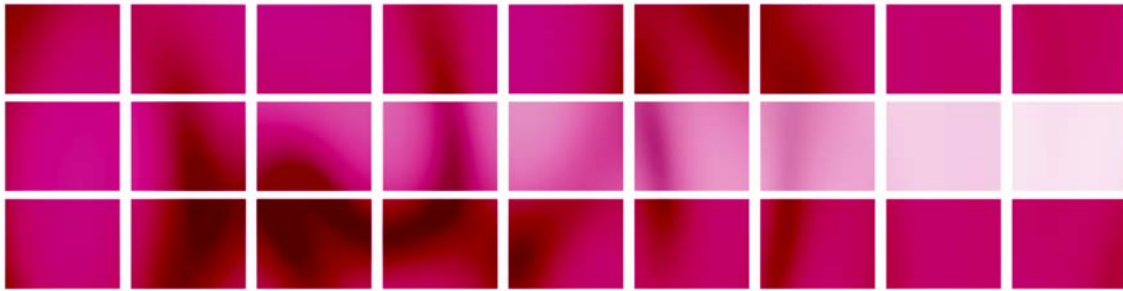


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**PRIVATISATION OF PUBLIC SERVICES AND THE IMPACT ON
QUALITY, EMPLOYMENT AND PRODUCTIVITY (PIQUE)**

***Liberalisation, privatisation and regulation
in the Polish local public transport sector***

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Country report on liberalisation and privatisation processes and forms of
regulation

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INTRODUCTION

Until 1990, a homogeneous scheme of organisation of municipal collective transportation was applied in Poland. One specialised public transport enterprise provided transport services within the area of a specific city, agglomeration unit or at voivodship level. This state enterprise – which had the respective minister and afterwards the voivode or other local organ of public administration as a founding body – monopolised transportation services on the local market. A characteristic feature of this model was that the functions of management of transport services supply and internal supervision of the execution of services were joined.

After the *Act on Territorial Self-Government* came into effect (1990) city transport became the individual task of communal self-governments (gmina). The communes took over properties of communalised transportation enterprises and simultaneously became responsible for the functioning of municipal transportation systems. Together with the freedom of undertaking economic activities (1989) this initiated a process of liberalisation of local collective transportation. However, such liberalisation proceeds very slowly since commune units and cities have become owners of transportation firms and therefore must reconcile the self-interest of ownership with those of the users of local transportation services within the area of the self-government unit. (Dydkowski 2003).

The market of collective transportation in large cities is not expanding (Tables 1 and 2) and this relates to the development of individual transport. However, after 1990 many private transport providers started up in small cities, communes and counties. Often such firms possess only a few buses and provide transportation services on routes within areas of a 70-kilometre radius.

Table 1: Decrease of seats in urban transport vehicles 1990- 2004, when 1999 =100%

1990	1995	2000	2004
100%	90.8%	83.1%	79.1%

Source: Statistical Yearbook of the Republic of Poland, Central Statistical Office, Warsaw, 2001, p. 221, Statistical Yearbook of the Republic of Poland, Central Statistical Office, Warsaw, 2004, p. 323, Statistical Yearbook of the Republic of Poland, Central Statistical Office, Warsaw, 2005, p. 324.

Table 2: Population in cities with municipal transportation enterprises in thousands of inhabitants

1980	1985	1990	1995	2000	2004
16,173	17,875	18,778	18,812	18,319	18,066

Source: Statistical Yearbook of the Republic of Poland 1993, Warsaw, GUS(1993: 398) and Statistical Yearbook of the Republic of Poland 2005, Warsaw, GUS(2005: 324)

1. MARKET STRUCTURE

1.1. Market structure before liberalisation

After the Second World War and the introduction of planned economy, the municipal transport in Poland was subordinated to the state – that is urban and voivodship authorities – as long as until 1990.

From 1945, the income-driven system of ticket and tariffs in municipal transportation no longer functioned. The state appropriated subsidising of transport while ticket prices did not relate to the real costs of enterprise maintenance. A complex list of passengers entitled to reduced or free fares contributed substantially to a growth of real deficit created by ticket sales revenue and free riders as well.

From 1964 to 1994, so-called Municipal Transport Enterprises (MZK) operated in cities, especially bigger ones. Such enterprises incorporated bus, tram and trolley services as well as depots and such divisions as administration and maintenance (operations, technical and repairs units). Municipal Transport Enterprises (MZK) were responsible for assigning price-lists, tariffs and timetables and for engaging ticket collectors. In respect to their market share MZK can be defined as a natural monopoly. (Kotuszewski 2000, Wyszomirski 2002).

Local (regional) transportation was provided by state enterprises, that is Motor Transport Enterprises (PKS) and the Polish State Railway Company (PKP). These operated on similar rules. In practice, the two enterprises monopolised the market, which was split between them. No alternative private carriers existed.

