

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Taxi, ride-sourcing and ride-sharing services - Note by Lithuania****4 June 2018**

This document reproduces a written contribution from Lithuania submitted for Item 3 of the 65th meeting of Working Party No 2 on Competition and Regulation on 4 June 2018.
More documents related to this discussion can be found at www.oecd.org/daf/competition/taxis-and-ride-sharing-services.htm

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

JT03431145

Lithuania

It has now been some years that ride-sharing services have been provided in Lithuania. Most popular undertakings in this regard are Uber and Taxify. As a reaction to a changing landscape of passenger transportation services, in the end of 2016 legislative amendments were made (entered into force on 1 January 2017) to the Road Transport Code of the Republic of Lithuania.

1. It was at the end of 2015 when Uber entered into Lithuania, or to be more precise, into its capital city Vilnius.¹ In April 2016 Uber signed a memorandum with the State Tax Inspectorate committing itself to provide information to the aforementioned authority about the earnings of the Uber-drivers operating in Lithuania upon their consent.² Also, the Estonian company “Taxify” offers such services in Lithuania.³ It could be noted that, in January 2018, it was reported in the media about a strike planned to be organized by the drivers (calling to join the strike through a social media platform) urging Taxify and Uber to increase prices for ride-sharing services.⁴ In this regard, the Competition Council provided a comment drawing drivers’ attention to the principle of fair competition and to the fact that encouraging competitors to boycott the provision of particular services may fall under the practices prohibited by competition law.⁵

2. A changing landscape of passenger transportation services raised the need for a reaction of the legislator. After all, as it was said, it was several years ago that companies such as Uber or Taxify entered into Lithuania. In fact, legislative amendments were made on 27 September 2016 to the Road Transport Code of the Republic of Lithuania (hereinafter: the Road Transport Code)⁶ by way of the Law amending Articles 7 and 18 of the Road Transport Code.⁷ According to Article 3(1) of the Law amending Articles 7 and 18 of the Road Transport Code, the aforementioned legal amendment entered into force on 1 January 2017.

3. As regards Article 7 of the Road Transport Code (which provides the definitions of organizing the transportation), it could, first of all, be noted that a carrier is defined in

¹ See <https://www.uber.com/en-LT/newsroom/uber-vilnius-memorandum-with-the-city-of-vilnius/>.

² http://www.vmi.lt/cms/aprasymas/-/asset_publisher/Djwe6gNL5Io9/content/%E2%80%9Euber%E2%80%9C-vmi-yra-pavyzdys-kitoms-europos-saliu-institucijoms (in Lithuanian).

³ See, for example, <https://taxify.eu/en-gb/cities/vilnius/>; <https://taxify.eu/en-gb/cities/kaunas/>.

⁴ <https://www.15min.lt/gazas/naujiena/autorinka/pavezejai-rengiasi-streikui-ragina-taxify-ir-uber-didinti-kainas-220-908036> (in Lithuanian).

⁵ *Ibid.*

⁶ Lietuvos Respublikos kelių transporto kodeksas (The Road Transport Code of the Republic of Lithuania), 19 November 1996, No. I-1628, as lastly amended on 16 November 2017.

⁷ Law amending Articles 7 and 18 of the Road Transport Code of the Republic of Lithuania, 27 September 2016, No. XII-2653.

Article 7(2) of the Road Transport Code as an undertaking, which is registered on the basis of the requirements set by the laws and which has the right to transport passengers and luggage. The 2nd sentence of Article 7(2) of the Road Transport Code says that an undertaking should be understood as it is defined in Article 2 of the Regulation (EC) No. 1071/2009.⁸ The aforementioned Law amending Articles 7 and 18 of the Road Transport Code added part 3 to Article 7. According to Article 7(3) of the Road Transport Code, the organizer of the transportation of passengers is a natural or a legal person, who/which organizes the transportation of passengers or creates technical or organizational conditions for a person providing transportation services and a passenger to agree on the services of the transportation of passengers by cars in exchange for a payment.

4. As regards Article 18 of the Road Transport Code (which stipulates on the transportation of passengers), Article 18(1) was amended. The legal provision now reads:

5. “Passengers are transported by the road transport vehicles for passengers such as buses, trolleybuses, cars, taxi cars. The transportation of the passengers is regulated in the rules issued by the Ministry of Transport and Communications of the Republic of Lithuania (hereinafter: the Ministry of Transport and Communications), i.e. the Rules of Passenger and Luggage Transportation and the Rules on the Transportation of Passengers by Cars in Exchange for a Payment and by Taxi Cars.”

6. In this regard, it is noteworthy that the Rules on the Transportation of Passengers by Cars in Exchange for a Payment and by Taxi Cars were adopted by the Order of the Minister of Transport and Communications as of 30 December 2016,⁹ which amended the Rules on the Transportation of Passengers by Taxi Cars as of 27 January 2012.¹⁰

7. Furthermore, the amendment to the Road Transport Code added two new parts to Article 18, i.e. part 13 and 14.

8. According to Article 18(13) of the Road Transport Code:

“The transportation of passengers by cars in exchange for a payment is a transportation service, which is provided by a carrier by car in exchange for a payment on the basis of a written agreement concluded with a passenger or through the organizer of the transportation of passengers. The agreement on the transportation of passengers by cars in exchange for a payment or, in the case when such an agreement is concluded on the basis of telecommunication services, the data about such an agreement have to be provided according to the order set in the Rules of Passenger and Luggage Transportation and the Rules on the Transportation of Passengers by Cars in Exchange for a Payment and by Taxi

⁸ Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, OJ [2009] L 300/51.

