parties do not provide figures or reports that substantiate this claim.

The relevant market in this case is the market for taxi transport from Schiphol. Various studies as well as study conducted by the NMa indicate that there is no substitute for taxi transport at the airport. The various forms of transport present at the airport could sooner be regarded as complementary (the Nederlandse Spoorwegen (Dutch national railways) share this opinion). The market is therefore far tighter than the parties have indicated and the impact of this agreement on the market is therefore much greater.

Case 602 (still under consideration)

Nine Dutch suppliers of motor coaches to motor coach operators in the Netherlands have entered into a “gentlemen’s agreement” in the form a declaration of intent. This was realised also in response to a request by the KNV, which represents 90 percent of these motor coach operators. This declaration of intent relates to the agreement to no longer issue a so-called 100 percent buy-back declaration with the supply of motor coaches.

This 100 percent buy-back declaration was formerly issued to offer finance companies extra assurance with the financing of motor coaches. The parties are of the opinion that this 100 percent buy-back declaration allows inefficiently managed or bad faith entrepreneurs to enter the market, or to easily expand their fleet, leading to financial problems with these companies in due course.

The financial problems of these companies cause them to violate regulations in the field of quality and safety, evade collective labour agreements and exert a downward pressure on the pricing structure.

Each motor coach operator must obtain its financing through the normal channels (via the bank).

The sector has been struggling for years with negative returns: the behaviour of companies in financial difficulty serves to exacerbate this situation; the competition between motor coach companies on the one hand and other modes of transport (train and aeroplane) on the other is extremely strong and remains assured.

Case 1767 (still under consideration)

The director general of the Netherlands competition authority (NMa) has ordered an official investigation into possible infringement of article 6 of the Competition Act by a number of taxi bases and taxi companies operating in Rotterdam and the immediate vicinity.

The investigation has focused on possible similarities or mutually co-ordinated actual activities regarding the rates charged for taxi services.

We don't have any cases of dominant position or predatory prices at present.

NORWAY

1. The Transport Industry

1.1 Introduction

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.

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.

1.2 Regulatory Regime

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.

County councils administer the licence system of *taxi transport* within each 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.

For regular bus transport, which operate within one county, the county council administers the licence system. For regular bus transport that covers two or more counties, the Ministry of Transport and Communications administers 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.

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.

The county councils (19 in all in Norway) which administer most of the transport within its county consists of a political board (chosen for four years at a 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.

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).

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.

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.

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.

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 undue delay. The actual time of the procedure will vary from case to case depending on the application to be considered.

Licences can be granted to 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 ten 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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

1.3 Market Outcomes

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.

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 to 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.

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.

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.

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 above). The Norwegian Competition Authority enforces the Competition Act.

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.

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.

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.

Where 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

2.1 Introduction

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.

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

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.

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.

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.

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.

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?

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?

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?

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

Have you considered mergers or concentrations in this sector?

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

Have you addressed concerns involving horizontal arrangements in this sector?

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.

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?

No.

Have you found cases of collusive tendering or bid rigging?

No.

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

See above.

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

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.

POLAND

1. Regulatory Regime

(1.1) What agency or agencies have responsibility for developing and/or implementing policies related to local, regional, inter-state or international [road freight/road passenger/taxi] regulation? At what level of government do these agencies operate? What is the broad structure of these agencies? Who are they responsible to? What are their broad objectives?

The Ministry of Transport and Maritime Economy (MT&ME) has a leading position in formulating and introducing regulatory policies for transport, including road transport. This covers in particular the following areas: operation and development of transport infrastructure, road traffic, transport of passengers and goods by means of road transport, public transport..

Efforts and activities of the MT&ME are supported in particular by: the Ministry of State Treasury (MST), Ministry of Regional Development and Construction (MRD&C) and Ministry of Economy (ME).

Regulation of the Prime Minister of 20 June 2000 (OJ of 21 June 2000, No. 50, item 591) lays down detailed responsibilities and competencies of the Minister of T&ME.

The Minister of T&ME supervises over the General Director of Public Roads, who by means of a governmental administration agency, i.e. the General Directorate of Public Roads (GDDP), is responsible for matters related to operation and development of road transport, and in particular construction, modernisation, maintenance and protection of public roads, including motorways. Accordingly, under the Regulation of the Minister of T&ME of 22 December 1998 on approving the statute of the GDDP – OJ of 31 December 1998, No. 164, item 1192) GDDP is financed from the State Budget.

The Minister also supervises the Agency for Motorway Construction and Operation. Regulation of the Prime Minister of 13 May 1995 on approving the statute of the Agency for Motorway Construction and Operation (OJ of 24 May 1995 No. 52, item 283) states that the Agency shall prepare and co-ordinate construction and operation of motorways, and is a national legal person and a financially self-dependent agency.

The Minister of Regional Development and Construction heads the “regional development” sectors and is responsible for tasks within his competencies. Regulation of the Prime Minister of 20 June 2000 (OJ 21 June 2000, No. 50, item 589) lays down detailed scope competencies and responsibilities of the Minister of RD&C. Among them there are the following: co-operation with organisations associating territorial government units with regard to social and economic issues of national development, drafting national strategies for regional development, drafting and implementing programs related to regional development of the country.

Preparation of annual targets for privatisation schemes and programs (including privatisation of State Passenger Road Transport Companies - PKS) falls into scope of responsibilities of the Minister of State Treasury. The Minister of ST supervises over the Privatisation Agency.

What are the names of the most important industry associations or groupings of industry players?

So called social and professional environment of the road transport is organised in many groupings and associations, and in particular associations of international road transport operators of regional and national scope (among them: the Association of International Road Transport Operators – ZMPD, member of the IRU and the Polish Association of International Passenger Road Transport Operators). There is also a kind of mother Union of Associations – National Council of Road Transport Operators. State Passenger Road Transport Companies - PKS are members of the Polish Commercial Chamber of Transport and Freight Forwarding. Employers also have their own regional and nation-wide groupings.

The law of 30 May 1989 on professional self-management in certain enterprises (OJ of 1989, No. 35, item 194 with later amendments) lays down principles for establishing and operating professional management structures associating persons-entrepreneurs involved in economic activity in the scope of:

- 1) trade, catering and general services;
- 2) transport;
- 3) other types of activity.

Entrepreneurs are free to associate within professional self-managerial organisations, e.g. in the form of transport associations.

Principal task of such associations is in particular maintaining and developing professional liaisons, promoting attitudes based on professional ethics and self-respect, as well as involving in cultural, educational and social initiatives to the benefit of members, establishing and maintaining internal funds and member benefit facilities, and representing member interests before central administration authorities.

Do national, state, regional or local governments have an ownership interest in firms providing [road freight/road passenger/taxi] services?

Yes. Under among other regulations the law of 20 December 1996 *on municipal management* (OJ of 1997 No.9, item 43) units of local government may establish limited liability companies or joint stock companies, as well as may accede to such companies. The law lays down detailed conditions and requirements in this regard.

(1.2) Are there important recent regulatory developments that should be noted or important facts in the history of the industry that affect the way it is currently regulated? If so, please give a brief summary of the history of the [road freight/road passenger/taxi] industry.

There are the following external factors and events of the greatest importance which had implications for the system transformation in Poland, and indirectly for the transport sector development:

- the Europe Agreement (signed in 1991, in force since February 1994), which established association of the Republic of Poland with the European Communities and the Member Countries thereof; it established a framework for gradual integration with the EU through open market access in many sectors and industries and other forms of activities;
- the European Council Summit in Copenhagen (June 1993), which established principal political and economical criteria for accession of the associated countries,
- the European Council Summit in Essen (December 1994), which set forth the pre-accession strategy substantiating actions required to achieve integration of the associated countries with the EU,
- “White Paper of the European Commission on integration with the EU Common Market” (Cannes 1995), which identified priority adaptation tasks and a sequence of measures to adjust regulations of the EU candidate countries to the *acquis communautaire* in individual segments of internal market,
- “Opinion (AVIS) of the European Commission on the Polish application for membership in the EU” and so called AGENDA 2000 (presented in July 1997 in the European Parliament), recognising Poland as a country of functioning market economy, able to meet competition requirements in the mid-term; in the “Opinion” the European Commission stated that “*Poland achieved significant progress in adopting acquis communautaire in the transport sector*”, therefore no major problems are expected in this regard.
- the European Council Summit in Luxembourg (December 1997), which decided to start negotiations with the associated states;
- Brussels, 30-31 March 1998 – beginning of negotiations with the accession countries, including Poland;
- draft decision of the EU Council on principles, priorities, intermediate targets and conditions included in the European Commission’s document “Accession Partnership”, adopted in March 1998.

In internal relations, the following elements of the adjustment process are of great importance:

- submission of the official Polish application for membership in the EU (April 1994);
- adoption of the Resolution No. 133/95 by the Council of Ministers, on implementation of recommendations of the “White Paper of the EC on integration with the common market of EU” (November 1995);
- providing the European Commission with Replies to the Questionnaire – information required to draft an opinion on the Polish application for membership in the EU (July 1997);
- adoption of the “National Strategy for Integration – NSI” by the Council of Ministers (January 1997);
- establishment of Inter-ministerial Team of Experts for Preparing the Membership Negotiations (July 1997);

- adoption of the “Schedule for implementing measures adjusting the Polish legislation to recommendations of the White Paper of the EC on integration with the Common Market of EU” by the Council of Ministers (August 1997);
- development of the “Report on status of preparations for membership of Poland in the EU as of the end of 1997” (March 1998);
- in 1998 development of the National Program for Preparations for Membership of Poland in the EU – NPPC (National Program for the Adoption of the Acquis) including annexes to the priorities in the short term (for 1998) and medium term (for 1999-2002) and follow-up with modifications and supplements.

Between November 1998 and March 1999 the European Commission in Brussels held several working meetings with representatives of the Polish state administration on multilateral and bilateral screening of the *acquis communautaire* with respect to the “Transport Policy” area (including road transport). In 1998 representatives of MT&ME participated also in the screening exercise related to the “Free Movement of Goods” area, where among other things, adjustment of technical parameters of vehicles were analysed. The exercise was based on the so called “screening list” including a current transport EU *acquis communautaire* and equivalent Polish legal acts, as well as on the “Guide to the Transport *acquis*” prepared by DG-VII Transport of the European Commission.

Polish negotiating position in the scope of the transport policy was finally submitted to the European Commission in mid 1999.

All the above external and internal circumstances accelerated integration measures, which was reflected by higher intensity of legislative adjustment initiatives, implementation of system solutions, establishment of new institutions responsible for enforcing regulations and monitoring activities of transport entities.

There is a significant degree of cohesion between targets of the Polish and common transport policies. Basic underlying principles, in particular with relation to provisions of conditions for sustainable development of the transport sector with respecting safety and environmental standards, are compatible with Community requirements, which were reflected in current Polish legislation and drafts of proposed legal regulations.

A number of laws and executive acts, which entered into force between July 1997 and June 2000 (including amendments to existing regulations), prove that the Polish transport sector is well adapted to the needs of market economy and mechanisms as well as rules of fair competition and international co-operation.

The most prominent acts include: the Law of 2 August 1997 *on conditions of performance of international road transport* (OJ No.106, item 677 with later amendments), the Law of 29 August 1997 *on conditions of performance of national road transport of passengers* (OJ No. 141, item 942 with later amendments), the Law of 20 June 1997 *on road traffic* (OJ No. 98, item 602 with later amendments).

Currently proposed Law on the Road Transport Inspection is at the last stage of legislative procedure. Effectiveness is expected before end of 2000.

The new Law on road transport is expected in the beginning of 2002. It will uniformly harmonise and regulate conditions of the access to the road transport markets, passenger and goods , local and

international, and access to the profession of the road transport operator. The law will introduce the licence to the road transport (replacing currently in use concession).

On 13 April 2000 Poland initialled Agreement on international occasional carriage of passengers by coach and bus - INTERBUS, prepared by the European Commission and negotiated with 13 associated countries. The Agreement shall enter into force during the pre-accession period and replace these parts of the bilateral agreements between Poland and European countries which deal with international occasional road transport of passengers. A next step on the way to harmonise conditions to perform this type of passenger services will be taken.

(1.3) What are the primary regulatory requirements that must be satisfied by a firm, which wishes to provide [road freight/road passenger/taxi] services (whether local, regional, inter-state or international)?

Polish legislation regulates conditions of the access to the market and to the profession of road transport operators separately, in terms of national and international road transport.

Conditions to perform international road transport of passengers and goods are regulated in the Law of 2 August 1997 on conditions of performance of international road transport (OJ No.106, item 677 with later amendments), and in the relevant executive acts thereunder, including in particular:

- the Regulation of the Minister of T&ME of 28 November 1997 laying down the documents required for granting a licence for performing international road transport and content as well as form of such a licence (OJ 1997, No 148, item 991 with later amendments);
- the Regulation of the Minister of T&ME of 28 November 1997 on additional conditions for granting of authorisations for a national enterprise to perform international regular carriage of passengers by coach and bus, shuttle and occasional services (OJ 1997, No 148, item 990 with later amendments);
- the Regulation of the Minister of T&ME of 31 March 1998 on charges for journeys using the roads of national character for international road transport and on the bodies entitled for charging (OJ 1998, No 45, item 286 with later amendments).

In national road transport, regulatory framework was provided only for passenger transport (including taxis). Relevant regulations may be found in the Law of 29 August 1997 on conditions of performance of national road transport of passengers (OJ 1997, No. 141, item 942 with later amendments) and respective executive acts thereunder, including in particular:

- the Regulation of the Minister of T&ME of 5 March 1998 on documents required for granting a permit to perform national passenger road transport for hire and reward by motor vehicles other than the taxi cabs, and content as well as form of such a permit (OJ 1998, No 34, item 193 with later amendments);
- the Regulation of the Minister of T&ME of 5 March 1998 on documents required for granting a permit to perform national passenger road transport for hire or reward by taxi cabs, and content as well as form of such a permit (OJ 1998, No 34, item 194 with later amendments);

- the Regulation of the Minister of T&ME of 23 May 2000 concerning training and examining of persons applying for the permission to perform national road transport of passengers for hire or reward (OJ 2000, No 45, item 529).

Conditions of the access to the national markets of the road transport of goods are regulated by many different provisions scattered through the Polish legislation, for example covered by the *Transport Law* of 1984 (OJ 2000, No 50, item 601), the *Law of 1999 on the economic activity* (OJ 1999, No 101, item 1178), etc.

Is a licence necessary to provide such services?

Polish entrepreneurs, who wish to perform international road transport for hire and reward (of passengers and goods) are required to obtain concession (basically equal to the Community licence), which is granted by the Minister of Transport and Maritime Economy upon meeting quality criteria set forth in the *Law* (current status conforms to the Council Directive 96/26 on access to the profession of road transport operator).

The concession is not required in case of international combined transport.

The concession does not apply also in case of international road transport for own account (both passengers and goods).

In national road transport no concessioning is applicable. Economic activity consisting in performing national road transport of passengers for hire and reward requires relevant permit. Such permit is granted, refused, withdrawn, exchanged or expired by means of relevant administrative decision.

What are the most important license conditions (e.g. financial standing, criminal history, insurance requirements and so on)?

The concession to perform international road transport (of passengers and goods) for hire and reward is granted to any entrepreneur, who meets the following quality criteria:

- 1) at least one member of the management board of a legal person, and otherwise – one of persons involved in economic activity – has at least three years of experience in performing national road transport or one year of experience in case of international transport;
- 2) members of the management board of a legal person, and otherwise – persons involved in economic activity, have no criminal record of offences against taxation, safety in inland transport, property or documents;
- 3) provides adequate security in the form of financial or tangible assets in the amount equal to at least EURO 3000 or EURO 150 per ton of maximum allowable payload or per bus seat or in the form of other collateral equal in value to the above;
- 4) is entitled to hold a vehicle, technical characteristics of which conform to requirements laid down in the *Law on road traffic*;
- 5) international road transport may be performed by driver or drivers meeting the conditions set forth in point 1), holding a certificate of professional qualifications as defined in the *Law on*

road traffic with no criminal record of offences against taxation, safety in inland transport, property or documents.

Economic activity consisting in performing national road transport of passengers for hire and reward requires relevant permit. The permit is granted if:

- 1) entrepreneur is entitled to hold a vehicle, technical characteristics of which conform to requirements laid down in the Law on road traffic;
- 2) at least one of the undertaking's owners and in case of legal person - a member of the management board has certified adequate professional qualifications, which means:
 - has completed higher education in economical, technical or legal field; or
 - holds a certificate confirming passing an exam in the scope of performing national road transport of passengers for hire and reward; or
 - holds executive post in transport enterprise, or is a member of the management board in a company dealing with transport activity, for at least one year; or
 - has documented at least three years of experience in performing road transport of passengers for hire and reward;
- 3) entrepreneur provides a financial or material guarantee equal in value to at least EUR3000 per vehicle or EURO 150 per each seat, or provides any other acceptable collateral for the period of holding the permit.

The permit for performing national carriages by taxi is granted when the entrepreneur personally performing such transport for hire and reward and employed by him drivers meet the conditions laid down in the relevant regulations (including regulations of the Law on road traffic).

Additional requirements regarding taxi operators are provided for in the provision, which refers to the obligatory withdrawal of the permit whenever the entrepreneur:

- 1) ceased to fulfil the requirements to obtain such permit; or
- 2) arbitrarily alters readings of measuring and control devices fitted in taxi; or
- 3) goes beyond his rights, or does not meet his obligations set forth in the permit; or
- 4) violates regulations on counteracting unfair competition.

The permit may be withdrawn, if the entrepreneur:

- 1) fails to perform carriages for a period longer than three months due to his own reasons;
- 2) violates provisions of related laws or transport regulations, including disciplinary provisions related to carriages of passengers and luggage by taxi; or
- 3) violates provisions on regulated prices for transport services; or
- 4) violates provisions on working hours of drivers; or

- 5) fails to remedy within specified period of time, faults identified during a relevant inspection.

Is the quantity of licences limited in some way? Does the licensing authority take into account “need” or “demand” before granting a license?

Yes. The Minister of Transport and Maritime Economy is the relevant authority to grant concessions. The authority has powers to refuse, change and withdraw concessions. Such actions are taken by means provided for in the Code of Administrative Conduct. Concessions take form of administrative decisions.

Under provisions of said Law on international road transport, the Minister of Transport and Maritime Economy shall deny granting the concession in case it is not possible to provide for sufficient quantity of foreign permits (to perform bilateral transport services, in transit, to and from third countries).

The term foreign permit means a document received under relevant bilateral agreement on international road transport from competent foreign authority or international organisation, entitling to perform international road transport, for single or multiple use on the territory of states specified in such permit or in transit through such territory. Issues related to mutual exchange of foreign permits are discussed on the Joint Committee meetings, based on the bilateral agreements on international road transport, signed by Poland and other European states.

The Minister of T&ME, in consultation with nation-wide organisations associating international road transport operators, may establish a quota of concessions or concession promises for any given calendar year.

Such measures can be economically justified since in order to provide for fair, undisturbed operation of international road transport it is necessary to guarantee a number of permits for any concession holder. Full liberalisation of this market against a limited number of foreign permits for bilateral and transit road transport might break down the Polish transport market.

Is there a time limit within which a license must be granted or denied?

Yes. 14 days according to provisions of the Code of Administrative Conduct. However, when the case is very difficult and complex, administrative proceeding may take longer (not longer than 60 days) upon relevant notification of the applicant.

Do operators already in the market have any official role to play in the decision making process that leads to new entry?

No. Access to the market is fully liberalised.

Nevertheless, at the current stage, it is not possible for firms, which apply for concessions to perform international transport, to grow in proportion to the rate international trade develops, due to limited number of concessions. The Minister of T&ME requests nation-wide Polish organisations associating international road transport operators for an opinion on the number of available concessions or concession promises for a given calendar year.

Are separate licenses required for the provision of different services? Which services?

Concessions are granted to perform international road transport to one or more countries, by specified motor vehicle.

Concessions for international road transport fall into two categories:

- passenger concession (for passenger road transport);
- goods concession (for road transport of goods).

Are there limitations on the ability of one firm to hold more than one licence?

No. A company has to meet requirements set forth in the Law and executive acts, only.

Is licensing restricted to individuals?

No. To the application for concession to perform international road transport should be attached:

- in case of natural persons and civil companies – a document proving the registration of economic activity;
- in case of legal persons (limited liability companies, joint stock companies, state owned enterprises) - a document of entry into the commercial register and the deed of establishment (notary deed, statute);
- and then - the person has to meet the requirements set forth in the law and executive acts.

Are licenses transferable?

No. The concession may not be transferred to third persons.

Nevertheless, the Minister of T&ME acting upon application of the entrepreneur, may **transfer** rights flowing from such concession in case:

- of death of natural person – holder of the concession – replaced with heir, which shall include natural person as a partner in all forms of civil companies (governed by the Civil Code);
- of merger, split or transformation, according to relevant regulations, of the company holding vehicles covered by the concessions for international road transport;
- of take over by other entrepreneur, whole or part of the activity in the scope of international road transport.

Can licenses be transferred on a geographic basis?

No.

Are there constraints on the ownership, organisational form or operation of the firm which holds the license?

No.

Is the validity of license limited in time?

No, unless requested by the applicant.

In the case of passenger services is a regulatory distinction made between regular or scheduled and occasional services (such as chartered services or one-off excursions)? What are the different regulatory requirements in each case?

According to said Law on international road transport, performing regular international bus transport, shuttle or occasional services on the territory of the Republic of Poland requires – beside the concession – an additional permit of the Minister of T&ME.

Occasional services are exempt from this requirement when:

- 1) the same group of passenger is carried in the same vehicle throughout the travelled distance in order to reach a starting point, or
- 2) passengers are carried one way only in order to reach a destination point.

The permit to perform regular bus services may be granted for up to five years, and in case of shuttle and occasional services – not longer than for one year.

The permit must be used only by the recipient.

In international road transport of passengers no quotas (foreign permits) are applicable regarding access to the market, i.e. there is no ceiling for foreign permits (save for road transport to and from: Austria, Croatia, Czech Republic, Latvia, Slovakia, Slovenia, Russia, Italy where quotas are established for number of vehicles entering their territories empty – with no passengers).

Regulation of the Minister of T&ME of 28 November 1997 on additional conditions for granting of authorisations for a national enterprise to perform international regular carriage of passengers by coach and bus, shuttle and occasional services (OJ 1997, No 148, item 990 with later amendments), stipulates that national entrepreneurs applying for permits to perform regular bus services should:

- 1) have at least three years of documented experience in the scope of performing international road transport of passengers by road or five year experience in the field of performing national road transport of passenger by road;
- 2) hold adequate number of buses covered by concessions, which enable them to operate a regular line and at least one bus in reserve per each 10 buses operated on the line;
- 3) evidence that proposed activity in the scope of regular international services by bus shall:
 - a) pose no direct threat to existence of previously approved regular bus services;
 - b) pose no real competition for respective railway connection.

The regulation introduces a distinction between requirements for operators applying for additional permits for performing regular international bus services and for international shuttle or occasional services.

In the first case, relevant application should be supported by:

- 1) a copy of concession to perform international road transport;
- 2) documents required under the regulation;
- 3) detailed description of route indicating stops for picking up and discharging passengers and cross border points;
- 4) a map with indication of proposed routes and stops;
- 5) information on length of the line in km, and distance between individual stops;
- 6) timetable agreed with foreign operator proposed to perform regular services on the line;
- 7) a copy of contracted on common regular services signed by operators;
- 8) schedule for driving hours and rests;
- 9) tariffs and prices;
- 10) copies of registration cards of buses covered by the concessions, and in case the applicant is not owner thereof – additionally document entitling to use such vehicles.

Application for granting permit to perform international shuttle or occasional services should be supported by:

- 1) proposed route of carriages indicating cross border points;
- 2) dates of carriages;
- 3) schedule of driving hours and rests;
- 4) copies of registration cards of buses covered by the concessions, and in case the applicant is not owner thereof – additionally document entitling to use such vehicles.

The Polish resident applying for the permit to perform national regular bus transport services is required to provide the granting authority with:

- 1) proposed agreed timetable in line with provisions of transport regulations;
- 2) principles of using bus stops and stations agreed with owners thereof.

How is the co-ordination between different routes and time schedules achieved at the local level? Is there any co-ordination at the local level by different companies operating on different routes and by different forms operating different means of transportation?

The Transport Law (OJ of 1995 No. 119, item 575 with later amendments) stipulates that operators of regular international road transport of passengers are required to agree proposed timetables with relevant local customs authority, and in particular - time and place of crossing national border by buses and waiting times on cross border points.

Both in case of national and international services operators are required to publish – by generally acceptable means – scope of activity, and in particular addresses of dispatch points and procedure to conclude contracts for carriage.

Operators of regular public transport are required in particular to publish timetable of offered services.

Co-ordination of timetables of operators involved in national road transport of passengers for hire and reward in the form of regular public transport is done by:

- 1) board of local community – in case of in-community routes;
- 2) board of county – in case of cross community routes within one county;
- 3) board of the voivodeship – in case of routes crossing two or more counties;
- 4) board of the voivodeship, on which territory starts the route further crossing two or more voivodeship.

The above authorities (boards) are obliged to organise co-ordination of timetables on their territories and to agree on timetables when proposed route goes beyond their territories.

Operators are obliged to agree timetables with relevant authorities. Costs related to co-ordination of timetables is borne by operators.

The above issues are also regulated in the Regulation of the Minister of T&ME of 15 December 1998 on contents, procedure and deadlines to publish timetables, procedure to agree and co-ordinate such timetables and conditions to bear related cost (OJ of 1998 No. 159, item 1054).

(1.4) *What are primary regulatory restrictions on the provision of new services or the expansion of existing services (whether local, regional, inter-state or international)?*

There are no such restrictions.

Is a licence required to provide new services or expand existing services?

Polish entrepreneurs wishing to perform international road transport (of passengers or goods) for hire and reward have to obtain a relevant concession (which is basically equal to a Community license). The concession is granted by the Minister of Transport and Maritime Economy provided that legal provisions on quality criteria are met.

Are there controls on the quantity of services that can be provided or the routes that they can be serviced?

Entrepreneurs performing international road transport for hire and reward are required to follow the conditions, under which the concession was granted. Concession may be granted for:

- 1) road transport to one or more countries;
- 2) carriage in one or more specified motor vehicles;
- 3) all or selected types of carriages.

In case of persisting violations of respective regulations, the concession may be withdrawn or the permit for international road transport of goods may be denied.

The law on performing international road transport calls for obligatory and optional withdrawal of concessions.

The concession must be withdrawn when the entrepreneur fails to meet requirements thereunder (for example the operator used the vehicle other than shown in the concession or performed the carriage to country other than shown in the concession).

The concession may be withdrawn, when the holder fails to provide relevant information and documents required by the granting authority within specified deadline. The documents should evidence that the entrepreneur acts in conformity with conditions to perform economic activity in the field of international road transport.

The Minister of T&ME may request the concession holder to present, within specified period of time, information and documents evidencing that the entrepreneur acts in conformity with conditions to perform international road transport, laid down in relevant law.

Granting of permit to perform national regular passenger services on specified route crossing neighbouring counties or voivodeship, requires approval of the competent voivodeship authorities relevant to geographic scope of such route. The granting authority may request the permit holder to present, within specified period of time, information, data and documents evidencing that the entrepreneur acts in conformity with conditions to perform road transport of passengers for hire or reward, laid down in relevant law.

Is the quantity of licenses limited in some way? Does the licensing authority take into account "need" or "demand" before granting license? What are the criteria followed for deciding how many new licenses to offer?

The Minister of Transport and Maritime Economy is the competent authority to grant concessions. The granting authority is entitled to deny, change and withdraw the concession. Actions in this respect are governed by procedures laid down in the Code of Administrative Conduct. Concessions take form of administrative decisions.

Under provisions of said Law on international road transport, the Minister of T&ME shall deny the concession in case it is not possible to provide for sufficient quantity of foreign permits (to perform bilateral transport services, in transit, and to and from third countries).

The term foreign permit means a document received under relevant bilateral agreement on international road transport from competent foreign authority or international organisation, entitling to perform international road transport, for single or multiple use on the territory of states specified in such permit or in transit through such territory. Issues related to mutual exchange of foreign permits are discussed on the Joint Committee meetings, based on the bilateral agreements on international road transport, signed by Poland and other European states.

The Minister of T&ME, in consultation with nation-wide organisations associating international road transport operators, may establish a quota of concessions or concession promises for any given calendar year.

Such measures can be economically justified since in order to provide for fair, undisturbed operation of international road transport it is necessary to guarantee a number of permits for any concession holder. Full liberalisation of this market against limited number of foreign permits for bilateral and transit road transport might break down the Polish transport market.

In case a company has environment friendly vehicles, the entrepreneur may at any time submit relevant documents, and within next 30 days he will be granted a concession. Such concession is valid in all countries save for Austria and Slovenia.

Entrepreneurs shall be exempted from a requirement to hold foreign permit to perform international combined transport if relevant international agreements provide for such exemption on mutual basis.

Is there a time limit within which a license must be granted or denied?

Yes. 14 days according to provisions of the Code of Administrative Conduct. However, when the case is very difficult and complex, administrative proceeding may take longer (not longer than 60 days) upon relevant notification of the applicant.

What other provisions do licenses control (such as capacity, routing, etc.)?

Entrepreneurs performing international road transport are obliged to follow the conditions, under which the concession has been granted. Concession may be granted for:

1. road transport to one or more countries;
2. carriage in one or more specified motor vehicles;
3. all or selected types of carriages.

In case of persisting violations of respective regulations, the concession may be withdrawn or the permit for international road transport of goods may be denied.

The Law on international road transport provides that the Minister of T&ME may request the permit holder to present, within specified period of time, information and documents evidencing that the entrepreneur acts in conformity with conditions to perform international road transport, laid down in relevant Law.

In case of national road transport of passengers, the granting authority may oblige the permit holder to present, within specified period of time, information, data and documents evidencing that the entrepreneur acts in conformity with conditions to perform paid transport of passengers, laid down in relevant Law and the permit.

