Summary of Discussion Points

Presented by the Business and Industry Advisory Committee (BIAC) to the OECD Competition Committee

Roundtable on the Methods for Allocating Contracts for the Provision of Local and Regional Transportation Services

February 25, 2013

1. The purpose of this paper is to provide brief remarks rather than a full contribution, as the aim of the WP2 roundtable of February 25, 2013, “to understand the tendering/allocation mechanisms used in different jurisdictions to ensure greater competition in the provision of local and regional bus services and to examine the advantages and limitations associated with them”, is mainly informative. However, BIAC wishes to take advantage of this roundtable to remind the Committee of some basic principles which are important to the business community, and is grateful to be given this opportunity.

2. Our points relate to concerns that were already discussed in the recent past: at the October 14, 2011 meeting of the Competition Committee, BIAC recommended an extensive discussion on the subject of what the European Union calls “services of general economic interest” (SGEI). We therefore welcome this first roundtable on one of the most topical examples of SGEI.

3. Indeed local bus and coach transport services are run either directly by state- (or local government-) owned enterprises (SOE) or by private companies to whom some forms of universal service obligations (USO) are imposed. There is nothing wrong with this in principle as it is generally the response to market failures (e.g. in cases where the bus service is the replacement of a railway service which had to be stopped because of insufficient profitability). Although the required investments are not huge, often the services cannot be operated on a profitable basis unless subsidised, because of regulated prices, timetable and safety constraints, etc. Again, there is nothing wrong with this in principle since government intervention may well be required to maintain infrastructure networks beneficial to the whole economy, or so that certain sub-groups of citizens can have access to important basic services at affordable prices.

4. BIAC’s general position in these matters has consistently been that it neither opposes nor encourages in principle either SOEs or state aids, which may be justified by broader policy concerns or necessary because of market failures, as long as competitive neutrality is
preserved. However, BIAC insists on two important conditions: maintaining a level playing field between SOEs and private companies, including by regulation ensuring that competition law is enforced on SOEs on the same terms as private industries; and limiting the harmful distortions of competition that may result from state aids by defining and enforcing clear rules. In the case of local or regional bus transport, public-sector enterprises are generally owned, and public aid generally granted, by local or regional governments rather than by national governments as such, so it is up to the state authorities to enact these conditions and monitor their implementation.

5. The most advanced set of rules in this respect is probably the European “new SGEI package” completed in April 2012, which is based on the doctrine of the European Court of Justice as established in the Altmark decision of 24 July 2003, defining four conditions under which compensation for SGEIs can be exempted from the régime of state aid control:

   o that the universal service obligation in consideration of which it is granted is clearly defined;
   o that its parameters are objective, transparent and established in advance;
   o that it should not exceed cost and a reasonable profit; and
   o that it is determined either through public procurement or “on the basis of the costs of a typical well-run company”.

6. BIAC considers this constitutes a reasonable basis for a policy, which could be emulated by those other jurisdictions which do not have an appropriate set of rules in that respect. However, there are a number of issues deserving attention, for instance the definition of the “general economic interest” (which may vary greatly from country to country), the economic definition of a “typical well-run company”, and the practicalities of the exercise of controls over the contractors’ operations.

7. BIAC recognizes that competitive public tenders for the award of local or regional transport service franchises can promote efficiency and reduce cost. Public transport agencies that establish competitive tenders for transport services nearly always do so with the objective of reducing cost. Indeed, competitive tenders have been estimated to reduce cost by 60% in some cases, with a mean cost reduction of 39.5% per vehicle kilometre as compared to non-competitive services. Other studies showed improvement in service levels by 25%. Thus, the benefits of competitive tenders are well-demonstrated, but the challenges of establishing tenders also should be understood. Public tendering requires strong planning and commitment by a transport agency and can face opposition, for example, from incumbent operators, political constituencies and trade unions.

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2 Id.
8. Naturally, franchises for local and regional bus transport services should be awarded in conditions that meet the key factors which business would look for in a good tendering mechanism. This implies that it be transparent, including as to the parameters for evaluating bids and deciding on the outcome and award of the licences, be open to all qualified potential bidders, deal with bids and bidders fairly and without discrimination (whether between public and private, local or foreign enterprises), be managed professionally by qualified evaluators, and minimise transaction costs by avoiding unnecessarily onerous requirements.

9. Another remark that may be submitted is that the award of bus transport services contracts and more generally the sector’s activity should be supervised at national (as opposed to local) level, preferably by dedicated, independent regulatory authorities, for two reasons. First, in many cases, bus and coach services are dependent on efficient and consistent connections with other transport modes (the so-called “intermodality”), principally railways, often run by SOEs which are also competitors on road transport and which enjoy, therefore, a strong competitive advantage compared to “pure” road transport companies. The other reason why supervision at national level may be desirable is that the decision-making power for awarding contracts is often in the hands of local government which is perhaps more vulnerable to short-term political considerations.

10. Although dealing with local services, bus and coach transport is more and more open to international competition. This makes the requirement of a level-playing field (a constant concern of BIAC) an increasing necessity, implying both the international convergence of policies and the prevention of discriminations in the contract award processes. This is why BIAC is particularly appreciative of the OECD’s effort to draw the competition agencies’ attention and to bring harmonization to these matters.