

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**DISCUSSION ON METHODS FOR ALLOCATING CONTRACTS FOR THE PROVISION OF  
REGIONAL AND LOCAL TRANSPORTATION SERVICES**

-- Japan --

25 February 2013

*The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item V of the agenda at its forthcoming meeting on 25 February 2013.*

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## **1. Introduction**

1. Similar to the bus service operations in the metropolitan area, the basic regulatory framework concerning local and regional bus services in Japan is formulated by the Road Transportation Act (which is in the jurisdiction of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT)). This Act adopts a prior permit system for the business of common omnibus operators<sup>1</sup> which includes local and regional bus services. The basic principle of the system is that anyone who meets the criteria can enter the business market.

2. Some regulatory frameworks regarding local and regional bus services in other countries are based on a bidding system whereby the operator who meets the publicly announced service criteria at the lowest price will be granted service rights. The competition principle is applied to the entry stage into the market. In contrast, the regulatory framework of Japan that is based on the Road Transportation Act is unique in the sense that it primarily encourages post-entry competition in the market.

3. In the following, we would like to provide an overview of the Road Transportation Act followed by an introduction to the exemption system from the Antimonopoly Act in the Road Transportation Act, with respect to local and regional bus service as well as the competition policy.

## **2. The Road Transportation Act**

### **(1) Overview of the Road Transportation Act**

4. The Road Transportation Act was substantially amended in 2002. Prior to 2002, in the business field of bus services, the supply and demand had been adjusted by the government and the license allocation system for respective service routes was adopted. Furthermore, the service route and service frequency were subject to approval, and the suspension or the abolishment of the services was subject to permission by the government. The grounds for such systems were the public nature of transportation business, the predisposition of the business to regional dominance and the importance of the safety of transportation. However, the quantitative restrictions that restrain competition became obsolete, and the voice to abolish the operator permit system that existed for the sake of adjusting supply and demand grew stronger. As a result, the Ministry of Transport decided to make a fundamental revision to the system and eliminated any regulations regarding supply and demand adjustment in the area of transport business including bus services.

5. For the amendment of the Road Transportation Act, a report submitted by the Council for Transport Policy argued that it is important to provide improved bus services through the promotion of competition that will bring about creativity of business operators. It further stated the necessity to stimulate competition by abolishing regulation regarding supply and demand adjustment to make market entry possible.

6. In light of this report, the Road Transportation Act was revised, and this led to switching the traditional license allocation system for respective service routes to a permit system for each business operator. Furthermore, the system concerning the service route and the service frequency was changed from an approval system to a notification system. In addition, the fare and pricing system shifted to the

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<sup>1</sup> “Common omnibus operators” means the business transporting passengers for value by vehicles upon demand.

approval system based on the upper-limit fare from just an approval system, and the implemented fare<sup>2</sup> within the scope of the upper-limit was to be notified. Also, for service routes entering a phase of inactivity or its elimination thereof was changed from a permit system to an advance notification system.

## **(2) The background and overview of the exemption system from the Antimonopoly Act in the Road Transportation Act**

### a. The background of the exemption system

7. The exemption system from the Antimonopoly Act in the Road Transportation Act has been established since 1951. Sharing of facilities, joint carriage, or any contract with regard to joint management or any agreement concerning other transportation that were approved by the Minister of Transport were exempt from the application of the Antimonopoly Act. However, no procedural stipulations which allow the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) to examine the exemptions were set.

8. Due to the amendment of the Road Transportation Act in 1997, the scope of the exemption was re-examined, and it was restricted to the following agreements;

1. Agreement regarding joint management for the maintenance of service routes
2. Agreement regarding joint management to set appropriate time tables

9. The exemption systems concerning agreements on the sharing of facilities or joint carriages were eliminated as they were deemed not to be an issue in terms of the Antimonopoly Act.

10. Furthermore, to prevent any abuse of the exemption system, procedural stipulations which allow the JFTC to examine agreements were established. In addition, criteria for approval were clearly defined in order to facilitate a careful examination by the Minister of Transport in approving that agreements would be exempt from application of the Antimonopoly Act. As a result, the four requirements which will be described in Paragraph b. were established.

### b. Overview of the exemption system

11. Given the situation of the yearly decline in the demand for bus services, it is necessary to maintain and secure the service routes which are important and necessary for local residents in under-populated areas even if they have become unprofitable due to the decreasing demand.

12. Furthermore, for service routes with some competing operators, it is important for the customers to coordinate an established time table through operating bus services at regular intervals. Therefore, it is necessary for the operators to adjust the time table amongst themselves. However, since there is a possibility of violating Article 3 of the Antimonopoly Act (Unreasonable Restraint of Trade) when operators jointly manage<sup>3</sup> with such an objective, the exemption system from the Antimonopoly Act with regard to joint management of the Common Omnibus Operators have been stipulated in the Road Transportation Act. The following two agreements are subject to the exemption system of the Antimonopoly Act:

<sup>2</sup> “Implemented fare” means notified fare and price within the scope of the upper-limit fare.

<sup>3</sup> “Jointly manage” means as follows: Adjustment of fare, price, service frequency and service routes will be decided between the operators. Also, the fare revenue will be pooled and will be allocated based on the comparison of service frequency, comparison of person per kilometer and sales volume.

1. Agreement on joint management in order to ensure passenger transport necessary for local residents in a route where it is expected to be difficult to continue the services due to a decreased demand for transport services (Article 18, item (i) of the Road Transportation Act).
  2. Agreement on joint management in order to establish appropriate time tables that will increase the passengers' convenience. (Article 18, item (ii) of the Road Transportation Act).
13. The business operator needs to obtain an approval from the Minister of MLIT when intending to conclude an agreement, or alter the contents of the agreement. The requirements for approval are as follows (Article 19, paragraph (2) of the Road Transportation Act);
1. The contents of the agreement shall not unfairly impair the benefits of users.
  2. The contents of the agreement shall not be unfairly discriminatory.
  3. The contents of the agreement shall not unfairly restrict participation and withdrawal.
  4. The contents of the agreement shall be kept to the necessary minimum for the purpose of the agreement.
14. When intending to grant an approval, the Minister of MLIT will have to consult with the JFTC (Article 19-3, paragraph (1) of the Road Transportation Act).
15. A time period has been established for agreements on joint management in order to keep them to the necessary minimum. Furthermore, operators have to get approval in case of applying for extending periods of agreements on joint management.
16. Currently, there are only three agreements which are exempt from application of the Antimonopoly Act with an approval from the Minister of the MLIT based on items (i) and (ii) of Article 18 of the Road Transportation Act.

### **3. Summary**

17. The entry system of local and regional bus services allows anyone to enter the market as long as the operator meets the criteria for approval that is based on the Road Transportation Act.
18. Although the exemption system from the Antimonopoly Act exists in the Road Transportation Act, the requirements are very stringent. Consequently, it is highly restricted to specific matters including joint management in order to ensure passenger transport which is necessary for local residents in a route where it is expected to be difficult to continue the services due to a decreased demand for transport services.