What flexibility does a license holder have to change the services that he/she provides? Are there any constraints on withdrawing from the provision of a service?

The Law on conditions to perform international road transport provides for circumstances when the concession expires. It may happen under the following circumstances:

- 1) concession expires after the concession period stipulated therein;
- 2) generally, concessions are granted for indefinite period of time. However if requested by the applicant, the concession may set forth the concession period;
- 3) concession expires in case the undertaking belonging to the concession holder is liquidated and no circumstances arise to justify the transfer of rights under the concession and such transfer is not authorised by the decision of the Minister of T&ME;
- 4) concession expires in case the concession holder relinquish all his rights thereunder.

Additionally in circumstances of: change of vehicles, change of the firm's address, change of vehicle registration number, change of territorial scope of the concession, change of vehicle DMC with the replacement of the vehicle, application for a concession duplicate or extension of transport capacity (more vehicles) – the cases where additional concession should be applied for – submission of relevant documents is required.

In the case of taxi services, is a regulatory distinction made between taxis that can be hailed on the street, taxis hired at ranks and taxis ordered by phone?

No.

Is there a national regulatory mechanism in place?

Yes. The Law of 1997 on conditions of performance of national road transport of passengers lays down the conditions to be followed in performing taxi services, and the Regulations of the Minister of T&ME of 5 March 1998 on documents required for granting a permit to perform national passenger road transport for hire or reward by taxi cabs, and content as well as form of such a permit (OJ 1998, No 34, item 194 with later amendments), includes more detailed provisions in this regard.

Are there limitations on the number or identity of taxis that can serve certain locations (such as a limitation on the number/identity of taxis that are allowed to pick up at a major airport)?

Relevant county authorities and Municipal Council of Warsaw may introduce a requirement to obtain a permit for carriage of passengers by taxi, for hire and reward. Such permits are granted for vehicle and area of:

- 1) a local community;
- 2) neighbouring communities, after relevant agreement is reached between all involved communities;
- 3) a City of Warsaw – union of communities.

Heads of respective local authorities (depending on the area stipulated in the permit) are competent to issue, deny, withdraw, change and terminate permits.

It is allowed to perform carriage originating in the authorised area and going beyond, however with no right to render passenger services outside the authorised area, save for return leg.

Relevant community councils and the Municipal Council of Warsaw may introduce a limit of new permits for taxi services to be issued during particular calendar year, upon consulting organisations associating local taxi drivers and organisations, statutory obligation of which is to protect consumer rights.

Are there quality standards (colour, size, age, comfort, etc.) to which a taxi has to comply?

The Law on road traffic of 20 June 1997 (OJ of 1997 No.160, item 1086 with later amendments) stipulates that a taxi is a motor vehicle fitted with adequate equipment and adequately marked, designed to perform the carriage, upon a charge paid on the basis of readings of a taximeter:

- 1) not more than nine passengers (including a driver) and hand luggage thereof (passenger taxi);
- 2) loads of the maximum allowable weigh of 2.5 t (luggage taxi).

The Law regulates also conditions of the access of the vehicles to the traffic on public roads and in residential areas and describes rules and principles to control road traffic.

An association of taxi drivers of given city, local community or county may establish the colour of taxi cabs to be used by its members; it also supervises over quality of offered services.

Does taxi regulation differ municipality from municipality?

A national regulatory framework is in place, however individual municipalities and communities are free to adopt different solutions in the field of organisation.

Are there limitations on the hours of operation of a taxi or are these limitations placed on each driver?

There are no such limitations.

How do you guarantee holiday or night services?

Services are rendered 24 hours a day in all year around. Relevant tariffs are in place.

(1.5) *What are the primary regulatory controls on prices and/or quality of services? Are there limits on the prices than an operator can charge? Do these limits set a price ceiling or a price floor, or both? What constraints are placed on the flexibility of the service provider to adjust prices or services? Is there provisions for oversight, registration, rate-filling or approval of the prices charged? What is the objective of these regulations? Do professional bodies or associations have a role in setting the level of prices?*

Under the Article 11 of the Law of 15 November 1984 – *Transport Law* (OJ of 1995 No. 119, item 575 with later amendments) prices charged for national road transport of passengers and goods are set by providers themselves:

- since 1 November 1989 – in case of national goods transport by road;
- since 1 January 1999 – in case of national passenger inter-city bus services.

Under Article 18 of the Law of 26 February 1982 *on prices* (OJ of 1988 No. 27, item 195 with later amendments) the following authorities have facultative right to regulate prices for transport services:

- community council – for services offered in the scope of communal public transport and taxi services. In the Capital City of Warsaw this right belongs to the Municipal Council of Warsaw. The Municipal Council stipulates also the price zones (tariff zones) applicable to carriage of persons and luggage by taxis;
- county council – for services of county public transport;
- regulated prices are in the form of a ceiling (maximal level).

The law of 1984 – *Transport Law* stipulates that providers are required to publish, by generally acceptable means, tariffs and prices they set or use. Providers shall provide open access to their own transport regulations.

In the case of passenger services, competition is sometimes restricted in the provision of certain services, granting the incumbent a local monopoly. Is competition restricted for certain services? In these cases how is the service provider chosen?

The above issues are regulated under provisions of various laws and regulations, among others the Law of 1993 *on counteracting unfair competition* (OJ of 1993 No. 47, item 211 with later amendments), the Law of 1982 *on prices* (OJ of 1988 No. 27, item 195 with later amendments), the Law of 1999 *on economic activity*.

Are some services subsidised? How is the level of subsidy determined?

The Law of 1997 on conditions of performance of the national road transport of passengers by road stipulates that operators of public transport services take account of passenger rights to free or discounted rides when the authority which grants such rights, established contractual rights to compensate for related costs (lost revenues).

Providers of national bus services are subsidised on account of obligation to respects rights to discounted and free rides.

Providers of passenger bus services, under Article 12b of the Law of 29 August 1997 on conditions of performance of the national road transport of passengers (OJ No. 141, item 942 with later amendments) have to respect rights to discounted or free rides authorised by:

- competent authority;
- by means of the Law.

First of the above categories of rights is used by operators on the basis of conditionally, i.e. only when the authority which grants such rights signs a contract with operator to compensate for related cost (Article 12b.1 of the Law).

Statutory rights to free and discounted rides (established by means of a law) and principles to compensate for related cost are set forth in the Law of 20 June 1992 on rights to free and discounted rides in means of public transport (OJ No. 54, item 254 with later amendments), Based on the Law providers of national passenger bus services are compensated on this account in the form of a subsidy. Such subsidies are transferred to providers of national passenger bus services upon relevant contracts concluded between them and voivodeship self-government authorities.. The level of subsidies is established on the basis of readings of cash registers and is related to actual difference between full ticket price and revenues on sale of tickets (net of Value Added Tax).

(1.6) What are the primary controls on international trade in road freight/passenger services? Are there controls on foreign ownership of road freight/passenger companies? Are there controls on foreign companies providing services to or from your country?

Are there controls on foreign companies providing services within your country (i.e. cabotage)? Conditions to perform cabotage services in road goods transport in Poland are regulated in the Law of 2 August 1997 on conditions of performance of international road transport (OJ No.106, item 677 with later amendments). In Article 22, the Law stipulates that performing cabotage services by foreign operator requires separate permit of the Minister of Transport and Maritime Economy. Foreign provider applying for such permit has to support his/her application with recommendation from at least two Polish nationwide organisations associating international road operators.

Currently, bilateral agreements on international road transport prohibit any form of cabotage services on territories of the contracting parties.

Are these controls on the quantity, routing or prices of international services? How are these controls determined?

The Law on road traffic (OJ of 1997 No. 98, item 602 with later amendments) and executive acts thereunder issued by the Minister of Internal Affairs and Administration and Minister of T&ME establish frame regulations for goals of road traffic controls (including vehicles and drivers involved in national and international road transport), principles to organise and perform such controls, procedure to follow and control authorities.

According to these regulations main authority to monitor safety, manage and control traffic on the Polish roads is the Police. Powers of the Police include scope of controls (in terms of who and what)

which conforms to the scope of the Council Regulation EEC 4060/89 on abolishing controls on borders between the Member States in the scope of road transport and inland shipping.

Issues related to controls of entrepreneurs and drivers of the Polish and foreign vehicles performing international road transport of goods and passengers fall in the scope of the Law on conditions to perform international road transport (OJ of 1997 No. 106, item 677).

It details obligations of entrepreneurs related to providing the driver with relevant documents (including: a concession to perform international road transport, foreign permit for goods services, a permit to carry passengers in the scope of international road transport, route form – in case of occasional, shuttle carriage or carriage of passengers for own account, evidence of payment required in international road transport, a vehicle permit to cross territory, full or empty, when weigh, axle loads or dimensions exceed maximum allowable limits set by the Law).

Police, customs authority, Border Guards and road administration are all authorised to check drivers of vehicles registered locally or abroad, for the documents required in international road transport.

In 1999 the following regulations were adopted, which facilitate further improvement of road traffic safety:

- a) statement of the Polish Government of 29 January 1999 on publication of standard text of European agreement on international transport of dangerous goods by road (ADR) done in Geneva on 30 September 1957, including amended texts of attachments A and B to the Agreement (OJ No. 30, item 287);
- b) regulation of the Minister of Internal Affairs and Administration of 25 May 1999 on road traffic controls (OJ No. 53, item 563);
- c) regulation of the Minister of T&ME of 15 June 1999 on road transport of dangerous materials (OJ No. 57, item 608);
- d) regulation of the Minister of T&ME of 15 June 1999 on training courses developing knowledge of drivers of vehicles carrying dangerous materials (OJ No. 57, item 609).

Currently in Poland, we are still missing an agency specialised in road transport controls. The Ministry of T&ME drafted the Law on Road Transport Inspection (expected to become effective in the second half of 2000). The main task of the draft Law is to establish the Road Transport Inspection and to lay down principles and conditions for operating and conducting control of the road transport. The Minister of T&ME shall supervise over controlling tasks of the Inspection.

Controls shall include in particular:

- possession of the necessary authorisation to perform the road transport for hire and reward (concession or permit, including cabotage services, and other documents related to services performed;
- statutory documents required by the Law on road traffic;
- technical condition of motor vehicles;
- actual weigh, axle loads and dimensions of vehicles to meet allowable limits set forth in relevant regulations;

- driving hours, obligatory periods of brakes and rest to meet the standards set forth in respective regulations;
- performance under principles for transport of dangerous goods by road (ADR Agreement);
- performance under principles of carrying perishable foodstuff (ATP Agreement);
- performance under detailed principles and conditions of carrying livestock;
- reliability of services offered in regular bus transport, shuttle and occasional road transport.

During controls, inspectors shall be entitled to:

- 1) enter vehicles, premises or facilities involved in economic activity during times and days when such activity is or should be performed;
- 2) impose financial penalties or road charges;
- 3) use means of direct enforcement;
- 4) use firearms.

The Inspection shall co-operate with Border Guards, customs authority, Customs Inspectorate, the Police and road administrator.

Is it necessary to harmonise certain international regulatory controls in order to facilitate international trade in transport services, or is it sufficient for each jurisdiction to enforce its own laws on its own territory? If harmonisation is necessary, which features should be harmonised? (vehicle weight, dimension and loading rules? driving time rules? emission standards?) Is it necessary to harmonise vehicle registration charges or taxes?

The European Union in parallel to harmonising legal frameworks of performance of international road transport on the basis of quality criteria only, simplifying administrative procedures and formalities as well as liberalising access to the market, extends scope and procedures of control on entrepreneurs and drivers involved in road transport of passengers and goods.

A number of legal acts currently regulate control and inspection procedures – both with regard to road traffic, vehicles and entrepreneurs performing national or international road transport of passengers and goods.

Authorities relevant to controls are mainly:

- border guards and customs authorities;
- the Police.

In Poland the Law on road traffic gives the detailed competencies and specifies scope of control performed by the Police. Additionally, executive acts regulate sanctions for violation of regulations regarding principles and conditions of road traffic, carriages of specific types of goods and passengers, use of specified types of means of transport. Offences in this regard result in administrative penalties, financial penalties as well as increased charges.

In parallel to growing volume of vehicles on roads and road transport operators in Poland it is necessary to increase scope and frequency of control carried on roads and in premises of road transport operators as a precondition to increase safety and conditions of fair competition in the transport sector.

It would be possible to meet these objectives only when specialised body, acting in co-operation with other control authorities, is empowered to implement such wide and complicated scope of controls in road transport – both national and international – in efficient and effective manner.

Taking into account the above considerations, as well as respective *acquis communautaire*, the Government of the Republic of Poland intends to introduce the Law on Road Transport Inspection (ITD) in December 2000, and establish specialised control authority thereunder, able to meet extensive control requirements.

The draft Law and executive acts would facilitate existing control mechanisms and instruments, they would also strengthen institutional capability of Poland to perform efficient controls of transport documents and means of transport used in road services, on cross border points and internally.

The draft Law will implement into the Polish legislation not only principal Council Regulations EEC No. 4060/89 (on abolishing controls on internal borders of the Member States in the scope of road transport and inland shipping) and 3912/92 (on controls performed within the Community in the scope of road transport and inland shipping with respect to transport means registered or put into traffic in third countries), but also provisions and solutions proposed in other legal EC acts, i.e.:

- Council Regulation 3820/85 on harmonisation of certain social legislation relating to road transport;
- Council Directive 88/559 on standard control procedures with respect to Regulations 3820/85 and 3821/85 (on recording equipment in road transport);
- Council Regulation 684/92 (on common principles for international transport of passenger by bus);
- and other directives and regulations regarding controls of conditions and principles of performing road transport and technical parameters of vehicles used in road transport.

Polish side – in line with its pre-accession commitments – carry out also adjustment measures in the field of legislation on charges and taxes, in that - for the use of certain sections of the road infrastructure and taxes on transport means (heavy goods vehicles, buses and others).

2. Market Outcomes

(1.7) *What is the market structure of the [road freight/road passenger/taxis] sector? How many firms are active? What are their market shares and the various relevant markets?*

Legislation and practice with regard to provision of road services in Poland reflects actual split into two sub-sectors: international road transport and national road transport.

3. International road transport

3.1 of goods

- As of 20 September 2000, about 24.4 thousand goods transport concessions were granted.
- The concessions are held by 7.4 thousand of different firms.
- Over 42 percent of firms have only one vehicle, 41 percent - between one and four vehicles; only nine firms have between 51 and 100 vehicles, while the biggest two have more than 100 vehicles.
- Vehicle fleet is relatively modern and conforms with European technical requirements (established by UN/ECE and EU); from the total of over 23 thousand of heavy goods vehicles used in international transport some 50 percent is friendly to the environment.
- There is a trend of growing share of foreign capitals in the Polish transport market (many independent foreign firms are established; rep-offices flourish throughout Poland; foreign companies establish joint ventures with the Polish counterparts; foreign companies serve the Polish customers with their own fleet). In 1998 in total about 90 firms were established with foreign capital involvement.

3.2 of passengers

- As of 20 September 2000, about five thousand passenger transport concessions were granted.
- The concessions are held by 2.3 thousand of firms.
- Close to 88 percent of the firms own between one and four vehicles; only eight percent have between five and nine vehicles, while the two biggest firms have more than 50 vehicles.

4. National road transport

4.1 of goods

In general, there is no yet broad, efficient and legally enforceable system to monitor national road transport market. Fragmented analysis and expertise give the rough estimations and information on the status and tendencies among enterprises in that sector of road transport. The most valuable source of data is the Main Statistical Office in Warsaw (GUS). GUS carries on surveys and collects data on obligatory basis.

- It is estimated that 92 percent of transport operators for hire and reward are private firms. Among those, some 74 percent have between 1 and 4 vehicles and employ the staff of five. Only 26 percent employ more than five persons.

- Analysis of statistical data on heavy goods vehicles (more than 3.5 tons) shows that 75 percent of these were manufactured before 1997. Majority of old vehicles is used in national transport by private firms and users.

4.2 *of passengers*

It is estimated that of 81.5 thousand of buses and coaches registered in Poland in 1997, 46 thousand was used in national and international transport of passengers for hire and reward. Total employment level is estimated at 100-200 thousand.

Other vehicles (23 thousand) were engaged in road transport for own account and municipal public transport (12.5 thousand).

- The market of national passenger services is dominated by PKS companies. About 170 PKS companies currently active in Poland employ over 50 thousand people and own over 17 thousand of vehicles.
- Significant part of PKS companies is involved in regular services on national inter-city routes (share of private companies is only 13.5 percent).
- It is estimated that about 65 percent of national occasional services (local and regional tourism, excursions, transport of employees, pupils etc.) is done by PKS companies, remaining 35 percent by mostly private firms.

5. Market structure of goods and passenger transport by road in 1998

5.1 *Goods services*

Goods transport by all means of transport - in 1998, million tons

Total:	1359.23	100%
Railway transport	206.4	15.2
Road transport	1077.3	79.2
of which: for hire and reward	372.9	27.4
Pipelines	40.7	3.0
Sea transport	25.4	1.9
Inland shipping	9.4	0.7
Air transport	0.03	0.0

Goods transport by road (million tons)

Total:	1077.3	100%
1. Transport for hire and reward	372.9	34.6
public sector	24.9	2.3
private sector	348.0	32.3
of which: firms with over 5 persons	97.4	9.0
2. Transport for own account	704.4	65.4

Goods transport by road for hire and reward by firms with over 5 staff (million tons)

Total:	97.4	100%
Goods vehicles and tractors/semi-trailers	95.7	98.3
Trailers	1.7	1.7

Vehicles owned by firms involved in road transport for hire and reward (over 5 staff) – goods vehicles and tractors – as of 31 December 1998

	Number of firms	
Total:	2037	100%
5 and less	592	29.1
6 – 9	392	19.2
10 – 19	782	38.4
20 – 49	220	10.8
50 – 99	38	1.9
100 and more	13	0.6

5.2 Passenger services.

Passenger transport by all means of transport - million passengers

Total:	1444.0	100%
Railway transport	401.5	27.8
Road transport	1038.3	71.9
Sea transport	0.6	0.0
Inland shipping	1.0	0.1
Air transport	2.6	0.2

Passenger transport by road (million passengers)

Total:	1038.3	100%
Regular services	910.5	76.9
Irregular services	127.8	23.1
PKP companies of the total	967.7	93.2

Municipal public services – fleet as of 31 December 1998

Buses	12120	100%
- Public sector	11666	96.3
of which: communal	11555	95.3
- non-public sector	454	3.7
Trams	3876	100.0
of which communal	3440	88.8
Trolleybuses – communal	228	100.0

Are there limitations on the number of vehicles (or total tons) each firm operates?

No.

(1.9) Does the competition law apply to the [road freight/road passenger taxi] transport sector without exemption or exception? What is the nature of and reason for any exemptions or exceptions? Who administers and enforces the competition law in this sector? Does the competition agency have responsibility for enforcing sectoral rules in this sector? What is the nature of the relationship between the competition authority and the sectoral regulator in this sector?

(Part of the Report based on the contribution of the Office for Competition and Consumers Protection - OCCP)

General provisions of the Act of 24 February 1990 on counteracting monopolistic practices and protection of consumer interests (consolidated text published in OJ of 2000 No. 31, item 381) apply equally to all sectors of economy, including the transport sector. The monopolistic practices, as defined by the Act, are as follows:

1. conclusion of competition restricting agreements;
2. abuse of a dominant position.

Article 6 of the Act provides a general prohibition of monopolistic practices. Nevertheless, President of the Office for Competition and Consumers Protection (OCCP) may issue a decision allowing for application of such practices provided that interested entrepreneurs prove that the practices "are for technical, organisational and economical reasons necessary to perform economic activity and do not cause significant restriction of competition." (so called "rule of reason").

The draft Act on competition and consumers protection, which is to replace the current Act, provides for a few important changes in this matter. The provision concerning "the rule of reason" will be amended and the prerequisites contained in it will be modelled on Article 81 of the EU Treaty, including that it will no longer apply to the abuse of a dominant position. The draft Act introduces two types of exemptions from the prohibition to conclude the competition restrictive agreements:

3. statutory exclusions – to cover so called agreements of minor importance, the effect of which is of no importance for the state of competition on the market;
4. block exemptions – to cover specific types of such agreements, elaborated by means of a regulation of the Council of Ministers.

Authority responsible for implementation of tasks related to protection of competition, including protection of competition in the transport sector, is the President of OCCP. Sectoral regulator in the transport sector is the Minister of T&ME. Co-operation between OCCP and the Ministry of T&ME consists in consulting legal acts drafted by the Ministry for their conformity with rules on competition.

(1.10) Have you considered mergers or concentrations in this sector? What relevant markets were identified? What was the scope of the geographic market? Have you opposed any mergers? What remedies were proposed?

In the past few years, there have been no mergers or concentrations in the field of road transport. Currently, almost 170 passenger transport companies operate in the market (established after division in the early 90's of a large state owned passenger transport company – Państwowa Komunikacja Samochodowa PKS). At the same time a number of small size companies flourished – often operating not more than one connection – owned by natural persons. In addition, a great number of companies owned by the local authorities perform the road transport services.

(1.11) Have you addressed concerns involving horizontal agreements in this sector? Have anticompetitive arrangements been prosecuted? Have you found cases of collusive tendering or bidding? Have you cleared certain horizontal arrangements on the basis of their efficiencies and/or pro-competitive effects? Have certain forms of collaboration or joint ventures emerged in this sector?

The Office has not received any complaints or information indicating that such horizontal agreements occur in this sector.

(1.12) What experience do you have with abuse of dominance in this sector? Have you required access to an "essential facility" such as a bus station in an urban area? What cases or predatory pricing have addressed? What principles have you followed when determining whether a particular competitive response is predatory?

In the last few years the Office initiated several proceedings on the motion of private entrepreneurs, whose access to specific bus stops was limited by the local authorities (being at the same time the owners of the transport companies operating on the same geographical market) or who were discriminated during co-ordination of timetables (local authorities allocated worse slots in case of several attractive bus stops). As a result of the Office actions the local authorities ceased to apply such practices.

SPAIN

1. Market Structure

In Spain the modal split of domestic passenger transport by modes was in 1998, road 91.24 percent; railways 4.98 percent; air 3.48 percent; maritime 0.33 percent (million passengers- km)

The split in freight domestic transport was: road 81.74 percent; railways, 4.22 percent; maritime 11.55 percent; pipes, 2.46 percent (million tons-km).

1.1 Road Haulage

In 1998 there were 68 384 firms operating 143 698 heavy haul vehicles (national, regional and local licences); 47 021 were independent carriers with only one vehicle, and 54 were carriers operating more than 60 vehicles. In 1999, there were 40 948 firms operating heavy vehicles with national licences, 24 716 own only one vehicle and 54 own more than 60 vehicles

These enterprises are located mostly, in Cataluña (22 917), Andalucia (18 222), Madrid (11 824), and Valencia (10 798), Vasque Country (9 011).

The most important industry associations are CETM (68.39 percent of the firms), FENASDIMER (12.7 percent), FUET (nine percent), FEDATRANS (8.94).

Undertakings operating own transport have fleets that amount 108 116 heavy vehicles.

Undertakings operating own transport transported in 1998, 166 903, thousands tons; public transport carriers transported 523 905 thousands tons.

1.2 Road Passenger

In 1998, there were 4 743 passenger public transport operators in Spain operating 33 870 coaches; 1 426 carriers own only one bus, 294 operators own more than 20 buses.

898 operators are located in Andalucia, 723 in Madrid, 643 in Cataluña.

In 1998, road public passenger transport by bus reached 28.455 million passengers/km.

The most important industry associations are FENEBUS, which represents 71.22 percent of the scheduled enterprises, and 39.42 percent of the chartered enterprises, ANETRA is the industrial grouping for SMEs, and ASINTRA which represents 25.94 percent of the scheduled firms and 33.98 of unscheduled firms.

2. Regulatory regime

2.1 Key governing legislation

Land Transport Law --(Law16/1987).

Royal Decree 1211/1990 that develops Law 16/1987.

Royal Decree 1.211/1990 has been modified by Royals Decrees 1.136/1997, 927/1996, 1.830/1999, and by ministerial orders in order to adapt Spanish regulation to EU Regulation.

National government has no ownership interest in firms providing road freight or road passenger transport. Some municipalities and local government have interest in enterprises providing urban passenger transport. In the road passenger transport sector there was only one state owned enterprise ENATCAR, which in the past belonged to RENFE (National Railways), its privatisation process started in 1998 and was completed in 1999.

2.2 Agencies

In Spain, national government rule on transport services taking place among regions (Comunidades Autonomas) and on international transport services. Regional government (Comunidades Autonomas) rule on intra regional transport services.

At national level the regulatory agency is a general directorate within the ministry of transport and infrastructures (Ministerio de Fomento). At regional level there are in each region (Comunidad Autonoma) a regional transport ministry (Consejería) de Transport) which is the regional regulatory agency for intra regional transport services.

There are regular meetings between regional transport general directors and the central government transport general director. At national level there exist a Transport National Council where regulators, operators, consumers and trade unions seat.

2.3 Road Haulage

Complying with EU regulation, liberalisation process is completed, but social working conditions and fiscal obligations differ from other EU countries. The most important fact about freight road transport is the high percentage of independent carriers, owing only one heavy vehicle operated by one or two drivers with family links. These independent carriers work for big public transport carriers or for big own transport undertakings.

To become a road haulage operator, it is compulsory to comply with EU regulation on access to the occupation: professional competence, financial standing and good repute. As far as heavy vehicles are concerned, and for licences that cover all national territory, new entrants must comply with the followings conditions: they must have at least three new vehicles (no older than two years) with a minimum laden weight of 60 tons; their share capital if they own three heavy vehicles has to be 19 000 euros, if they own more vehicles they need 5 000 euros more for each vehicle, (the share capital for an independent operator in the market with only one vehicle is 9 000 euros. 5 000 euros more are needed for additional vehicles). They must have paid all their taxes and social security obligations and comply with the good repute conditions. These conditions are revised every two years. Once they have obtained a licence (licences are

linked to vehicles, they need a licence for every vehicle), they have no regulatory limits to work in the whole of the national territory, their only restrictions are related to safety and social regulations and vehicles capacities. Operators already in the market have no official role to play in the decision making process that leads to new licences.

New entrants may go into the market buying the licences of an enterprise already in the market, they must buy all the licences of the enterprise, usually they buy the licence of one vehicle enterprise.

In road haulage transport tariffs are not intervened, but there are reference tariffs.

2.4 *Passenger Transport*

As for freight transport, EU regulation on access to the occupation of road passenger transport operator is compulsory.

A new entrant in the unscheduled market at national level must comply with the following conditions: to own five buses (no more than two years old), and the same financial conditions set for freight transport in relation to share capital. The licence is given to the enterprise not to the bus. Complying these conditions there are no limits for new entrants. A new entrant may also go into the unscheduled market buying a licence of an enterprise in the market, but if this enterprise want to increase capacity, it has to buy at least up to five buses otherwise it will not be allow to increase capacity. Tariffs are set freely, but there are reference tariffs.

A new entrant to the scheduled market at national level must previously obtain a licence in the unscheduled market and then compete for a concession for a given scheduled service. Tariffs of scheduled services are regulated tariffs approved by the ministry of transport and Infrastructure (Ministerio de Fomento).

Scheduled transport services, since Transport Law 1987 (Law 16/1987) was passed, are subject to concessions. Prior to this law the process was no transparent and the Spanish National Railways had a privilege position to operate scheduled services either directly or letting them to other operators.

Cities and municipalities in Spain are connected by scheduled bus services. These services are subject to concessions. Each concession is operated by only one firm on a monopolist regime during the concession period. Concessions periods were established in Transport Law 16/1987 for a period of no less than 8 years and on longer than 20 years, in the recent liberalisation's measures approved by government in June 2.000, this period was reduced for new concessions to a period of no less than six years and no longer than 15 years.

The content of the TOR of scheduled services by concessions define the frequencies, the itinerary and tariffs to be applied.

There are 120 national concessions that serve major cities, and 3 000 concessions at intra regional level. There are 92 operators serving the national concessions, and 684 operators serving all kind of concessions. These enterprises have 5 237 buses, Since 1990, 27 new concessions have been bid, and there are still 93 concessions that were given prior to 16/1987 Transport Law was passed.

These national concessions vary to a great extent from one to other, in the length of their itinerary and in the economic outcome of their operations.

In the last call for proposals the number of bidders were the following, for the following concessions:

- Madrid--Malaga--Algeciras: 29;
- Irun-Algeciras:23;
- Badajoz-Murcia:21;
- In the concessions of the last three years due to competition, tariffs have been reduced.

2.5 Taxi

There were 62 059 taxi operators in Spain in 1998. 95.5 percent of these operators have only one vehicle.

A Royal Decree of 1979 governs the basic aspects of the taxi market, at national level, most Comunidades Autonomas have ruled over taxi services and municipalities have ruled over additional aspects of the taxi service. Madrid municipality approved a regulation in 1980. A new entrant must pass some test and obtain a licence that entitles to operate a taxi, then the new entrant has to buy a licence in the market. There are in the Madrid region 15 629 taxi licences to serve a population of about five million inhabitants. The municipality do not intervene in the licence market. Taxi tariffs are regulated.

In most municipalities, there are qualities requirements taxi must comply, colour, size comfort etc. There are not regulatory distinction between taxi that can been on the street, hired at ranks or ordered by phone. Any customer may hailed a taxi on the street provide there is certain distance to the next taxi stop.

2.6 Co-ordination at local level: Madrid

In 1985, Madrid region set up the Consorcio Regional de Transportes in order to co-ordinate the services of the different passengers operators in the region, urban and regional, private (buses), state owned (suburban railways services), owned by the regional government (Metro de Madrid, underground) , owned by Madrid municipality (EMT, Madrid Urban Bus Company).

The Consorcio, coordinates the operating programs for the different modes and establishes a tariff system for the whole system that allows users to have multi modal tickets valid for all modes and enterprises.

