

CNMC study on intercity bus passenger transport services

Questions and answers¹

The CNMC has just published a study on intercity bus passenger transport services in Spain ([E/CNMC/006/19](#)).

This document provides the CNMC's answers to the most common questions that may arise in relation to the published study.

Why is the CNMC carrying out this study?

The CNMC carries out studies and research to promote the proper functioning and effective competition in all sectors and markets of the economy. These studies identify barriers and obstacles to competition in the markets, and provide guidance on the most effective ways to achieve public policy objectives.

Bus transport is the most widely used means of regular, collective, inter-city passenger transport in Spain. It also represents an important tool for social and territorial cohesion, given its relevance for low-income users and the connectivity of regions with low population density. Traditionally, these characteristics have justified public intervention in the bus sector, in order to ensure that this means of transport reaches a large number of destinations in Spain.

The aim of this study is to analyse the concession system in Spain, as well as European liberalisation experiences, in order to propose recommendations to the relevant authorities to improve competition conditions in the bus sector and consumer welfare.

How does intercity passenger transport work in Spain? What are the characteristics of the concession system?

In Spain, the powers to regulate and plan intercity bus services are split between the State and the Autonomous Communities, depending on the path of a given service. Thus, Autonomous Communities have the power to organise transport within their regions, while the State plans those services that circulate through more than one Autonomous Community.

Spain manages intercity bus transport services through a concession system, based on public initiative. Under this system, the Administration designs the route

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network (the "concession map") and private bus operators provide the service as a monopoly after obtaining an administrative concession that grants them exclusive operation rights over certain routes for a limited time period. There is *ex-ante* competition between operators, when they bid for the right to carry out the activity, and a threat of *ex-post* competition, because the winning operator knows that its right is temporary and that it will have to compete again if it wishes to continue to operate the activity.

For this reason, the concession system precludes competition "in-the-market" and adopts a "for-the-market" approach, whereby companies compete for concessions in public tenders called by the Administration.

Tendered concessions group together profitable and unprofitable services, in order to link certain destinations which, due to their location or low demand, would not be attractive to bus operators. The absence of competition on profitable routes allows the successful bidder to obtain a higher profit margin on these services, and use the resulting profits to cover the cost of operating unprofitable services.

The limited duration of monopoly rights, and the implicit cross-subsidy between profitable and unprofitable routes (that is, the use of profits from some routes to cover losses from others) are the cornerstones of the concessionary system.

What are the problems of the current concession model?

Under the concession system, Public Administrations (PAs) have to put the concession contracts out to tender. In theory, competition between operators through these tenders means that they all strive to submit the strongest possible bids with the intention of winning the tender. This should result in better prices, higher service frequency or higher quality of service. In this way, competition should improve the services for the benefit of consumers. However, in practice there are several factors that have undermined competition.

Firstly, in order for competition for the market to be intense, tender specifications need to be designed in a pro-competitive manner. In the case of intercity bus transport, the current wording of tender specifications is not conducive to adequate competition in tenders. For example, it is common for authorities to tender large concessions that result from the unification of different previously existing contracts (which reduces the number of tenders and makes it difficult for smaller companies to bid), or for concessions to be excessively long, precluding competition for long periods of time. It is also common for tender specifications to demand excessive resources, and to impose technical ability and solvency requirements few companies can comply with.

Secondly, in most cases there is a considerable delay in the call for tenders, which means that the same operator has been providing the service for decades

without having competed with other companies to win the concession. In other words, most of the bus sector in Spain today has not been exposed to either for-the-market or in-the-market competition over the last few decades.

Thirdly, the concession system has a series of limitations inherent to the system of competition for-the-market itself. These include information asymmetries between the PA and the concession holders, and between the latter and other bidders, which undermine the PA's ability to plan and regulate the sector and confer competitive advantages to the incumbent. The administrative planning of the concession network may not be in line with demand; cross-subsidies between profitable and unprofitable services could have implications in terms of equity by making certain routes more expensive; and lastly, the system exhibits a high degree of litigation and generates distortions in adjacent liberalised markets, such as international or occasional transport.

How does the system work in our neighbouring countries?

In recent years, a large number of European countries (including Germany, France, Italy and Portugal, and previously the UK and Sweden) have liberalised their intercity medium and long-distance bus transport services, introducing a number of safeguards that guarantee the provision of local and suburban public transport services. After the liberalisation of their markets, any bus operator can provide services on any route it wishes, and services are freely determined by supply and demand.

In those countries, the results of the liberalisation have been positive: there has been a reduction of fares and an increase in frequencies, connections and demand for services.

In fact, following the positive experiences of intercity bus service liberalisation in some Member States, the European Commission has launched a [new regulatory proposal](#), which extends liberalisation to domestic services carrying passengers more than 100 km. This proposal has been approved by the European Parliament and is pending approval by the EU Council.

Spain currently represents the largest EU market with a concession system for intercity bus transport.

Can the sector be liberalised in Spain? How would this work?

As in many other EU countries and under EU rules, the intercity passenger transport sector in Spain can be liberalised and a model similar to that of other neighbouring countries can be implemented.

