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TAXI SERVICES REGULATION AND COMPETITION

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GERMANY

In Germany taxi services belong to the local public passenger transport sector. The essential features of taxi services are set out in the Carriage of Passengers Act (PbefG), which differentiates between regular and occasional services. Regular services represent a regular transport connection at which passengers can be picked up and set down at predetermined stopping points. For example, the entire local public transportation network provided by the Deutsche Bahn falls under this category. Taxi services, on the other hand, are categorized as occasional services. In Germany taxi services are regarded as an element of general public services.

1. Statistics and economic development

In Germany there are currently 22,882 companies which operate exclusively taxi services, 7,055 companies which offer only car hire services and 5,791 which provide both taxi and car hire services. The number of licensed vehicles totals 79,344.

Generally the economic situation of the taxi and car hire sector has improved over recent years. However, according to a special survey carried out by the Federal Ministry of Transport, Building and Urban Affairs (*BMVBW*) the number of taxi businesses in Germany fell by 10.3 per cent between March 2000 and December 2004. Yet the number of licensed vehicles has remained constant. This can be explained by the simultaneous increase in the number of car hire companies despite the negative development in the taxi sector. Meanwhile the car hire sector has acquired almost a third of the market to the detriment of the taxi sector.

2. Market entry conditions

2.1. Training of drivers

No special vocational training is required for the occupation of taxi driver, either on a self-employed basis or as a salaried employee. The only requirement in Germany is a licence to transport passengers (*Personenbeförderungsschein*). This has to be applied for at the relevant road traffic authority. The applicant must have two years driving experience, be at least 21 years old and ensure that he/she can fulfil the special responsibility of carrying passengers and be physically and mentally capable of performing this role.

A so-called medical and psychological examination (MPU) is conducted to establish this and local knowledge has to be proved in a written examination at the Technical Inspection Agency (*TÜV*). The introduction of GPS has not changed the relevancy of this examination in Germany. This is partly because the taxi business themselves have no interest in doing without this examination and still regard a certain extent of local knowledge as necessary even in GPS times, e.g. if a road is flooded because of a storm or is blocked due to an accident. Secondly, taxi drivers often have a migration background meaning that problems can possibly arise with entering the orthographically correct name of a road. Nonetheless many taxis are equipped with GPS.

The chauffeur of a hire car also requires a licence to transport passengers. In contrast to taxi drivers the chauffeur of a hired car is only obliged to take a local knowledge examination if the population of the area his licence covers exceeds 50,000.

2.2 *Licence to operate taxi or car hire services*

Any self-employed taxi driver or company planning to operate taxi or car hire services also requires a licence from the relevant regulatory agency to pursue his business activity. Both the licence to transport passengers as well as the licence to operate a taxi or car hire business can be issued for a maximum of five years.

Licences to operate a taxi are often subject to quota: however, there is no overall limit to the number of taxi licences issued. Some towns generally reject such limits on the number of taxi licences. Conditions for the first issue of a licence are, apart from the applicant's personal reliability, the financial standing of the company and the professional aptitude of the entrepreneur. The licence is only valid for the area covered by the local licensing authority.

In the areas in which the number of licences issued is subject to a quota, the taxi businesses are mostly guaranteed solid profits. Newcomers, however, have to wait years on the waiting list of the competent authority for a licence to be issued. According to the Carriage of Passengers Act it is possible to have a licence transferred (free of charge) from one to another business if the whole company is transferred at the same time. Although it is legal to transfer a licence from one entrepreneur to another free of charge, in practice a licence is acquired by means of payment (so-called licence trading). Ultimately, and against the intent of the legislator, licences are thus becoming marketable and objects of trading. The market price for such a licence varies widely and depends primarily on the condition and size of the vehicle fleet to be transferred. In recent years there has been a sharp fall in the prices for licences. Whereas in the 80s licences in conurbations were traded at a price of up to 30,000 DM (approx. 15,000 €), today prices of only 5,000-7,000 € are reached in the same areas.¹

There is no trade in licences in areas where the issue of licences is unlimited. There is no limit to the number of licences issued for hire cars so that here again licence trading does not play a role.

3. *Regulatory oversight*

The specific form, for example, of the tariff obligations and administrative oversight lies with the *Länder* and the municipalities. There is no superior federal authority for this. The regulatory authorities responsible for the taxi sector are usually the local authorities. Neither taxi drivers nor consumers are directly represented in the regulatory authorities. The regulatory agency also lays down the area in which the obligation to carry passengers and tariff obligations apply.

3.1 *Obligation to carry passengers*

The obligation to carry passengers is an obligation to contract. Taxi drivers are obliged to enter into an agreement with anyone if the current conditions for transporting passengers are observed. The taxi driver may, however, refuse to transport a passenger if occupational safety is endangered. Reasons for this can be if the passenger is heavily intoxicated, is likely to soil the taxi, is armed or demonstrates aggressive behaviour.