1.2. Steps and processes of liberalisation

The liberalisation process began by shifting responsibility for local transport from the state to the level of self-government authorities.

The current model of management and organisation of passenger transportation services in urban areas has been shaped by laws concerning the whole national economy undertaken in the period 1989-1990. In 1990, the Lower House of Parliament (Sejm)

passed the *Act on Territorial Self-Government*, which produced the model, wherein the commune self-government (gmina) is the only body entitled to creating transportation policies in cities. On the local level, the government relies on voivodships and partially counties as organs of the state and the self-government authority simultaneously.

According to the *Act on Territorial Self-Government* of March 1990, meeting the collective needs of the local community belongs to commune self-government (gmina) tasks. This especially refers to local collective transportation needs. Reformist-oriented politicians have acknowledged that since the commune (gmina) knows the local inhabitants' needs it should be able to organise a system which satisfies these needs better than any other body (Dydkowski 2003).

Voivodship municipal transportation enterprises were divided into a series of local enterprises or budgetary establishments. Most of them were transformed into budgetary establishments, while some kept the status of Limited Liability Companies. Some Municipal Transport Enterprises (previously part of multidisciplinary enterprises of voivodship or municipal level) became budgetary establishments which remained within the structure of local multipurpose municipal administration entities or were detached into separate units (Rozkwitalska 1994).

While the tasks of territorial self-governments are defined by law and cannot be privatised, it became possible to privatise the performance of such tasks. Competitiveness of municipal transportation became a key aspect, so that the offer of city transportation would be attractive in comparison with individual transportation. Strategies of competition in municipal communication pursued in separating the organisation of transportation and the execution of services.

Every entity providing passenger transportation services had free access to the market if it had the license and met qualitative criteria regarding the type and technical conditions of the fleet set by the organising body. All transport providers have equal rights with other competitors willing to tender for a contract for providing transportation services. The *Public Procurement Act of 1994* became a tool for creating competition in municipal transport.

Municipal, state and private providers have equal rights to perform transportation services on the market. For the successors of the former Municipal Transport Enterprises, their lack of experience in rationalising activities, reducing costs and increasing profits as well as changes around such firms proved to be a problem.

The approach of Polish communes to restructuring municipal transport can be described with one of the following ideas:

- a) the model of lack of change: preservation of hitherto existing solutions regarding organisation and management while modifying relations between public authorities and municipal transport enterprise,
- b) the model of deregulation of municipal transport: enabling unrestricted access to transportation activities organised by transport providers on their own,

c) the model “of separation” of organising activities from transportation activities: introduction of competition between transport agents engaged by the organiser. (Rataj 1993).

The deregulation model was accepted in smaller cities: quite often the decision was to undergo complete privatisation of both organiser and providers of municipal transport services. This resulted in problems of small communes which were not in such financial standing to be able to meet such requirements as modernising fleets or managing the transportation system (Majewski 2004).

In the case of smaller cities – which decided to undertake a complete privatisation of the organiser and performers of municipal transport services – issues of social policy proved essential while concluding contracts with an investor. As after privatisation profit becomes a high-level goal of transport providers, it was necessary to guarantee in the contract that providers would manage transportation in such way as to enable inhabitants to use public transport (Majewski 2004).

In the case of deregulation, prices and tariffs are essential issues. Price policy is a notion that goes beyond a price-list of fares for using municipal means of transportation. Reasons for a separate treatment of price policy is that by such policy the aims of urban transport policy as well as social policy are executed. In the case of tariffs, this refers to social and transportation policies. These are prepared as a result of market knowledge, income from ticket sales, costs of organisation and the performance of transportation services as well as political aspects. The formation of tariffs requires consultation, and the opinion of trade unions, which, by the power of law, are given the opportunity to express their opinions about tariffs (Kulig 1993, Wyszomirski 2002).

In the case of bigger cities, the third model – i.e. separation – came in place. The essence of this concept is an adaptation to market economy while preserving regulation of the system by public authorities. The role of municipal transport organiser acting on behalf of the public authorities and executing their transportation policy is being given to specialised establishment called Municipal Transport Management Authority.

Tasks of the Municipal Transport Management Authority includes most often duties of: market research of municipal transport, preparation of transportation offers, maintenance of stations, loops and stops. Furthermore those duties also include: ticket sales and ticket inspections, engaging transport agents to provide transport tasks, the inspection of transport duties, traffic regulation over municipal transport vehicles, transferring information about the functioning of municipal transport to the society.

As a result, in Warsaw, for example, urban transportation services are provided to consumers by the Municipal Transport Management Authority, which organises transport for the city and consumers while using municipal transport agents (i.e. communal companies and private providers) (Kania 1991, Szablewski 1991).

