Working Party No. 2 on Competition and Regulation

REGULATION AND COMPETITION ISSUES IN ROAD TRANSPORT

-- Spain --

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

SPAIN

1. Market Structure

1. In Spain the modal split of domestic passenger transport by modes was in 1998, road 91.24%; railways 4.98%; air 3.48%; maritime 0.33%.(million passengers- km)

2. The split in freight domestic transport was: road 81.74%; railways, 4.22%; maritime 11.55%; pipes, 2.46%.( Million tons-km).

1.1 Road Haulage

3. 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.

4. These enterprises are located mostly, in Cataluña (22,917), Andalucia (18,222), Madrid (11,824), and Valencia (10.798), Vasque Country (9.011).

5. The most important industry associations are CETM ( 68,39% of the firms), FENASDIMER (12,70%), FUET (9%), FEDATRANS (8,94).

6. Undertakings operating own transport have fleets that amount 108.116 heavy vehicles.

7. Undertakings operating own transport transported in 1998, 166,903, thousands tons; public transport carriers transported 523,905 thousands tons.

1.2 Road Passenger

8. In 1998, there were 4,743 passenger public transport operators in Spain operating 33,870 coaches; 1426 carriers own only one bus, 294 operators own more than 20 buses.

9. 898 operators are located in Andalucia, 723 in Madrid, 643 in Cataluña.


11. The most important industry associations are FENEBUS, which represents 71,22% of the schedules enterprises, and 39,42% of the chattered enterprises, ANETRA is the industrial grouping for SMEs, and ASINTRA which represents 25,94% of the scheduled firms and 33,98 of unscheduled firms.
2. Regulatory regime

2.1 Key governing legislation.

12. Land Transport Law --( Law16/1987)


15. 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

16. 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.

17. 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 (Cominidad Autonoma) a regional transport ministry (Consejería de Transport) which is the regional regulatory agency for intra regional transport services.

18. 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

19. 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.

20. 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 3 new vehicles (no older than 2 years) with a minimum laden weight of 60 tons; their share capital if they own 3 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 2 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.

21. 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.

22. In road haulage transport tariffs are not intervened, but there are reference tariffs.

2.4 Passenger Transport

23. As for freight transport, EU regulation on access to the occupation of road passenger transport operator is compulsory.

24. A new entrant in the unscheduled market at national level must comply with the following conditions: to own 5 buses (no more than 2 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 5 buses otherwise it will not be allow to increase capacity. Tariffs are set freely, but there are reference tariffs.

25. 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).

26. 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.

27. 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 2000, this period was reduced for new concessions to a period of no less than 6 years and no longer than 15 years.

28. The content of the TOR of scheduled services by concessions define the frequencies, the itinerary and tariffs to be applied.

29. 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.

30. 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.
31. 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

32. There were 62,059 taxi operators in Spain in 1998. 95.5% of these operators have only one vehicle.

33. 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 5 million inhabitants. The municipality do not intervene in the licence market. Taxi tariffs are regulated.

34. 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

35. 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).

36. 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

37. 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.

38. 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
39. 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

40. Competition Law fully applies to the road transport sector.

41. Competition Law in this sector is administered and enforced by the competition authorities, the TRIBUNAL and the SERVICIO.

3.1 Mergers

42. 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% 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.

43. ENATCAR had 200 buses, 10 national, 3 intra regional, and 7 international concessions, its market share in the concession market was 19.41%. Some of its concessions ends in 2018 and 2017.

44. ALSA had a market share (passenger/km) of 15.10% of the concession market, followed by CONTINENTAL AUTO with a market share of 14.54%, and AUTO RES with a market share of 11.14%.

45. The relevant market identified and analysed was the concession market, the scheduled road passenger transport. The geographical market was national.

46. The Tribunal advised the government not to oppose the merger but to approved it subject to conditions.

47. The Tribunal applied in its report the capture of the regulator theory.

48. 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 5 years.
   - ALSA GROUP had to divest it stakes in ANSA share capital (ALSA’s and CONTINENTAL’s subsidiary).

49. 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

50. The Servicio has initiated action against some haulage operators active in Bilbao Port for reaching agreements on tariffs and other commercial conditions.
51. 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.

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<thead>
<tr>
<th>TARIFTS. A MULTIMODAL COMPARAISON</th>
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<tbody>
<tr>
<td><strong>Corridor Madrid--Valencia.</strong></td>
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<tr>
<td><em>Scheduled road passenger transport--Bus private operator: AUTO RES</em></td>
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<tr>
<td>Frequencies: 3 per day in both direction</td>
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<tr>
<td>Tariff (going and return) 5.255 pesetas</td>
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<td>Journey length: 4 hours.</td>
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<tr>
<td><em>Railways--State Owned operator: RENFE</em></td>
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<tr>
<td>Frequencies: 5 per day in each direction</td>
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<tr>
<td>Tariffs (going and return). 9,120 pesetas (economy fare)</td>
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<tr>
<td>Journey length: 3 hours, 30 mn</td>
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<tr>
<td><em>Air-- Partially state owned operator.: IBERIA</em></td>
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<td>Frequencies: 10 flights a day east and west bound.</td>
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<td>Tariffs: from 37,780 pesetas (full economy) to 18,830 pesetas (full discount)</td>
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<td>Journey length: 1 hour...</td>
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