¹ The price here only covers the value of the licence to transferred, exclusive of the vehicle fleet.

3.2 *Tariff obligations*

Taxi drivers are obliged to provide services in accordance with predetermined rates (taxi rate system). This represents an administrative pricing in contrast with autonomous pricing. In total there are over 800 taxi rates in Germany. As a general rule each town in Germany has its own taxi rate system. The taxi rate is made up of a basic charge, the kilometre charge, which may vary after a specific number of kilometres travelled, and a price for waiting times.²

Apart from these regular rates there is also the possibility to charge so-called service rates for certain special services such as additional charges for night, Sunday and holiday services, and services in the surrounding area for more than four people, call-out charges, luggage rates, etc. Fixed rates are sometimes set for certain routes.³

The transportation fees are proposed by the taxi company registered in the area in which it is obliged to carry passengers. The licensing agency examines the transportation costs proposed by the company for their economic adequacy and political compatibility (whether they are consistent with public transport interests and in the public interest). The actual costs of services performed are only partly reflected in the approved transportation charges.

Each taxi driver is obliged to choose the shortest or most favourably priced route without being asked, if the customer does not specify the route. A so-called taximeter is installed in each taxi to check that the pre-determined tariffs are observed. This is an electronic device for recording fares on the basis of taxi tariffs. In Germany taximeters are checked once a year by the Office of Weights and Measures. Nowadays a so-called "seat contact system" is used to prevent the possible manipulation of the taximeter. Today many taxis are fitted with in-built seat contacts, which either automatically activate the taximeter or start to separately record the taxi fare once the contact is engaged.

The driver is neither obliged to carry passengers nor to comply with tariff obligations outside the area in which he is obliged to carry passengers. A taxi driver licensed in Munich is, for example, not obliged to drive a passenger to Hamburg. However, if he declares his willingness to do so, the tariff for this journey is negotiable on leaving the area covered by his licence. On the other hand, taxi drivers are not allowed to accept a passenger outside their licence area. This means that the taxi driver from Munich has to drive back from Hamburg with an empty taxi.

3.3 *Hired cars*

Hired cars are subject neither to the obligation to carry passengers nor tariff obligations. Legal measures are in place to counterbalance the competitive advantage gained from this, in comparison to taxi drivers, in that car hire companies can only execute orders which are received at the company's registered office. After completion of the hire contract the hired car has to return to the registered office unless the vehicle has not received a follow-up order from the office during the journey by radio or mobile phone. Taxis can wait in stand-by at officially authorized taxi ranks and pick up passengers en route. Moreover, signs and symbols reserved for taxis may not be used by hire cars. This also applies to lanes reserved for taxis in some towns.

² For example, the basic charge in Munich is 2.70€ and the kilometer charge for 0-5 km 1.60 €, from 5-10 kms 1.40 € and from 10 kms 1.25 €. The price for waiting time is 22.50 € per hour.

³ For example, in Munich's taxi rate system the fare for the route from Munich Airport to the new trade exhibition halls (Neue Messe) in Munich, incl. any surcharges, is set at a fixed rate of 51 €.

4. Quality regulations

In order to obtain a licence as a taxi in Germany a vehicle has to fulfil certain technical requirements. As a result many automobile manufacturers in Germany sell their vehicles as a so-called taxi package. This includes, e.g. the obligatory emergency alarm system, preliminary setup for radio and taximeter, special aerials, rear child seat attachment points, preliminary fixture for roof sign, residual heating system (keeps the taxi warm while the engine is switched off until the cooling water becomes cold), reinforced components such as battery, brakes, door hinges, seats. Absolutely mandatory, however, are only a minimum of two axles and four wheels, two doors on the passenger side, the so-called Taxi sign, a taximeter, an alarm system, radio warning system, a city map, papers (inter alia a driver's permit with photo and name of the driver) and receipts.

Due to the relatively low technical basic requirements there is a broad range in Germany as regards service quality. Against general acceptance the passenger in Germany is free in his choice of taxi. He is by no means obliged to get into the first taxi at the taxi rank but has free choice.

Nationwide quality offensives have been started to promote friendliness, customer care and competent know-how in the taxi business. In Germany this has led to the training of various kinds of quality taxi models such as *Service Taxi* in Bremen and *Premium Taxi* in Frankfurt. The main features of these taxi services are the specially coached drivers, who are particularly polite and obliging and e.g. offer to accompany their passengers to the house door or can provide information on sights of interest in their licence area. The vehicles used as *Quality Taxis* are in a particularly good condition, both the interior and exterior, and have special technical fittings such as air conditioning. Meanwhile there are taxis in Berlin offering an internet connection, so-called *Hitec taxis*.