2.7 Subsidies

Freight transport is not subsidised. Neither unscheduled passenger transport nor intercities scheduled passenger transport receive subsidies. Only urban transport services and some intra regional passenger services (public services obligations) receive subsidies that are previously approved by EU authorities.

Independent freight operators, over 60 years of age, owning only one heavy vehicle, may receive some subsidy (social state aid) if they retire and leave the market, these aids must be also approved by the EU.

In the past the Ministry of Industry subsidised through the banking system interest rates for credits to renew the buses or vehicles fleets of freight and passenger operators. This aid was not approved by the EU.

3. Competition law enforcement

Competition Law fully applies to the road transport sector.

Competition Law in this sector is administered and enforced by the competition authorities, the TRIBUNAL and the SERVICIO.

3.1 Mergers

The road passenger operator ENATCAR was state owned, in June 1998, the privatisation process started. The group led by the road passenger operator ALSA made the best proposal, and ENATCAR was sold to ALIANZA BUS, in which ALSA had a stake of 75 percent of the share capital. On September 1999 the merger was notified to the Servicio, and the Servicio advised the Minister of Economy to send the file to the Tribunal.

ENATCAR had 200 buses, ten national, three intra regional, and seven international concessions, its market share in the concession market was 19.41 percent. Some of its concessions ends in 2 018 and 2 017.

ALSA had a market share (passenger/km) of 15.1 percent of the concession market, followed by CONTINENTAL AUTO with a market share of 14.54 percent, and AUTO RES with a market share of 11.14 percent.

The relevant market identified and analysed was the concession market, the scheduled road passenger transport. The geographical market was national.

The Tribunal advised the government not to oppose the merger but to approved it subject to conditions.

The Tribunal applied in its report the capture of the regulator theory.

The Council of Ministers approved the merger in April 1999 subject to the following conditions:

- The merged group could not bid for any concessions during a period of five years.
- ALSA GROUP had to divest it stakes in ANSA share capital (ALSA's and CONTINENTAL's subsidiary).

Recently a merger has been notified to the Servicio of two road passenger transport firms operating unscheduled services in the Canary Islands

3.2 Enforcement

The Servicio has initiated action against some haulage operators active in Bilbao Port for reaching agreements on tariffs and other commercial conditions.

In the past the Servicio initiated action and passed the files to the Tribunal in two cases related to the Taxi market in Madrid, and *ex officio*, opened a file against forwarding agents in Madrid region for reaching agreements on minimum tariffs.

Tariffs. A multimodal comparison: Madrid--Valencia, Corridor

Mode	Operator	Frequency	Tariff (return journey)	Journey length
Scheduled road passenger transport	private bus operator: <i>AUTORES</i>	3 per day in each direction	5.255 pesetas	4 hours
Railways	State Owned operator: RENFE	5 per day in each direction	9.120 pesetas (economy fare)	3 hours, 30 mn
Air	Partially state owned operator.: IBERIA	10 flights a day east and west bound.	from 37.780 pesetas (full economy) to 18.830 pesetas (full discount)	1 hour

TURKEY

1. Regulatory Regime

(1.1) Within the boundaries of Turkey, in land transport, goods and passenger transports, authorities that carry out regulatory activities within the boundaries of municipality and regulations outside the boundaries of municipality differ from each other. Outside the boundaries of municipality, the power to regulate freight and passenger transport services via highway whose carrying distance exceeds 100 km rests with the General Directorate of Land Transport which serves as the main service unit at the Ministry of Transport central organisation. Below-listed are the duties of this General Directorate determined by article 10 of the Act dated 9 April 1987 and numbered 3348 which sets the organisation and duties of the Ministry of Transport:

- a) to take measures ensuring that the railway transportation and highway transportation on road outside the boundaries of municipality are carried out in accordance with economic, technical, social and national security needs and purposes, and that these services are in harmony with other transport services;
- b) to conduct international relations required by highway and railway transport services, to conclude agreements and perform joint commission works, to follow up the legislation, technological and economic developments at the international level in highway and railway transport, and to develop new solutions fitting the rules;
- c) to arrange the eligibility qualifications of transporters, agencies and brokers who shall take place in highway transport activities, to issue authorisation certificates and supervise where needed;
- d) to take measures ensuring that activities conducted by the public and private sector in highway transportation develop in accordance with the public interest and market requirements, to determine the ceiling and floor prices and supervise the practice when needed;
- e) to take or have others take measures in order to provide safe, quality and economic service in highway and railway transportation;
- f) to perform similar duties to be assigned by the Ministry."

As to the General Directorate of Land Transport operating throughout the country, its services in international goods transportation via highways and in domestic passenger transportation via buses are conducted by ten Regional Directorates of Transport under the Ministry of Transport, and by Branch Directorates and Head Offices under the Regional Directorates. Powers and responsibilities assigned to the Ministry of Transport by regulations have been transferred to Regional Directorates, thus spreading services to the whole country. The General Directorate of

Land Transport serving in the mentioned organisation has, over the firms dealing with land transport, the powers to determine eligibility qualifications, permit operation and supervise. In exercising such powers, the goal is to ensure that land transport activities are carried out in accordance with economic, technical, social and national security needs and purposes, and that these services are in harmony with other transport services. Associations of lorry carriers and passenger transporters via bus whose members comprise owners of firms operating in international highway transportation act as intermediaries in the presence of the government and firms concerned against sectoral deficiencies.

On the other hand, in transports with a 100 km transport distance or between settlement points within the boundaries of the province, the power to make a regulation rests with governors' offices. And, as to the passenger transports within the boundaries of a province via bus, minibus, taxi and service-bus services, the power to make a regulation rests with the municipality, police, gendarmerie, National Education, Road Provincial Directorates and relevant chambers of tradesmen under the Turkish Chauffeurs and Automobile Drivers Federation, headed by the governor or deputy governor, and provincial traffic commissions composed of university, foundation, association representatives deemed appropriate by the governor's office. For purposes of ensuring traffic coordination within the boundaries of metropolitan municipalities, coordination is provided in mass transportation by means of establishing a transport coordination centre (UKOME). The owners of privately-owned public buses, minibuses and taxis operating in intra-city transportation should possess the qualification of a tradesman, and are obliged to register themselves in chambers of tradesmen. The said chambers of tradesmen and unions of tradesman composed by them set the most important industrial groupings.

- (1.2) Within the Ministry of Transport; works are in progress for putting into force the "Regulation About Inter-City Goods Transports Via Highway" which is prepared so as to render orderly and safe the inter-city goods transport services via highway, and to determine the eligibility qualifications and working conditions, supervision principles, powers and responsibilities of carriers, transport warehouse and cargo operators, and natural and legal persons who shall act as agencies and transport works brokers in such services.

On the other side, works are also underway for putting into force the "Highway Transport Draft Law" which is prepared with the aim of organising highway transports as required by the country's economy, ensuring transport safety and preventing unfair competition, arranging the principles regarding the organisation of passenger and goods carriers, and ensuring that available resources in highway transports are utilised in a more beneficial manner.

In line with the Customs Union concluded by the EU, works are being carried out in order to render also the legislation in harmony with the legislation of the European Union.

Works of the traffic commission set up within the Turkish Grand National Assembly are in progress, and things to be done are examined for purposes of diminishing traffic accidents and arranging safe travel and transport conditions. With the termination of the works, new amendments to the Act may arise.

- (1.3) In international transport services via highway and in inter-city passenger transport services via buses; natural or legal persons who would like to deal with passenger and goods transportation or act as agencies or brokers in these areas are obliged to receive an authorisation certificate from the Ministry of Transport in accordance with the regulations in force. The units of the Ministry of Transport determine and supervise at border gates, supervision points and necessary places whether international passenger and goods transports via highway are performed with authorised

carriers and vehicles, and the compliance of passage, quota and fare conditions with bilateral and multilateral agreements. Furthermore, in inter-city passenger transportation; carriers, transports, agencies and employees in transport works, passenger terminals and relevant works and services are also subject to the supervision of the Ministry. While issuing an authorisation certificate in inter-city passenger transportation via buses, the most important licensing conditions sought are determined as follows by the regulation provided: not to have been punished due to miscellaneous offences, compulsory individual accident insurance for seats, firm's owning three vehicles itself, being involved in the group of carriers in the chamber of commerce, having legal personality, having an independent office where to operate, buses by which the transport shall be performed would have more than 25 seats. For various services in international goods and passenger transportation, first various qualifications are sought such that natural and legal persons should have T.R. nationality, should not have been sentenced due to miscellaneous offences, should possess several number of vehicles determined by the type of transportation, should be registered in the chambers of commerce and industry, should receive professional education from the institutions determined by the Ministry. Also, there are capacity and age limits as to vehicles to be used by carriers in international passenger and goods transports. In intra-city transportation transactions, those people who shall act as commercial minibus, bus and taxi operators are required to be registered in relevant chambers and have the qualification of a tradesman who earns his living by this job.

In terms of amount of licences, there does not exist any limitation in international goods and passenger transports and in inter-city goods and passenger transports. One does not face a restriction in applications bearing the qualifications for receiving an authorisation certificate. However, restriction exists in intra-city bus, minibus, taxi and service-bus vehicle licences. Requests for restriction established by provincial traffic commissions pursuant to the principles determined by the resolution of Council of Ministers, enter into force by the approval of the Minister of Internal Affairs. As of the end of September 2000, there is limitation in the number of taxis and minibuses in 21 out of 81 cities of Turkey. Any time limitation does not exist in issuing licences; those who apply with the documents requested are granted permission and controls are performed later. In international transport certificates, final permission is granted by detecting the accuracy of documents and conditions via the controls performed after giving temporary authorisation. The incumbent operators do not have an official role in the permission procedure.

Different licences should be obtained in the provision of different services. Authorisation certificates are listed as follows in international transportation: authorisation certificate A for those to engage in international passenger transportation via automobiles; authorisation certificate B for those to engage in international passenger transportation via buses; authorisation certificate C for those to engage in international goods transportation via highway; authorisation certificate E for public organisations or organisations serving the public interest to engage in international transportation; authorisation certificate F for those to act as agencies in international passenger transportation; authorisation certificate G for those to act as agencies in international goods transportation; authorisation certificate H for those to act as brokers in international goods transportation. Authorisation certificates B and C also fall into sub-licences by ways of transportation. Different authorisation certificates are sought so that inter-city passenger transportation can be carried out on road via buses. These certificates are as follows: authorisation certificate (D1) for those to engage in regular inter-city passenger transportation via buses; authorisation certificate (D2) for those who carry pre-grouped passengers from a point of departure to the same point of departure by return trips; authorisation certificate (D3) for those to engage in transportation by organising trips dependent on the state of passengers without adhering to a certain schedule; authorisation certificate (D4) for those to engage in inter-city

passenger transportation related with the main occupation of the vehicle owner; authorisation certificate (E1) for public organisations and organisations serving the public interest to engage in inter-city passenger transportation; authorisation certificate (F1) for those to act as agencies in inter-city passenger transportation. It is observed from the characteristics of authorisation certificates that different authorisation certificates are needed for regular and charter trips. Besides, in the distribution of intra-city minibus and taxi number plates, distribution can be made by tenders where persons registered in relevant chambers and qualified as tradesman can participate. There is no limitation in one firm's holding more than one licence. Licences are granted to natural or legal persons, and may not be transferred. It is required that firms holding licences have T.R. nationality, and there is no limitation in terms of partnership. In international passenger and goods transportation, there is term limitation for a total of five years such that one year is for temporary authorisation certificates and four years for principal authorisation certificates. On the other hand, the term for any kind of authorisation certificates is two years in inter-city passenger transportation. It is possible to extend the terms of certificates with the conditions established by regulations.

In transportation transactions at the local level, line and time coordination is ensured by provincial traffic commissions and UKOMEs whose characteristics are described under the section (1.1).

- (1.4) Any distinction does not exist in regulations made for taxi services. In taxi transportation to take place from particular points such as airports, train stations, bus terminals, persons other than those who have stops at the places mentioned are prohibited to take passengers. As to taxis, same regulations are being implemented throughout the country, and prices vary by cities. That taxis are yellow in colour and their number plates start with the letter "T" has become a standard. Though there is no limitation in working hours of taxis, there exist general limitations concerning the shift of drivers during the day, and regarding that they should not use vehicles more than a particular period. Any limitation is not present for working at holidays or nights, and vehicles remain in service dependent on the market conditions.
- (1.5) In the land transport sector, any price regulation and control do not exist in relation to international transports. In inter-city passenger transports via highway, setting of prices is left to carrier firms in accordance with the provisions of the regulation concerned, but it is established that tariffs introduced are subject to approval by the regional directorates. It is among the provisions of the regulation that 25 percent discount may take place from prices set and subjected to approval by the carrier firm. In lines where transportation takes place, there is no ceiling or floor price set by the public authority. Carrier firms are obliged to comply with tariffs set by them for a minimum of four months, and it is provided that price changes shall not take place during bairam and bank holiday periods. Though there is no price regulation by the public authority, it is mentioned that floor and ceiling prices shall be regulated by the Ministry where necessary, should transport prices yield results against the economy and public interest, and should an excessive pricing practice or a predatory competitive environment arises. On the other side, in intra-city minibus and taxi services, there is the practice of line fare and taximeter. Prices are set by the chambers of tradesmen concerned as per the power derived from their special Acts, and enter into force by the approval of the federations of chambers of tradesmen. In passenger services, there is no such practice where competition is restricted or subsidised by the public authority in any manner.
- (1.6) In accordance with the provisions of the "Regulation About International Passenger and Goods Transports Via Highway", the units of the Ministry of Transport determine and supervise at border gates, supervision points and necessary places whether international passenger and goods

transports via highway are performed with authorised carriers and vehicles, and the compliance of passage, quota and fare conditions with bilateral and multilateral agreements. It is required that firms to deal with transportation within the boundaries of Turkish Republic have T.R. nationality. Foreign firms are allowed in cases of transit transportation and imports. Cabotage provisions are applied in domestic transportation.

It is required that standards attained generally among the European countries through agreements in order to facilitate international trade in transport services, also extend to the middle east and asian countries.

2. Market Information

- (1.7) About 95 percent of passenger transportation undertaken within the boundaries of Turkish Republic takes place via highway. The largest share is that of land transportation in transporting goods as well. The number of firms and vehicles constantly increase owing to the fact that there are not many barriers to entry to and operation in the sector, and it sets an example for a competitive market. As of the end of July 2000, there are 146 673 minibuses, 515 208 lorries, 821 716 small lorries, 133 695 buses and 32 624 large lorries within the boundaries of Turkish Republic according to traffic registration entries.

As of the end of July 2000, there are 152 firms, 1373 buses and 67 528 seat capacities awarded an authorisation certificate from the Ministry of Transport for temporary international passenger transportation via highway. Likewise, as of the same date, the number of firms receiving an authorisation certificate from the Ministry for international goods transportation via highway reached 888, and the fleet of vehicles owned by themselves reached nearly 853 thousand tons. International highway transportation services take place pursuant to bilateral and multilateral international highway transportation agreements. Today, we have bilateral international highway transportation agreements with 48 countries, and agreements have been initialled with three countries. As required by the agreements in question and protocols signed in relation to these agreements, passage certificates are in use for bilateral, transit, loaded-on-return and third country transports. Within the framework of bilateral international highway transport agreements and protocols signed in relation to these agreements, 278 850 passage certificates have been obtained from 35 countries, and 20 4291 of them have been utilised in transporting our export and import products. Market shares of firms operating in international land transportation remain low due to high number of firms.

The number of firms dealing with inter-city passenger transportation at the national level reached 572 by the end of July 2000, and the number of buses reached 9 800. There is no limitation as to vehicles operated by firms. In inter-city passenger transportation markets, low market shares arise due to high number of firms operating both throughout the country and in terms of particular lines. It may be said that the sector presents a competitive structure with its characteristic denoting a surplus of supply in terms of competition.

On the other hand, the number of commercial automobiles operating in intra-city taxi transportation reached 111 991 by the end of May 2000. Among the cities where there is limitation in taxis, there exist 17 416 taxis in Istanbul, 9527 in Ankara, 9738 in Antalya.

3. The Application of the Competition Act

- (1.9) The Competition Act does not recognise any sectoral exceptions. Similarly, it is applied in all areas of the transport sector without being subject to any exceptions and exemptions. Though the Competition Authority is commissioned with applying the Competition Act in all these sectors, it has no obligation to implement the sectoral rules. In case of a request by a unit of the Ministry of Transport which is the institution acting as regulator in these sectors, the Competition Authority may draft an opinion as to competitive conditions of regulations to be made.
- (1.11) There are investigations opened by the Competition Authority upon miscellaneous complaints that undertakings operating in these sectors committed violation of competition through price agreements concluded between themselves. In a petition of complaint filed to the Competition Authority in 1999 concerning the market of load transportation via lorries; it was expressed that in various customs fields in the city of Istanbul, there were barriers to entry in transporting imported goods, and that the cooperatives of carriers operating in those regions concluded price agreements between themselves. As a result of the examinations performed upon complaint and the preliminary research report prepared, an investigation has been opened in view of the fact that activities of the undertakings and associations of undertakings concerned may lead to violation of competition, and the investigation has not been completed yet. In another petition of complaint filed to the Competition Authority in the beginning of 2000; it was claimed that the undertaking operating •zmir inter-city bus terminal has set a lower limit for bus travel fares by routes, and thus competition was restricted. During on-the-spot examination as to the matter; it was detected that certain undertakings operating in the market of inter-city passenger transportation via highway had signed “protocols” having the nature of violating price competition between themselves. Investigation was opened in view of the fact that they concluded price agreements against 91 firms which deal with inter-city passenger transportation via highway from the city of •zmir to other cities, and that they committed violation of competition by implementing these agreements. This investigation is in progress as well. It was detected from these complaints that firms acting as carriers coordinated with organisations established by them, and that they set up partnerships in the form of cooperatives. However, it has not been decided yet whether these situations create violation of competition.
- (1.12) Claims of abuse of dominant position present in the above-mentioned events in land transportation sectors are also evaluated under the investigation. These claims are barriers to entry in the complaint as to lorry transport, and that the operator of inter-city bus terminal of the city of •zmir imposes punishment on the firms which do not comply with the price agreement led by it, due to its dominant position in the market of terminal operation, and makes discrimination. Within the year 2000, there was also a complaint about the operator of inter-city bus terminal of the city of Istanbul, stating that it abused its dominant position in the market of terminal operation, and discriminated between firms operating inter-city buses by applying terminal departure prices differently. In the examination performed as a result of this complaint, the claim of violation of competition was also considered to be serious, and an investigation was opened about the undertaking operating the Inter-City Bus Terminal. In a petition of complaint filed to the Authority within 1999, there were claims that minibuses operating in the city of Ankara had a monopoly position, and applied exorbitant prices. As a result of the examinations; it was concluded that initiating any transaction was not required on grounds that minibuses did not hold a dominant position in the market of passenger transportation in the city of Ankara, and that prices were set by the occupational chamber by the power derived from the special Act.

UNITED STATES

Over the past twenty-five years the transportation sector has benefited from significant regulatory reform at the federal level in the US. This paper reviews some of the developments in interstate trucking and intercity bus services, and discusses experience with the US taxicab industry, which is regulated at the state or municipal level.

1. Interstate Trucking

For many years interstate trucking was heavily regulated by the Interstate Commerce Commission (ICC). The ICC reviewed rates, on complaint, that common carriers were required to file, and the ICC strictly limited entry. Beginning in the late 1970s, a series of administrative and legislative actions liberalised regulation of the industry. These, and similar initiatives deregulating the railroad industry, led to the abolition of the ICC in 1995. Today little economic regulation remains, and the antitrust laws, including merger review by the federal antitrust agencies, apply except with respect to certain immunised conduct discussed below. Entry is no longer restricted and barriers to entry are low. Rates are no longer filed and reviewed for reasonableness,⁶ and Congress has pre-empted state economic regulation of intrastate transport (except for transport of household goods).

1.1 Surface Transportation Board

The Surface Transportation Board (STB) was established on January 1, 1996 as an independent adjudicatory body housed within the US. Department of Transportation (DOT), with jurisdiction over certain surface transportation economic regulatory matters. It was created by the ICC Termination Act of 1995 (ICCTA). The ICCTA terminated the ICC effective December 31, 1995; eliminated various functions previously performed by the ICC; transferred licensing and certain non-licensing motor carrier functions to the Federal Highway Administration within DOT; and transferred remaining rail and non-rail functions to the Board.

The Board is headed by Board Members appointed by the President and confirmed by the Senate. The Board is authorised to have three members, each with a five-year term of office. The Board's Chairman is designated by the President from among the Members.

1.2 Rate Bureaus

With the enactment of the Motor Carrier Act of 1980 ("MCA of 1980"), the way in which interstate trucking firms formulated their rates changed dramatically. Prior to 1980, virtually all interstate motor common carriers collectively formulated their rates through regional rate bureaus that enjoyed broad antitrust immunity. The collectively established rates were subject to review by the Interstate Commerce Commission. Deviations from published bureau rates through the independent actions of individual motor carriers were rare. The rate bureaus were effective in establishing both less-than-truckload (LTL) general

freight sector rates and truckload (TL) rates, but were particularly effective with LTL rates. Since 1980, however, the scope of antitrust immunity for motor carrier rate bureaus has been greatly reduced. Under current law, collectively agreed single-line rates are no longer generally immune from the antitrust laws. The main exception is the formulation of general rate increases (GRIs).⁷ Carriers are considerably more free to establish their own rates. While rates set pursuant to a rate bureau agreement must be reasonable, there is no requirement that the Board examine the reasonableness of a rate increase prior to its becoming effective.

The Board is currently reviewing the status of rate bureau agreements to determine whether to renew their immunity. In 1998 the Board concluded that "collective ratemaking, under present circumstances, contravenes the public interest, and that existing collective ratemaking agreements ought to be approved ... only if all existing class rates are amended to reflect market-based rates." Carriers had argued that the collectively agreed "benchmark" rates were not harmful because most shippers received discounted rates and the established rates were "only paid by a handful of uninformed or pressured shippers." On February 9, 2000, the Board reconfirmed its decision and initiated a proceeding "on how to effect appropriate reductions in benchmark rates." The Board stated "that carriers should not be given immunity to collectively set, and to charge, rates that are above competitive levels; rather, if carriers want to set and charge rates above competitive levels, they must do so individually and not through their rate bureaus."⁸

The DOJ's position, as set forth in comments submitted to the Board, is that despite the provision for independent action and a competitively structured industry, the ability to engage in collective ratemaking for GRIs can lead to supra-competitive rates. This is particularly true given the "light" regulation of GRIs under the ICCTA. The *quid pro quo* for antitrust immunity to set rates collusively has always been regulation of those rates by a regulatory agency. Consumers would depend on the regulators to prevent the regulated firms from setting rates that were supra-competitive. In the absence of a strict regulatory regime, shippers depend on competition among trucking firms to ensure competitive rates. But even in competitive industries such as trucking, oversight under the antitrust laws is needed to assure that competition is not thwarted. Otherwise, explicit collusion or other anticompetitive practices could emerge.

The remaining antitrust immunity enjoyed by the rate bureaus could lead to rates in excess of competitive levels in at least two ways. First, a rate bureau could function like a cartel in promoting coordinated pricing. With immunised rate bureaus, motor carriers can meet with their competitors, exchange cost information, discuss their preferences on price increases, resolve differences among the firms, and ultimately, through the implementation of GRIs, achieve collective agreement to raise rates across the board. In addition, rate bureaus provide members with the opportunity to confront an efficient and aggressive rival, discuss alternative responses to its conduct, and dissuade it from price-cutting.

Second, even if immunised rate bureau activity does not lead to explicit agreement by carriers to collude at supra-competitive rates, rate bureaus could still have an adverse effect on rates. Firms competing in the marketplace have many prices from which they can choose. They will choose those that are expected to generate the highest profits. One factor going into each firm's calculation of the most profitable price to charge is the price it believes its competitors are likely to charge. Collectively determined and publicised GRIs give all trucking firms a "benchmark" rate increase to consider. And, while no firm is bound or required to adhere to that increase in carrying particular traffic, the existence of such a benchmark may nevertheless give each firm somewhat greater reason to expect that its rivals will select it from among the many possible price increases available to them. This, in turn, provides firms with an incentive to designate through the rate bureaus relatively profitable GRIs. Although there may be no actual agreement to adhere to these increases, there is a somewhat greater likelihood that carriers will end up increasing their rates by this amount in anticipation that others will do likewise. The result, whether or not one observes discounting from the posted GRI, may be that actual rates exceed competitive levels.

The DOJ stated in its comments that reliance on discounting from a cartel price -- a price that would not otherwise be set -- to protect consumers is to stand competition policy on its head. There is always the risk that the cartel prices will not be completely discounted away. And there is no reason to take such a risk, given that there are no significant benefits from retaining rate bureau agreements. The rate bureau functions that benefit the public, such as classification of commodities with similar transportation characteristics, basic information dissemination, or rate publication, can be done in ways that do not limit competition and thus can continue without antitrust immunity.

1.3 *Effects of Regulatory Reform*

According to one study,

The deregulatory [Motor Carrier Act] of 1980 has spurred intense competition in virtually every element of the interstate trucking sector. Combined with technological and service innovations, this competition has produced a dynamic and expanding industry. As the ICC has noted, the benefits of interstate trucking deregulation are wide-spread and likely to be long-term. The vast majority of shippers and many members of the trucking industry are pleased with deregulation.⁹

Clifford Winston analysed the effects of deregulation on the LTL and TL sectors:

The trucking industry is composed of two sectors: "less-than-truckload" (LTL), which uses a network of terminals to consolidate shipments of more than one shipper's goods on a truck, and "truckload" trucking, which provides point-to-point service for one shipper's goods that fill an entire truck. In the LTL segment, low-cost non-union regional carriers have become an important competitive force. In response to this challenge, the national LTL carriers ... have pursued an aggressive policy of purchasing regional (non-union) carriers and operating them as independent business units. The dominant force in "truckload" trucking has become the "Advanced Truckload" or "High Service" mega-carrier. These carriers have become so efficient that they are capturing substantial traffic from firms that historically, in response to high regulated truck rates and poor service, provided their own trucking services. For-hire trucking operations are now roughly 25 percent less expensive than private carriage, which relies primarily on (more costly) unionised labour.¹⁰

For LTL trucking, he concludes that carriers have substantially reduced their empty miles since deregulation, with real operating costs per vehicle mile dropping 35 percent. For truckload trucking, these costs have fallen at least 75 percent; in both cases, operating profits are slightly lower than they would have been under regulation.¹¹ Average rates charged per vehicle mile have declined by the same percentages as have costs, with significant service improvements.¹²

Another study notes that "the number of large (Class I [over \$ten million in revenues]) LTL carriers fell from more than 600 in 1976 to around 50 in 1995. Nonetheless, although figures for specific markets are difficult to obtain, competition in LTL markets has clearly become much more intense since deregulation, both because of the growth of low-cost (non-union) regional LTL carriers and because of increased competition from alternative small shipment carriers such as UPS and Federal Express. LTL carriers' share of small shipment revenue declined from nearly 60 percent in 1980 to 35 percent in 1995. The truckload (TL) industry has always been quite competitive, and although the number of competitors has increased since deregulation, from some 20 000 small (Class III) TL carriers in 1980 to nearly 55 000 in 1995, competition has actually intensified because of the growth of national mega-carriers (commonly referred to as advanced truckload carriers)"¹³ with annual revenues of roughly \$one billion each.

The same study states that “trucking firms have achieved higher load factors by optimising their routing and negotiating price-service packages with shippers to minimise their empty mileage. They have also made more efficient use of inputs and reduced their labour costs. As a result, since 1977, just before administrative deregulatory policies went into effect, LTL carriers’ real operating costs have fallen 35 percent and TL carriers’ costs have fallen more than 75 percent, largely because of the emergence of advanced truckload carriers.”¹⁴ The reduction in rates charged has matched these cost savings. “Large shippers in high-density markets have undoubtedly gained more than small shippers in low-density markets, but small shippers have been able to share in some of the benefits from lower rates through third-party logistics firms. Shippers have also gained from improvements in service time and service time reliability. Including these benefits, the annual net benefits to shippers from trucking deregulation amount to more than \$18 billion (1996 dollars).”¹⁵

A study of the effects of deregulation on employment shows “an appreciable reduction of the union membership rate of 46 to 23 percent over the deregulation period of 1978 to 1996. The union membership pattern is consistent with the notion that the trucking industry has relatively low barriers to entry, which meant that deregulation allowed non-trivial entry of non-union carriers. The trucking employment pattern reveals further evidence suggesting the ease of entry into this industry. After a pre-deregulation period of relatively low employment growth, from 977 000 in 1973 to 1 111 000 in 1978, the number of workers employed in trucking dramatically increased to 1 907 000 in 1996. Together, the union membership rate and the industry employment trends suggest a tremendous loss of bargaining power following deregulation. This loss is further supported by the findings that show workers in this industry experiencing their real weekly earnings falling from \$491 in 1978 to \$353 in 1996.”¹⁶

1.4 NAFTA Provisions

Cabotage is not permitted in the US trucking market.¹⁷ There are no restrictions on foreign investments in motor carrier companies in the United States. Mexican citizens, however, cannot own a controlling interest in a US motor carrier. Neither can they obtain DOT authority to operate outside of certain border commercial zones. The Congress placed a moratorium on the issuance of new grants of operating authority to Mexican motor carriers in 1982. This was done because Mexico did not allow U.S. motor carriers to operate in Mexico. For a very short time in 1982, there was a moratorium with respect to Canada as well, but the issue with Canada was resolved immediately when Canada agreed to lift restrictions on US trucking.

The NAFTA creates a timetable for the removal of barriers to the provision of motor carrier services for the carriage of passengers and international cargo between the United States and Mexico. Implementation of the NAFTA land transportation access liberalisation provisions has been delayed since December 1995 because of US safety concerns. The United States and Mexico are working to resolve outstanding safety issues. Mexico has filed complaints under the NAFTA's dispute resolution procedures claiming the United States has failed to meet its NAFTA obligations. A NAFTA panel is considering the case.

