



RECOMMENDATIONS
FOR THE **REGULATION**
OF **SHARED**
TRANSPORT FROM
A **COMPETITION**
PERSPECTIVE

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RECOMMENDATIONS FOR THE REGULATION OF SHARED TRANSPORT FROM A COMPETITION PERSPECTIVE

The phenomenon of shared mobility, in its different forms (moped sharing, bike sharing, scooter sharing, etc.) is bringing about major changes in mobility and the management of urban space in cities. Promoting the use of shared transport, with the aim of reducing the use of private vehicles, can help to decongest our cities and improve their habitability, but at the same time it forces us to rethink the public transport system, to set up infrastructures to facilitate its use and to manage the use and planning of public space. This management is complex and often not without criticism and risks. As in many other activities arising from the so-called 'digital economy', the regulatory challenges arising from this new type of activity or service are approached from divergent positions of the different actors involved (administrations, operators and citizens in general, not only the potential users of these services), which must necessarily converge in order to better satisfy the general interest.

The potential benefits for the general interest of the different modes of shared mobility are clear. On the one hand, most of them are electric vehicles that help to achieve a more sustainable mobility - reducing environmental and noise pollution - to the extent that they reduce the use of private vehicles, mostly combustion vehicles which are, therefore, more polluting and noisier. On the other hand, it favours the right to mobility of those people who do not have a private vehicle¹. Lastly, well-managed shared mobility vehicles should improve efficiency in the use of the public domain compared to private vehicles.

¹ - In this vein, the study carried out by the RACC on the use of shared vehicles in Barcelona pointed out that 73% of users of shared services did not have their own vehicle, mainly due to economic reasons (acquisition and maintenance costs) and low usage. See [press release published on the occasion of the presentation of the study "Use of shared vehicles in Barcelona"](#) (June 2019).

However, the introduction of this new type of transport, which has been favoured by the development and generalisation of technology, has been disruptive and abrupt. Thus, in some cities there have been cases that have contributed to the over-crowding of public space. In addition, the lack of custom and regulation in the use of certain vehicles - shared or not - for

example, electric scooters, has led to some safety problems for users and pedestrians. Finally, the success of this type of mobility has led to the need for city councils to deploy dedicated infrastructures and design mechanisms for modal interchange between public transport and all shared mobility systems².

2 - See, for example, the technical report justifying the granting of licences for the special common use of public space for mopeds, motorcycles and shared mechanical and/or electric bicycles, dated February 2019, drawn up by Barcelona City Council.

Local administrations must face the challenges posed by this new mobility (especially those related to the use and occupancy of public space)³ through the various tools, especially regulatory tools, available to them. Until now, in the absence of state or regional

3 - Additionally, as we have pointed out, local administrations, especially in large urban environments, will have to face the challenges derived from the need to develop dedicated infrastructures and design mechanisms for modal interchange between public transport and shared mobility systems.

legislation on the activity, those local authorities that have opted to facilitate the use of vehicle sharing in their municipalities have done so through the regulation of the public space, by means of the granting of licenses (via contests or lottery in cases where the number of licenses or operators is limited or via award to all operators) based on the fulfilment of certain requirements or conditions. By means of this method, an attempt is being made to regulate the provision of the activity or service at the municipal level, finding very different solutions even among those municipalities that have opted to promote this new form of mobility. Special mention should be made of those other municipalities that, although they have the ideal characteristics to carry out this type of activity, have chosen not to carry it out.

Beyond some local experiences, with better or worse results in terms of competition, the promotion of this type of mobility is an obligation for local administrations, which they must address through the different instruments available to them (e.g. regulation). The recently approved Law 7/2021, of 20 May, on climate change and energy transition, is very clear when, in its article 14, it establishes the obligation for municipalities with more than 50,000 inhabitants⁴

and island territories, to adopt before 2023 sustainable urban mobility plans that introduce mitigation measures to reduce emissions from mobility *including, at least: (...) (f) measures to promote shared electric mobility*". A clear positive obligation is

4 - This obligation would also affect municipalities with more than 20,000 inhabitants that exceed the limit values for pollutants.

therefore imposed on municipalities of a certain size and above to encourage the development of this type of mobility. It will also be necessary to keep an eye on the future law on sustainable mobility and transport financing, announced by the Ministry of Transport, Mobility and Urban Agenda, in case it contains any new regulatory developments in this regard.