The regular working time of a driver, including "stand-by", is 8 hours. This can possibly be extended by collective agreement. However, a driver may not work longer than 12 hours in total, including breaks and stand-by. The average length of a shift should normally be only 8 hours. A tachograph is not used by taxi and hired car drivers.

5. Taxi cooperatives

In Germany taxi drivers are not obliged to join a taxi cooperative (colloquially often referred to as taxi central office). However, most self-employed taxi drivers and independent taxi companies are members of a cooperative. Of the just under 80,000 taxis registered in Germany, about 80 per cent are members of one of the 500 taxi cooperatives.

The cooperatives' main activity is the distribution of taxi orders among their members. Some larger cooperatives also offer garage services, provide advertising material and offer further additional services.

The cost of membership in a cooperative is about 2,000 – 3,000 € per vehicle. In the case of several registered vehicles costs may vary. In addition to this a monthly user fee is to be paid. This fee differs depending on the individual cooperatives' provisions, e.g. regarding the number of vehicles or taxi orders procured.

6. Reforms and selected cases from case-law

6.1 Reforms

Plans to de-regulate the taxi sector existed in 1992 and 2004. However, these met with strong opposition from the taxi sector which particularly fears competition from the strong car hire market. As regards de-regulation it is worth mentioning the field test carried out by the *Land* of Baden-Württemberg

which abandoned the legal provision that its 4,400 taxis should be coloured “light ivory” because, according to surveys, customers increasingly identified taxis by their sign, not by the colour of the car.

6.2 *Selected cases from case-law*

The taxi sector cases which are relevant in terms of competition law mainly concern the relationship between taxi cooperatives and taxi companies. In many cases taxi cooperatives dominate the market in their field of activity so that the relevant cases were almost exclusively about the abuse of a dominant position which the taxi companies followed up in private lawsuits. This is the reason why no Bundeskartellamt decision-making practice exists in this respect. There are, however, a large number of decisions which have been taken by the Federal Court of Justice and the relevant Higher Regional Courts. In all proceedings before the Federal Court of Justice and the Higher Regional Courts the Bundeskartellamt can act as *amicus curiae*.

Most cases are about the content of the cooperatives’ statutes. For example, several decisions dealt with the question of whether the prohibition of membership in more than one cooperative (dual membership) represents a restriction of competition, and whether this restriction could possibly be justified because it was “inherent in cooperatives”. The Federal Court of Justice acknowledges this inherence if the provision is required to safeguard the objective or effectiveness of a cooperative. The prohibition of dual membership was not considered to be inherent in cooperatives as membership in another cooperative would not necessarily violate the cooperative duty of loyalty and the obligation to safeguard the common interests. According to the Federal Court of Justice the mere possibility of future behaviour in breach of this duty neither harmed a cooperative’s interests nor affected its effectiveness.

In another case a taxi company wanted to use the call boxes of a taxi cooperative without becoming a member of the cooperative. The cooperative claimed, however, that all taxi operators wishing to use the cooperative’s facilities generally had to become members. The Federal Court of Justice did not consider this to be abusive conduct. According to the court, the fact that the dominant cooperative made the use of call boxes subject to membership did not constitute unfair hindrance under Section 20 (1) of the ARC as the operator concerned was granted non-discriminatory access to taxi orders. His objective to operate from outside the cooperative, but to be integrated into the procurement system via the call boxes would only be worth protecting if membership were linked to unreasonable conditions. However, this was not the case.

There are a number of decisions which have dealt with the level of fees for admission to a taxi cooperative. In a decision by the Düsseldorf Higher Regional Court, the amount of 7,500 DM was not seen to be in violation of Section 20 (1) ARC as this fee in fact covered the cost-intensive provision of services. An admission fee amounting to 12,000 DM, however, was held to be abusive because a taxi company might want to leave the cooperative after a very short period of time. Admission fees are currently at a level of between 2,000 and 3,000 €.

The bases for calculating the monthly user fees have often been the subject of court decisions as well. Under these decisions the calculation bases to be used must allow conclusions on the intensity of use. The number of drivers in a taxi company was considered to be an irrelevant calculation basis. An admissible basis for calculating user fees are the actual cases of use, and also the number of vehicles.

In view of increasing competition from the car hire sector some taxi cooperatives have required their members to submit a written declaration assuring that, apart from their taxi company, they neither operate their own car hire company nor participate in one. This was because the taxi cooperatives feared that those companies which operated both taxi and car hire services might use the procurement services provided by the cooperative’s central office for the benefit of their car hire operations. The courts, however, considered the declaration of commitment requested by the cooperative to be an inadmissible non-compete obligation.

