This note is submitted by the Delegation of Czech Republic to the Working Party No. 2 FOR DISCUSSION at its next meeting on 27 October 2000.
REGULATION AND COMPETITION ISSUES IN ROAD TRANSPORT

Czech Republic

1. The questions below seek to assess the current state of regulation and the experience with competition in three broad sectors – road freight services (i.e., trucking); road passenger services (i.e., buses and coaches); and taxi services.

2. These three sectors can be further subdivided. Within road freight services it will often be necessary to distinguish between domestic and international services, between long-haul and short-haul services, between full truckload and less-than-truckload (LTL) shipments, between the transport of dangerous goods (and other goods requiring special treatment) and the shipment of “ordinary” goods and between carriers operating on their own account and those offering transport services on a for-hire basis. Within road passenger services it will usually be necessary to distinguish between long-distance or inter-city services and local or municipal bus services and between regular and occasional services. Within taxi services, a distinction can be made between taxis which can be stopped on the street, taxis hired at a rank and taxis ordered by telephone.

3. The questions below focus primarily on economic regulation as it affects competition – that is, on regulation of entry, exit, prices and services (including controls on quantity and quality) as well as controls on ownership, forms of organisation and lines of business. Other economic instruments such as taxes and subsidies can also have a direct impact on road transport competition. The effect of these other economic instruments, to the extent that they affect competition, should also be mentioned in your response to the questions below.

4. There are other important regulatory objectives which arise in the road transport area, such as safety and environmental objectives. These other regulatory objectives give rise to a host of regulatory measures, such as controls on vehicle size and weight, driver licensing requirements, controls on vehicle speed and operation, controls on driving hours, emissions controls, controls on the carriage of dangerous goods, control on the quality standard for taxis (comfort, air conditioning, cleanliness etc.) and so on. These measures, although important, can be addressed without direct restraints on competition. They will not, therefore, be a focus of the questions below.

5. Many road transport issues are the responsibility of sub-national governments such as states, provinces or Länder (in federal systems) or regional, local or municipal governments (in the case of local bus and taxi services). In responding to the questions below you may wish to either summarise the main approaches used at the sub-national level or focus on one or two regions (or cities) in order to present their regulatory regimes in more detail.

6. In 1998 the OECD’s Regulatory Reform Project assembled a substantial database on regulatory regimes in OECD countries including information on the road transport sector. In order to prevent duplication a summary of the information on road transport already contained in the Regulatory Reform database is attached to the questions below. Many of these responses are of the yes/no variety. You are invited to expand on your earlier answers in your responses to the questions below.

7. There are close similarities and parallels between the questions that we would like to ask for each mode of road transport (trucking, buses and coaches and taxis). Therefore, for simplicity, only one set of questions is presented below. You are invited to answer this set of questions once for each of these three modes: road freight, road passenger and taxi transport.
1. The [Road Freight/Road Passenger/Taxi] Transport Industry

**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?

8. 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 it performs tasks ensuing for the Czech Republic from international agreements in the area of transport.

9. The most important organisations in the passenger road transport and road haulage are CESMAD Bohemia association, Sdružení autodopravců Čech a Moravy (Association of Carriers in Bohemia and Moravia) and České taxikáři (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.

10. 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.

11. 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?

12. 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".

13. 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 Procedure 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 the licence holder requests it.

14. 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?

1 “Good reputation" means that, e.g., in the past 5 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.

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?

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

16. 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?

17. 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 obchodni 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.

18. 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 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 in 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 monopoly position on the part of companies operating bus terminals in Prague and Pilsner.

19. The continuing regulation of fares remains to be 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.

20. 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 with 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?

21. 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.

22. As a member of the UN European Economic Commission, the Czech Republic actively cooperates 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 to harmonise 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.

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?
Freight

23. 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 shop up by more than 70 per cent 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 10 to 30 per cent on west European railroads).

Transport of persons

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

Freight transport

25. The performance of the road transport increased 2.5 times at the expense of rail transport, whose performance dropped by 50 per cent. In the same period, the performance of waterway transport was also almost halved (its share in the transport market is, however, less than 2.0%). In 1998, road transport performance dropped for the first time from 1990 (by 15% compared with 1997). In the next year, i.e. in 1999, the performance 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 performance since 1990 has exceeded 120%. The rail transport performance dropped last year by 11%, with the overall decrease since 1990 being about 60%. In the first quarter of the year 2000, rail transport showed increase for the first time since 1990. The performance of air transport has been growing steadily.

Passenger transport

26. Between 1990 and 1999, the demand for passenger transport dropped by 50%, with municipal public transport recording a drop of a quarter of that size (i.e. about 13 per cent). From 1990 to 1999, the number of passenger cars increased by about 50 % 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.

27. Compared with previous years, the utilisation rate of means of transport has decreased significantly, when 87% of busses on workdays operate below the break-even point. On weekends and holidays, their utilisation rate is about 80%. Rail passenger transport has also decreased significantly (by about 35%) since 1990. Growth trends have only been shown in air transport: the number of passengers there increased by over 100% compared with 1993.
28. According to the latest census, the traffic load on the roads in 1995 was 26% higher than in 1990. The highest increase was on motorways (an increase of up to 34%). Transit transport and the number of vehicles on border crossings increased considerably. Between 1990 and 1997, transport performance calculated for the transport of goods as a whole increased slightly (by about 5%).

**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?

29. 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?

30. The Office examined a merger between ICOM transport, a. s. and CSAD Pelhřimov, 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 Pelhřimov district (CSAD Pelhřimov). The share of the two companies after a merge exceeded 50%. Also investigated was the transport of goods, and the result showed that the two merging companies had a less than 5% share on the market of the Czech Republic.

31. 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?
32. 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.

33. 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.

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

- **Dopravní podnik hlavního mesta 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 than 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.

35. 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.

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