However, without going into how new legislation may affect to a greater or lesser extent the development of different forms of shared mobility, local councils already have legal tools to regulate or intervene administratively in these activities in their respective areas. Regulation should be based on internationally accepted basic principles to establish an efficient and pro-competitive regulation: **(i) principle of necessity and proportionality (justification of the restriction); (ii) principle of minimum distortion (justification of the instruments used); (iii) principle of effectiveness; (iv) principle of transparency; and (v) principle of predictability**⁵.

5- The OECD has put together and made public a toolkit for competition assessment consisting of 3 volumes (Principles, Guidance and Operations Manual): <https://www.oecd.org/competition/assessment-toolkit.htm>. In addition, the various competition authorities have for some time now been drawing up their respective guides on the subject; this is the case for the Methodology for assessing the competitive impact of standards, of the Catalan Competition Authority (ACCO), or the Recommendations to the public administrations for a regulation of more efficient and pro-competitive markets, drawn up by the then National Competition Commission (now the National Commission on Markets and Competition, CNMC).

It is from this perspective that a series of recommendations are offered below regarding the regulation of shared mobility services. The aim is to offer guidelines, in accordance with the principles of competition, to help local administrations when facing the challenges (or part of them) of a regulatory nature linked to this activity, especially those derived from the use and management of public space. This is a set of basic and general recommendations addressed to local administrations for the establishment of a pro-competitive regulation of shared mobility services, applicable in any of its forms (moped sharing, bike sharing or scooter sharing).

(i)**PROMOTE PUBLIC-PRIVATE COLLABORATION IN THE USE OF TECHNOLOGY AND DATA FOR BETTER MANAGEMENT OF PUBLIC SPACE.**

Beyond the classic mechanisms of regulation, we should explore the possibility of making use of the facilities offered by technology and the use of data in the 21st century and, in this sense, design smart or adaptive regulations that are more efficient. This is a new market which, due to its characteristics, should allow us to explore new mechanisms for controlling the activity.

The truth is that technology should allow, on the one hand, better compliance with the rules of use by users through the platforms providing shared mobility services. For example, operators could collaborate with the administration by validating the suitability of users for the use of certain vehicles or by providing data to the administration for the application of the sanctioning regime when appropriate.

In addition, the local administration could virtually determine the parking areas for shared mobility vehicles so that the different operators could introduce them in their applications and oblige users to comply with parking in the established areas. These areas could become dynamic depending on the needs of the administration at any given time (for example, due to there being differences in the use of public space between holidays and working days). Likewise, the use of occupancy data in these areas should also allow the administration to better resize the need and volume of parking areas for these vehicles and to make the corresponding investments.

In turn, it would also seem reasonable that municipalities could use technology and data to regulate, for example, the activity of an operator based on the efficiency of its vehicles' use of public space. If we assume that an operator is efficient when it minimises the time that its vehicles are idle and occupying public space without anyone using them, through adaptive regulation, efficiency thresholds could be established above which an operator could expand its vehicle fleet (i.e. increase the number of licences). Similarly, minimum efficiency thresholds could be set below which an operator could be forced to reduce its vehicle fleet (i.e. lose licences). Such a flexible mechanism would allow for an organic and competitive growth of the market while ensuring good management of public space. In other words, it would allow for the activity to

grow provided that the use and management of public space is efficient. In addition, the level of efficiency of the operators should also be an indicator for public administrations when assessing the degree of acceptance of the service by users and, for example, deciding on the need to extend parking areas.

A strategy similar to this one, based on allowing the entry and growth of operators based on their efficiency, should make many administrations rethink the need to establish a *numerus clausus* of operators or licenses in the sense that this measure may not always be necessary.

On the other hand, we must bear in mind that these types of operators base their business model on network effects. In other words, an operator's service will be better for its users depending on how many vehicles they have at their disposal. It is therefore clear that the existence of many operators with few possibilities of growth (due to the limitation of public space) may be a factor that limits network effects and, therefore, could limit the business model of these operators. The user who would like to fully enjoy the network effects should install all the operators' applications on his mobile device and, for a given journey, compare all the applications to find out which operator offers the closest vehicle, at the best price and of the highest quality. This is a task that is not always easy and quick to accomplish.

Therefore, it would be desirable, on the one hand, for the public administration to act in order to increase the public space suitable for the use of shared transport. And on the other hand, it would be desirable to have a platform (or several platforms) for aggregating the offer and making it easier for the end user to compare different offers and choose the one that seems most appropriate. Such a platform would make it possible to "socialise" or "share" the network effects among the operators subscribed to the platform and improve the service to its users.

These types of aggregators already exist in other markets. Examples of this include search engines for insurance offers or real estate offer aggregator platforms. However, there are risks for competition if these possible platforms homogenise the offer and facilitate the establishment of agreements between operators that are contrary to Law 15/2007, of 3 July, on the defence of competition. If this were to happen, the competition authorities should intervene.