The market of collective transportation services in a town with a Municipal Transport Management Authority takes a specific form: de facto what happens is the partition into two markets. The first one is the market of transportation services provided directly to passengers – this market provides such services as organization of transport, ticket

sales, traffic regulation and information. This market is monopolised because the Municipal Transport Management Authority is the only party offering municipal transport services (yet it can be noted that usually in bigger municipal areas in a limited scope also other entities provide such services – that is the result of an incomplete integration of services). Therefore, the Municipal Transport Management Authority acts as natural monopoly (Wyszomirski 1996). The second market is the market of carriage services where services purchased by Municipal Transport Management Authority are offered by several (a dozen or so) operators. From the supply point of view this is an oligopoly while from a demand point of view it constitutes a monopson (Tomanek 2003).

From the beginning, the liberalisation process has been determined by the fact that the Polish political elite of all hues accept the idea of territorial self-governments as hosts on their own ground. This refers also to local transport. The problem remains of how to execute such an idea.

1.3. Privatisation

The privatisation of public operators of transport services is an indispensable element of the liberalisation of transportation markets. In effect, it is based on legislation concerning the privatisation of state enterprises (1990), regarding commercialisation and the privatisation of state enterprises (1996) and the law on communal management (1996). These allow for various methods of privatisation in local transport, i.e.: a direct, an indirect and a mixed method.

- a) The direct method implies the sale of a public transport enterprise, contributing property to a partnership (as a result of negotiations undertaken on the basis of public invitation) or rendering for payable use for the sake of established company of physical persons.
- b) The indirect method means the sale of shares or stock of a privatised transportation enterprise. Such a course of action is possible only after a public (municipal) enterprise has been transformed into a company and acts on the basis of the “Code of trading partnerships”.
- c) The mixed method is based on managerial contracts, contributing the enterprise to wider companies or economic associations either liquidation and thensale . (Dydkowski, Tomanek 2003).

The scope of privatisation of municipal transportation enterprises is slow (see Table 3). During the period of 2001-2004, the number of joint stock companies with participation of territorial self-government grew considerably, however simultaneously, the number of self-government transportation entities without separated legal status increased as well. This means that self-government units do not adopt a homogenous privatisation strategy. Some boldly decide upon complete privatisation; while others, on the contrary, do not even undertake the legal separation of transportation enterprises. There are also

self-government units that adhere to a model of limited liability companies with all or part of the shares owned by the unit.

Table 3: Municipal entities in public transport according to organisational types, 2001-2004

Legal status	2001	2004	Dynamic 2001-2004 (2001=100%)
Municipal entities – total	155	176	113.55
JST entities without legal status	57	41	71.93
Limited liability companies with JST shares	94	93	98.93
Joint stock companies with JST shares	4	39	975.00

Note: JST – territorial self-government unit.

Source: Information on transformation and privatisation of municipal property, 2005, Ministry of State Treasury, and Information on transformation and privatisation municipal property, 2003, Ministry of State Treasury.

There are many barriers obstructing privatisation, first of all political and social ones. In the case of municipal transport relation to politics appears in reluctance to privatisation observed in politicised city councils (which refer to recommendations from national authorities of parties). The privatisation process meets social barriers as well; these result from connotations of massive layoffs as well as many negative examples of privatisation that are often publicised by media.

1.4. Current market structure and remaining challenges

The present structure of the transport market is very diverse. Regarding divisions of the market it is clear that the participation of private operators has been growing substantially in comparison to municipal operators (Table 4). Nevertheless, there still is a lot of capacity for privatisation.

There are many large cities in which strong municipal companies do not admit private providers to attractive routes while city councils are very reluctant to changes. In some large cities poorly managed municipal companies have had to be liquidated or file for bankruptcy.

In other cities budgetary establishments provide transport services. A budgetary establishment is a municipal organisational unit created for the purpose of conducting specific economic tasks based on a payment scheme. Such an establishment does not possess legal status and is only able to undertake its activities based on the authorisation granted by a prefect or mayor (president of the city). In effect the manager of a budgetary establishment acts on behalf of commune and on its account. Budgetary establishments are equipped with material and financial means allocated from commune property, while managers of budgetary establishments are responsible for managing this property. The budgetary establishment conducts its activities on the payment scheme, which does not necessarily mean that it must pursue records of all costs related to

performed services. Moreover, such an establishment does not have to be profitable. The task of a budgetary establishment is to provide services from the sphere of duties assigned to the commune. These tasks can be assigned either by the city council or prefect. The council also appoints resources for the execution of these tasks and controls the manager of the establishment on how the duties were performed (Tomanek 2003, Wyszomirski 2002).

In small cities that are only just creating municipal transport, transportation is organised and performed by private providers. Such providers are also very active in the area of local transport between small cities. As a result (see Table 4), in relation to the overall economy, the share of private transportation and storage firms in sales revenue has been on the increase and in 2004 was three times higher than sales of public sector enterprises (Majewski 2004).