In a liberalised model, bus operators would be free to enter and leave the market, so that routes would no longer be designed centrally by the Administration, but

according to supply and demand, and the same route could be operated by more than one operator simultaneously.

Any existing service no longer provided due to a lack of commercial interest, but which is deemed necessary from the point of view of regional and social cohesion, would be declared to be of Public Interest by the Administration and provided through a Public Service Contract.

Liberalisation could entail significant benefits for the users of the service, in terms of lower fares, higher frequencies, better connectivity and higher-quality services. It would also promote a more efficiently designed public transport network and the development of multimodal passenger transport.

It would also present a series of challenges that would need to be addressed. The regulatory framework for the financing of loss-making services would need to be reformed.

It would require rethinking the regulatory framework for the financing of loss-making services. It would also pose challenges for the management of conflicts between commercial services and the remaining concessions, which should ensure that the compensation received by the latter does not distort competition in the liberalised market. It would also be necessary to guarantee equal access to bus stations and to promote the competitiveness of smaller operators, so that they continue to exert competitive pressure on the market, and on prospective bus mobility platform operators that could potentially enter the market.

What does the CNMC recommend for journeys of more than 100 km?

The low degree of for-the-market competition in Spain, the problems associated with the administrative management and the intrinsic limitations of the concession system entail additional costs for users and public authorities in the form of reduced management efficiency, which calls into question the current model. In view of the international experiences analysed, liberalisation could entail significant benefits for the users of the service, in terms of lower prices, higher frequencies, better connectivity and higher-quality services. It would also promote a more efficiently designed public transport network and the development of multimodal passenger transport.

Taking these factors into account, the CNMC considers it necessary to liberalise regular bus passenger transport services of more than 100 kilometres, adopting an in-the-market competition model, in line with the European Commission's proposal.

To this end, the CNMC proposes the establishment of an independent regulatory body to supervise the liberalisation process and to solve possible conflicts arising, for example, over access to bus stations, or between liberalised services and those operated through concessions. In turn, it is recommended that the current

coverage of the concession network be re-evaluated, guaranteeing those connections not served by the liberalised market whose coverage is considered to be of general interest, and ensuring sufficient funding for those services. On the other hand, to avoid cross-subsidies between concessions and commercial services, it would be necessary to ensure that the remaining concessions are operated following the principles of transparency and accounting separation, and that the contracts are put out to tender. Lastly, in order to promote the competitiveness of smaller operators, the CNMC recommends that platform operators that could enter the market allow access to operation data generated by subcontracted operators and that they refrain from prohibiting them from contracting with other platform operators.

What does the CNMC recommend for routes that will not be liberalised?

For routes that are not liberalised, the study recommends actions on three fronts to ensure adequate competition in tenders, to the benefit of public authorities and users:

- Improve the design of tender requirements, to remove barriers to competition and ensure the efficient management of the concessions. For example, by favouring the division into lots and shortening the duration of contracts, whenever possible, and by rationalising the minimum resources and technical ability and solvency requirements.
- Ensuring adequate management of the concessions by the PAs. In particular, among other things, it is recommended that expired concessions be put out to tender according to a pre-established and properly organised tendering schedule, that expired concessions be considered liberalised two years after their expiry in the absence of a new call for tender, and that the exceptional nature of extensions be reinforced.
- Mitigating inefficiencies associated with the concession system. The CNMC recommends that PAs strengthen the transparency obligations of concession holders to improve network planning and management supervision. PAs should guarantee free and transparent access to concession operation data to allow potential bidders to plan their bids in advance. On the other hand, the CNMC proposes a review of the current institutional framework to ensure a balanced representation of all stakeholders, including user associations and small operators. The CNMC also proposes improvements in the design of contracts, such as introducing contractual formulas that promote quality of service, and of the public transport network, by encouraging private planning initiatives. In order to optimise public spending on transport, the CNMC recommends that PAs strengthen inter-territorial cooperation, approaching the design of the public transport network from a comprehensive and multimodal

perspective. Finally, the CNMC proposes the elimination of the artificial segmentation of related markets (such as discretionary, special or tourist markets), allowing the free provision of services, subject to prior notification of recurrent services to ensure the balance of the remaining concessions.

How has the CNMC carried out this study?

The CNMC carries out studies and research work to promote competition and the proper functioning of markets, in accordance with the provisions of the 2021-26 Strategic Plan and its biennial action plans. The [2021-2022 Action Plan](#) prioritises our activities in sectors that directly affect citizens, especially the most vulnerable.

The studies are carried out following the [methodology for preparing CNMC studies](#), which is available on our website. As part of our research process, we analyse Spanish and third-country regulations, review the academic literature and the research work of other competition and regulatory authorities, and assess the situation of markets in Spain. To gather the necessary information, the CNMC consults with regulators and operators through interviews, requests for information and public consultations.

To draw up this study on intercity bus passenger transport, the CNMC has carried out an intensive analysis of the relevant regulations and academic literature, and performed a comparative study with other countries. It has also analysed the information provided by all participants to the [public consultation carried out between December 2019 and February 2020](#), to which 234 responses were received, as well as the information provided by the MITMA, by the majority of the Autonomous Regions, and by several transport associations and companies, via numerous requests for information