Today, there are already several aggregators on the market in the field of transport in our cities, for example: Freenow, Wondo, RACC Trips, Urbi, Chipi, CityMapper, Free2Move, Smou or Madrid Mobility 360.

Regarding **Smou**⁶, the application, promoted by the Barcelona City Council, provides

6 - <https://www.smou.cat/>

users with information and mobility services to make it easier to get around. This application manages various municipal initiative services (Bicing, ApparkB, Agil-park and EndollaBarcelona), but also provides information on various modes of transport in the city, such as operators authorised in the city to provide shared mobility services (bike sharing and moped sharing).

Madrid Mobility 360⁷, a sustainable mobility planner designed by the Municipal

7 - <https://www.mobility360.app/index.html>

Transport Company of the Madrid City Council, offers different services: from information on the occupancy of urban buses and payment of tickets on this means of transport, to a route planner that also includes private shared mobility operators without a fixed base, as well as the management of the BiciMAD and BiciMAD Go services.

We would like to simply point out here (as we will go into more detail on this aspect later) that this public-private collaboration in the use of technology and data should also favour a global and intermodal management of transport in the city⁸.

8 - As detailed below, this intermodal management should incorporate all modes of shared transport, its integration with public transport and, of course, also the management of private vehicles.

Ultimately, the creation of a data space where the administration and operators can share data in an orderly, standardised and protocolised way should facilitate a more efficient management of public space, a better coordination of the administration with the operators and, ultimately, a better service for the citizen. The creation of common data spaces is part of the *Data Strategy*⁹ of the European Commission, which has recently published a proposal for a regulation on data governance¹⁰. There are also private or public-private

9 - <https://digital-strategy.ec.europa.eu/en/policies/strategy-data>

10 - <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52020PC0767&from=EN>

initiatives¹¹ such as the International Data Spaces Association or the Open Mobility Foundation with the aim of standardising data sharing mechanisms and standardising data architecture and integration models between public and private environments¹².

11 - <https://internationaldataspaces.org/>
<https://www.openmobilityfoundation.org/about-mds/>
<https://tomp-wg.org/>

12 - <https://www.autonomy.paris/en/long-reads/a-new-data-driven-mobility-future-for-cities-ways-to-get-there/>

(ii)

ASSESS ALTERNATIVES TO LIMITING OPERATORS AND/OR LICENSES BASED ON A GOOD ANALYSIS OF NEED AND PROPORTIONALITY. POSSIBILITY TO SET UP REGULATORY SANDBOXES

Despite the opportunities offered by technology to regulate this activity, most local administrations that have opted for the development of shared mobility services in their municipalities have opted for a model based on limiting the number of operators and/or licenses to be granted. In this sense, the legal basis or legal title generally used by the city councils when facing this new activity has been the one related to the management of the public space.

However, it would be worth considering the existence of other legal titles that could be the basis for the regulatory intervention of municipalities in the field of shared mobility. Nevertheless, it is not for us, as competition authority, to make a decision on this matter. In any case, the recommendations made in this document are compiled in a sufficiently general manner to be fully applicable whatever the legal basis used for the regulation of the activity.

The limitation of the available public space and its intensive use is one of the reasons that has traditionally justified the limitation of available authorisations (understood in a broad sense as a regime of administrative intervention) and even the number of operators. The absence of regulation in some cities (not necessarily in all) can lead to a situation of over-crowding of the available public space, as this is an activity in which (relatively) low entry costs are combined with the need for operators to maximise the efficiencies introduced by network effects.

To avoid these potential problems, many city councils have been tempted to develop regulations limiting the number of operators and/or the number of vehicles or licences per operator in order to guarantee a certain occupancy and management of public space. However, this limitation has not operated in a totally homogeneous way between administrations and, in a context such as the European one, we can find different approaches¹³.

13 - For a general overview of the situation in Europe, see the *European Shared Mobility Index*, for July 2021, prepared by Flutcuo.

When analysing the scooter sharing service in particular, we see that in Paris, for example, after a period in which a large number of companies (between 12-15 according to various reports) operated freely in the city, the City Council chose to regulate the activity by limiting the number of operators authorised to provide services. In this sense, a maximum total number of vehicles was established (15,000) and the number of operators to be selected by the City Council was set at 3, with 5,000 vehicles each.