Table 4: Sales revenue of products and services of transport and storage sector

Specification	1995	2000	2004
Public sector	50%	41%	27%
Private sector	50%	59%	73%

Source: Statistical Yearbook of the Republic of Poland 2001, Warsaw, GUS(2001: 405) and Statistical Yearbook of the Republic of Poland 2005, Warsaw, GUS(2005: 520).

The law regulates conditions of access to the passenger transportation market. On the one hand this equalises terms of competition between firms, yet on the other those regulations impose formal and legal obligations on companies which cause considerable financial burden. However, without doubt, the self-government authorities decide about how open the market of municipal transport is in a given urbanised area.

Small scale of commitments of the private sector in collective transportation constitutes a barrier in the development of competitive relations. Private providers can give cities two measurable advantages: capital, which would enable them to limit direct commune commitment in the functioning of municipal firms (e.g. limit investments in the transportation fleet) and higher effectiveness of service performance (that is to say lower costs). Private providers incorporated into integrated system of municipal transport contribute to a decrease of costs and an improvement of quality, also including a better standard of the fleet. Private providers acting outside the sphere of such an integrated system do not provide such advantages.

The privatisation of local transportation firms is certainly a challenge. It is a difficult issue, especially with reference to large firms in greater cities and their privatisation happens slowly. Most town councils are not yet determined to undertake a privatisation of transport enterprises, because there is lack of positive examples and experiences. Therefore, communes prefer to introduce ownership changes evolutionary.

Table 5: Market structure of the urban transport (indicator: passengers' seats in urban transport vehicles) (%)

Specifications	Before liberalisation	After liberalisation		
	1990	1995	2000	2004
<i>Buses</i>	100.0	100.0	100.0	100.0
Of which public sector	100.0	97.6	95.6	92.2
Of which local self-government owned		90.3	95.1	91.5
Of which private sector		2.4	4.4	7.8
<i>Trams - public sector</i>	100.0	100.0	100.0	100.0
Of which local self-government owned		79.7	94.9	100.0
<i>Trolley busses (local self-government owned)</i>	100.0	100.0	100.0	100.0

Source: Statistical Yearbook of the Republic of Poland, Central Statistical Office, Warsaw, 2001, p. 221, Statistical Yearbook of the Republic of Poland, Central Statistical Office, Warsaw, 2004, p. 323, Statistical Yearbook of the Republic of Poland, Central Statistical Office, Warsaw, 2005, p. 324.

2. REGULATION

Before 1989, regulations regarding road transport were very precise. A planned economy (command-distributive system) required municipal transport enterprises to execute the plan, which was sufficient for positive evaluation and budgeting. Economic goals were of secondary importance. The plan and its accomplishment were a tool of regulation. On the basis of the law on road service and home forwarding of 1961, performing road transport services was possible after obtaining permission from the Minister of Transport (later, after reorganisation, of the Minister of Transportation, Shipping and Transport). Permanent licences were issued mostly to state enterprises of public transport, which thereby provided transport on monopolistic rules. Access to the market for other economic entities, especially private carriers, was limited (Dydkowski 2003, Wyszomirski 2002).

Transport agents existing outside the public sector could obtain single or periodic licences only in justified cases or when there was no possibility to satisfy transportation needs by means of public transport. Among the regulative legal acts regarding the execution of transportation services one can mention the Civil Code of 1964 and the Transport Law of 1984. The Civil Code qualified in a very general and fragmental way the rules for providing carriage services, the scope of duties and the rights of contracting parties as well as the responsibilities of transport agents in the case of lack or improper performance of the transport contract.

In 1989, in consequence of the practical introduction of the freedom of economic activity, the local transport market was almost completely released. Small private transport firms emerged on a mass scale. Such providers displaced big and tardy public

enterprises such as Motor Transport Enterprises (PKS) or Polish State Railway Company (PKP) from local markets. In the first half of the 1990s, it was practically enough for a provider to have a bus to be able to render services. In the second half of the 1990s, several regulations were gradually introduced, which limited access to the market for firms unable to meet established standards. The will to regulate resulted from negative experiences in the first years of liberalisation, when the quality of services had not met consumer demands.

2.1. *Instruments*

According to the law on communal self-government (1990) all public matters of local importance which – by virtue of other laws are not guaranteed to other entities – belong to the duties of the commune. In particular, such duties include assignments such as local collective transport, however the notion of “local collective transportation” was not precisely defined in legal regulations. The notion of “municipal transport” appears quite often, especially in records granting authorisation to free and reduced rides. Most often local transportation is reckoned as transport lines with routes within one commune. However, transport lines with routes running through two or more communes do exist. Those, in practice, are lines executing passenger transport services between two or more centres of big cities. Such carriages are conducted as local collective transportation. This means, among other things, that communes are settling prices and subsidising of executed services. Fixing prices for services regarding lines with routes running through two or more communes is done by appropriate resolutions agreed by the councils of the respective communes or according to the rules defined in the agreement (regarding the organisation and financing of transport lines) between respective communes. Regulations set in the law on commune self-government created the possibility for a cooperation of communes. For the purpose of performing public assignments communes are entitled to create intercommunal associations or sign communal agreements empowering one of the communes to carry out public assignments.