⁹ Order of the Minister of Transport and Communications of the Republic of Lithuania on the amendment of the Order of the Minister of Transport and Communications of the Republic of Lithuania as of 27 January 2012, No. 3-80 “On the confirmation of the rules on the transportation of passengers by taxi cars”, 30 December 2016, No. 3-460(1.5 E).

¹⁰ Order of the Minister of Transport and Communications of the Republic of Lithuania on the confirmation of the rules on the transportation of passengers by taxi cars, 27 January 2012, No. 3-80.

Cars by the carrier, or on their behalf, by the organizer of the transportation of passengers, to the institutions controlling the road transport. In the case when the transportation of passengers in exchange for a payment is agreed upon through the organizer of the transportation of passengers, such organizer guarantees that the passenger will be provided with the service of the transportation of the passengers in exchange for a payment, which complies with the requirements enshrined in the legal acts.”

9. Article 18(14) of the Road Transport Code specifies further requirements for the vehicles and the permissions based on which the service of the transportation of passengers by cars in exchange for a payment may be provided. Basically, a declaration by the carrier has to be submitted about the services to be provided to the municipality of their establishment (in the case of a legal person) or of their registered residence (in the case of a natural person). On the basis of such a declaration, a permission is issued (the permission is considered to be issued either as of the next day after the submission of the declaration or as of the day specified in the declaration, if the latter date is later than the date of the submission of the declaration). The legal provision explains that the permission to provide aforementioned services may be suspended if the Rules on the Transportation of Passengers by Cars in Exchange for a Payment and by Taxi Cars are infringed, the vehicle, included in the permission, does not comply with the requirements and 30 working days are given for the carrier to correct these deficits. The validity of the permission may be annulled if the carrier refuses to make use of the permission, transfers the vehicle, included in the permission, to another person, it turns out that false information was provided for getting a permission, the circumstances, which were the reasons for the suspension of the permission, are not eliminated within the set limit of time.

10. As compared with the transportation of passengers by taxi cars, it could be mentioned that Article 18(12) of the Road Transport Codes says that for such services a permission is needed from the municipalities, in the territories of which the passengers will be transported based on the Order of the Ministry of Transport and Communications. The permissions are issued or refused to be issued within 20 working days. The legal provision explains when the permission may be refused to be issued. It further elaborates on the circumstances when the permission may be suspended or its validity may be annulled.

11. During the preparatory process of this legislative amendment, also the Competition Council expressed its opinion. The Competition Council stressed that an economic activity could be restricted only in the cases when it is necessary and only if such restrictions are proportionate to the aim pursued to be achieved. This was based on the ruling of the Lithuanian Constitutional Court,¹¹ according to which, any restrictions or the prohibition of an economic activity, the freedom of which is enshrined in Article 46(1) of the Constitution of the Republic of Lithuania, have to comply with four conditions: firstly, economic activity can be restricted only by law, secondly, such restrictions are necessary in the democratic society pursuing to protect the rights and freedoms of other persons, the values enshrined in the Constitution of the Republic of Lithuania as well as the constitutionally relevant aims, thirdly, the restrictions do not deny the nature and the essence of the rights and freedoms, and fourthly, the principle of

¹¹ Ruling of the Constitutional Court of the Republic of Lithuania, 31 May 2006, No. 42/03.

constitutional proportionality is complied with.¹² Accordingly, the Competition Council was of the opinion that, bearing in mind the innovative nature of such novel services, the regulation of the provision of ride-sharing services should be regulated, but only to the extent needed for the protection of consumer interests.

12. Finally, it could be noted that, in 2014, the Competition Council found that the decision of the municipality of Vilnius city (hereinafter: Vilnius City Municipality) to participate in the establishment of the public company “Vilnius veža”, providing taxi services, infringed Article 4 of the Law on Competition.¹³ Article 4 of the Law on Competition prescribes the duty of the institutions of public administration to ensure the freedom of fair competition. Specifically, Article 4(1) of the Law on Competition stipulates that the institutions of public administration, when fulfilling the tasks vested in them, related to the regulation of economic activity in the Republic of Lithuania, have to ensure the freedom of fair competition. According to Article 4(2) of the Law on Competition, it is prohibited for the institutions of public administration to adopt legal acts or other decisions, which would grant privileges or discriminate separate undertakings or their groups and due to which differences of competition conditions for competing undertakings appear or may appear in the relevant market, except for cases when it is impossible to avoid such different competition conditions due to the fulfillment of the requirements set by the laws.