When operating in the United States, foreign carriers must comply with all applicable laws and regulations, including the Federal Motor Carriers Safety Regulations, and immigration, customs, and labour requirements. The NAFTA parties are working towards more compatibility of motor carrier safety standards, including vehicle weights and dimensions, drivers' hours of service, transportation of hazardous materials, etc. Foreign carriers must pay all state taxes and fees and comply with any state emissions standards just like US carriers.

2. Intercity Bus Services

The intercity bus market was fully deregulated by the Bus Regulatory Reform Act of 1982. The U.S. market is now served by a single national carrier, Greyhound, and various regional independent companies and local feeders. Total annual revenues for the market are about \$900 million. The regular route sector has been declining, while other segments (charter, tour buses) have expanded as a result of the relaxation of regulatory entry barriers. Consolidations and mergers are reviewed by the Surface Transportation Board under a public interest standard. Bus companies may apply to the Board for permission to "pool or divide traffic or any services or any part of their earnings." 49 U.S.C. §14302. The Board must hold a hearing on such an application if it finds that "the agreement or combination is of major transportation importance" or "there is a substantial likelihood that the agreement or combination will unduly restrain competition." If either of these conditions is present, the Board "shall hold a hearing concerning whether the agreement or combination will be in the interest of better service to the public or of economy of operation and whether it will unduly restrain competition."

On October 3, 1997 the DOJ filed Comments with the Board opposing the application of Peter Pan Bus Lines, Inc. ("Peter Pan") and Greyhound Lines, Inc. ("Greyhound") to pool their operations between New York, NY and Washington, DC. The Division's comments argued that there was a substantial likelihood that the proposed pooling agreement would unduly restrain competition. Peter Pan and Greyhound were the only bus lines that provided scheduled transportation between New York City and Washington, DC. The DOJ argued that if the pooling agreement were approved, bus service between those cities would be provided by what is in effect one company. The Division's comments noted that there was no evidence that service from other common carrier modes of transportation -- trains and airplanes -- nor rented or privately owned automobiles, would provide effective competition to the provision of scheduled bus service by the pooled companies on this route. As a result, the pooled companies would likely raise bus fares above competitive levels. On April 21, 1998, the Board issued an order approving the Peter Pan - Greyhound pooling application subject to the condition that applicants file periodic reports on the fares they charge for service between the points in their pooling agreement. The Board noted the pervasive intermodal competition in the market for intercity passenger travel and the declining position of intercity buses in this market, and stated that the DOJ had not submitted sufficient countervailing evidence with respect to the Washington-New York route.¹⁸

In 1995, the DOJ sued Greyhound Lines, challenging a provision in Greyhound's bus terminal leases that prohibited tenant bus companies from selling tickets for intercity bus transportation within a 25-mile radius of Greyhound's terminals. Greyhound, the only nation-wide intercity bus company, operates approximately 200 bus terminals. Many smaller bus companies operate out of Greyhound's terminals pursuant to contracts in effect in some 135 cities. Under the terms of the challenged contracts, Greyhound operated as the tenant bus companies' exclusive ticket agent, and also provided other services, including baggage handling and maintenance of the terminal facilities. The tenants paid rents based on ticket sales, either in the form of a set commission on each ticket sold or a pro rata share of the costs of operating the terminal. The DOJ was concerned that the 25-mile rule would limit competition in intercity bus services, particularly when the tenant was an actual or potential competitor of Greyhound, either alone or through interlining. Under the terms of a consent decree, Greyhound was required to remove the provision from existing contracts and was enjoined from conditioning access to its terminals on an agreement not to sell tickets outside the terminals. Greyhound was also enjoined from refusing to interline with a carrier unless that carrier agrees to interline exclusively with Greyhound.

3. The US Taxicab Industry

In 1984, Frankena and Pautler co-authored an FTC staff report on taxicab regulation, which was submitted to the Competition Law and Policy Committee (CLP) in 1990 in connection with a round table discussion of this topic. That report described the various markets segments that exist in the market including cruising cabs, cabs that wait for riders at taxi stands, radio-dispatched cabs, and cabs providing services under contract. The report also reviewed the history of taxicab regulation in the United States and described various types of regulation that existed in the taxi industry. These forms of regulation included entry restrictions based on the absolute numbers of cabs or the ratio of cabs to the city population, and requirements that entrants prove that their entry is necessary to improve public convenience. Typical regulations also fix the fares that can be charged or provide for minimum or maximum rates of fare. Numerous other aspects of taxicab service are also regulated.

The report also discussed the theories of market failure that would justify regulation of taxicabs serving cruising, cabstand, and radio-dispatched, and contract segments of the market. As the authors note, special characteristics of the cruising and cab-stand segments (e.g., first-in/first-out queues) may make it difficult to induce price competition among the various firms. If so, maximum fare regulation may be an option. Competition in the other two segments would appear to be viable because shopping for lower fares should be possible at relatively low cost. In addition to an analytical examination of the market segments, the report reviewed the evidence of deregulation during the 1970s in several US cities, focusing on Seattle, San Diego, Phoenix, Tucson, Berkeley, and Oakland.

The main conclusions of the report were that restrictions on entry (numerical limits, limits based on cab/population ratios, or public convenience and necessity requirements) did not appear to be supported by plausible theoretical arguments. Even in those situations where problems had arisen following a change to open entry,¹⁹ other regulatory responses (e.g., maximum price levels, physical reconfiguration of taxicab queues) would be more efficient. As the authors noted:

In marked contrast to the radio-dispatch segments, there have been many problems in cab stand market segments at airports following regulatory reform as a result of lengthening of the queues. These problems do not provide an argument in favour of entry restrictions, however. Rather, they suggest that there would be significant gains from either increasing fare competition at airports or imposing lower fare ceilings on airport taxi service. Fare ceilings could be reduced until the taxi queue shortened to the desired length. (pp. 8-9)

The authors concluded that deregulation would be viable in radio-dispatch segments of markets, but that, due to the difficulty of inducing competition at taxi stands (airports, hotels, etc.), deregulation in cabstand markets would require more care.

As of 2000, the general description of the taxicab industry and taxicab regulation in the United States remains much as it was when Frankena and Pautler described it in 1984. That is, nothing dramatic has happened to alter the U.S. industry in the interim.²⁰ Although the details of regulation vary from place to place, most major cities still regulate entry and fares in some manner, most also regulate the types of service that can be provided (e.g., minimum number of cabs per company or association, 24/7 coverage of telephone requests, no shared riding, no service refusals, service areas are defined, dispatch capability is often required, taximeters are normally required), and vehicle and driver characteristics (e.g., cab age and design, no criminal background, knowledge of the city streets and landmarks, neatness), and service quality (maximum response times). In addition, jurisdictions often regulate the maximum hours of service per driver per day, license transferability, safety inspection frequency, and insurance and bond requirements. The monitoring levels for these various regulations seem to vary widely across local jurisdictions.²¹

The stringency of entry regulation can manifest itself in the value of taxicab licenses. In a competitive, open entry market, the right to serve the market would be zero. However, if the right to serve is restricted, the value of the right to serve a non-competitive market is capitalised in the price of the license. A list of taxicab license values for selected cities in the US is attached.²² The fact that license values are substantial in several US cities implies that entry restrictions have raised the rate of return in taxi service provision above that in other lines of endeavour and that prices are likely higher and the number of trips lower than they would be in the absence of regulation.

3.1 *Two Experiments with Deregulation in the US (Seattle and Indianapolis)*

Since entry restrictions were adopted by most cities in the United States during the 1930s, experiments with taxicab deregulation have been infrequent. One exception was a period in the late 1970s when several moderate-sized cities altered their regulations to make entry less difficult.²³ One major city, Washington D.C., has retained an easy entry policy (and its unique zone pricing structure) from at least 1970 through 2000.²⁴ Since the late 1970s, however, there has not been a great deal of activity in taxicab deregulation and open entry among US cities.²⁵ Two of the leading examples of deregulation in the U.S. are probably provided by Seattle, Washington in 1979 and Indianapolis, Indiana in 1994; these are briefly discussed below.

3.2 *Seattle, Washington (1979)*

Seattle opened entry and allowed fares to be set by individual firms in 1979. The effects of these changes on fares has been the subject of some debate. They may have led to a small (five percent) net reduction in fares as radio-dispatch fares fell and taxi-stand fares rose. Other reports indicated no net change in fares.²⁶ One effect that is not in dispute is the increase in service to cabstands at the airport due to the influx of additional cabs. This led to longer taxi lines and disputes among cabbies. Price competition did not develop in part due to the first-in first-out queuing system often used at airports. In response to this problem, the airport imposed maximum fares and later disallowed additional entry. Still later, they moved to an exclusive monopoly franchise system.

Although a 1980 survey of residents and visitors indicated positive evaluation of taxicab service in Seattle immediately after the deregulation, Seattle later returned to entry limits and fixed fares in the 1980s. A 1996 report indicated dissatisfaction with the taxicab industry among various groups particularly the hospitality industry (hotels, conventions, tourism, etc).²⁷ The complaints centered on the independent (non-fleet) cabbies who reportedly provided poor service and were difficult to hold accountable for poor service or rule infractions. As of 1996, Seattle had 637 licensed cabs organised in seven fleets and 210 single-cab firms. Licenses sold for about \$12 000 each, and entry, fares, and driver standards of conduct and dress are fully regulated.²⁸ Thus, 17 years after the experiment with deregulation, complaints about taxi service remain.

3.3 *Indianapolis, Indiana (1994)*

In July 1994, Indianapolis, Indiana deregulated taxicabs and allowed jitney²⁹ and minivan operation as part of a broader market-oriented approach to city governance taken by a new city administration. The city administration indicated that the deregulation was a success, pointing to increases in the number of cabs and the number of taxicab companies, fare reductions (newcomers cut fares by 7-10%), service improvements, reductions in customer complaints, and the granting of one new jitney license. Wages and profits fell, and the safety of cab drivers may have also decreased (as they drove into

less safe neighbourhoods). As in Seattle, many of the new cab drivers worked the airport queues and those queues reportedly remain long as of 1999.³⁰

The ultimate effect of the 1994 deregulation is in dispute. The city administration continues to view it positively, while the taxi association portrays it as a failure. The policeman in charge of taxicab complaints during the entire period indicated that the number of consumer complaints rose immediately after deregulation, but that complaint levels are now lower than during the more heavily regulated period, and are focused on fares, rather than service quality.

3.4 *Lessons from the US Experience*

Reviews of the effects of deregulation experiences in the United States indicate that:³¹ (1) the number of cabs and cab companies rise and, therefore, employment opportunities and the number of cab hours of service rise; (2) the bulk of the new entrants serve taxi-stand markets that do not require radio-dispatch capability; this leads to longer queues of drivers at those locations and near zero waiting times for riders;³² (3) new radio-dispatched companies occasionally begin operation, but that is not the norm; and (4) little service innovation is evident. Fares may fall a bit in the radio-dispatch segment of the market,³³ but problems with an absence of price competition will occur at airports and taxi stands if maximum fares are not reduced sufficiently or competition is not viable due to first-in-first-out queuing.

The US experience has not provided a clear example of the benefits of deregulation on taxi fares. This may be because the few cities that have experimented with deregulation have not been those where the pre-deregulation equilibrium was particularly far from that which would have existed in a deregulated environment. It may also be due to the fact that price competition does not quickly develop among the many individual cab drivers who enter and serve taxi-stand markets. It may also be that consumer responsiveness to price is not very great because: (1) repeat customers may be uncommon in the taxi market, leading to little incentive to cut price to draw future clients, and (2) on-time arrival may be the most important characteristic to occasional phone-hail cab riders, making price a relatively unimportant characteristic (so long as the price is within the realm of reason).³⁴

A key lesson from the US experience is that when deregulation is attempted in the future, administrators of the change will have to pay more attention to ensuring that price competition can be developed at the taxi-stand and airport locations. In this vein, perhaps the most intriguing examples of US regulatory reform took place in Phoenix, AZ and Sacramento, CA where easier entry was allowed, but airport service was regulated and downtown hotels were allowed to contract for exclusive service with taxi companies if they wished to do so. This approach reportedly allowed these cities to ameliorate airport and taxistand problems that were associated with open entry in other cities such as Seattle in the 1970s.³⁵ Whether these were the best approaches to solving the taxi-stand problems is open to debate. Exclusive contracts can solve the problems of rowdy or non-accountable independent drivers, but it does not directly improve price competition at the queues (unless pricing is made part of the contract) and may not be the approach that would maximise the welfare of taxi riders.

Literature cited in Taxi section (See Frankena and Pautler (1984) for earlier references)

- Avants, S., G. Gilbert, and B. Lupro (March 20, 1996) "Peer Review - Seattle Taxicab Regulation," <http://www.taxi-1.org/seat0396.htm>. City of Seattle.
- Frankena, M. W. and P. A. Pautler (1984) *An Economic Analysis of Taxicab Regulation*, Bureau of Economics, Federal Trade Commission, 176 pp.
- Frankena, M. W. and P. A. Pautler (1986) "Taxicab Regulation: An Economic Analysis," *Research in Law and Economics*, Vol. 9, JAI Press, 129-165.
- Gaunt, Clive N. (June 1998) "A Finance Analysis of Taxicab Industry Regulation," Ph.D. Dissertation, Queensland University of Technology, Brisbane, Australia, School of Accountancy, Faculty of Business.
- Price Waterhouse (1993) "Analysis of Taxicab Regulation and Deregulation," study funded by International Taxicab Foundation, 32 pp. [available from the Taxi Foundation for \$50].
- Schaller, Bruce (1999) "Elasticities for Taxicab Fares and Service Availability," *Transportation*, 26, 283-297.
- Soon, Jason (1999) "Taxi!! Reinvigorating Competition in the Taxi Market," *Policy*, Winter, 13-19. (Australian publication focusing on New South Wales).
- Staley, Samuel (1998) "Taxicab Licensing and Economic Opportunity in Madison: A Preliminary Analysis," <http://www.taxi-1.org/madison.htm>, September 30.
- Teal, R.F. and M. Berglund (1987) "The Impacts of Taxicab Deregulation in the USA," *Journal of Transport Economics and Policy*, 37-56.

Taxicab License Values in Various Cities (last update 8-28-00)

Atlanta, GA	\$1,500	1986	Curtis Wagner report from Research Atlanta, July 1986
Baltimore, MD	\$12,000-20,000	1996	“Baltimore: No Harbor for Entrepreneurs,” Institute for Justice, Vehicles for Hire subsection (April 1997)
Boston, MA	\$180,000	2000	T. Ronald Rosenberg, “Boston Mogul Plans To Sell Off Taxi Business,” Boston Globe, June 3, 2000
Chicago, IL	\$23,000	1990	“Taxi! All the World’s A Cab”, The Economist, December 22, 1990, pp. 32-34. p. 123 of Clive Gaunt dissertation
Cincinnati, OH	\$3,000-6,000	1994	Report of Cincinnati Enquirer recounted in R. Hardaway “Indianapolis Reaps The Benefits Of A Deregulated Industry” Christian Science Monitor, April 2, 1996 (law prof, at U. of Denver Col. of Law)
Columbus, OH	Up to \$25, 000	1991-96	The Columbus Dispatch, editorial, November 11, 1996, p. 10A
New York, NY	\$225,000 (independent) and \$250,000 (corporate)	2000	Edward Lewine, “Wanted: Taxi Drivers,” Daily News, April 16, 2000.
Philadelphia, PA	\$55,000	1999	Laura J. Bruch, “Despite Some Positive Strides, Taxi Troubles Return To Philadelphia,” Philadelphia Inquirer 3-26-99
Portland, OR	\$17,000	1998	J. Boroski & G. Mildner “An Economic Analysis of Taxicab Regulation In Portland, Oregon, April 1998, Cascade Policy Institute (at notes 21, 22)
San Diego, CA	\$60,000	1998	J. Boroski & G. Mildner “An Economic Analysis of Taxicab Regulation In Portland, Oregon, April 1998, Cascade Policy Institute (at notes 21, 22)

Seattle, WA	\$15,000 (city) \$90,000 (airport)	1998	S. Nina Shapiro, "Taxi Blues," Seattle Weekly, p. 20, March 5, 1998
Ottawa	\$95,000	1997	T. Corcoran "Taken For A \$1 Billion Tax Ride," Toronto Globe & Mail, April 5, 1997
Toronto	\$80,000	1997	T. Corcoran "Taken For A \$1 Billion Tax Ride," Toronto Globe & Mail, April 5, 1997
Vancouver	\$120,000	1990	November 1990 Terry Smythe article. "Taxi Regulatory Fees" published in <u>The Regulator</u> , (originally July 1991)
Adelaide	\$141,000	1995	Data provided to the author by the respective State Transport Departments as at February 1995. p. 123 of Clive Gaunt dissertation
Brisbane	\$169,500	1995	Data provided to the author by the respective State Transport Departments as at February 1995. p. 123 of Clive Gaunt dissertation
Melbourne	\$150,000	1995	Data provided to the author by the respective State Transport Departments as at February 1995. p. 123 of Clive Gaunt dissertation
Sydney	\$215,000	1995	Data provided to the author by the respective State Transport Departments as at February 1995. p. 123 of Clive Gaunt dissertation
Hong Kong	\$153,000	1991	"Taxi Prank", Far Eastern Economic Review, June 20, 1991, pp. 96. p. 123 of Clive Gaunt dissertation
Paris	\$46,000	1990	"Taxi! All the World's A Cab". The Economist December 22, 1990, pp. 32-34 p. 123 of Clive Gaunt dissertation
Rome	\$160,000	1990	"Taxi! All the World's A Cab", The Economist December 22, 1990, pp. 32-34. p. 123 of Clive Gaunt dissertation

1. All license values from Clive Gaunt's dissertation are in U.S. dollars. Clive N. Gaunt, "A Finance Analysis of Taxicab Industry Regulation," School of Accountancy, Faculty of Business, Queensland University of Technology, Brisbane, Australia, June 1998.

LISTING OF OTHER LITERATURE ON TAXICAB REGULATION

Bibliography of Post-1984 Literature (See Frankena and Pautler (1984) for earlier references).

- Avants, S., G. Gilbert, and B. Lupro (March 20, 1996) "Peer Review - Seattle Taxicab Regulation," <http://www.taxi-1.org/seat0396.htm> . City of Seattle.
- Boroski, John W., and Gerard C.S. Mildner (1998) "An Economic Analysis of Taxicab Regulation in Portland, Oregon," http://www.CascadePolicy.org/transit/taxi_reg.htm Policy Perspective 1007, *Cascade Policy Institute*, April.
- Cairns, Robert D., C. Liston-Heyes (1996) "Competition and Regulation in the Taxi Industry," *Journal of Public Economics*, 59, 1-15.
- Evans, Lewis, Arthur Grimes, Bryce Wilkinson, with David Teece (December 1996) "Economic Reform in New Zealand 1984-1995: The Pursuit of Efficiency," 34 *Journal of Economic Literature*, 1856-1902.
- Frankena, M. W. and P. A. Pautler (1984) *An Economic Analysis of Taxicab Regulation*, Bureau of Economics, Federal Trade Commission, 176 pp.
- Frankena, M. W. and P. A. Pautler (1986) "Taxicab Regulation: An Economic Analysis," *Research in Law and Economics*, Vol. 9, JAI Press, 129-165.
- Gallick, E.C. and D.E. Sisk (1987) "A Reconsideration of Taxi Regulation," *Journal of Law, Economics & Organization*, 3:1, 117-128.
- Garling T., T. Laitla, A. Marell and K. Westin (1995) "A Note on the Short-term Effects of Deregulation of the Swedish Taxi-cab Industry," *Journal of Transport Economics and Policy*, May, 209-214.
- Gaunt, C. and T. Black (1994) "The Unanticipated Effects of the Industry Commission's Recommendations on the Regulation of the Taxi Cab Industry," *Economic Analysis and Policy*, 24:2, 151-170.
- Gaunt, C. and T. Black (1996) "The Economic Consequences of Taxicab Regulation: The Case of Brisbane," *Economic Analysis and Policy*, 26:1, 45-58.
- Gaunt, C. (1995) "The Impact of Taxi Deregulation on Small Urban Areas: Some New Zealand Evidence," *Transport Policy*, 2:4, 257-262.
- Gaunt, C. (1996) "Taxicab Deregulation in New Zealand," *Journal of Transport Economics and Policy*, 30:1, 103-106.
- Gaunt, C. (1996) "Information for Regulators: The Case of Taxicab Licence Prices," *International Journal of Transport Economics*, 23:3, 331-345.
- Gaunt, C. (1996) "Risk and Return in the Market for Taxicab Licences," *Accounting Research Journal*, 9:2, 21-29.

- Gaunt, Clive N. (June 1998) "A Finance Analysis of Taxicab Industry Regulation," Ph.D. Dissertation, Queensland University of Technology, Brisbane, Australia, School of Accountancy, Faculty of Business.
- Klein, Daniel B., Adrian T. Moore, and Binyam Reja (1997) *Curb Rights: A Foundation for Free Enterprise in Urban Transit*, Brookings Institution, 148 pp.
- Lagos, Ricardo A. (November 1996) "An Alternative Approach to Market Frictions: An Application to the Market for Taxicab Rides," CARESS Working Paper 96-09, University of Pennsylvania.
- Mansson, Jonas (January 1996) "Technical Efficiency and Ownership: The Case of Booking Centres in the Swedish Taxi Market," *Journal of Transport Economics and Policy*, 30(1), 83-93.
- Marell, A. and K. Westin (1995) "Deregulation of the Swedish Taxicab Industry: Vehicle Utilization," mimeo accepted for presentation at the WCTR, Sydney Australia, July 16-21.
- Price Waterhouse (1993) "Analysis of Taxicab Regulation and Deregulation," study funded by International Taxicab Foundation, 32 pp. [available from the Taxi Foundation for \$50].
- Schaller, Bruce (1999) "Elasticities for Taxicab Fares and Service Availability," *Transportation*, 26, 283-297.
- Smythe, Terry (May 1997) "An Editorial Comment: Taxicab Deregulation: Futility or Blessing?" <http://www.taxi-l.org>
- Soon, Jason (1999) "Taxi!! Reinvigorating Competition in the Taxi Market," *Policy*, Winter, 13-19. (Australian publication focusing on New South Wales).
- Staley, Samuel (1998) "Taxicab Licensing and Economic Opportunity in Madison: A Preliminary Analysis," <http://www.taxi-l.org/madison.htm>, September 30.
- Staley, Samuel (1996) "Taxicab Regulation in Ohio's Largest Cities" *The Buckeye Institute for Public Policy Solutions*, October.
- Taylor, D.W. (1989) "The Economic Effects of the Direct Regulation of the Taxicab Industry in Metropolitan Toronto," *Logistics and Transportation Review*, 25:2, 169-182.
- Teal, R.F. and M. Berglund (1987) "The Impacts of Taxicab Deregulation in the USA," *Journal of Transport Economics and Policy*, 37-56.

NOTES

- 1 See 1850/*Deutsche Post AG – Correct Express* dated 15 June 2000, 1834/*The Post Office – NPD* dated 4 April 2000 and 1780/*Vos – De Bruin* dated 3 March 2000.
- 2 Here it should be noted that in a previous decision, 1052/*DFDS Transport -Danzas Eurocargo* dated 6 October 1998, a market for international (goods) transport by land was distinguished. In the decision 1656/*Wagenborg -Vos* dated 3 March 2000, freight transport over land was treated as a separate market.
- 3 1780/*Vos – De Bruin* dated 3 March 2000.
- 4 Decision 1383 dated 27 September 1999.
- 5 1138/*Arriva – VEONN and Hanze* dated 25 November 1998.
6. Rates and rules relating to movements of household goods, to non-contiguous domestic trade (*i.e.*, involving Alaska or Hawaii), or collectively set by rate bureaus and immunised by the Surface Transportation Board, are subject to review by the Board for reasonableness. Filing requirements are limited to non-contiguous domestic trade.
7. The ICCTA permits a rate bureau to establish “rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates).” 49 U.S.C. § 13703(a)(1)(G). Antitrust immunity is also given for collective action with respect to through routes and joint rates; rates for the transportation of household goods; classifications, mileage guides, rules and divisions. 49 U.S.C. §13703(a)(1).
8. Surface Transportation Board, EC-MAC Motor Carriers Service Ass’n, Inc., Sec. 5a Application No. 118 (Amendment No. 1), February 9, 2000.
9. Paul Teske, Samuel Best, and Michael Mintrom, *Deregulating Freight Transportation*, AEI Press (1995), p. 81.
10. Clifford Winston, U.S. Industry Adjustment to Economic Deregulation, *Journal of Economic Perspectives*, Summer 1998, p. 94.
11. *Ibid.*, p. 99.
12. *Ibid.*, p. 101.
13. Stephen Morrison and Clifford Winston, *Regulatory Reform of US. Intercity Transportation*, in *Essays in Transportation Economics and Policy*, Brookings (1999), eds. Jose Gomez-Ibanez, William Tye, and Clifford Winston; p. 477.
14. *Ibid.*, p. 481.
15. *Ibid.*, pp. 486-87.
16. James Peoples, *Deregulation and the Labour Market*, *Journal of Economic Perspectives*, XII:3 (Summer 1998), p. 112.

17. According to regulations administered by the Immigration and Naturalisation Service, transportation operators "may load from locations in the United States if all goods or passengers to be loaded will be delivered in the territory of another party. Purely domestic service or solicitation, in competition with U.S. operators, is not permitted."
18. The STB has approved a number of pooling arrangements between intercity bus companies, including other pooling arrangements between Greyhound and Peter Pan. Prior to the pooling arrangement discussed above, the Board approved a pooling arrangement between these two carriers for service between New York and Philadelphia (June 24, 1997) and between New York and Boston and between New York and Springfield, MA (February 3, 1998). The STB has also approved an agreement by these two carriers to pool operations between Albany, NY and Boston (June 25, 1998).
19. Problems associated with entry occurred at cab stands as lines of waiting cabs lengthened, cabbies bickered over their places in the queue, and service refusals occurred if a passenger wanted a short trip. See the discussion (pp. 125-143) of the situations at airports in Seattle, San Diego, and Phoenix. Reports of similar problems at hotels are common.
20. For a detailed description of the industry, see Frankena and Pautler (1984, pp. 10-28 and especially note 21) and Price Waterhouse (1993, pp. 4-5). New technology has not impacted the industry greatly, although Soon (1999) indicates that dispatch costs may have fallen as telecommunications options have increased. Perhaps the biggest continuing change in the industry has been the move to lessee/contractor drivers from the owner-operator or employee format of the 1950s and 60s. The advent of contracting was likely caused by tax changes that made it advantageous for taxi firms to characterise their drivers as independent contractors rather than employees. It is not clear how this has changed driver incentives to provide high service quality, but that issue is a recurring theme of certain industry commentators.
21. In most cases the jurisdictional unit is a city or a county. In a few instances, regulation occurs at the state level.
22. Many cities restrict entry but do not allow license transfers, so public information on the value of the right-to-serve in those cities is not available. The list was compiled from readily available information and it does not represent a complete listing of license values for all U.S. cities. Some data on license values from an earlier period for more cities is included in Frankena and Pautler (1984, pp. 106-107).
23. The 1970s experiences of several cities are recounted in Frankena and Pautler (1984, pp. 125-154). These same experiences (with a more negative gloss on the results and some additional information on fares) are discussed by Teal and Berglund (1987) and Price Waterhouse (1993).
24. The District of Columbia's cab scheme and its apparently relatively low prices in 1984 are described in Frankena and Pautler (1984, pp. 83-89). DC taxicab prices are difficult to compare to those of other cities due to the unique zone-based system used in the District.
25. Complete freedom of entry would destroy the value of the existing licenses and would therefore be vigorously opposed by incumbent service providers. This is likely the primary reason for the retention of entry regulation in many areas. Many jurisdictions allow increases in the number of cabs over time as population grows or other demand factors change.

26. Zerbe indicated that radio-dispatch fares fell, but airport and taxistand fares rose, resulting in a small net decline in fares. For a description of Zerbe's results and the Seattle experience, see Frankena and Pautler (1984, pp. 125-131). Teal and Berglund (1987) examined taxicab trade association survey data and concluded that fares did not fall in Seattle following deregulation.
27. See Avants et al. (1996).
28. As of 1998, licenses to serve the city of Seattle traded for \$15 000, while airport licenses traded for \$90 000. The airport is served by monopoly franchise taxis. The current Seattle taxi regulations are incorporated in the Seattle Municipal Code sec 6.310.100 to 6.310.730. Ord. 118341 Section 2 (1996).
29. Jitneys provide transportation service for individuals along a semi-fixed route.
30. For a very positive description of the changes about one month after entry was allowed, see Editorial, Indianapolis News, August 4, 1994. Later press reports were less positive, reflecting either deteriorating performance or information from other sources. See, David Shaffer "Cab Deregulation: Competition or a License to Gouge? New Firms Hail the Equipment, but Older Firms Say Fares are Up, Profits Down," Indianapolis Star, June 11, 1995, E-1; and Adam Ellick "Stuck in Idle: Cab Drivers Who Work Indianapolis International Have Found it Tough to Make a Living Since Airport Service was Deregulated Five Years Ago," Indianapolis Star, Aug 22, 1999, E-1. The city administration still considered deregulation a success as of 12-98. (See 12-10-98 letter from John Hall, Indianapolis Deputy Mayor to Hamilton Smythe, President, International Taxicab and Livery Association (the industry trade association) arguing that all the underlying goals of the Indianapolis deregulation had been met.)
31. See Frankena and Pautler (1984), Teal and Berglund (1987), and Price Waterhouse (1993).
32. Changes in customer waiting times in the radio-dispatch portion of the market were documented in only one case, San Diego, where a reduction in average waiting time from 10 to 8 minutes occurred.
33. In the US, fares may have fallen a small amount in the radio-dispatch segments of certain deregulated cities (Seattle, Indianapolis, and Sacramento), but even those effects are in dispute. See Teal and Berglund (1987, pp. 42-46). The New Zealand evidence reported by Gaunt (1998) and Soon (1999) indicates that fares in major cities might declines by as much as 20 percent due to deregulation of entry. The Working Party may be interested in pursuing the evidence regarding taxicab deregulation in New Zealand, because it appears to provide a counterpoint to the U.S. evidence where fare reductions were not common. The effect of deregulation on fares is important. If open entry does not result in fare reductions or waiting time reductions for riders, then the increased cab use might well be characterised as pure waste.
34. Empirical estimates do not imply, however, that customers are unresponsive to price. The responsiveness to price as measured by the elasticity of demand for taxi rides has been estimated to be slightly inelastic (falling in the -0.8 to - one range). See Frankena and Pautler (1984, p. 162-165). See Schaller (1999) for a more recent estimate from New York.
35. Based only upon Price Waterhouse (1993, p. 17).