This law defines limitations of the duty to provide transportation services and competencies related to qualifying order regulations. It defines issues related to the inspection of documents of transport of persons or baggage as well as indicates institutions entitled to settle additional charges in the case of a lack of carriage reimbursement duties (With reference to collective transportation of communal, county or voivodship level, regulations regarding issues of supplementary charges are described respectively by the commune council, county council or voivodship council).

Liberalisation in the sphere of road transportation followed after 1988, when the law on economic activities came into effect and previous legislation regulating this sphere had been rescinded. Every Polish transport agent, regardless of affiliation to an economic sector, could execute truck fleet transports without any licence or permission. The condition only was to inform the proper local public administration body of such activities. The abolition of restrictions led to a substantial increase in the number of

entities performing transportation services of persons and freight. Full freedom of access to the transport market had both positive and negative effects.

Among the positive effects one can mention the emergence of new entities and diverse offers – i.e. the creation of competition on the market (as a result users of transport services gained the possibility to choose between service providers). Thus, the road transport market in Poland was quite quickly transformed from a provider market into a consumer market. Negative effects resulted from a lack of qualifications and suitable experience of many new providers.

In 1997 the law on conditions of performing national collective transportation became binding. By right of this regulation, activities related to national passenger transportation conducted for profit, became subject to permission granted on the basis of qualitative criteria. The Law on Road Service (2001) has replaced the above-mentioned regulation (along with the law on international transport).

The law on road service defines the rules of undertaking and performing national road service, international road service, not-for-profit national road transport, not-for-profit international collective transport, foundation for activities of Collective Transportation Inspection. It provides a large spectrum of regulations regarding issues of performance of transportation, including admission to the occupation of the transport agent and to the market of transport services.

The necessity of such regulation results from Polish adaptation commitments and the implementation of decisions of community law into the Polish system of law. Among the most important problems covered by this law one can mention the designation of rules regarding admission to the occupation of transport agent and to the market of transport services, the description of institutions entitled to issuing licences and permissions. Furthermore, among important subjects covered by the law are also the conditions and modes of acquiring certificates of professional qualifications as well as of supervision and inspection.

In compliance with the law on road service, undertaking and performing economic activity referring to road transport requires obtaining a suitable licence. The licence is granted to entrepreneurs meeting three principal conditions: reputation of managing staff and owners of the enterprise, professional qualifications and the financial guarantee of vehicles. Moreover, it is necessary to fulfil other criteria regarding qualifications and a lack of penal history of hired drivers as well as the condition of having vehicles at one's disposal or ownership.

Granting such a licence as well as refusal to grant the license, change or withdrawal of the licence is an administrative decision, with the right for court appeal. Foreman of the given area dedicated to enterprise seat is a legitimate body regarding decisions to grant, refuse, change or withdraw license concerning road transport (in the scope of national road transport except for taxi services).

Aside from the possession of a suitable licence also performing regular transport of persons requires permission. In terms of national road transport such permission is

granted with reference to the scale of transports and the seat or place of residence of the entrepreneur; thus, the prefect, mayor or president of a city grants permission for the area of the commune while the foreman for an area issues licences for areas exceeding one commune.

With the application form submitted in order to get permission to perform regular transportation services in national transport one has to enclose: an agreed-upon timetable (in accordance with the coordination rules set in transport freight regulations). Such a timetable has to take into account stops, time of departures and arrivals, the length of the regular route in kilometres and distances between stops. Furthermore, it is necessary to submit a map showing transport routes and stops, rules of use of depots and stops settled with their owners or managers, tariffs and a price-list with a rate change system included.

In compliance with the Act of June 2, 1997 supervisory functions are performed by the police, border guards, customs offices, road supervisors and institutions granting licences for the transport of persons.

Table 6a: Regulations

	Year	Act (Law)	Regulation
Before liberalisation	1964	Civil Code	Settlement of conditions of agreement between passenger and transport agent
	1984	Transport Law	Conditions and mode of performing collective transportation, coordination of transport
	1988	Law on economic activities	Very wide opening of transport market
After liberalisation	1990	Laws on commune self-government	Transfers entire responsibility for municipal transport from state to the commune
	1990	Law on privatisation of public enterprises	Makes privatisation of public transport services operators possible
	1994	Law on public procurement	Defines conditions of opening calls and conducting public auctions; legal frameworks for creating competition in municipal transport
	1996	Law on commercialisation and privatisation of public enterprises	Makes privatisation of public transport services operators possible
	1996	Law on communal management	Makes privatisation of public transport services operators possible
	1997	Law on conditions of performing national collective transportation	Licences for performing transportation of passengers, permission granted on the basis of qualitative criteria
	1999	Regulation of Minister of Transport and Maritime Economy regarding technical conditions and equipment of vehicles	Defines indispensable equipment of buses
	2000	Law on prices	Fixing official prices for collective transportation services in the commune area are in the competencies of commune

	2001	Law on road service	Licences for performing transportation of passengers, permissions granted on the basis of qualitative criteria Establishment of Collective Transportation Inspection – respecting rules of fair competition
	2002	Law on conditions of admission and supervision of state aid for entrepreneurs	Elimination of aid, which obstructs the creation and functioning of competition.