13. The investigation of the Competition Council showed that Vilnius City Municipality adopted a number of decisions¹⁴ related to the establishment of the public company “Vilnius veža”, specifically, the participation of the Vilnius City Municipality in the establishment of “Vilnius veža”,¹⁵ and to the economic activity of the aforementioned company, such as financial support to “Vilnius veža”, including the grant of subsidies,¹⁶ support related to the reduction of costs related to the activities of the aforementioned company,¹⁷ the creation of favourable conditions for the activity of “Vilnius veža”, *inter alia*, by promoting the latter undertaking,¹⁸ and the decision to establish a centralized taxi call-service center.¹⁹ Since the latter decision was annulled later on,²⁰ the Competition Council terminated the investigation on this issue.²¹

¹² *Ibid.*, Part II of the legal findings of the Court, para. 2.2.

¹³ Decision of the Competition Council on the compliance of the decisions of the municipality of the city of Vilnius related to the provision of taxi services in the city of Vilnius with the requirements of Article 4 of the Law on Competition of the Republic of Lithuania, 22 October 2014, No. 2S-10/2014.

¹⁴ *Ibid.*, paras 20 et seq.

¹⁵ *Ibid.*, paras 21-30.

¹⁶ *Ibid.*, paras 31-48.

¹⁷ *Ibid.*, paras 49-63.

¹⁸ *Ibid.*, paras 64-76.

¹⁹ *Ibid.*, paras 77-80.

²⁰ *Ibid.*, para. 80.

²¹ *Ibid.*, paras 83, 167-170.

14. The Competition Council, having defined the relevant product/service and geographic market as the market for the provision of services of the transportation of passengers by taxi cars spanning the geographic territory of the municipality of Vilnius city,²² first of all, noted that Vilnius City Municipality did not ensure the freedom of fair competition in the relevant market.²³ Specifically, it was held that the participation of the institution of public administration in the economic activity in the relevant market through their established or controlled undertakings usually is not a tool, which promotes effective competition and which could serve for fulfilling the duty of the institutions of public administration to ensure the freedom of fair competition as it is enshrined in Article 4(1) of the Law on Competition, in particular if the institution of public administration implements such public administration with regard to the established or controlled undertaking and its (potential) competitors.²⁴ The competition authority said that only in the case when there is sufficient reliable data about the fact that some services are essential for the needs and interests of the society and that the provision of such services cannot be guaranteed by the competition of private undertakings or such services are not provided by private undertakings, the institutions of public administration, complying with the requirements set by the laws and other legal acts, should look for the tools for providing such services bearing in mind that the establishment of their companies should be an exceptional rather than a usual activity of the institution of public administration.²⁵ However, it was stressed that, if the institution of public administration simultaneously takes part in an economic activity and implements public administration with regard to the undertaking established or controlled by it and the (potential) competitors of the latter, thereby creating the situation of the conflict of interests of the economic activity and public administration as regards the institution of public administration, in the absence of exceptional circumstances mentioned before such an institution of public administration could be held as infringing the duty to ensure the freedom of fair competition.²⁶ Based on this and in light of the fact that the Vilnius City Municipality, by participating in the establishment of “Vilnius veža” adopted a decision to engage into an economic activity in the relevant market where a number of undertakings providing the aforementioned services were present, the Competition Council held that the Vilnius City Municipality infringed Article 4(1) of the Law on Competition, since it created the conflict of interests in terms of an economic activity and public administration and thereby did not ensure the freedom of fair competition.²⁷

15. Furthermore, referring to Article 4(2) of the Law on Competition, the Competition Council held that the aforementioned decisions of Vilnius City Municipality (such as granting financial support, reducing the costs of the economic activity of “Vilnius veža”, promoting the latter undertaking etc.) created different competition conditions in the relevant market²⁸ in terms of granting privileges to “Vilnius veža” and

²² *Ibid.*, paras 99-114.

²³ *Ibid.*, paras 118-129.

²⁴ *Ibid.*, para. 123.

²⁵ *Ibid.*, para. 124.

²⁶ *Ibid.*, para. 125.

²⁷ *Ibid.*, para. 129.

²⁸ *Ibid.*, paras 130-153.

discriminating other undertakings competing with the latter in the relevant market,²⁹ so that due to these decisions different competition conditions were created for the undertakings in the relevant market, in particular bearing in mind that the economic risk for “Vilnius veža” was significantly reduced,³⁰ and these different competition conditions were not related to the fulfillment of the requirements set by the laws of the Republic of Lithuania³¹.

16. Thus, the Competition Council concluded that the Vilnius City Municipality, by its decision to participate in the establishment of “Vilnius veža” and by a number of other decisions related to it, infringed Article 4 of the Law on Competition.³² It was noted that the Vilnius City Municipality had a discretion to choose the tools of how to eliminate the aforementioned infringement, one of such tools being a decision on the liquidation of the established undertaking.³³ The decision of the Vilnius City Municipality was the liquidation of “Vilnius veža”.

²⁹ *Ibid.*, paras 132-142.

³⁰ *Ibid.*, paras 143-146.

³¹ *Ibid.*, paras 147-153.

³² *Ibid.*, paras 158-160.

³³ *Ibid.*, paras 161-166.