AIDE MEMOIRE OF THE DISCUSSION

by the Secretariat

1. Introduction

The Chairman opened the Roundtable observing that the three sectors under discussion – trucking, buses, and taxis – differ in the extent to which each sector can sustain competition. The opportunity for effective competition is strongest in trucking and is possible in buses, especially long-distance buses, while there is some debate as to how and what form of competition can be introduced in taxis. The Chairman recalled that road transport competes with other modes of transportation, particularly rail and air transport, and this will be important to bear in mind.

The Roundtable was divided into three sections dealing, respectively with road freight (trucking), buses, and taxis.

2. Road Freight

The Chairman noted that the road freight sector can be further subdivided in various ways, into the “truckload” and “less-than-truckload” sectors and between national and international trucking. As in the air transport industry, international trucking is governed by restrictive bilateral treaties. Most countries have liberalised their domestic trucking sector, removing controls on entry and prices. At the same time, most countries have strengthened controls on safety and environmental issues.

The United States was one of the first countries to liberalise its domestic trucking. But, this liberalisation did not completely eliminate all controls. The US submission mentions what are called rate bureaux, which meet to set rates or mechanisms for general rate increases. These bureaux have retained partial immunity from the US antitrust legislation. One of the consequences of the liberalisation has been a strong increase in concentration in the less-than-truckload sector. Economies of scale and scope are very important in this sector, but is this increasing concentration a concern? What is constraining the development of a fully liberalised international market for trucking within NAFTA?

The United States agreed that the story of liberalisation of the trucking industry in the US is one of the big success stories of regulatory reform and deregulation. Dating back to the 1930s there had been a long period of extensive, heavy regulation of rates, pricing and entry in the trucking market. That began to change in the late 1970s, first through the regulatory changes of the Interstate Commerce Commission and through statutory changes, which concluded in 1995 with the Interstate Commerce Commission Termination Act under which the regulatory agency, itself, was abolished. Today, the sector is fully deregulated.

Economic estimates shows that both rates and costs in the industry have dropped by 35 percent with significant improvement in services and reliability and the introduction of many different types of innovative services. There has been some increased concentration in the less-than-truckload sector,

probably due to economies of scale. But there has also been intensified competition from a number of new, low-cost, non-union, regional carriers and also from a number of small-shipment carriers such as UPS and Federal Express. Even though this market has become more concentrated, there is still significant competition and the antitrust authorities have not had cause to intervene in those markets in the last decade or so. There has also been a lot of non-union entry into this market and although wages have gone down, employment has almost doubled from around one million in the mid-1970s to close to two million by the mid-1990s.

The one area that has not been fully liberalised relates to rate bureaux. Prior to the Motor Carrier Act of 1980, most rates in the industry were set collectively by regional rate bureaux. Over the years the immunity for that activity has been cut back. Today the only immunity that exists is for “general rate increases”, i.e., overall, industry wide, periodic rate increases either for the truckload or less-than-truckload sectors. That particular immunity is under review by the Surface Transportation Board. The Department of Justice has filed comments suggesting that the immunity should not be continued. The DOJ noted that the immunity given to rate increases can either lead to naked collusion or can provide a platform to which most carriers will raise the rates. The Surface Transportation Board has postponed its decision in this area for a couple of years. The Board has stated that they would not allow collective rate making unless the rates set are at competitive levels. If the company wants to set its rates above a competitive level it must do so individually and not collectively.

On the NAFTA issue, since the early 1980s, carriers from the south of the border (i.e., Mexico) have the right to transport goods to and from certain border commercial zones – a strip along the US-Mexico border of between five and 50 miles. Under NAFTA this was supposed to be liberalised. Mexican carriers were as of 1995 to have the right to serve the border states and later, the entire US. In December 1995 the US government announced that it was going to postpone that liberalisation due to safety concerns. The issue was whether or not the Mexican safety regulatory agency was able to ensure that comparable safety standards were met. That issue has been controversial and, in fact, a NAFTA dispute panel is expected to rule sometime in November 2000 whether that delay is consistent with NAFTA. There is no cabotage in the US. That is not under discussion at this point.

The Chairman turned to Australia, another early reformer. In Australia the liberalisation was not the result of a policy change but was the result of a legal decision which held that the previous regime was unconstitutional. The Australian submission raised concerns about safety – the idea that liberalisation, by increasing competition leads trucking companies to take greater risks – and noted that there have been calls to re-introduce a licensing regime

Australia agreed that there has been a long history of liberalisation and an absence of licensing regime in Australia's trucking industry. The Australian constitution itself contains provisions opposing regulations which hinder interstate trading and commerce. The high level of competition in the industry is reflected in low profit margins. The proposal to re-introducing licensing was merely a suggestion of a trucking lobby group. It has not been endorsed by the government or the ACCC. The ACCC would be extremely concerned by any such moves which would limit competition and considers that there are many other means of promoting safety such as anti-driver-fatigue programmes and influencing the trucking companies themselves to take a more responsible attitude to the driving safety situation, rather than re-introducing licensing.

Turning to Korea, the Chairman observed that the Korean trucking sector was only reformed in 1999. This reform was carried out despite strong opposition from incumbent operators. The Chairman asked Korea how they were able to overcome the opposition from incumbent operators.

The delegate from Korea explained that in the early 1990s the KFTC began to investigate and research the market structure and the policies of the Ministry of Construction and Transportation (MOCT). The KFTC was assisted by many economists and specialists in the trucking sector. The KFTC found that there were many significant market distortions in the sector. For example, the price premium on existing licences was \$15 000, i.e., the entire earnings of one operator in one year. Based on these investigations, the KFTC formulated a regulatory reform plan. The initial objective was to eliminate entry barriers and price control immediately. This plan was not accepted by the MOCT, due to MOCT concerns about opposition from existing operators. Eventually, a plan for a phased reform was accepted by the MOCT and approved by the Economic Deregulation Committee in November 1995. The KFTC is very proud of this outcome.

There was, in fact, very strong opposition from incumbent operators against the reform. One of their tactics was to put signs on the trucks opposing deregulation. Officials on the regulatory reform task force received telephone threats. Despite this opposition, reform was taken step-by-step by the Korean government. The success of the reform was due to two major factors: First, the KFTC role, especially its role as a regular member of Cabinet. Second, and more important, the strong political support. There was, in this instance, strong political support to improve productivity and to eliminate market distortions.

The Chairman recognised the important role of the EC in liberalising the trucking industry in the EU and asked the Commission whether there is any prospect for the centralisation in the Commission of negotiation of bilateral agreements with countries outside the EU.

The European Commission reminded delegates that, together with rail and inland water, road transport has been subject to the application of EU competition rules since 1968 (as a result of Council Regulation 1017). Within the Union, road transport of freight is liberalised and road freight transport policy is limited to questions of security such as the transportation of dangerous substances. A small number of horizontal agreements between transport operations have been notified under Article 81 of the Treaty. But, since these were found to have no substantial restrictive effects on competition, they were rapidly cleared.

Cabotage for road freight within the Union was fully liberalised only on 1 July 1998. Since that date a freight operator from any member state is able, provided that he or she meets the conditions set out by the Directives, to carry out the transportation of goods between any two destinations in the European Union, including destinations within a member state which is not his own. For example a Belgian operator can carry freight from Paris to Rome without problems. On the other hand, cabotage in the market for regular transport of passengers is not yet permitted.

The EC Directives in this sector relate to driving licence rules and rules on market access. Since January 1993, any road operator wishing to carry goods or passengers internationally (i.e., between at least two member states) must hold a community driving licence issued by the member states in which he resides. Conditions for the licence are determined by the member states themselves, with one main condition which is binding on all member states – that they must enforce the EU Directive on the admission to the occupation of road haulage operator or road passenger operator. This directive sets out the conditions and criteria for access to the occupation. They set out, for instance, conditions related to good repute, professional competence and financial standing. The second part of the directive concerns the mutual recognition of diplomas, certificates and other formal qualifications. These are necessary to ensure that a driver who is recognised in one country can operate in another country without any additional controls or problems.

The Chairman then turned to the countries which are neighbours to the European Union and, in particular, Poland. In Poland, while domestic trucking has been completely liberalised, international

trucking is subject to a system of quotas and permits. The Chairman asked Poland to explain the statement in the Polish submission that states that full liberalisation of international transport will lead to the “breakdown” of the Polish freight industry.

Poland’s system is very similar to the system which currently exists in the countries of the European Union, except that there is an authorisation requirement for international trucking. The number of such authorisations is more than sufficient for countries outside the EU. The authorisation requirement with Turkey and Slovenia has been completely removed. The primary problem for Poland concerns the insufficient number of authorisations coming from the countries of European Union. Otherwise, the market is open to operators who fulfil the three conditions of good repute, financial standing, and competence.

The numbers of authorisations are decided in the process of negotiation of bilateral agreements. These agreements are broadly similar from one country to another, with small differences. They are negotiated at the government level.

The Chairman then opened the floor for general discussion, highlighting two issues – the question of how to overcome the opposition of incumbents and the issue of “transit” countries – i.e., small countries in the middle of major flows of traffic between major countries.

The delegate from ECMT (European Conference of Ministers of Transport) explained that issues in the road freight sector are the everyday business of the ECMT. In the case of trucking, most countries have deregulated at the national level, moving from quantitative controls to qualitative controls. There are still some laws on the books in some countries, such as Italy, but these are not enforced. There are still some issues left, including some in the “own account” sector. Restrictions on back-hauling, for example, mostly apply to the own account sector. The problem is that operators in the own account sector don’t have the same conditions of access to the market, so there would be some competitive distortion if they were granted equal rights.

The regulation of road transport has been mixed up with broader policy issues like the environment, safety, and the role of railways. It is linked also to the dominance of road transport in our economies. All these other factors become involved in discussions on regulation of road transport and make a sensible debate on road transport quite complicated. Competition policy experts can contribute to the debate by highlighting the consequences of different mechanisms for pursuing these other objectives.

In regard to international trucking, this is a difficult, complicated issue. In the European Union international road freight transport has been liberalised but this was an enormous and long battle. Cabotage is only two years old and the regulations on cabotage allow countries to fall back on more restrictive provisions in the event of a negative outcome. One of the lessons of the last two years is that the catastrophic scenario that was foreseen has not happened. Cabotage is only 1 percent of the market in Germany, for example, yet German hauliers were strongly opposed to cabotage.

In Europe, there is still an amazing patchwork of bilateral agreements and some multilateral arrangements. The ECMT itself administers a multilateral quota system. It has 10 000 permits that Transport Ministers fight over every year. The ECMT is trying to increase the number of such permits but there is a lot of resistance from some countries. In regard to bilaterals, these are secretly negotiated between countries. Amongst other provisions, these bilaterals sometimes include mutual exemptions from road charges or taxes. If so, this would appear to be discriminatory and against other principles of international trade. The ECMT is trying to make these bilateral agreements more transparent and more alike.

Another problem is that the very large number of small independent operators in this sector feel they are vulnerable. Shippers either give them long-term contracts or take-it-or-leave-it offers, so they

cannot pass on cost increases to their customers. Some countries are trying to address this by trying to transfer responsibility higher-up in the chain. For example, if an independent trucker is caught speeding or overloading, the responsibility might be passed on to the shipper. France, for example, are looking at that question. Another issue is what is sometimes called "social dumping" - using cheap labour to transport internationally. There are instances of drivers with much lower salaries from the very far east (such as Azerbaijan) driving between Germany and France, using for example ECMT permits. This is a very topical issue among Transport Ministers. The ECMT is struggling with clarification on what is legitimate salary differences and what is some form of unfair practice.

On the question of safety, the ECMT prepared a report a few years ago on safety. There was a horrifying admission from 60 percent of drivers that they had at some time fallen asleep at the wheel. This is an enormous safety problem and an enormous enforcement problem. Although the laws exist, the commitment and ability to enforce them has been very uneven. There are electronic devices such as the tachygraph for monitoring working and rest times, but the problem in the road transport industry is the other work that drivers do such as loading and unloading. There is a huge debate in Europe at the moment because the European Union is trying to exclude independent operators from laws on driving time and rest time. This would be a distortion to the market, but it is possibly the only way that a political compromise can be reached.

Switzerland, responding to the Chairman's question on transit, observed that Switzerland is in a transit zone for North-South transport in Europe. This North-South transit traffic has preoccupied politicians in Switzerland because of problems related to damage to the road network and the environment. The leading solution to this problem in Switzerland is what is called "railroading", i.e., loading the trucks that arrive in the country on trains and making them pass through Switzerland on the rail network. This will require the development of new infrastructure, such as the creation of new tunnels through the Alps, but will limit the environmental drawbacks of road transport.

There is an annual tax at the moment on all large trucks, which is applied equally to Swiss and foreign trucks. But this annual tax has the potential to distort competition between Swiss and foreign trucks, because the same tax is levied on a foreign truck and a Swiss truck, even if the foreign truck only crosses Switzerland twice in a year while the Swiss truck drives every day of the year in Switzerland. A new tax has been adopted by the Parliament and will come into force 1 January 2001. The new tax depends on the number of kilometres driven and applies equally to Swiss and foreign trucks that want to transit Switzerland. Part of the revenue from this tax is transferred to the rail sector to encourage railroading (this is a form of cross-subsidy from road to rail).

The delegate from Spain recalled a time in Spain when road transport was not liberalised in Europe and international trade was hindered by a lack of licences. In the case of the bilateral agreement between Poland and Spain, by June the exporters had used all their licences. This pushed the authorities to increase the size of the quota.

The Chairman asked how these quotas are assigned to the different truck operators. Is there a tendering procedure?

The ECMT responded that this is unclear. In the past, in Ireland, the Minister would, just before Christmas, send out quota to his favourite trucking companies. Nowadays, in some countries there is a form of market for quota – it may not be a tendering process, but some form of trading process. In other cases, countries monitor which operators use them "properly", ensuring that only top hauliers with international experience get an allocation. In international haulage, there is a move to only give quota to firms with the highest quality vehicles and the highest safety standards. This is a way to at the same time liberalise and improve quality.

The delegate from BIAC underlined the comment of the ECMT that some road haulage operators are vulnerable. There are some developments on the demand side of the market which increase this vulnerability. The development of E-commerce leads to more and smaller shipments and strengthens the position of the large companies specialising in parcel services. There is also increasing concentration of the demand side (for example in the retail sector) and, finally, the move to a 24-hour economy, favouring trucking companies which can provide services 24 hours a day. These developments generally do not favour small, independent operators.

The Chairman asked a question about safety – does greater competition lead to safety problems? Were there fewer safety problems when the trucking sector was more protected?

A member of the OECD Secretariat (Division of Transport) observed that the issue of driving hours has been a major concern in Australia. Under the National Road Transport Reform Agenda, which is being handled by the National Road Transport Commission, developments in driving hours control has focused on the merits of regulated hours versus fatigue management regimes. These regimes do not focus on mandating a certain number of hours of work and rest, but focus on placing responsibility on the driver and the operator for the total regime of health and safety. The early experiences with this programme are positive.

On the issue of safety, the Australian experience since the enactment of the National Road Transport Reform legislation in 1992 (and recognising that it is always difficult to draw direct correlations) is that since 1990 the incidence of heavy vehicles involved in fatal accidents in Australia has declined. This was a period during which significant reforms were taking place across a range of issues related to the road transport sector, including road charges, controls on vehicle dimensions and controls on operating arrangements such as fatigue management regimes.

Australia has also looked at alternative compliance regimes relating to vehicle management and road worthiness. These regimes are operated by the industry and accredited by the state. The industry has been quick to accept these programmes to present an industry which is not only competitive but is also responsible with regard to safety and other issues. There are many elements of this model which are perhaps worth looking at.

3. Buses and Coaches

The Chairman turned the discussion to the passenger side of the road transport industry. It is important to divide the bus industry into different parts: long-distance versus local buses and also regular or scheduled services against occasional or charter buses. Occasional and charter bus services are usually liberalised in OECD countries. Long-distance bus services are liberalised in some countries while intra-city or local buses are very rarely liberalised. Amongst those countries which have fully liberalised the long-distance bus industry are Australia, the UK and the US. The Chairman observed that an important difference between these three countries is that while in the US and Australia rail does not play an important role, it does play an important role in the United Kingdom.

Turning to the US, the Chairman noted that the US liberalised the bus market in 1982. A single national operator has emerged (Greyhound) with an extensive network. Does inter-modal competition play a role in disciplining Greyhound's market power? The US contribution makes reference to an alliance between Greyhound and a rival (Peter Pan), which the Surface Transportation Board approved despite the objections of the Department of Justice. What was the argument of the DOJ in that case and how did the

arguments differ from the Greyhound/Trailways merger which was approved by the DOJ? The Chairman also asked about a case involving the issue of control of bus terminals.

The US acknowledged that the US intercity bus market was fully deregulated in 1982 by the Bus Regulatory Reform Act, and today there are is a single national carrier – Greyhound. Previously, there was a second carrier, Trailways. It did not have a full national network, but it was close. Trailways was purchased by Greyhound. This was a failing firm case – Trailways would have gone bankrupt or out of business had it not been purchased by Greyhound. That transaction was not challenged. According to DOJ economists, the reason that the US has seen the emergence of a single carrier is probably due to economies of scale in network operation.

In regard to the Greyhound/Peter Pan case, these two carriers competed on the Washington DC - New York City route. Greyhound and Peter Pan wanted to enter into a pooling arrangement, which is permitted under the law. The Surface Transportation Board holds a hearing and decides whether to allow this arrangement based on two considerations: first, whether there is better service to the public or economy of operation and, second, whether there is no unreasonable restraint of competition. The DOJ submitted comments to the hearing based on an informal survey of the market. The hearing was only to determine whether there would be an inquiry into the situation. The Surface Transportation Board decided that the request was not worthy of a full inquiry. The DOJ's informal investigation showed that there were simply not adequate competitive pressures from the alternatives – rail, rental car or privately owned cars. In the situation there were certain cost factors which made it simply unreasonable to assume that those other modes of transportation would put pressure on the rates of the combined Peter Pan/Greyhound operation. Nor was it reasonable to assume that there would be entry into that market if rates increased.

The only other enforcement action in the last ten years in the bus area concerns Greyhound terminals. Greyhound has about 200 terminals spread throughout the US. In 135 of the cities the terminals are shared with other regional operators. Typically the way that the carriers work out arrangements for sharing the terminal is that the regional carriers give Greyhound an exclusive right to sell tickets. In exchange for that the regional carriers get the use of space and sometimes the use of baggage handling services and other services at the terminal. The problem arose in that Greyhound imposed a condition that other bus operators could not sell tickets within a 25 mile radius of the terminal. The effect of this was that a competing regional operator who wanted to begin service from a new or different terminal or who wanted to begin service from an airport or railway station or college campus – places which might be likely spots to start a new bus service – could not do so because they didn't have the power to sell tickets. The DOJ sued in that case and ended up with a consent agreement where Greyhound agreed to stop the practice and to no longer tie those services together.

The Chairman contrasted the US bus market with that of Spain. While in the US any operator can provide any service, the situation is quite different in Spain. In fact, in Spain, the right to provide bus service is tendered. How often are services re-tendered and how many firms participate in the tendering? This raises the question of the appropriate use of tendering. What are the advantages in this type of extensive competitive tendering, or would it be better to rely more on market competition? One of the problems of tendering is that the government or regulator has to know in advance what services consumers want and are willing to pay for, with what frequency, over what routes, with what stopping patterns and so on.

The situation in Spain changed when the Transport Act was passed in 1987. Prior to that date rights to operate routes were not auctioned, but were given away in a non-transparent manner. There are four big passenger operators which have 60 percent of the market. 27 rights have been auctioned since the law was passed (there are rights which are currently being operated which were approved prior to the new law which will last until 2020). As existing rights lapse new auctions will be held. The new law fixed the

length of the rights as no less than eight years and no more than 20. This was reduced last June to no less than six years and no more than 15 years. This system arose because historically the government wanted to ensure that all cities were served.

The terms of reference of the tender sets out the required service frequencies, the tariff, the quality of the service, the type and level of comfort of the coach, and so on. The successful bidder can add frequency, but cannot reduce frequency of service. Competition is primarily on the level of the tariff - that is the variable which is given the most weight when assessing the proposals. The successful bidder has a monopoly for the duration of the right. Operators can propose a route to the Ministry if they think that there is a possible route that could be worthwhile operating. If the Ministry agrees, the route must be auctioned. The schedule frequencies and timings are co-ordinated at the national level by the Ministry of Transport. At the regional level, each region has its regional Transport Ministry.

Prior to the introduction of this system, the railways had the right to operate all road passenger transport, which it carried out by delegating the right to private enterprises. One of the purposes of this law was to remove this remaining right from the railways and give it, in a non-discriminatory manner, to private operators.

The Chairman then raised the issue of competition problems with bus terminals. Besides the Greyhound case, there are several other cases which are set out in the different countries submissions, such as the case from the Czech Republic concerning terminals in Prague and Pilsner. The Chairman asked whether, in the Czech Republic, bus services and rail services are substitutes or complements.

The Czech Republic responded that the first case concerned the central bus terminal in Pilsner which is operated by a company that also provides bus services. This company, without any objectively justifiable reason, discriminated against one of the competing operators on the route Pilsner-Prague, by not allowing the rival to use a part of the platform comparable in quality to those allocated to other operators. The Office for the Protection of Competition decided that this constituted an abuse of a dominant position by the operator of the bus terminal (which was also a competitor of the company discriminated against). The second case concerns a private bus terminal which was also operated by a company active in the market for bus services. The operator of the bus terminal discriminated against domestic and international operators by charging them different prices for the use of the platform. Subsequently to these cases, the Office for the Protection of Competition argued that bus terminals should stay in the hands of municipalities, rather than being sold to bus operators.

There are about 20 000 buses registered in the Czech Republic. About half of them (about 10 000 buses) are involved in or owned by companies that provide regular bus services – either municipal bus services or suburban, long-distance or international bus services. The share of total bus-kilometres that is subsidised is about one-quarter, but the share of total passenger kilometres is about one half. There are two types of subsidies - one is to meet public service obligations and the other is the subsidy provided by municipalities who ask for more frequent services than is required by the public service obligation.

Regarding whether bus services are substitutes or complements, until the end of this year rail services are subsidised by the national Ministry of Transport, while bus services are subsidised at the county or municipal level. Next year, the system will be changed. Regional and local railway services will be subsidised by regional councils which will be established from next year. There will be some system of prioritisation of subsidies to various types of transport.

In Turkey, the regulations for the transport of goods and passengers differ according to whether the transport occurs inside or outside municipal boundaries. The governors of the provinces hold the power to regulate local transport and transport up to 100 kilometres outside municipal boundaries. Transport more than 100 km outside municipal boundaries is the responsibility of the Directorate General of Road

Transport which is part of the Ministry of Transport. There is no limit on the number of licences for national and international transport. In the bus sector there are 572 firms and around 10 000 buses.

The Turkish competition law has no sectoral exemptions or exceptions, so it is applicable to the whole of the road transport sector without exception. The Turkish competition authority is currently investigating a competition case involving a bus station in Izmir in which, as in the Czech Republic, the bus terminal operator facilitated a horizontal agreement between bus companies and imposed fines and discriminatory conditions of firms which did not abide by the agreement. Another recent case concerns the bus terminal in the city of Istanbul. The allegation is that the operator of the bus station has set discriminatory departure fees. A formal investigation has been launched.

In Norway, the “need” for a service is considered before providing a licence for long-distance regular bus services. If there are parallel existing rail or bus services, this is also taken into consideration when deciding whether a new licence should be granted. Developments in this sector have been in the direction of liberalisation. As a result of the most recent change (in 1996) if a new service is only partly parallel to the existing service, or if the new service offers, for instance, a different stopping pattern, then a new licence shall be granted. All applications for new licences are evaluated individually. The need test is maintained in order to ensure a stable and reliable service. Moves towards a more liberal system are possible but developments are slow. Licenses are granted by the Ministry of Transport and Communications. Before a decision is taken one of the counties involved will hold a hearing and will obtain the views of the existing services and the relevant local authorities. Then the Ministry will make a decision.

The Chairman then turned to Italy where, as in Norway, the regime for buses is quite restrictive. The interests of incumbent operators are taken into account when granting a new licence and incumbents have a preference when any new licence becomes available. Fares on bus services are regulated and set equal to rail service fares, eliminating inter-modal competition. In Italy, most of the time rail service and bus service are complements rather than substitutes.

The Chairman then discussed a merger between the rail operator FS and the bus company Sogen. This merger was allowed under the condition that the rail operator would not gain control of those routes which were competing with railroads. This remedy, however, was not very effective because the rail operator maintained an important minority shareholding, almost equal to 50 percent, which was sufficient to not be in control from a legal perspective. Yet they maintained effective control.

The delegate from Italy emphasised that in Italy the situation is quite different for long-distance services and local bus services. Long-distance services are explicitly regulated to prevent competition and to protect the railways. The Transport Ministry itself prevents competition between buses and railways. As a result long-distance bus services are highly profitable and extremely crowded (evidence of insufficient supply). The users are made worse off by this situation and the state itself is also worse off, as allowing greater competition from buses would decrease the need for rail subsidies.

In the contrary, in local transport, a recent law required submitting all licences to competitive tendering. The law doesn't come into force until 2003, which gives time to incumbents to reinforce themselves. Local administrations (which are often the incumbents) are taking measures explicitly to defend themselves against competition. One approach is to transfer special non-mobile assets such as bus stations and depots to the incumbent company. That will raise entry barriers to the sector. A second approach is to combine the authority responsible for tendering and providing the service. In an early case, competitive tendering resulted in incumbents winning all the licences, showing that the playing field was not entirely level.

The delegate commented on concerns about proposals from the European Commission on long-distance road passenger transport which favour competitive tendering. The concerns are that the exceptions to the rule of tendering out licences are broad and difficult to interpret, such as for national safety reasons, or to protect rail subsidies. Another concern is that the document states that the contracts are to have a life of five years, but could be longer according to the economic life of the assets. Franchises as long as 15 years will not introduce much competition.

The Chairman emphasised that it is important to hear from the United Kingdom because the UK is one of the few countries which has introduced competition in local bus services. Is competition possible in local bus services? What are the most recent developments in the thinking of the UK authorities?

The United Kingdom deregulated local buses in the 1980s. It is extremely easy to get a licence – all you need is a bus and a timetable which must be registered. At the time of deregulation the market structure was very fragmented with a large number of local monopoly bus companies. The OFT anticipated that many mergers would occur and that has indeed been the case. Many mergers have been permitted and a few have been opposed. Some mergers were allowed subject to partial divestment of some routes, or in one case the divestment of a bus depot. In the latter case the OFT also required anti-predation undertakings. At the moment the OFT is addressing a merger case where it is thinking, unusually, of imposing a price cap because it felt that divestment was a disproportionate remedy.

The OFT has addressed two major cartels in buses. For example, there were two network operators which overlapped providing local bus services in Warrington in the Northeast which entered into a price war. In order to settle this war they decided to agree on certain things like prices and dividing up the routes. Another case involved 20 local bus operators in Humberside in the Northeast who were engaged in price-fixing.

There are also horizontal issues which arise with the operation of travelcard schemes. For travelcards to be valuable they must be recognised by all (or most) of the different passenger services. Travelcards can lower barriers to entry by encouraging customers to use a new or smaller company. For the same reason, the OFT generally looks favourably on timetabling agreements, reciprocal agreements to honour companies tickets and so forth. A number of travelcards schemes are promoted by the local authority, if not run by the local authority, and they do not constitute an agreement for the purposes of the competition law. The OFT has addressed one case which involved a refusal to be part of a multi-operator travelcard scheme. Greater Manchester Buses had about 70 percent of the buses in the area and they felt they were not getting enough money back out of the scheme so they boycotted the scheme and started their own scheme which was damaging to the other smaller operators. The OFT held that this was an abuse of dominance.

The largest number of complaints have dealt with allegations of predatory pricing, or, more generally, predatory behaviour such as increasing the frequencies of buses, registering timetables which are just in front of rivals, selective discounts, fighting fleets of buses. The bus drivers would try to overtake rivals buses to beat them to the next stop. Although barriers to entry are apparently low (you just need an operating licence and a bus to start out) the reputation for an aggressive response to new entry can serve as a major barrier to entry. Of course, if a firm operates nationally, the reputation that it has in one town might deter rivals from entering the market in other towns elsewhere in the UK. In regard to predatory intent, although bus companies have been known to make statements about other companies like “we will run them off the road”, the OFT does not pay attention to such statements, which are made for staff morale purposes. On the other hand, the OFT looks at questions such as loss of profitability and other kinds of behaviour.

The main concern that the UK government has at the moment is addressing the issue of quality. The government is thinking about giving statutory backing to “quality partnerships” between local authorities and bus companies and is looking at trying to reduce the frequency of timetable changes and strengthening the powers of the Traffic Commissioner to act against bus companies which do not provide services as advertised. The effect of these changes will be to go back to the kind of franchising which still operates in London. This is the only area of the country where all the routes are put out to tender. Allowing quality contracts where it is appropriate, which would help local authorities integrate the bus services with other services (e.g., bus to bus, bus to car, and bus to rail) offers the best solution. This is part of a general focus throughout the UK on local services. Services are liberalised and they seem to work, except that it seems there is room for improving the quality through more liaison between the local authorities and the people providing the services.