Table 6b: Regulation by means: Warsaw example

After liberalisation	
Legal basis	Municipal Transport Management Authority acts on basis of City Council statements and according to transport law
Quality measures and control	Each carriage company must have a licence (law on road services) checked by Collective Transportation Inspection. Specific quality demands are listed in agreements between the carriage companies and the Municipal Transport Management Authority. The Municipal Transport Management Authority controls the quality of operators' performance on the basis of the law of road services and individual agreements.
Frequency	The Municipal Transport Management Authority is responsible for measuring and setting appropriate timetables for transport calculated on the basis of the number of people transported per hour. Therefore each route has specific requirements concerning number and size (i.e. number and size of buses) and quality. The operators who signed an agreement with MTMA compete for each line on the basis of the quality and size of their fleet.

According to the law on commune self-government (1990) and the law on prices (2000) the commune council can fix official prices for collective transportation services performed in the area of the commune. If an intercommunal association is established, these competencies (in accordance with the law on commune self-government) are taken over by the association.

Official prices are maximum prices, unless the public administration body decides on another form of regulation (taken in conjunction with resolution agreed by the body). Regarding fixing prices for collective local transportation services, one ought to take into account the entitlement to reduced or free fares offered to selected social groups (set in various regulations and bills).

The basic legal provision regulating the procedure of refinancing by the state budget of profits lost by transport agents due to authorisation given to reduced fares in collective transport is the law on Entitlement to Reduced Fares on Public Collective Transportation (1992). Records of this law do not apply to municipal transport.

Financing legally authorised reduced fares is the duty of voivodship self-governments as the assignment of government administration. On the basis of contracts signed

between self-government authorities and transport providers conducting national bus transport services for passengers, voivodship self-governments transfer supplementary payments to transportation services due to reduced fares in place. Transport agents are obliged to use cash boxes that can register and define the amount of supplementary payments. According to law, transport providers submit to the Marshal's Office an application for reimbursement of reduced fares in place. A condition of applying for the reimbursement is to have permission for performing transport and the use of a fiscal cash box.

The above situation highlights the problem of state aid. Since 2002, the conditions of permissibility of state aid, rules of granting and monitoring state aid for entrepreneurs are defined in the Law on Conditions of Admission and Supervision of State Aid for Entrepreneurs. The essence of this law is the elimination of aid, which obstructs the creation and functioning of competition.

A crucial problem for the local market of passenger transportation is that the refinancing of profits lost by transport agents due to authorisation given to reduced and free fares (established by self-government institutions or by specific laws in collective transport) is not regulated in any law. The legal basis for a reimbursement of such income (to transport providers) disappeared when new legislation on road services came into effect (January 1, 2002) while the law on conditions of admission and supervision of state aid for entrepreneurs leaves this matter out.

Transport providers performing services without suitable authorisations, contrary to authorisations granted or without required documents, can be found quite often. This has an influence on traffic safety, the deterioration of the road infrastructure, environmental protection or meeting tax duties. These negative effects can be limited by Collective Transportation Inspection. This institution, established by virtue of the Law on Road Service (2001) has to ensure that rules of fair competition are respected. The law foresees wide authorisations for inspectors of the road service. Among their activities remain such tasks as the inspection of documents, the inspection of chosen records of the "Law on road traffic", an inspection of how the law concerning periods of vehicle driving and obligatory pauses as well as rest periods of drivers are observed.

Except from the law of September 2001 on road service, Polish regulations became adapted to community law. That was done by resolution of the law on the work time of drivers (2001) and the law on measures as well as by further amendments of law on road traffic of 1997. Regulations of the law on the work time of drivers (of August 2001) apply to drivers engaged on the basis of an employment contract as well as other drivers performing transportation tasks. This law defines periods of obligatory pauses and warranted rest periods as well as employers' obligations related to regulations of the law. The law on measures regulates among other things such issues as types of measuring instruments, authorisations to conduct repairs and installations as well as addresses sanctions.

Legal frameworks for creating competition in municipal transport are first of all set by the law on public procurement (1994) – with further amendments. This regulation

imitates EU solutions. All entities conducting activities in municipal transport are subject to regulations of the public procurement act.