The Secretariat responded that the UK experience is important as the only country in the world which has attempted to introduce real competition at the local bus level. The delegate went on to ask about how competition works with travelcards. Travelcards are something like a “monthly pass” which give you the right to use all the buses that belong to the travelcard scheme for a period of, say, one month. Is it not the case that such travelcards completely eliminate any possibility of price competition because once you buy the travelcards you can travel on any bus in the participating group for free? Maybe there could be competition in the price of the travelcards itself. But, this is not possible either. If you can travel on any bus in the group then obviously everyone would just buy the cheapest travelcard. All the travelcards would have to have the same price.

The Chairman added that the companies participating in the travelcard have to agree among themselves on the way they share the revenue from the travelcard. So, travelcards not only reduce competition on the demand side, but also reduces competition on the supply side.

The United Kingdom observed that the use of travelcard schemes outside of London does not seem to have deterred bus companies from fighting for passengers on the more lucrative routes.

The Chairman then opened the floor for general discussion. He asked whether the economies of scale and scope in long-distance buses are so high that there is a tendency for a single national bus operator to emerge, or is it just a coincidence that this arises in those countries that have liberalised? Second, are bus and rail substitutes or complements? Rail seems particularly suitable for long-distance or commuting to the major towns, while buses are better in remote parts of the country. Finally, why is competition so rare in local buses? Is it because a central agency is necessary for co-ordination of routes? The Chairman also mentioned that the restrictions on international bus passenger transportation are quite strong, even within the European Union.

The experience of Ireland highlights how one might overcome resistance to liberalisation. In Ireland transport Ministers have been promising liberalisation of bus services for at least 15 years, but it has not yet officially happened. But, in the long-distance bus market, there is a *de facto* liberalisation, through the use of what are described as “charter” or “travel” clubs. These have become scheduled services – they run regularly between particular urban locations. If you want to go from Dublin to Cork at six p.m. on Friday evening, most people in Dublin would know where to go to get the bus. The only unusual aspect is that technically you join a “club” to get on the bus. You can join the club every day of the week and keep travelling back and forth. These services seem to work. They provide cheap, efficient services using modern buses. This is one way to undermine resistance to liberalisation. Competition authorities can advance arguments that competition will bring benefits, but when consumers see the benefits in reality it is a lot easier to make a strong case.

In regard to the need for co-ordination of routes. If the routes and frequencies are determined by a central agency, that agency lacks incentives to develop new services and therefore if, for some reason, patterns of industrial location change in an urban area, the lack of competition and central planning of routes may mean that there is no incentive to develop new services in response to consumer demand. While there may be a need for co-ordination, it may still be better to have some competition so that bus companies will develop new routes to meet consumer demand.

In regard to the question of whether rail and bus are competitors or not, Italy responded that the picture has been distorted by bus subsidies and very heavy regulation. At the level of costs and services provided by the two systems, it is quite clear that long-distance bus services offer inferior quality but are cheaper to produce. So there remains scope for competition, not exactly on the same segment of the market but offering different services, for the benefit of both consumers and the state.

The Czech Republic described an experience they had which involved a travelcard scheme in Prague. There was a travelcard scheme which covers not only the city itself but also the counties around Prague. There is a town of some 50 000 people north of Prague which is connected by the motorway to Prague. An incumbent local bus company provides service on local roads from this town to Prague. Another bus company entered, providing service on the motorway to Prague. But, this competing company was not integrated into the Prague travelcard scheme. After five months, this rival was forced to shut down, because, even though it was providing better service as far as Prague, it could not compete with a rival integrated with the Prague network.

The Secretariat returned to a point mentioned earlier by the Czech Republic relating to the ownership of bus terminals. The Czech Republic said that the competition authority is advising against the privatisation of bus terminals, arguing that they should remain in the hands of the municipalities. There was a similar situation in Italy where the local authorities were transferring the assets of bus terminals into the hands of the incumbents. Although delegates to the Working Party would normally favour privatisation, these examples show that when privatisation involves passing assets into the hands of the incumbent operators it can work against competition interests.

4. Taxis

Turning to the third part of the roundtable, the Chairman observed that the taxi industry appears at first sight to be competitive. There are many buyers and many sellers. But, in reality the taxi market is not so competitive. The number of taxis is limited by regulatory interventions and there are controls on the tariffs that they charge.

One reason for the regulation is that competition is dampened because many passengers are inexperienced. Taxi services are often purchased by customers from out-of-town who do not know the way around. So tariffs need to be controlled to prevent the taxi driver exploiting customer ignorance. (Although the ability to exploit the customer is not entirely removed because the way that tariffs are set, the taxi driver has an incentive to make the route as long as possible). The level of competition that is possible is different in different market segments. Competition is much more likely in the phone-booked taxi market than in the market for hailed taxis.

Many countries have liberalised the taxi market. The experience with liberalisation has not always been successful. The Chairman turned to the US which has some experience of deregulation of taxis in a few cities, while retaining heavy regulation in others.

The United States experience with taxi deregulation comes from the late 1970s when a number of medium-sized cities undertook deregulation of taxi entry and fare regulations. The market segments involved in those cities were radio dispatch taxis and cabs at taxis stands, including airports. There was no "cruising" segment or contract service in those cities. A 1984 FTC staff report studied the results of the deregulation in these cities and concluded that generally the deregulation works in the radio dispatch market. The study also concludes that deregulation in the taxi stand market, especially airport queues, requires great care. The evidence as to the favourable effects of the deregulation was most significant with respect to the effect of entry restrictions. There was no dramatic evidence of the benefits of deregulation on taxi fares.

The experience in the radio dispatch market segment, which was generally favourable, was important because in these cities this segment accounted for 75 percent of the taxi trips. The favourable effects included increases in the number of taxi firms, decreases in the market share of the largest firms, increases in the number of cab service hours, reduction in fares and response times, and reduction in the time the City Council's devoted to licensing and fare sitting. Overall, they were no widespread significant problems related to open entry. Any noted increase in customer complaints could have been dealt with through enforcement or regulation of driver qualification and vehicle safety requirements.

However, there were problems related to the taxi stand segment, most notably at airports. The authors felt that insufficient attention was paid to induce price competition at taxi stands or airport queues which followed the first-in-first-out rule for cabs. The problems related to high tariffs for airport trips, which in turn provided incentives for long lines at airport stands (because the taxicab drivers could afford to wait for a long time if they could get a few very profitable fares). These problems in turn lead to refusal to make short hauls and disputes over place in line, causing disruption at airports, in particular.

In retrospect, more might have been done to improve competition. One possibility would have been to physically reconfigure the area in which taxis wait so that people could, in fact, choose rather than taking the first taxi to arrive. In addition, there could have been rules requiring the posting of fares so that customers could see what the fares would be. A less desirable alternative, according to the authors of the FTC report, but a possibility if price competition was difficult to induce, would have been to lower the maximum fare to reduce the long queues of waiting cabs. In the first case, if a city chose to redesign the queues, there would be a need to educate consumers that they can shop around for the lowest price or the best quality. Major US cities have not experimented with deregulation. Some believe that this is because the parties that favour continued regulation are concentrated and united, whereas those who would benefit from deregulation are dispersed and would only gain a small amount individually. In this situation, there has not been much pressure for deregulation.

The Chairman responded that this opposition to deregulation particularly arises when taxi licences are granted exclusively to individuals and not to companies. This is particularly the case in Italy where there are 6 000 individual taxi drivers and their families that vote as one single entity. This lobby which is united in opposition to the liberalisation of the taxi market is very effective at maintaining a protected industry. The problem of winning the support or eliminating the opposition of incumbents is very important. There are a few other countries which have liberalised including Sweden and New Zealand. The Chairman invited Sweden to share experiences of their recent liberalisation.

Sweden deregulated the taxi market on 1 July 1990. During the past ten years Sweden has collected some experience of a taxi market exposed to competition. There have been some problems as well as some positive effects. The taxi market in Sweden can be described as a large number of local taxi markets with very different conditions. The volume of customers varies greatly between urban and sparsely populated areas. This has to be taken into consideration when deciding whether the reform has been a success or not. In addition, very different customer categories are dominant in different parts of the

country. In some scarcely populated parts of the country, publicly funded transport such as transport for old people and transport for medical care accounts for 90 percent of all taxi transport.

Has the reform been a success? The answer is yes and no. In the cities the deregulation has been a clear success despite problems with price comparison that are familiar. Fixed prices has become one way to get around the problem. The taxicabs display a single price for a certain area of the city (especially the central areas of the city) or for trip to the airport, for instance. As a result of the negotiations with the Swedish Board for Consumer Policies and the taxi associations, there are agreements and guidelines on how prices should be presented to consumers outside the cars and inside the cars. Another result of deregulation is a broader variety of different types of cars. Small cars in particular, were not seen before the reform. They are less comfortable, but the price for the taxi journey is also cheaper.

Central booking offices with several connected taxi companies have become an important component of the Swedish taxi market. The sparsely populated parts of the country lack the volume of customers necessary for a number of competing central booking offices. This is one of the important reasons why the reform has not been so successful in rural areas. On the other hand, co-operation with a booking office is in many cases a condition for a taxi company in the countryside to maintain efficiency.

The deregulation has led to, or threatened to lead to, a total absence of taxi service in some parts of the country. This calls for some new regulation with three objectives; first to uphold competition as far as possible; second, to guarantee access to taxi services in all parts of the country; third, to ensure stability and clear rules for the taxi industry. Against this background, the government has proposed a new exemption to the competition rules. It regards co-operation between taxi companies in central booking offices if the number of cars involved is 30 or less. There was also a new block exemption proposed for central booking offices with less than 35 percent of the relevant market. Regarding passenger security, there has always been a licensing system for taxi drivers. On the 1st January 1995, a new licensing system was introduced to ensure the drivers are suitable - whether the applicant has been convicted of any crimes, especially crimes involving violence. In the beginning of the reform process physical fights could be seen on the streets between taxi drivers over who was going to take a passenger.

The Chairman noted that Australia also has some experience with taxi deregulation, especially in South Australia where all restrictions on entry and pricing were removed. The Chairman asked Australia whether there were any problems maintaining service at off-peak times.

Australia has had a very long history of regulation of its taxi industry. The ACCC predecessor (the Trade Practises Commission) took a very strong stand on across-the-board deregulation of Australia's taxi industry in its 1994 submission to the Industry Commission, arguing that regulation of the industry has led to competition being hampered and consumer choice being unduly limited. Taxi legislation is undergoing a review in Australia as part of a broader review of all legislation which has an impact on competition. The principle underlying this broad review is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition. The government has also included as part of that legislative review a number of financial incentives to State governments to induce them to remove restrictive legislation. These reviews have led to some change but the ACCC would be surprised if there were any major reforms in the taxi legislation as part of this review process. The review process has been under way for about five years and the review of taxi legislation has been put off right until the end – perhaps not surprisingly, given the difficult issues that are involved. The ACCC's counterpart agency, the National Competition Council, it is arguing strongly for reform of the industry. But, that may not occur. Any such reforms are probably likely to only be on the fringes and not substantial at this stage. We still have some distance to go.

The Chairman turned to the interesting situation in Norway in which the competition authority has a very important role in the taxi industry. In particular, the competition authority has played the role of a price controller, fixing prices for taxi services in some cities. More recently the competition authority has chosen not to fix prices in cities where there are more than two central agencies. Does this mean that when there are two central agencies there is already enough competition in the market for taxi services? What if the number of taxis is also restricted?

In Norway, licensees are very small undertakings having between one and ten persons. A central booking agency, which involves many such undertakings, is a joint venture which amounts to a horizontal agreement on prices. That is why the Norwegian competition authority is involved, granting an exemption for central agencies. Norway has recently undertaken a partial liberalisation. The competition authority has abandoned regulating prices in most major cities. Specifically, in all areas where there are more than two central agencies. It is true that the competition authority is both the regulator and a competition authority in this market. Currently, the taxi market is the only market where you have such controls.

The reason why prices were liberalised in areas with two or more central agencies was not due to the level of competition. Rather, the competition authority found it quite difficult to estimate the efficient level of prices. There was some evidence that the prices were too low during peak hours in the major cities, leading to the existing capacity not being fully utilised, and long taxi queues and long waiting times. In addition, the competition authority argued that fixing prices was not the most efficient method to control market power in the sector. In order to exert market power, the taxis would have to limit the capacity in the markets. That means that, at least sometimes, the number cabs operating would have to be less than the total number of licensed operators. To arrive at such an outcome, the NCA believed that it would have been necessary to have side payments for the cabs which are not operating on the market. And, in that case, there would have been a strong incentive to form another competing central agency or central booking office. So, in conclusion, the competition authority, has changed its regulatory approach to pricing towards regulating the more qualitative features of this market.

The Chairman raised an idea from the Irish submission that, as a way to win the support of incumbents to liberalisation, you could give each incumbent a new licence so as to double the number of licences. The incumbent would receive some benefit from this increase. The problem here is that if you increase the number of licences too much the value of the licence goes down to zero so there is no benefit. Has this been implemented in Ireland?

The delegate from Ireland reported that, as in Italy, most taxi licences are held by individuals. That has generated an articulate and well-organised political bloc, which has made it difficult for politicians to take on the issue and introduce change. However, one of the lessons of the Irish experience is that if you limit entry and as demand has grown, ultimately it creates a situation where consumers start to be very vocal and pressure politicians to change. But, it can take a long time and it is a slow process.

Until the late 1970s there were no limits on taxi numbers. The market was unregulated. Regulation was introduced in 1978 which allowed the local municipalities to regulate taxi numbers in their areas. No new licences were issued for a period of about 14 years. At that time the Minister intervened. He issued a number of extra licences and then gave the power back to the local authorities. Again, they didn't issue new licences. Ultimately under public pressure, the Minister intervened again with this current proposal.

The proposal, announced about one year ago, involves a doubling in the number of taxi licences in the Dublin area. Each existing taxi would be given an additional licence. They have proposed a further 500 licences would be issued to people who drive taxis but do not own them. The implementation of the proposal was held up because it was challenged in court. It was challenged by so-called "hackney" drivers

(these are similar to cabs except they can only be hired by phone; hackney cabs are prevented from picking up people on the street and from operating from taxi stands) on the grounds that it discriminated against them. Two weeks ago the High Court ruled on the case and said that it does discriminate against them. But the court went further and said that they have looked at the legislation and in their view the legislation does not allow the Minister to impose any limits on taxi numbers. Unless an appeal is brought, it would appear that quantitative restrictions on taxi numbers have been struck down by the court. Unless there is an appeal the taxi market would appear to be opened overnight.

The Chairman observed that in the Netherlands, licences are given to corporations which are then allowed to run as many taxis as they want for as many hours as they want. This is quite a contrast with Ireland and Italy.

The Netherlands acknowledged that in Holland companies which have a licence can drive as many cars as they want. There are no limits. A new taxi law came into force from the 1st January 2000. The licence holder needs to have a good reputation and needs a minimum number of operating hours of 390 hours in three months. That is the only limitation on entry at the moment.

In the Czech Republic the Office for the Protection of Competition has recently intervened against rules imposed by municipalities, such as rules concerning the residential address of the driver (drivers not living in the city were not permitted to operate taxi services) and the minimum size of the car (certain types of cars were not permitted). The Office considered these rules anti-competitive and requested the relevant municipalities to remedy the situation. Most of them accepted the arguments of the Office despite the fact that the Office does not have the power to enforce decisions against municipalities.

In Poland, the regulatory regime is the responsibility of local authorities. At the moment, there are no entry barriers - anyone can exercise the profession of taxi driver. But this is the sovereign decision of the local authority.

The Netherlands raised the case of an agreement between the airport of Schiphol and two Dutch taxi companies, giving exclusive rights to these companies to the two stands at the exit of the airport. One could say, of course, that it is a competition restriction on this market if you define the market as taxi services at the airport - the definition of the market seems, as usual, to be very important.

The delegate from Italy reported the results of some research that has been carried out in Milan that is presenting unexpected results. First, the elasticity of demand for taxi services is very high - much higher than was expected. As a result regulation of tariffs can have a big impact. Second, the share of low income patronage is also much higher than expected that people - mostly by people that cannot afford a car. Third, transport planners consider that the only effective way to reduce cars in city centres is to let the taxi sector expand.

The Chairman brought the Roundtable to end, making the following points. Competition is quite important in trucking and in long-distance bus services. Competition authorities clearly have a role to play in any reform involving transport services, both passenger transport services and taxi services. Competition for the market is not the same thing as competition in the market. Competition for the market usually requires regulation, gives market power in many circumstances and is a very poor substitute for competition in the market. Competition in the market should be the solution whenever possible. In this respect, long-distance buses are not really the right example for the introduction of tendering especially in the light of inter-modal competition.

Regarding the international aspects of trucking and of passenger services. While delegates were aware of the existence of such restrictions in trucking, most delegates were probably not aware that

passenger cabotage is still not liberalised in the European Union. There is a need for a further liberalisation push.

Turning to taxis, delegates have shown that there are prospects for competition and the worst problems and difficulties that were raised when liberalisation of taxi services is discussed did not occur. These cases provide strong arguments for other countries. If the elasticity of demand is very high, the right solution is not maximising the number of people waiting for taxis, but having those people served with a larger number of taxi services at lower prices and greater quality.

AIDE MÉMOIRE DE LA DISCUSSION

par le Secrétariat

1. Introduction

Le Président a ouvert la table ronde en faisant observer que les trois secteurs examinés - transport de marchandises par route, transport de voyageurs par autocar et autobus, et transport par taxi - diffèrent du point de vue du degré de concurrence qui y est possible. Le secteur du transport de marchandises par route est celui où les conditions sont les plus propices à une concurrence effective. Dans le secteur du transport par autobus/autocar, la concurrence est possible, surtout dans les services d'autocars. Enfin, les avis sont quelque peu partagés quant à la façon d'introduire la concurrence dans le monde du taxi et à la forme qu'elle doit prendre. Le Président a rappelé que le transport par route était en concurrence avec d'autres modes de transport, notamment le chemin de fer et l'avion, et qu'il importait de ne pas perdre de vue cet aspect.

La table ronde comprenait trois volets, consacrés respectivement au transport de marchandises par route, au transport par autocar et autobus, et au transport par taxi.

2. Transport de marchandises par route

Le Président a fait remarquer que le secteur du transport de marchandises par route pouvait lui-même être décomposé de diverses façons, selon qu'il s'agit de "charges complètes" ou de "charges partielles", et de transport intérieur ou international. A l'international, le transport par route, comme le transport aérien, est régi par des traités bilatéraux restrictifs. Au plan intérieur, la plupart des pays ont libéralisé le transport routier, levant les obstacles à l'entrée et les mesures de contrôle des prix, et ont renforcé dans le même temps leurs normes en matière de sécurité et d'environnement.

Les Etats-Unis ont été l'un des premiers pays à libéraliser le transport intérieur par route, sans toutefois que la libéralisation n'abolisse vraiment toutes les mesures de contrôle. En effet, le document présenté par ce pays mentionne l'existence de "bureaux d'établissement des tarifs", qui se réunissent pour fixer les tarifs ou les mécanismes des hausses généralisées, et qui restent partiellement exemptés de l'application de la législation antitrust américaine. La libéralisation a notamment induit un fort accroissement de la concentration dans le secteur du groupage des charges partielles, où les économies d'échelle et de champ d'activité sont très importantes, mais y a-t-il lieu de s'inquiéter de cette concentration accrue ? Qu'est-ce qui entrave le développement d'un marché entièrement libéralisé du transport international par route dans la zone de l'ALENA ?

Les Etats-Unis ont reconnu que la libéralisation de leur marché du transport par route était l'une des grandes réussites en matière de réforme de la réglementation et de déréglementation. Le pays avait connu, depuis les années 30, une longue période de stricte réglementation des tarifs et de leur mode de fixation, ainsi que de l'accès au marché. Les choses ont commencé à changer à la fin des années 70, d'abord avec des modifications réglementaires émanant de l'Interstate Commerce Commission, puis à la

suite d'une réforme législative qui a abouti, en 1995, à l'adoption de l'*Interstate Commerce Commission Termination Act*, laquelle mettait fin à l'existence du régulateur lui-même. Le secteur est aujourd'hui entièrement déréglementé.

Les évaluations économiques indiquent que les tarifs et les coûts dans le secteur ont diminué de 35 pour cent, que les services et la fiabilité se sont sensiblement améliorés et qu'une grande variété de services novateurs ont vu le jour. On note un certain accroissement de la concentration dans le secteur du groupage des charges partielles, qui s'explique probablement par les économies d'échelle, mais également une intensification de la concurrence émanant d'un certain nombre de nouveaux transporteurs régionaux à faible prix de revient et sans affiliation syndicale, ainsi que de plusieurs transporteurs de petits colis comme UPS et Federal Express. Bien que ce marché soit aujourd'hui plus concentré, il s'y livre encore une vigoureuse concurrence, et les autorités antitrust n'ont pas eu de motif d'y intervenir depuis une dizaine d'années. C'est un marché qui a également accueilli de nombreux nouveaux venus non affiliés à un syndicat, et bien que les salaires aient baissé, le nombre d'emplois a presque doublé, passant d'environ un million au milieu des années 70 à près de deux millions au milieu des années 90.

L'activité qui n'a pas été entièrement libéralisée est celle des bureaux d'établissement des tarifs. Jusqu'à l'adoption du *Motor Carrier Act* de 1980, la plupart des tarifs pratiqués dans la profession étaient fixés collectivement par les bureaux d'établissement des tarifs. Au fil des ans, le champ d'application de l'exemption dont bénéficiait cette activité a été réduit et se limite aujourd'hui aux "hausses tarifaires généralisées", c'est-à-dire aux augmentations périodiques de tarifs à l'échelle de la profession, que ce soit pour le transport de charges complètes ou pour le groupage de charges partielles. Cette exemption particulière est à l'étude au *Surface Transportation Board*. Le ministère de la Justice a déposé des commentaires selon lesquels cette exemption ne devrait pas être maintenue, faisant valoir qu'elle risquait d'aboutir à la collusion pure et simple ou de fournir une plate-forme que la plupart des transporteurs pourront utiliser pour hausser leurs tarifs. Le *Surface Transportation Board* a différé de deux ans sa décision à ce sujet. Le *Board* a fait savoir qu'il n'autoriserait pas que les tarifs soient fixés collectivement, sauf si c'est à des niveaux concurrentiels. Si une entreprise veut fixer ses tarifs à un niveau supérieur au niveau concurrentiel, elle doit le faire individuellement et non dans un cadre collectif.

S'agissant de l'ALENA, depuis le début des années 80, les entreprises mexicaines ont le droit de transporter des marchandises à destination et en provenance de certaines zones commerciales frontalières - c'est-à-dire une bande de territoire d'une largeur variant de cinq à 50 miles longeant la frontière américano-mexicaine. L'ALENA prévoyait la libéralisation de ces activités de transport. Les transporteurs mexicains devaient avoir, à compter de 1995, le droit de desservir les Etats frontaliers et, ultérieurement, l'ensemble des Etats-Unis. Toutefois en décembre 1995, les autorités américaines ont annoncé qu'elles allaient différer cette libéralisation pour des raisons de sécurité, la question étant de déterminer si l'agence mexicaine chargée de la réglementation de la sécurité était capable de garantir le respect de normes de sécurité comparables. Cette question a été une source de polémique et, en fait, un groupe spécial de l'ALENA chargé du règlement du différend devrait rendre une décision en novembre 2000 et déterminer si ce report est conforme à l'Accord. Il n'y a pas de cabotage aux Etats-Unis et cette activité n'est pas à l'ordre du jour pour le moment.

Le Président a abordé ensuite la situation en Australie, autre pays précurseur en matière de réforme du secteur des transports. En Australie, la libéralisation ne découle pas d'un changement de politique mais d'une décision juridique selon laquelle le régime en vigueur auparavant était inconstitutionnel. Le document présenté par l'Australie faisait état de certaines préoccupations relatives à la sécurité -- la libéralisation, en intensifiant la concurrence, risquant de pousser les entreprises de transport routier à prendre davantage de risques -- et notait que des voix s'élevaient pour réinstaurer un système de licences.

L'Australie a confirmé la longue tradition de libéralisation qui caractérise le secteur du transport par route, qui n'est soumis à aucun système de licences. La Constitution australienne elle-même contient des dispositions qui s'opposent à des règlements entravant les échanges inter-Etats. La forte concurrence qui s'exerce dans la profession se traduit par de faibles marges bénéficiaires. La proposition de réinstaurer un système de licences émanait essentiellement d'un groupe d'intérêts du transport par route et elle n'a pas été retenue par le gouvernement ni par l'ACCC. Cette dernière verrait en effet d'un très mauvais œil une quelconque mesure visant à limiter la concurrence, et il y existe selon elle d'autres moyens qu'un système de licences pour promouvoir la sécurité, par exemple en favorisant les programmes de lutte contre la fatigue des chauffeurs et en agissant directement auprès des entreprises de transport par route pour les inciter à adopter une attitude plus responsable en matière de sécurité routière.

S'agissant de la Corée, le Président a fait observer que la réforme de la profession routière dans ce pays ne remontait qu'à 1999 et qu'elle avait été menée à bien en dépit d'une vive opposition des transporteurs en place. Il a demandé au délégué de la Corée de préciser les modalités de cette réforme.

Le délégué de la Corée a expliqué qu'au début des années 90, le KFTC avait commencé à étudier la structure du marché ainsi que les politiques du ministère de la Construction et des Transports (MOCT). Le KFTC, qui était épaulé dans sa démarche par de nombreux économistes et spécialistes du secteur du transport par route, avait pu constater de nombreuses et importantes distorsions dans le secteur. Par exemple, le surpris sur les licences en vigueur était de 15 000 dollars, ce qui correspondait aux recettes annuelles totales d'un opérateur. En se fondant sur ces enquêtes, le KFTC avait formulé un plan de réforme de la réglementation, qui avait pour objectif immédiat de lever les obstacles à l'entrée et de mettre fin à la réglementation des prix. Ce plan n'a pas été accepté par le MOCT, qui craignait l'opposition des transporteurs en place. Finalement, un plan de réforme graduelle a été accepté par le MOCT et approuvé par le Comité de la déréglementation économique en novembre 1995. Le KFTC est très fier de cette réalisation.

De fait, les transporteurs en place se sont très vigoureusement opposés à la réforme (affiches de protestation sur les camions, appels téléphoniques de menaces aux fonctionnaires de l'équipe chargée de la réforme), mais le gouvernement coréen a malgré tout graduellement mené à bien son projet. Le succès de la réforme s'explique essentiellement par deux facteurs -- d'une part, le rôle du KFTC, surtout en raison de ses liens organiques avec le Cabinet, et d'autre part un solide appui politique. En effet, il existait dans ce cas de figure un soutien politique très solide en faveur de l'amélioration de la productivité et de l'élimination des distorsions sur le marché.

Le Président a reconnu le rôle important de la CE dans la libéralisation du transport par route dans l'UE et a demandé à la Commission s'il était envisagé de centraliser sous sa coordination la négociation des accords bilatéraux avec des pays extérieurs à l'Union.

La Commission européenne a rappelé aux délégués que le transport par route, tout comme le transport par chemin de fer et par voies navigables, était soumis à l'application des règles de l'UE relatives à la concurrence depuis 1968 (par suite du Règlement n° 1017 du Conseil). A l'intérieur de l'Union, le transport de marchandises par route est libéralisé et la politique en la matière se limite à des questions de sécurité telles que le transport des marchandises dangereuses. Un petit nombre d'accords horizontaux entre entreprises de transport ont été notifiés en vertu de l'article 81 du Traité, mais comme ils ont été jugés sans effet restrictif d'importance sur la concurrence, ils ont rapidement été autorisés.

Le cabotage routier à l'intérieur de l'Union n'a été entièrement libéralisé que le 1er juillet 1998. Depuis, un transporteur de n'importe quel Etat membre est en mesure, à condition de répondre aux conditions énoncées dans les directives, de transporter des marchandises entre deux destinations situées sur le territoire de l'Union européenne, y compris à l'intérieur d'un Etat membre qui n'est pas celui dont il est

ressortissant. Ainsi, un transporteur belge peut par exemple transporter des marchandises de Paris à Rome sans problème. En revanche, le cabotage sur le marché du transport régulier de voyageurs n'est pas encore autorisé.

Les directives de la CE dans ce secteur concernent les permis de conduire et l'accès au marché. Depuis janvier 1993, tout prestataire de services de transport par route souhaitant transporter des marchandises ou des voyageurs sur une liaison internationale (par exemple entre au moins deux Etats membres) doit détenir un permis de conduire établi selon le modèle communautaire par l'Etat membre dans lequel il réside. Les conditions d'obtention du permis sont déterminées par les Etats membres eux-mêmes, l'une des principales, qui est contraignante pour tous, étant qu'ils doivent faire appliquer la directive de l'UE relative à l'accès à la profession de transporteur de marchandises ou de voyageurs par route. Cette directive énonce les conditions d'accès à la profession, par exemple en matière d'honorabilité, de capacité professionnelle et de capacité financière. La deuxième partie de la directive concerne la reconnaissance mutuelle des diplômes, certificats et autres qualifications officielles. Cette reconnaissance est nécessaire pour qu'un conducteur reconnu dans un pays puisse conduire dans un autre sans avoir à subir d'autres contrôles.

Le Président a ensuite abordé la situation des pays qui sont voisins de l'Union européenne, notamment celle de la Pologne. Dans ce pays, le transport par route a été entièrement libéralisé au plan intérieur, mais il est soumis à un système de contingents et d'autorisations à l'international. Le Président a demandé au délégué de la Pologne de préciser l'affirmation figurant dans le document présenté par ce pays selon laquelle la libéralisation complète du transport international entraînerait l'"effondrement" de l'industrie polonaise du transport de marchandises.

Le système de la Pologne se rapproche à bien des égards de celui qui existe actuellement dans les pays de l'Union européenne, à cette exception près qu'il exige une autorisation pour le transport international. Le nombre d'autorisations est plus que suffisant en ce qui concerne les pays extérieurs à l'UE. L'obligation de détenir une autorisation pour les liaisons avec la Turquie et la Slovaquie a été entièrement levée. Le principal problème qui se pose à la Pologne, c'est le nombre insuffisant d'autorisations émanant des pays de l'Union européenne. Cela mis à part, le marché est ouvert aux opérateurs qui satisfont aux trois conditions d'honorabilité, de capacité financière et de capacité professionnelle.

Le nombre d'autorisations est décidé dans le cadre de la négociation, d'Etat à Etat, d'accords bilatéraux, qui sont grosso modo semblables d'un pays à un autre, à quelques légères différences près.

Le Président a ensuite donné la parole à l'auditoire pour un débat général, en mettant en évidence deux questions -- celle de savoir comment vaincre l'opposition des transporteurs en place et celle des pays "de transit", qui sont les petits pays situés sur les grands courants de trafic entre les grands pays.

Le délégué de la CEMT (Conférence européenne des Ministres des transports) a expliqué que les questions concernant le transport de marchandises par route faisaient partie des préoccupations quotidiennes de la CEMT. La plupart des pays ont déréglementé le secteur au niveau national, abandonnant les mesures de contrôle quantitatives pour privilégier désormais le contrôle de la qualité. Des textes législatifs demeurent en vigueur dans certains pays, comme l'Italie, mais ils ne sont pas appliqués. Il reste encore certaines questions en suspens, notamment en ce qui concerne le secteur du transport "pour compte propre", concerné au premier chef par les restrictions sur le transport de retour, par exemple. Le problème tient à ce que les opérateurs pour compte propre ne sont pas soumis aux mêmes conditions d'accès au marché que les autres transporteurs, de sorte que la concurrence serait dans une certaine mesure faussée si des droits d'accès égaux leur étaient accordés.

La réglementation du transport par route a été intégrée à des domaines d'action plus large des pouvoirs publics, tels que l'environnement, la sécurité et le rôle des chemins de fer. Elle est liée également à la place dominante qu'occupe le transport routier dans nos économies. Tous ces autres facteurs entrent maintenant en ligne de compte dans le débat sur la réglementation de ce mode de transport, où la pondération trouve par conséquent difficilement sa place. Les spécialistes de la politique de la concurrence peuvent contribuer au débat en faisant ressortir les conséquences des différents mécanismes au regard de la poursuite de ces autres objectifs.

En ce qui concerne le transport international, la situation est compliquée. L'Union européenne a libéralisé le transport international de marchandises par route mais ce fut au terme d'une rude et longue bataille. Le cabotage n'existe que depuis deux ans et la réglementation qui le concerne permet aux pays de revenir à des dispositions plus restrictives si l'évolution s'avérait défavorable. L'un des enseignements qui se dégagent de ces deux dernières années est que le scénario catastrophique qui était envisagé ne s'est pas concrétisé. Le cabotage ne représente en effet que un pour cent du marché en Allemagne, par exemple, alors que les transporteurs allemands y étaient farouchement opposés.

Le transport routier en Europe est encore régi par un assemblage disparate d'accords bilatéraux et de certains arrangements multilatéraux. La CEMT elle-même administre un système de contingent multilatéral, soit 10 000 autorisations, que les Ministres des transports se disputent chaque année. La Conférence tente d'augmenter le nombre de ces autorisations, mais elle se heurte à une forte résistance de la part de certains pays. S'agissant des accords bilatéraux, ils sont négociés en secret entre les pays. Entre autres dispositions, ces accords comprennent parfois des exemptions mutuelles de redevances ou de taxes routières. Si tel est effectivement le cas, cela apparaît comme discriminatoire et irait à l'encontre des autres principes du commerce international. La CEMT s'efforce de donner davantage de transparence et d'uniformité à ces accords bilatéraux.

Autre problème, les petits opérateurs indépendants, très nombreux dans ce secteur, se sentent vulnérables. Les expéditeurs, en effet, ou bien concluent avec eux des contrats à long terme, ou bien leur font des offres du type "à prendre ou à laisser", de sorte qu'ils ne peuvent répercuter les hausses de coûts à leurs clients. Certains pays tentent de remédier à la situation en s'efforçant de faire remonter la responsabilité plus haute dans la chaîne. Par exemple, si un transporteur indépendant est pris en flagrant délit d'excès de vitesse ou de surcharge, la responsabilité pourrait être répercutée sur l'expéditeur. La France, notamment, réfléchit à la question. Un autre problème est celui que l'on appelle parfois le "dumping social", pratique qui consiste à utiliser une main-d'œuvre bon marché pour assurer des services de transport international. Ainsi, on sait que des conducteurs issus de pays situés loin à l'est de l'Europe (par exemple l'Azerbaïdjan), beaucoup moins payés que les conducteurs européens, roulent entre l'Allemagne et la France, en utilisant par exemple des autorisations CEMT. Ce sujet retient beaucoup l'attention des Ministres des transports. La CEMT s'emploie à préciser ce qui relève des différences salariales légitimes et ce qui procède d'une certaine pratique déloyale.

En ce qui concerne la question de la sécurité, la CEMT y a consacré un rapport il y a quelques années. Révélation terrifiante, 60 pour cent des conducteurs admettaient s'être déjà endormis au volant. On se trouve donc là face à un très grave problème de sécurité et d'application de la réglementation. Les lois existent, mais la détermination et la capacité à les faire appliquer ont été très inégales. On dispose bien de moyens électroniques tels que le tachygraphe pour contrôler les temps de conduite et les temps de repos, mais le problème de la profession routière tient aux autres tâches qu'exécutent les conducteurs, notamment le chargement et le déchargement. L'Union européenne, en tentant d'exclure les transporteurs indépendants du champ d'application des lois relatives au temps de conduite et au temps de repos, suscite un vaste débat en Europe. Cette mesure induirait en effet une distorsion du marché, mais peut-être est-ce là la seule voie possible vers un compromis politique.

La Suisse, répondant à la question du Président sur le transit, a fait remarquer qu'elle était située dans une zone de transit pour le transport entre le nord et le sud de l'Europe. Ce trafic de transit nord-sud préoccupe les milieux politiques helvétiques en raison des dommages qu'il cause au réseau routier et de ses atteintes à l'environnement. Face à ce problème, la Suisse privilégie le "ferroulage", solution qui consiste à charger les camions arrivant en Suisse sur des trains qui leur feront traverser le pays. Cette pratique exigera la mise en place d'une nouvelle infrastructure, et notamment le percement de nouveaux tunnels alpins, mais elle aura l'avantage de limiter les effets nuisibles du transport routier sur l'environnement.

Tous les gros camions sont actuellement soumis à une taxe annuelle, qui s'applique sans distinction aux camions suisses et étrangers. Cette taxe risque toutefois de fausser la concurrence entre les camions suisses et les autres, car elle est la même dans les deux cas, même si le camion étranger ne traverse la Suisse que deux fois par an, alors que le camion helvétique circule à longueur d'année dans le pays. Le Parlement a adopté une nouvelle taxe qui entrera en vigueur le 1er janvier 2001. Elle sera modulée en fonction de la distance parcourue et s'appliquera sans distinction aux camions suisses et aux camions étrangers transitant par la Suisse. Une partie des recettes provenant de cette taxe sera réinjectée dans le secteur des chemins de fer pour encourager le ferroulage (il s'agit d'une forme de subvention croisée de la route vers le rail).

Le délégué de l'Espagne a rappelé ce qu'était la situation pour l'Espagne lorsque le transport par route n'était pas libéralisé en Europe et que le commerce international était entravé par une insuffisance d'autorisations. En ce qui concerne l'accord bilatéral entre la Pologne et l'Espagne, par exemple, les exportateurs avaient épuisé dès le mois de juin toutes leurs autorisations. C'est ce qui a amené les autorités à accroître la taille du contingent.

Le Président a demandé comment le contingent était réparti entre les différents opérateurs. Est-ce que la répartition se fait par adjudication ?

La CEMT a répondu que cela n'était pas clair. Dans le passé, en Irlande, le Ministre faisait parvenir juste avant Noël les autorisations à ses transporteurs préférés. Aujourd'hui, dans certains pays, il existe une certaine forme de marché des autorisations -- qui ne sont pas forcément attribuées par adjudication, mais plus ou moins quand même selon un processus commercial. Dans d'autres cas, les pays surveillent les opérateurs pour déterminer ceux qui font un usage "approprié" de leurs autorisations et veillent à ce que les autorisations ne soient attribuées qu'aux meilleurs transporteurs, pouvant faire état d'une expérience internationale. On a maintenant tendance à accorder les autorisations aux entreprises utilisant les véhicules de la meilleure qualité et respectant les normes de sécurité les plus rigoureuses, ce qui est une façon à la fois de libéraliser et d'améliorer la qualité.

Le délégué du BIAC a souligné l'observation de la CEMT selon laquelle certains opérateurs de services de transport par route sont vulnérables. Des faits nouveaux intervenus du côté de la demande aggravent cette vulnérabilité. Ainsi, le développement du commerce électronique a pour effet d'accroître le nombre et de réduire la taille des expéditions, et de renforcer la position des grandes entreprises spécialisées dans les services de colis. La concentration se fait également plus forte du côté de la demande (par exemple dans le secteur de détail) et, enfin, l'évolution vers une économie tournant 24 heures sur 24 favorise les entreprises de transport par route capables de soutenir le même horaire. Ces évolutions n'avantagent en général pas les petits opérateurs indépendants.

Le Président a posé une question concernant la sécurité. Est-ce que l'intensification de la concurrence engendre des problèmes de sécurité ? Ces problèmes étaient-ils plus rares lorsque le secteur était davantage protégé ?

Un agent du Secrétariat de l'OCDE (Division des transports) a fait remarquer que le problème des heures de conduite était une préoccupation importante en Australie. Dans le cadre du programme national de réforme du transport par route, qui relève de la compétence de la Commission nationale des transports routiers, la démarche suivie en ce qui concerne le contrôle des heures de conduite était surtout axée sur la comparaison des avantages respectifs d'un système de réglementation du nombre d'heures et d'un système de gestion de la fatigue. Il s'agit dans ce dernier cas, non pas d'imposer un certain nombre d'heures de travail et de repos, mais plutôt de responsabiliser le conducteur et l'opérateur dans le cadre d'un régime global d'hygiène et de sécurité. Les premiers résultats de ce programme sont encourageants.

Au chapitre de la sécurité, depuis la promulgation de la législation de 1992 relative à la réforme nationale des transports par route (et compte tenu du fait qu'il est toujours difficile d'établir des corrélations directes), on a pu constater en Australie depuis 1990 que le taux d'implication des poids lourds dans des accidents mortels avait baissé. Ces données correspondent à une période au cours de laquelle d'importantes réformes ont été menées dans un grand nombre de domaines concernant le secteur routier, notamment les redevances routières, la réglementation des dimensions des véhicules et le contrôle des modalités d'exploitation, comme les régimes de gestion de la fatigue.

L'Australie a également examiné d'autres systèmes possibles de contrôle du respect des normes relatives à la gestion et à l'état des véhicules. Ces systèmes sont administrés par la profession et agréés par l'Etat. La profession s'est empressée d'accepter ses programmes, soucieuse de présenter l'image d'une industrie non seulement concurrentielle mais également responsable, notamment en matière de sécurité. De nombreux éléments de ce modèle méritent peut être d'être examinés.

3. Transport par autobus et par autocar

Le Président a ensuite orienté le débat vers le transport de voyageurs par route. Il importe de diviser le secteur en différents segments : lignes interurbaines (d'autocars) et lignes locales, mais aussi services réguliers et services occasionnels ou services par autocar affrété. Les services occasionnels et les services par autocar affrété sont en général libéralisés dans les pays de l'OCDE. Les lignes d'autocars sont libéralisées dans certains pays, tandis que le service urbain ou local d'autobus l'est très rarement. Parmi les pays qui ont entièrement libéralisé le transport par autocar figurent l'Australie, le Royaume-Uni et les Etats-Unis. Le Président a fait remarquer qu'il existait une importante différence entre ces trois pays, dans la mesure où le rail ne joue pas un rôle important aux Etats-Unis et en Australie, tandis qu'il occupe une place importante au Royaume-Uni.

Au sujet des Etats-Unis, le Président a noté que la libéralisation du marché du transport par autocar y avait été effectuée en 1982. Un opérateur national unique en a émergé (Greyhound), qui exploite un vaste réseau. Est-ce que la concurrence intermodale a un effet modérateur sur le pouvoir de marché de Greyhound ? Le document présenté par les Etats-Unis mentionne l'alliance de Greyhound et d'un concurrent (Peter Pan), que le *Surface Transportation Board* a approuvé en dépit des objections du ministère de la Justice. Quel était l'argument invoqué par le Ministère dans cette affaire et en quoi la situation différait-elle de la fusion Greyhound/Trailways, qui avait été, elle, approuvée par le ministère de la Justice ? Le Président a également demandé des renseignements sur une affaire concernant la question du contrôle des gares routières.

Les Etats-Unis ont confirmé que le marché américain du transport par autocar avait été entièrement déréglementé en 1982, par le *Bus Regulatory Reform Act*, et qu'il n'existe aujourd'hui qu'un seul transporteur national - Greyhound. Auparavant, il en existait un second -- Trailways -- qui ne disposait pas d'un réseau véritablement national mais presque. Trailways a été acheté par Greyhound. Cette acquisition est intervenue à un moment où Trailways était sur le point de déposer son bilan, et la

transaction n'a donc pas été remise en cause. Selon les économistes du ministère de la Justice, l'émergence d'un transporteur unique dans ce secteur aux Etats-Unis s'explique probablement par les économies d'échelle liées à l'exploitation du réseau.

En ce qui concerne l'affaire Greyhound/Peter Pan, ces deux transporteurs se faisaient concurrence sur la ligne Washington DC./New-York. Ils ont voulu conclure un accord de services en commun, que la loi autorisait. Le *Surface Transportation Board* a tenu une audience pour décider s'il allait autoriser cet accord en se fondant sur deux considérations. D'abord, l'accord envisagé allait-il permettre d'améliorer le service offert au public ou l'économie de la ligne ? Et ensuite, est-ce que cet accord limitait de façon indue la concurrence. Le ministère de la Justice a déposé à l'audience des commentaires fondés sur une étude informelle du marché. L'audience avait uniquement pour but de déterminer s'il fallait ouvrir une enquête sur la question. Le *Surface Transportation Board* a décidé que la requête ne justifiait pas une enquête officielle. L'étude informelle du ministère de la Justice a révélé qu'il n'existait tout simplement pas de pression concurrentielle suffisante émanant des autres modes de transport -- rail, voitures de location ou voitures particulières. Dans cette situation intervenaient certains facteurs de coûts qui écartaient toute raison de supposer que ces autres modes de transport pourraient exercer une pression sur les tarifs pratiqués par Peter Pan/Greyhound. On ne pouvait non plus, en toute logique, prendre pour acquis que de nouveaux opérateurs feraient leur entrée sur ce marché si les tarifs augmentaient.

La seule autre mesure coercitive prise au cours des deux dernières années dans le secteur du transport par autocar concerne les gares routières de Greyhound. Ce transporteur possède environ 200 gares routières réparties sur l'ensemble du territoire des Etats-Unis. Dans 135 villes, il partage ces gares routières avec des opérateurs régionaux. En général, les accords de partage de gares routières prévoient que les transporteurs régionaux concèdent à Greyhound un droit exclusif de vente de billets, en échange de quoi ils peuvent utiliser une partie de l'espace de la gare routière, ainsi que parfois les services de manutention de bagages et d'autres services qui y sont fournis. Le problème s'est posé dès lors que Greyhound a posé comme condition aux autres opérateurs de ne pouvoir vendre de billets dans un rayon de 25 miles de la gare. Du fait de cette exigence, un transporteur régional concurrent qui souhaitait lancer un service à partir d'une nouvelle ou d'une autre gare, ou encore d'un aéroport, d'une gare ferroviaire ou d'un campus universitaire -- autant d'endroits où il peut être envisagé de lancer un nouveau service d'autocars -- était dans l'impossibilité de le faire parce qu'il n'avait pas la capacité de vendre des billets. Le ministère de la Justice a engagé une action qui a abouti à un règlement amiable en vertu duquel Greyhound a accepté de mettre un terme à cette pratique et de ne plus lier ces services les uns aux autres.

Le Président a mis en contraste le marché du transport par autocar aux Etats-Unis et en Espagne. En effet, aux Etats-Unis, tout opérateur peut offrir n'importe quel service, tandis que la situation est très différente en Espagne, où l'autorisation d'assurer des services de transport par autocar est accordée par voie d'appel d'offres. A quelle fréquence les services sont-ils remis en adjudication et combien d'entreprises participent au processus ? Cela soulève la question de l'utilisation appropriée du processus d'adjudication. Quels en sont les avantages ? Serait-il préférable de s'en remettre davantage au jeu de la concurrence sur le marché ? L'un des problèmes que pose l'adjudication est que l'Etat ou le régulateur doit savoir à l'avance quels sont les services que demandent les consommateurs et pour lesquels ils sont prêts à payer, selon quelle fréquence, sur quels itinéraires, où doivent être prévus les arrêts, etc.

La situation en Espagne a changé avec l'adoption de la Loi sur les transports en 1987. Auparavant, les autorisations d'exploiter les lignes n'étaient pas mises aux enchères, mais étaient accordées d'une façon dépourvue de transparence. On compte en Espagne quatre grands opérateurs de services de transport de voyageurs, qui détiennent 60 pour cent du marché. Vingt-sept autorisations ont été mises aux enchères depuis l'adoption de la loi (certaines autorisations utilisées actuellement ont été accordées avant l'adoption de la nouvelle loi et sont valides jusqu'en 2020). A mesure que les autorisations actuelles arriveront à expiration, de nouvelles enchères seront tenues. La nouvelle loi a fixé la durée de validité des

autorisations à un minimum de huit ans et un maximum de 20. En juin dernier, le minimum a été ramené à six ans et le maximum à 15. Ce système s'est mis en place parce que les autorités voulaient s'assurer que toutes les villes étaient desservies.

Les conditions de l'appel d'offres fixent notamment les fréquences de service requises, le tarif, la qualité de service, ainsi que le type et le niveau de confort de l'autocar. L'adjudicataire peut accroître la fréquence mais pas la réduire. La concurrence s'exerce essentiellement au niveau du tarif - c'est la variable à laquelle est accordée le plus d'importance dans l'évaluation des offres. L'adjudicataire détient le monopole sur la ligne en question pendant toute la durée de validité de son autorisation. Les opérateurs peuvent proposer un itinéraire au Ministère s'ils pensent que cela en vaut la peine. Si le Ministère donne son accord, l'itinéraire doit être mis aux enchères. Les horaires et les fréquences sont coordonnés au niveau national par le ministère des Transports. Chaque région a en outre son propre ministère des Transports.

Avant la mise en place de ce système, les chemins de fer avaient le droit d'exploiter tous les services de transport de voyageurs par route, en les sous-traitant à des entreprises privées. L'un des objectifs de cette loi était de retirer ce droit aux chemins de fer pour le concéder sur une base non discriminatoire aux opérateurs privés.

Le Président a ensuite orienté la discussion sur les problèmes qui se posent du point de vue de la concurrence dans les gares routières. Outre l'affaire Greyhound, plusieurs autres situations ont été mises en évidence dans les documents présentés par les différents pays, par exemple la République tchèque en ce qui concerne les gares de Prague et de Pilsner. Le Président a demandé si les services de transport par autocar et les services ferroviaires étaient en République tchèque des modes interchangeables ou complémentaires.

La République tchèque a répondu que la première des deux situations concernait la gare routière principale de Pilsner, qui est exploitée par une entreprise assurant également des services de transport par autocar. Cette entreprise, sans aucune raison objectivement défendable, a agi de façon discriminatoire à l'égard d'un des opérateurs concurrents sur l'itinéraire Pilsner-Prague, en ne l'autorisant pas à utiliser une partie de la plate-forme de qualité comparable à celle qui était accordée aux autres opérateurs. Le Bureau de la protection de la concurrence a alors décidé que cela constituait un abus de position dominante de la part de l'exploitant de la gare routière (qui était en même temps un concurrent du transporteur victime de discrimination). La seconde affaire concerne une gare routière privée qui était exploitée également par une entreprise offrant des services d'autocars. Cette entreprise -- l'exploitant de la gare -- a agi de façon discriminatoire à l'égard des opérateurs de services intérieurs et internationaux en pratiquant des prix différents pour l'utilisation de la plate-forme. A la suite de ces affaires, le Bureau de la protection de la concurrence a préconisé que les gares routières demeurent sous le contrôle des municipalités au lieu d'être vendues aux opérateurs de services d'autocars.

On compte environ 20 000 autocars et autobus immatriculés en République tchèque. Près de la moitié (environ 10 000) sont utilisés par des opérateurs qui assurent des services réguliers -- soit des services d'autobus municipaux, soit des services d'autocar suburbains, interurbains ou internationaux -- ou leur appartiennent. La part du nombre total d'autocars/autobus-kilomètres qui est subventionnée est d'environ un quart, mais celle du nombre total de voyageurs-kilomètres est d'environ la moitié. Il existe deux types de subventions - l'une qui vise à répondre aux obligations de service public et l'autre qui émane des municipalités demandant des services plus fréquents que ne l'exige l'obligation de service public.

Quant à la question de savoir si les services d'autocars sont interchangeables avec les services ferroviaires ou les complètent, jusqu'à la fin de l'année, les chemins de fer sont subventionnés par le ministère national des Transports, tandis que les services de transport par autocar sont subventionnés par le district ou la municipalité. L'année prochaine, le système sera modifié, et les services ferroviaires

régionaux et locaux seront subventionnés par les conseils régionaux qui seront créés. Il sera mis en place un système de classement par ordre de priorité des subventions aux divers modes de transport.

En Turquie, la réglementation du transport de marchandises et de voyageurs varie selon que le transport s'effectue à l'intérieur ou à l'extérieur des limites des municipalités. Les gouverneurs des provinces détiennent le pouvoir de réglementer le transport local ainsi que le transport effectué dans un rayon de 100 km des limites de la municipalité. Au-delà de cette limite de 100 km, le transport relève de la compétence du Directeur général du transport routier, qui est attaché au ministère des Transports. Il n'y a pas de limite au nombre d'autorisations de transport intérieur ou international. Dans le secteur du transport par autobus et autocar, on compte 572 opérateurs exploitant un parc d'environ 10 000 véhicules.

Le droit turc de la concurrence ne prévoit pas d'exemptions ni d'exceptions sectorielles et s'applique par conséquent à l'ensemble du secteur du transport par route. L'autorité turque de la concurrence enquête actuellement sur une affaire de concurrence concernant une gare routière d'Izmir où, comme dans l'affaire mentionnée plus haute en République tchèque, l'exploitant de la gare a facilité la conclusion d'un accord horizontal entre les opérateurs de services d'autocars et imposé des amendes et des conditions discriminatoires aux opérateurs qui ne s'y conformaient pas. Une autre affaire récente concerne la gare routière d'Istanbul, dont l'exploitant aurait fixé des heures de départ discriminatoires. Une enquête officielle a été ouverte.

En Norvège, on examine la "nécessité" d'un service avant d'octroyer une licence d'exploitation de services réguliers de transport par autocar. S'il existe des services ferroviaires et des services d'autocars parallèles, cela est également pris en compte dans la décision. L'évolution dans ce secteur va dans le sens de la libéralisation. A la suite du plus récent changement (1996), une nouvelle licence sera accordée pour un nouveau service qui n'est que partiellement parallèle au service existant ou qui offre par exemple une carte d'arrêts différente. Toutes les demandes de nouvelles licences sont évaluées individuellement. Le critère de nécessité s'applique afin d'assurer un service stable et fiable. L'évolution vers un système plus libéral est possible mais elle se fait lentement. Les licences sont accordées par le ministère des Transports et des Communications. Avant qu'une décision soit prise, la province concernée tient une audience pour recueillir les vues des prestataires de services existants et des autorités locales compétentes. Le Ministère rend alors sa décision.

Le Président a ensuite abordé la situation de l'Italie où, comme en Norvège, la réglementation du transport par autocar est très restrictive. Les intérêts des opérateurs en place sont pris en compte dans l'octroi d'une nouvelle licence et ceux-ci ont la préférence lorsque de nouvelles licences deviennent disponibles. Les tarifs des services de transport par autocar sont réglementés et fixés au même niveau que les tarifs ferroviaires, ce qui supprime la concurrence intermodale. En Italie, les services ferroviaires et les services d'autocars sont la plupart du temps complémentaire plutôt qu'interchangeable.

Le Président a ensuite parlé d'une fusion entre l'opérateur ferroviaire FS et le transporteur par autocar Sogen, qui a été autorisée à la condition que FS ne prenne pas le contrôle des itinéraires qui étaient en concurrence avec le rail. Cette condition ne s'est toutefois pas révélée très efficace car l'opérateur ferroviaire a conservé une importante participation minoritaire -- non loin de 50 pour cent --, lui permettant, sans exercer de contrôle du strict point de vue juridique, de maintenir néanmoins un contrôle effectif.

Le délégué de l'Italie a souligné que la situation était très différente dans son pays pour les services d'autocars à grande distance et les services locaux. Les premiers sont explicitement réglementés de façon à empêcher la concurrence et à protéger les chemins de fer. Le ministère des Transports lui-même interdit la concurrence entre le transport par autocar et le transport ferroviaire. Il s'ensuit que les services d'autocars sont très rentables et extrêmement fréquentés (preuve d'une offre insuffisante). Les usagers sont

désavantagés par cette situation, tout comme l'Etat, car si une plus forte concurrence de la part du transport par autocar était autorisée, le subventionnement du rail serait moins nécessaire.

Au contraire, s'agissant du transport local, une loi récente prévoit que toutes les licences seront mises en adjudication. Cette loi n'entrera toutefois pas en vigueur qu'en 2003, ce qui donne le temps aux opérateurs en place de renforcer leur position. Les administrations locales (qui contrôlent souvent aussi les opérateurs en place) prennent des mesures qui visent précisément à les défendre contre la concurrence. L'une des méthodes qu'elles emploient consiste à céder des actifs spéciaux non mobiles, par exemple des stations et dépôts d'autocars ou d'autobus à l'opérateur en place, élevant ainsi des barrières à l'entrée dans le secteur. Une autre tactique consiste à faire en sorte qu'incombe à la même autorité à la fois l'adjudication des licences et la prestation du service. Dans une première affaire, l'adjudication s'est traduite par l'attribution de la totalité des licences aux opérateurs en place, ce qui démontre que les règles du jeu n'étaient pas vraiment les mêmes pour tous.

Le délégué a formulé des observations au sujet des préoccupations qu'inspiraient les propositions de la Commission européenne concernant le transport de voyageurs par route à grande distance, qui privilégie l'adjudication. On craint en effet que les exceptions à la règle de l'adjudication des licences ne soit trop vagues et difficiles à interpréter, par exemple celles qui sont liées à des impératifs de sécurité nationale, ou au maintien des subventions au rail. Autre motif de préoccupation, la proposition de la Commission prévoit que la durée des contrats doit être de cinq ans, mais qu'elle pourrait être plus longue selon la durée de vie économique des actifs. Or, des concessions pouvant aller jusqu'à 15 ans ne favoriseront pas beaucoup la concurrence.

Le Président a souligné qu'il était important d'entendre l'avis du Royaume-Uni sur la question, car ce pays est l'un des rares à avoir introduit la concurrence dans les services locaux de transport par autobus. La concurrence est-elle possible dans ce secteur ? Où en est la réflexion des autorités britanniques à cet égard ?

Le Royaume-Uni a déréglementé le transport local par autobus dans les années 80. Il est aujourd'hui extrêmement facile dans ce pays d'obtenir une licence. Il suffit de disposer d'un autobus et d'un horaire, qui doit être enregistré. Au moment de la déréglementation, le marché était très fragmenté et comptait un grand nombre d'entreprises locales en situation de monopole. L'OFT a prévu qu'il y aurait de nombreuses fusions, ce en quoi les événements devaient lui donner raison. De nombreuses fusions ont effectivement été autorisées et quelques-unes rejetées. Certaines ont été autorisées sous réserve d'une cession partielle de certaines lignes ou, dans un cas de figure, d'un dépôt d'autobus. Dans ce cas précis, l'OFT a également exigé des engagements de non-recours aux pratiques d'éviction. Actuellement, l'OFT étudie un projet de fusion au sujet duquel il envisage, contrairement à son habitude, d'imposer un plafonnement des prix, car il est d'avis que la cession serait une mesure disproportionnée.

L'OFT a eu affaire à deux grands cartels dans le secteur du transport par autobus. Deux opérateurs de réseaux qui se chevauchaient pour les services locaux d'autobus à Warrington, dans le nord-est du pays, ont engagé une guerre des prix. Pour mettre fin à cette guerre, ils ont décidé de s'entendre, sur les prix notamment, et de se partager les itinéraires. Une autre affaire concernait une entente sur les prix impliquant une vingtaine d'opérateurs de services locaux d'autobus de Humberside, dans le nord-est.

Des questions horizontales se posent également en ce qui concerne le fonctionnement des régimes d'abonnement. En effet, pour qu'un abonnement ait une utilité, il faut qu'il soit honoré par la totalité (ou tout au moins la plupart) des différents services voyageurs. Les abonnements peuvent abaisser les obstacles à l'entrée en encourageant les clients à utiliser un nouvel opérateur ou un opérateur de moindre importance. Pour la même raison, l'OFT voit en général d'un œil favorable les accords sur les

horaires ou les accords de réciprocité par exemple. Un certain nombre de régimes d'abonnement sont encouragés par l'autorité locale, voire administrés par celle-ci, et ne constituent pas une entente selon le droit de la concurrence. L'OFT a examiné une affaire concernant un opérateur qui refusait d'adhérer à un régime d'abonnement multi-opérateurs. *Greater Manchester Buses*, qui possédait environ 70 pour cent du parc d'autobus de la région, a estimé que le régime n'était pas suffisamment avantageux pour lui, et a donc décidé de le boycotter et de lancer indépendamment son propre régime, lequel portait préjudice aux autres opérateurs plus petits. L'OFT a jugé qu'il s'agissait là d'un abus de position dominante.