On the one hand such regulations warrant that best offers of rivaling providers are chosen so that transportation needs of the population are fulfilled along with aims of urban transport policy. Moreover, they contribute to the creation of competition.

In such a model, the refinancing of transport organiser activities is subject to legal regulation (as far as it is a separate organisational entity). Expenditure dedicated to the purchase of transportation services from providers and money spent on the remaining functions of the entity responsible for the organisation of transportation (service of stops, distribution of tickets) are regulated by law as well.

The procedure of granting a public contract (by the entity responsible for the organisation of transportation) that leads to the appointment of providers of specific transportation assignments, routes or groups of routes as well as specific areas, must be preceded by permissive actions allowing for:

- a qualification of estimated values of order (based on a calculation of normative charges or rates for kilometre per vehicle),
- a designation of how profit-making specific routes are,
- securing financial supply (grant for specific route in the case that income from ticket sales are lower than service costs) by signing respective agreement with municipal authorities.

As a result, transport agents aim to minimise the total costs of performing transportation services, stop distinguishing means attained from ticket sales and resources allocated from grants. The value of tendering is a flat payment for the performance of transportation services; the certainty of attaining financial income in exchange for conducting services intensifies the process of formation of competition.

2.2. *Actors*

Until 1990, a homogeneous scheme for organising municipal collective transport was applied in Poland. An actor of regulation was the state, represented by the legislative authority (Sejm, lower house of parliament), the government including the respective minister, and afterwards the voivode or other local body of public administration (Majewski 2004, Rozkwitalska 1994, Szablewski 1991, Tomanek 1993, Uzdalewicz 1993).

After the law on territorial self-government came into effect in 1990, municipal transport became the commune's own task. Communes took over the fortune of communalised transportation enterprises and became responsible for the functioning of municipal transport system with property and legal instruments at their disposal. Communes organise public auctions and inspect the transportation in the area (through cooperation with government agencies and higher municipal bodies). In order to achieve changes in the regulatory system, communes must undertake lobbying activities in Sejm, political parties and need to cooperate with parliamentarians.

2.3. *Summary*

The duty of providing local collective transportation is on of the competencies of communal self-government. This duty provides communes with the legal authorisation to fix prices of services, decide about the model of the organisation of municipal transport as well as the level and rules of subsidising collective transportation services. Such a solution is convenient when considering the possibility of the market selection of transport providers and verification of costs of services offered. Mutual rights and duties between public organiser and transport agent are regulated in the contract signed after the execution of the procedure provided in public procurement act.

Prices of local collective transportation services are subject to diverse regulations. Commune councils can fix maximum prices. This creates possibilities for providers to differentiate prices of services in local collective transportation. Simultaneously in local collective transportation one ought to honour authorisations to reduced and free rides granted by different legislation. Aside from those, some passengers take advantage of reductions applied by local regulations (which in most cases are a continuation of reduced fares established before 1990). Eventually a lot of people profit from reduced and free rides (Dydkowski 2003).

Simultaneously, since legal regulations are not very precise, some providers performing transport services in local collective transportation outside the system regulated by communal self-government provide transport at lower ticket prices. Thus, such providers do not accept authorisations to reduced and free rides and therefore limit the possibility of conducting an effective tariff policy on the local level.

Except for regulations concerning organisations and price fixing for local collective transportation services, a normalisation regarding conditions of conducting regular passenger transportation services and defining those competent to issue licences and permissions are essential as well. Those subjects were set in the law on road service of 2001.

3. ACTORS/OWNERSHIP

Table 7: Actors/ownership in the process of liberalisation

Before liberalisation	Under liberalisation	Current state
Public enterprise	Budgetary establishment, municipal enterprise owned by the commune, private transportation firms	Budgetary establishment, municipal enterprise owned by the commune, limited liability company with a majority of shares owned by the commune, Private transportation firms

3.1. Before liberalisation

Before the liberalisation process, a state monopolist was acting on the municipal transport market. Municipal Transport Enterprises (MZK) concentrated organisational, technical and maintenance functions as well as bus, tram and trolley units. In the case of suburban railways, Polish State Railways (a monopolist in passenger railway transports) needs to be mentioned. All of those were public enterprises, which, in principle, satisfied social needs. Public enterprises were not obliged to make a profit. (Kania 1991, Kotuszewski 1998, 2000, 2003)

3.2. After liberalisation

A plurality of legal and ownership forms currently shapes local transport. Communes decide in effect which of a number of possible solutions are used in their area. Thus, communes can build local transport upon private transportation firms, establish (together with private enterprises) mixed public-private companies of different legal forms or can rely on limited liability companies with 100% of shares owned by the commune. Finally, communes can secure services for passengers by using budgetary establishments or other providers not legally derived from its structures. The scope of privatisation is a field of game between these enterprises and the commune. Private businessmen eagerly enter companies with communes, because it gives them a good start in participating in the privatisation of such companies. In addition, the emergence of private firms as transport providers on the local market is beneficial for them. They enter into a network of relationships and commitments, which in a country like Poland – with a relatively high level of corruption – counts for business stability.

4. *ROLE OF GOVERNMENT AND OTHER STAKEHOLDERS*

4.1. *Role of government – role of local self-government*

In the case of municipal transport, the role of the state has been reduced in Poland, because the law on territorial self-government of 1990 assumed the task of satisfying local passengers transportation as commune duty. This means that all the burden related to the organisation, management and financing of municipal transport has been shifted to the communes (both municipal and situated next to the city). A possibility to create associations of communes was granted for the performance of public duties (including municipal transport as well) on a mutual basis. As the property of municipal transport enterprises underwent a process of communalisation, commune authorities were up against the necessity to administer this property and implementing specific solutions regarding organisation and management as well as de-monopolisation (Dydkowski 2003, Wyszomirski 2002).

4.2. *Other stakeholders*

1. *Collective Transportation Inspection – quality control, respecting rules of fair competition*

Collective Transportation Inspection (established by the Law on road service of 2001) is responsible for ensuring compliance with technical as well as health and safety rules that influence respecting rules of fair competition.

2. *The organisational activity in municipal transport: Municipal Transport Management Authority*

In Warsaw as well as many bigger cities the municipal transport scheme is designed by the Municipal Transport Management Authority, which acts in compliance with the statute set by resolution of Warsaw's City Council in May 2004 and accordingly to the law on transport service. The Municipal Transport Management Authority is the only municipal body entitled to fixing tariffs and timetables of municipal transport. Competitiveness was introduced only on the operating level (exploitation), thus in compliance with public procurement – Municipal Transport Management Authority, preparing calls for tender for contracting passenger bus transportation services. The Municipal Transport Management Authority profiles municipal transport through fixing and changing transport routes, opening Park & Ride utilities and proclaiming reduced fares for specific social groups. The Municipal Transport Management Authority and commercial law companies owned by the city of Warsaw call for social consultations in the case of large investments (Kotuszewski 1998, 2000, 2003).

Due to system of local self – government in Poland no private nor public company operates on national scale. Every carriage public or private company acts on their own as well as each Municipal Transport Management Authority.

3. Trade unions

In many smaller cities, it quite often appeared that even trade unions opted for the privatisation of the public municipal transport enterprise. The necessity to improve the quality of services was a principle argument. Trade unions opted for an improvement of vehicle fleet that was only possible if private investor took over the enterprise. Thus, a private investor could buy better and cheaper buses. Regarding the restructuring of public enterprises (and turning them into limited liability companies owned by the commune) trade unions are rather reluctant to privatisation. They accuse the management of companies of intentional thriftlessness, which has resulted in the liquidation of these companies and the market being taken over by private providers (accused for not following workers' rights).

Trade unions criticise the Municipal Transport Management Authority accusing it of acting in favour of private providers and aspiring to liquidate transport companies owned by the communes. Moreover, accusations include an imposition of timetables which decrease the quality of transport services.

4. Organisations of municipal transport sympathisers

Circles of sympathisers of municipal transport popularise travelling through cities by buses, trams, trolleys and the subway. With their activities, these organisations support the idea of collective transport, which is gainful for all public and private firms, as their greatest competitor is individual transport. In addition, such organisations can be a good source of the social consultation for transport enterprises.

5. County (municipal) spokesmen of consumer rights qualified by the virtue of law (1999)

The basic role of these spokesmen is to provide free guidance and legal information regarding consumer protection. This is a new institution working on the rule of subsidiarity.

6. Voluntary association, working for the sake of consumers are expression of ranks consumer movement in Poland

The Federation of Consumers, the oldest and is biggest of its kind, is an independent non-government organisation whose main objective is the protection of the individual consumer in Poland. It acts through a network of 48 clubs. These provide advice, help to reach court inquires, mediate and intervene in the name of consumers as well as influence legislative processes. The Association of Polish Consumers was established in March 1999 with the purpose of extending consumers' consciousness regarding their right to safety and health protection, information, education and representation, as well as in order to protect their economic and legal affairs. Position of such organisations became strengthened as a consequence of regulations included in the Law on road service. According to those regulations self-government units take consultations with such organisations before issuing licences.

4.3. *Conflicts*

In the beginning of 90 there was an open conflict concerning wages between city councils and trade unions of the budgetary establishments. The strike paralyzed Warsaw and for two days no local transport operated. The conflict was solved through negotiations and after that all tensions are solved before the confics gain intensivity.

At present, fundamental conflicts refer to the speed of privatisation. This is not a structural conflict, since in some cities trade unions and employees demand the privatisation of communal companies, while in other cities such proposals are approached with distrust.

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