Les plaintes les plus nombreuses ont trait à des allégations de pratique de prix d'éviction, ou d'une façon plus générale de comportements prédateurs, comme l'augmentation de fréquence du service, l'enregistrement d'horaires précédant immédiatement ceux des concurrents, l'application de réductions sélectives, ou encore la "course" que se livrent les véhicules d'opérateurs rivaux pour arriver le premier au prochain arrêt. Bien que les obstacles à l'entrée soient en apparence peu importants (on peut se lancer en affaires avec seulement une licence d'exploitation et un autobus), une réputation de réaction agressive à l'égard des nouveaux entrants peut avoir un effet dissuasif. Et bien sûr, si une entreprise exerce ses activités à l'échelle nationale, la réputation qu'elle a acquise dans une ville peut dissuader les éventuels concurrents d'entrer sur le marché d'autres villes du Royaume-Uni. En ce qui concerne les intentions prédatrices, bien que les opérateurs de services d'autobus soient connus pour leur langage énergique à l'égard de leurs concurrents ("nous les enverrons dans le fossé"), l'OFT n'y prête guère attention, ce genre de formule visant essentiellement à renforcer le moral de leur personnel. En revanche, l'OFT s'intéresse à des questions comme la perte de rentabilité et d'autres types de comportement.

Le grand souci des autorités britanniques actuellement est la qualité. Il est envisagé de donner une assise juridique aux "partenariats de qualité" entre les autorités locales et l'on étudie les moyens de réduire la fréquence des modifications d'horaires et d'accroître les pouvoirs dont peut user le *Traffic Commissioner* à l'égard des opérateurs qui ne fournissent pas les services annoncés. Ces changements auront pour effet de revenir au système de concessions encore en vigueur à Londres. La capitale britannique est la seule région du pays où tous les itinéraires sont mis en adjudication. Autoriser les contrats de qualité lorsque cela est approprié, afin d'aider les autorités locales à intégrer les services d'autobus à d'autres services (par exemple, autobus-autobus, autobus-voiture particulière et autobus-rail) constitue la meilleure solution. Cette démarche cadre avec la place privilégiée que l'on accorde en général aux services locaux partout au Royaume-Uni. Les services sont libéralisés et semblent fonctionner, mais leur qualité pourrait encore être améliorée par une coordination plus étroite entre les autorités locales et les prestataires de services.

Le Secrétariat a répondu que l'expérience du Royaume-Uni était importante dans la mesure où c'était le seul pays du monde ayant tenté d'introduire une véritable concurrence au niveau des services locaux d'autobus. Le délégué a poursuivi son intervention en demandant comment la concurrence fonctionnait au plan des abonnements. L'abonnement est un "billet" qui donne le droit d'utiliser tous les autobus couverts par l'abonnement pendant une période d'un mois. Est-ce que ce type d'abonnement n'a pas pour effet d'éliminer complètement toute possibilité de concurrence par les prix, étant donné qu'il permet à l'utilisateur de se déplacer sur n'importe quel autobus des opérateurs participants ? La concurrence pourrait peut-être s'exercer au niveau du prix de l'abonnement proprement dit. Mais cela n'est pas non plus possible. Si les usagers peuvent emprunter n'importe quel autobus du groupe, il est évident qu'ils achèteront tous l'abonnement le moins cher. Tous les abonnements devraient se vendre au même prix.

Le Président a ajouté que les opérateurs participants devaient s'entendre entre eux sur le partage des recettes générées par l'abonnement. Par conséquent, le système des abonnements non seulement réduit la concurrence du côté de la demande, mais également du côté de l'offre.

Le Royaume-Uni a fait observer que l'utilisation des systèmes d'abonnement à l'extérieur de Londres ne semblait pas avoir dissuadé les opérateurs de services d'autocars ou d'autobus de rivaliser pour attirer les voyageurs sur les itinéraires les plus lucratifs.

Le Président a ensuite donné la parole à l'auditoire pour un débat général. Il a demandé si les économies d'échelle et de gamme dans les services d'autocars étaient si élevées qu'elles favorisaient en général l'émergence d'un opérateur national unique, ou s'il s'agissait juste d'une coïncidence qu'il en soit ainsi dans les pays où le secteur a été libéralisé ? Par ailleurs, le transport par autocar et le transport ferroviaire sont-ils des modes de transport interchangeables ou complémentaires ? Le rail semble particulièrement adapté au transport à grande distance ou aux trajets domicile-travail dans les grandes villes, tandis que l'autocar convient mieux aux régions éloignées. Enfin, pourquoi la concurrence est-elle si rare dans le secteur du transport local par autobus ? Est-ce parce qu'il faut un organisme central pour coordonner les itinéraires ? Le Président a également mentionné que les restrictions visant le transport international de voyageurs par autocar sont très fortes, même au sein de l'Union européenne.

L'expérience de l'Irlande illustre comment il est possible de vaincre la résistance à la libéralisation. Dans ce pays, les ministres des transports ont promis la libéralisation des services d'autocars pendant au moins 15 ans, sans que cela n'ait encore été réalisé officiellement. Cependant, on constate dans le marché du transport à grande distance une libéralisation de fait, à la faveur du phénomène des "clubs charter" ou "clubs de voyage", dont les services sont devenus des services réguliers, assurés entre des points d'embarquement urbain donnés. Ainsi, pour se rendre de Dublin à Cork, le vendredi à 18 heures, la plupart des Dublinois savent à quel endroit prendre l'autocar. Le seul aspect quelque peu inhabituel, c'est que techniquement, il faut adhérer à un "club" pour pouvoir prendre le car. Cette adhésion peut se faire tous les jours de la semaine et permet d'utiliser le service à l'aller et au retour sans restriction. Ces services semblent bien se porter. Ils sont bon marché, efficaces et sont assurés au moyen d'autocars modernes. C'est là une des façons de venir à bout de la résistance à la libéralisation. Les autorités de la concurrence ont beau avancer comme argument que la concurrence sera avantageuse, il est beaucoup plus facile de convaincre les consommateurs lorsqu'ils peuvent le constater concrètement par eux-mêmes.

En ce qui concerne la nécessité de la coordination, si les itinéraires et les fréquences sont établis par un organisme central, celui-ci manquera de motivation pour développer de nouveaux services. Par conséquent, si pour une raison ou une autre la structure de l'implantation industrielle venait à changer dans une agglomération, l'absence de concurrence et le caractère centralisé de la planification des itinéraires pourraient entraver le développement des nouveaux services nécessaires pour répondre à la demande. La coordination est certes nécessaire, mais il demeure peut-être préférable de maintenir une certaine concurrence pour que les opérateurs de services d'autobus développent de nouveaux itinéraires en fonction de l'évolution de la demande.

S'agissant de la question de savoir si le rail et l'autocar sont des modes concurrents ou non, l'Italie a répondu que la situation avait été faussée par les subventions au transport par autocar et par une très lourde réglementation. Compte tenu des niveaux de coûts et de services des deux systèmes, il apparaît clairement que les services par autocar à grande distance sont d'une qualité inférieure à celle des services ferroviaires, mais que leur prix de revient est également moindre. Par conséquent, il y a encore des possibilités de concurrence, pas exactement sur le même segment du marché, mais en offrant des services différents, dans l'intérêt à la fois des consommateurs et de l'Etat.

La République tchèque a décrit une expérience de système d'abonnement à Prague. L'abonnement couvrait non seulement la ville proprement dite, mais également les districts périphériques. Il y au nord de Prague une ville d'environ 50 000 habitants qui est reliée à la capitale par une autoroute. Un opérateur historique de services d'autobus dessert les chemins vicinaux entre cette ville et Prague. Un autre opérateur qui a fait son apparition assure le service sur l'autoroute menant à Prague, mais il n'a pas été intégré au

système d'abonnement de Prague. Au bout de cinq mois, ce nouveau concurrent a dû mettre la clé sous la porte, car même s'il offrait un meilleur service sur Prague, il ne pouvait soutenir la concurrence d'un rival intégré au réseau pragois.

Le Secrétariat est revenu à un point mentionné précédemment par la République tchèque en ce qui concerne la propriété des gares routières. La République tchèque a indiqué que l'autorité de la concurrence avait exprimé des réserves à l'égard de la privatisation de ces gares, prétendant qu'elles devaient demeurer sous le contrôle des municipalités. Une situation analogue prévalait en Italie, où les autorités locales cédaient les actifs des gares routières aux opérateurs en place. Bien que les délégués du Groupe de travail favorisent normalement la privatisation, ces exemples démontrent que lorsque la privatisation consiste à céder des actifs aux opérateurs en place, elle peut aller à l'encontre du jeu de la concurrence.

4. Taxis

Abordant le troisième volet de la table ronde, le Président a fait remarquer que le secteur des taxis semblait a priori concurrentiel. On y trouve de nombreux acheteurs et de nombreux vendeurs. Toutefois, en réalité, le marché du taxi n'est pas si concurrentiel qu'il n'y paraît de prime abord. Le nombre de taxis est limité par des interventions réglementaires et les tarifs pratiqués sont soumis à des contrôles.

L'une des raisons invoquées pour justifier la réglementation est que la concurrence est amortie parce que de nombreux usagers manquent d'expérience. Les services de taxis sont souvent achetés par des clients de l'extérieur de la ville qui ne connaissent pas bien leur trajet. Il est donc nécessaire de contrôler les tarifs pour éviter que le chauffeur de taxi n'exploite l'ignorance de son client. (Bien que le risque d'exploitation ne soit pas entièrement écarté par la rigueur tarifaire, le chauffeur ayant alors intérêt à choisir l'itinéraire le plus long possible). Le degré de concurrence possible varie selon les différents segments du marché. Ainsi, il y aura vraisemblablement beaucoup plus de concurrence dans le segment des taxis réservés par téléphone que dans celui des taxis hélés en rue.

De nombreux pays ont libéralisé le marché des taxis, mais sans toujours en obtenir les résultats escomptés. Le Président s'est adressé aux Etats-Unis, qui ont une certaine expérience de la déréglementation du secteur des taxis dans quelques villes, tout en conservant une réglementation très stricte dans d'autres.

L'expérience des Etats-Unis en matière de déréglementation du secteur des taxis remonte à la fin des années 70, alors qu'un certain nombre de villes de taille moyenne ont libéralisé l'accès à la profession et la réglementation des tarifs. Les segments du marché concernés par cette libéralisation étaient ceux des taxis réservés par téléphone et des taxis pris à une station de taxis, y compris aux aéroports. Il n'existait pas de marché des taxis hélés en rue ou de contrats de service dans ces villes. Dans un rapport de 1984, le personnel de la FTC a dressé un bilan de la déréglementation effectuée dans ces villes, dont la conclusion était que d'une façon générale, elle avait donné les résultats escomptés dans le marché des taxis réservés par téléphone. Le rapport concluait également que la déréglementation du marché des taxis pris à une station de taxis, surtout aux aéroports, exigeait beaucoup de précautions. C'est au niveau des restrictions de l'accès au marché que les effets favorables de la déréglementation étaient les plus évidents. En revanche, la déréglementation n'a pas eu d'effet sensible sur les tarifs.

La déréglementation du marché des taxis pris à une station de taxis, qui a eu en général des effets favorables, a été de grande ampleur car dans ces villes, ce segment représentait 75 pour cent des courses de taxi. Elle s'est notamment traduite par l'augmentation du nombre d'exploitants de taxis, la diminution de la part de marché des plus grands exploitants, l'augmentation du nombre d'heures de service, la réduction des

tarifs et des délais de prise en charge, ainsi que la réduction du temps consacré par le conseil municipal à l'attribution des licences et à l'établissement des tarifs. Dans l'ensemble, aucun problème d'envergure n'a été noté en ce qui concerne l'ouverture du marché. Lorsqu'a été constaté un accroissement du nombre de plaintes de clients, celui-ci aurait pu être évité par des mesures d'application des normes en matière de qualifications des chauffeurs et de sécurité des véhicules.

En revanche, des problèmes ont été constatés dans le marché des taxis pris à une station de taxis, et plus particulièrement aux aéroports. Selon les auteurs du rapport susmentionné, on ne s'est pas suffisamment soucié d'induire une concurrence par les prix aux stations de taxis ou dans les files d'attente aux aéroports, où est appliquée la règle du "premier arrivé, premier parti". Les problèmes étaient liés aux tarifs élevés pratiqués pour les courses effectuées au départ des aéroports, qui avaient pour effet de favoriser les longues files d'attente aux stations de taxis des aéroports (les chauffeurs de taxis pouvant se permettre d'attendre longtemps sachant qu'ils pourraient pratiquer un tarif très lucratif). Ces problèmes ont pour conséquence que les chauffeurs de taxis refusent les courses courtes et se disputent leur place dans la file d'attente, ce qui occasionne des perturbations, notamment aux aéroports.

Rétrospectivement, on aurait pu faire plus pour améliorer la concurrence. Par exemple, réaménager physiquement l'aire d'attente des taxis, de façon que les clients puissent effectivement choisir au lieu d'être obligés de prendre le premier taxi qui arrive, ou établir des règles exigeant l'affichage des tarifs pour que le client soit informé. Toujours selon le rapport déjà cité de la FTC, si la compétition par les prix était difficile à induire, il aurait été possible, quoique moins souhaitable, d'abaisser le tarif maximum afin de réduire les longues files de taxis en attente. Dans le premier cas, si une ville avait opté pour le réaménagement des files d'attente, il lui aurait fallu éduquer les clients pour leur faire savoir qu'ils pouvaient se renseigner pour choisir le prix le plus bas ou le service de la meilleure qualité. Les grandes villes des Etats-Unis n'ont pas procédé à la déréglementation. Certains estiment que c'est parce que les acteurs qui sont en faveur du maintien de la réglementation forme un solide front commun, tandis que ceux qui bénéficieraient d'une déréglementation sont dispersés et n'en tireraient que de petits avantages individuellement. Dans cette situation, il ne s'est pas exercé une forte pression en faveur de la déréglementation.

Le Président a répondu que cette opposition à la déréglementation se manifestait surtout lorsque les licences de taxis sont attribuées exclusivement à des particuliers et non à des sociétés. C'est notamment le cas en Italie, où l'on compte 6 000 chauffeurs de taxi indépendants, qui constituent avec leur famille un bloc électoral homogène. L'unité de ce groupe de pression dans son opposition à la libéralisation du marché des taxis lui permet de maintenir efficacement une profession protégée. La question de savoir comment gagner l'adhésion ou vaincre l'opposition des chauffeurs en place est capitale. Il y a quelques autres pays qui ont libéralisé le secteur des taxis, notamment la Suède et la Nouvelle-Zélande. Le Président a invité la Suède à faire part de son expérience récente en la matière.

La Suède a déréglementé le marché des taxis le 1er juillet 1990. Au cours des dix dernières années, elle a donc acquis une certaine expérience d'un marché ouvert à la concurrence. La déréglementation a posé certains problèmes en même temps qu'elle a eu des effets favorables. On peut définir le marché des taxis en Suède comme la juxtaposition d'un grand nombre de marchés locaux régis par des conditions très différentes. Le volume de clientèle varie considérablement entre les zones urbaines et les régions faiblement peuplées. Cet élément a été pris en considération pour juger de l'efficacité de la réforme. En outre, la catégorie de clients dominante peut être très différente selon les régions du pays. Ainsi, dans certaines zones faiblement peuplées, le transport financé sur fonds publics (des personnes âgées ou des malades, par exemple) représente 90 pour cent de l'ensemble des courses de taxi.

La réforme a-t-elle été une réussite ? La réponse est mitigée. Dans les villes, le succès de la déréglementation est évident, en dépit des problèmes courants de comparaison des prix, que la pratique de

tarifs fixes a permis de contourner. Les taxis affichent un prix unique pour une certaine partie de la ville (surtout les zones du centre) ou pour une course à l'aéroport par exemple. Les négociations avec le Conseil suédois des politiques à l'égard des consommateurs et les syndicats de taxis ont abouti à des accords et à des lignes directrices sur la façon dont les prix devaient être présentés aux clients à l'extérieur et à l'intérieur des voitures. La déréglementation a également eu pour effet d'élargir la gamme des types de véhicules. Ainsi, avant la réforme, on ne voyait pas de petites voitures, qui sont certes moins confortables, mais dans lesquels la course est également moins chère.

La centralisation des réservations pour plusieurs exploitants de taxis est devenue un élément important du marché suédois des taxis. Dans les régions faiblement peuplées du pays, le volume de clientèle est insuffisant pour justifier plusieurs centres de réservation concurrents. C'est là une des principales raisons pour lesquelles la réforme n'a pas donné les résultats escomptés en région rurale. En revanche, la coopération au sein d'un centre de réservation est souvent une condition d'efficacité pour un exploitant de taxis en région rurale.

La déréglementation s'est traduite ou risque de se traduire par une absence totale de services de taxi dans certaines régions du pays. Cette conséquence appelle une nouvelle forme de réglementation axée sur trois objectifs : défendre la concurrence autant que possible, garantir l'accès aux services de taxi dans toutes les régions du pays, et assurer la stabilité et l'application de règles clairement définies pour la profession. Dans ce contexte, les autorités ont proposé une nouvelle exemption aux règles de la concurrence. Elle concerne la coopération entre sociétés de taxis dans le cadre de services de réservation centralisés lorsque le nombre de voitures est inférieur à 30. Une nouvelle exemption générale a également été proposée pour les services de réservation centralisés détenant moins de 35 pour cent du marché correspondant. En ce qui concerne la sécurité des voyageurs, il y a toujours eu un système de licences pour les chauffeurs de taxis. Le 1er janvier 1995, un nouveau système est entré en application pour veiller à ce que les chauffeurs soient fiables -- pour déterminer notamment si le candidat chauffeur s'est déjà rendu coupable d'un quelconque délit, surtout avec violence. Au début du processus de réforme, on a pu assister dans les rues à des bagarres entre chauffeurs de taxis qui se disputaient un client.

Le Président a fait remarquer que l'Australie avait également une certaine expérience de la déréglementation du secteur des taxis, surtout en Australie méridionale, où toutes les restrictions à l'entrée et à la tarification ont été levées. Le Président a demandé à l'Australie s'il se posait des problèmes pour le maintien du service aux heures creuses.

Le secteur des taxis en Australie a été pendant très longtemps réglementé. Le prédécesseur de l'ACCC (la *Trade Practices Commission*) a adopté une position très ferme en faveur d'une déréglementation générale du secteur des taxis en Australie dans sa présentation de 1994 à l'*Industry Commission*, dans laquelle elle faisait valoir que la réglementation du secteur avait empêché le développement de la concurrence et limité indûment le choix des consommateurs. La législation relative aux taxis est en cours de révision en Australie dans le cadre d'une réforme plus large de toute la législation ayant une incidence sur la concurrence. Le principe sous-jacent est que la législation ne devrait pas restreindre la concurrence sauf s'il peut être démontré que les avantages qu'il y a à la restreindre l'emportent sur les coûts, et que les objectifs de la législation ne peuvent être atteints que de cette façon. Le gouvernement a également inclus dans cette réforme législative un certain nombre de mesures financières destinées à inciter les gouvernements des Etats à abroger les dispositions législatives restrictives. Ces réformes ont entraîné certains changements, mais l'ACCC doute que le processus aboutisse à une profonde réforme de la législation relative aux taxis. Le processus d'examen se déroule depuis environ cinq ans et l'étude de la législation relative aux taxis a été reportée à la fin, ce dont il n'y a peut-être pas lieu de s'étonner compte tenu des épineuses questions qu'elle soulève. L'organisme homologue de l'ACCC, le *National Competition Council*, préconise avec insistance la réforme du secteur. Mais il se pourrait bien que

cette réforme n'ait pas lieu, ou alors qu'elle demeure marginale et sans grande envergure à ce stade. Il reste du chemin à parcourir.

Le Président a abordé ensuite la situation intéressante qui prévaut en Norvège, où l'autorité de la concurrence joue un rôle très important à l'égard du secteur des taxis, surtout en ce qui concerne le contrôle des prix, puisqu'elle fixe les prix des services de taxi dans certaines villes. Plus récemment, l'autorité de la concurrence a choisi de ne pas fixer les prix dans les villes où il existe plus de deux organismes centraux. Doit-on en conclure que dès lors qu'il existe deux organismes centraux, la concurrence est suffisante ? Qu'en est-il si le nombre de taxis est également limité ?

En Norvège, les titulaires de licences sont de très petites entreprises de une à deux personnes. Un service de réservation centralisé, qui regroupe bon nombre de ces exploitants, constitue en fait une co-entreprise qui équivaut à une entente horizontale sur les prix. Voilà où intervient l'autorité norvégienne de la concurrence, en accordant une exemption pour les services de réservation centralisés. La Norvège a récemment engagé une libéralisation partielle. L'autorité de la concurrence a mis fin à la réglementation des prix dans la plupart des grandes villes, plus précisément dans toutes les régions où il existe plus de deux services de réservation centralisés. Il est vrai que l'autorité de la concurrence, en plus de son rôle propre, agit aussi en qualité de régulateur sur ce marché. Actuellement, le marché des taxis est le seul marché où il existe de telles mesures de contrôle.

La raison pour laquelle les prix ont été libéralisés dans les régions où il existait au moins deux services centralisés de réservation n'est pas liée au niveau de concurrence, mais au fait que l'autorité de la concurrence jugeait très difficile de déterminer le niveau efficace des prix. Un certain nombre d'indices tendaient à prouver que les prix étaient trop bas pendant les heures de pointe dans les grandes villes, ce qui se traduisait par une sous-utilisation de la capacité, de longues files d'attente et de longs délais. En outre, l'autorité de la concurrence prétendait que la fixation des prix ne constituait pas la méthode la plus efficace pour contrôler la puissance de marché dans le secteur. Pour exercer cette puissance, les taxis devaient limiter la capacité sur les marchés. Cela veut dire qu'au moins de temps à autre, le nombre de taxis en circulation devait être inférieur au nombre total d'exploitants titulaires de licences. Pour ce faire, l'autorité de la concurrence était d'avis qu'il aurait fallu prévoir un système de paiements de transfert pour les taxis non utilisés, ce qui aurait fortement encouragé la création d'un autre service centralisé concurrent. L'autorité de la concurrence a donc modifié sa stratégie réglementaire en matière de prix et a décidé de s'attacher à réglementer les caractéristiques plus qualitatives de ce marché.

Le Président a fait état d'une idée tirée du document présenté par l'Irlande, selon laquelle, pour favoriser l'adhésion des exploitants en place à la libéralisation, il pourrait être envisagé de leur accorder à chacun une nouvelle licence supplémentaire, ce qui leur conférerait un certain avantage. L'ennui à ce moment-là, c'est qu'un trop fort accroissement du nombre de licences enlève toute valeur à la licence et annule par conséquent l'avantage qui s'y rattache. Est-ce que ce système a été mis en œuvre en Irlande ?

Le délégué de l'Irlande signale que, comme en Italie, la plupart des licences de taxi sont obtenues par des particuliers, ce qui a donné naissance à un bloc politique articulé et bien organisé, qui a rendu difficile la tâche des responsables politiques voulant agir dans ce dossier ou mettre en œuvre des changements. Cependant, l'un des enseignements à tirer de l'expérience irlandaise est que si on limite l'accès à la profession et que la demande a augmenté, on aboutit en définitive à une situation où les consommateurs commencent à se faire entendre vigoureusement et à exercer des pressions auprès des responsables politiques pour obtenir du changement. Cela peut toutefois être long.

Jusqu'à la fin des années 70, le nombre de taxis n'était pas limité, ni le marché réglementé. C'est en 1978 que les collectivités locales ont été autorisées à réglementer le nombre de taxis sur leur territoire. Aucune nouvelle licence n'a été délivrée pendant environ 14 ans. Le Ministre est alors intervenu, pour

délivrer un certain nombre de licences supplémentaires, avant de redonner le pouvoir aux autorités locales. Ces dernières, de nouveau, n'ont délivré aucune nouvelle licence. Finalement, sous la pression de l'opinion, le Ministre est intervenu une fois encore, avec la proposition décrite ci-après, annoncée il y a environ un an.

Cette proposition prévoit le doublement du nombre de licences de taxis dans la région de Dublin. Chaque taxi en exploitation recevra une licence supplémentaire. Il a été proposé de délivrer 500 nouvelles licences à des personnes qui conduisent des taxis sans en être les propriétaires. La mise en œuvre de la proposition a été retardée parce qu'elle a été contestée devant les tribunaux par les chauffeurs de radio-taxis (les "*hackneys*", cette catégorie de taxis qui ne peuvent être réservés que par téléphone, et ne peuvent ni être hélés en rue ni être en attente à une station de taxis) au motif qu'elle était discriminatoire à leur égard. Il y a quinze jours, le tribunal de première instance a rendu une décision en leur faveur, allant même plus loin en ajoutant qu'après examen des textes applicables, il était d'avis que la législation n'autorisait pas le Ministre à imposer de limites au nombre de taxis. A moins que l'affaire ne soit portée en appel, les restrictions quantitatives visant le nombre de taxis semblent donc avoir été invalidées par le tribunal, et le marché des taxis serait donc dès lors ouvert.

Le Président a fait observer qu'aux Pays-Bas, on accorde à des sociétés des licences qui les autorisent à exploiter autant de taxis qu'elles le veulent et pendant autant d'heures qu'elles le souhaitent, ce qui contraste vivement avec la situation qui prévaut en Irlande et en Italie.

Les Pays-Bas confirment que les sociétés de taxis néerlandais titulaires d'une licence peuvent en effet exploiter autant de véhicules qu'elles le veulent, sans aucune limite. Le 1er janvier 2000 est entrée en vigueur une nouvelle loi sur les taxis qui oblige le titulaire de licence à témoigner de son honorabilité et d'être en service pendant au moins 390 heures au cours d'une période de trois mois. Il s'agit là de la seule exigence concernant actuellement l'accès à la profession.

En République tchèque, l'Office de la protection de la concurrence est récemment intervenu contre des règles imposées par les municipalités, par exemple celles concernant l'adresse de résidence du chauffeur (un non-résident n'est pas autorisé à exploiter des services de taxi), ainsi que la taille minimum du véhicule (certains types de véhicules n'étaient pas autorisés). L'Office a jugé ces règles anticoncurrentielles et a demandé aux municipalités concernées de remédier à la situation. La plupart d'entre elles ont accepté les arguments de l'Office en dépit du fait que celui-ci ne détenait pas le pouvoir de faire appliquer ces décisions à l'encontre des municipalités.

En Pologne, le régime réglementaire relève de la compétence des autorités locales. Actuellement, il n'existe pas d'obstacle à l'entrée, et n'importe qui peut exercer la profession de chauffeur de taxi, mais cela relève de la décision souveraine de l'autorité locale.

Les Pays-Bas ont mentionné le cas d'un accord conclu entre l'aéroport de Schipol et deux sociétés de taxis néerlandaises en vertu duquel les deux sociétés obtenaient des droits exclusifs sur les deux stations situées à la sortie de l'aéroport. En pareil cas, on pourrait certes affirmer qu'il s'agit d'une restriction de la concurrence sur ce marché, si l'on définit le marché comme les services de taxi offerts à l'aéroport, d'où la grande importance que revêt en général la définition du marché.

Le délégué de l'Italie a fait état des résultats de certaines études effectuées à Milan. Premièrement, l'élasticité de la demande des services de taxi est très forte, beaucoup plus que prévu, ce qui fait que la réglementation des tarifs peut avoir une incidence sensible. Deuxièmement, la clientèle à faible revenu occupe également une place beaucoup plus importante que prévu, et est essentiellement constituée de personnes n'ayant pas les moyens de se payer une automobile. Troisièmement, les responsables de la

planification des transports estiment que la seule méthode efficace pour réduire le nombre d'automobiles en circulation dans le centre des villes est de laisser le secteur des taxis prendre de l'expansion.

Le Président a conclu la table ronde en formulant les observations ci-après. La concurrence est relativement vigoureuse dans les secteurs du transport de marchandises et de voyageurs par route. Les autorités de la concurrence ont de toute évidence un rôle à jouer dans une réforme visant les services de transport de voyageurs, qu'il s'agisse des services d'autocars ou de taxis. La concurrence pour le marché et la concurrence dans le marché sont deux phénomènes différents. La première nécessite en général une réglementation, confère souvent une puissance de marché à l'un des acteurs et ne saurait guère se substituer à la concurrence dans le marché, laquelle est la solution qu'il convient de privilégier chaque fois que cela est possible. A cet égard, le transport par autocar ne constitue pas vraiment le bon exemple pour l'introduction de l'adjudication, surtout compte tenu de la concurrence intermodale.

S'agissant des aspects internationaux des services de transport de marchandises et de voyageurs, les délégués sont au fait de l'existence des restrictions dans le secteur du transport de marchandises, mais la plupart ignorent probablement que le transport de voyageurs à l'intérieur d'un autre Etat membre (cabotage) n'est pas encore libéralisé dans l'Union européenne. Un autre effort de libéralisation est nécessaire.

S'agissant des taxis, les délégués ont montré qu'il existait des perspectives pour la concurrence. En outre, les plus graves problèmes et difficultés qui ont été soulevés au cours de la discussion sur la libéralisation des services de taxis ne se sont pas posés. Les situations examinées fournissent de solides arguments aux autres pays. Si l'élasticité de la demande est très forte, la solution ne consiste pas à maximiser le nombre de personnes qui attendent un taxi mais plutôt à fournir à ces personnes le service qu'elles recherchent en mettant à leur disposition un plus grand nombre de services de taxi, moins chers et de meilleure qualité.