Rome, while limiting the number of operators (7) currently providing the service, opted for a more flexible model that allows operators to adapt the number of vehicles to the growth of their activity. Initially they are assigned between 750 and 1000 authorised devices, but they can request a larger number as long as certain requirements are met (up to 1,500 per request), until the maximum quota established in total established devices is fulfilled (16,000).

In Spain, cities such as Madrid, Malaga, Seville and Zaragoza have also authorised the provision of these services. Seville and Zaragoza have opted to limit the number of operators, and a maximum number of licences to be granted (either a total quota of licences and/or per operator) has been established¹⁴. Madrid authorised a total of 18 operators (they were not limited in number), who were allocated a total of 8,610 licences by tender¹⁵. Malaga also does not limit the number of authorised operators, but it has established a maximum of 300 licences per operator.

14 - Both *Sevilla* and *Saragossa* limited the number of authorised shared scooter operators to 2. In the case of *Seville*, it has 1,000 licences per operator; *Zaragoza*, 850.

15 - In *Madrid* a maximum quota of 10,000 licences was set, distributed by district and neighbourhood.

These are situations in which, although operators and/or vehicles are limited in number, the activity is allowed, unlike what happens in Barcelona, where bike sharing and moped sharing are allowed, but not, for the time being, scooter sharing.

Regarding bike sharing and moped sharing, Barcelona City Council chose to limit the number of licenses available, but not the number of operators. If we go into the details of the procedure followed to allocate the licenses, the total number of licenses was divided among the operators. Since quite a few operators participated in the procedure (for moped sharing, for example, a total of 21 operators were provisionally awarded), the number of licenses allocated to each one was relatively low¹⁶.

16 - Currently, 10 motorbike sharing companies operate in Barcelona, with 633 licences each (except one, with 348) and 5 bike sharing companies, with between 470 and 741 licences, that is, a total of 6,040 motorbike sharing licences and 2,850 bike sharing licences, to which should be added those of the Bicing public service.

Going back to the city of Paris, to date, no specific regulations have been adopted applicable to bike sharing and moped sharing operators which, consequently, are not limited in number, although codes of good practices to be carried out by such operators have been signed in the past¹⁷. However, with regard to the specific activity of bike sharing, the City Council of Paris has recently approved a new regulation, which makes it subject to obtaining a title for the occupancy of the public domain, for a period of one year, but without any limitation on the number of operators or the number of vehicles available per operator.

17 - See: <https://www.paris.fr/pages/velos-en-libre-service-pour-un-partage-de-l-espace-public-harmonieux-5286#les-scooters-en-free-floating>.

Other cities that have moped sharing services operated by private companies are, for example, Madrid and Valencia, with several operators each, but without the respective city councils deciding, at least for now, to intervene and regulate the activity.

From a competition point of view, limiting the exercise of activity in a market by means of a limited number of operators and/or licences should be the last resort as it is the most restrictive and detrimental to the consumer (higher prices and lower quality and innovation). In this sense, in order to manage the problem of the occupancy of the public space there are, a priori, less restrictive alternatives to economic activity, such as:

- Increasing parking areas for these vehicles.
- Penalising users of shared vehicles for not making good use of public space.
- Designing an activity or public space use fee like the one already applied in some cases.
- Prioritising efficiency in the use of public space by operators (in this regard, see the recommendation above).

The key idea is that such a limitation, often applied by default as a general solution adaptable to all cases (despite the fact that the municipal reality is very diverse), is not always fully justified in terms of pro-competitive economic regulation, because it does not respect the principles of necessity and proportionality. In this regard, as competition authorities, we reiterate the importance of a good analysis, in terms of competition, of the existing alternatives. The aim must be none other than to implement measures to correct negative externalities, while guaranteeing as far as possible economic activity and competition in the market.

In short, it is essential that local authorities carry out a rigorous analysis of the necessity and proportionality of measures in order to first consider the least restrictive measures on economic activity, such as those mentioned above¹⁸. These measures would allow all operators to compete on a level playing field. This analysis must take into account the impact on the occupancy of the public space and also the impact that the shared transport activity may have on the use of the owned vehicle (if there is a transfer from one group of users to another) and the potential freeing up of public space in this case. In addition, this analysis should be carried out periodically in order to establish the optimum level of proportionality at any given time.

¹⁸ - For example, increasing parking areas for these vehicles, sanctioning vehicles for not making good use of public space or designing a fee that allows the city council to allocate resources to the management of public space.

Finally, a brief mention should be made of the possibility of resorting to the so-called pilot tests, or regulatory sandboxes. This tool could be very useful for local administrations, as it would allow them, prior to the adoption of a definitive regulation, to analyse on the ground the needs for shared

mobility, the real capacity of their public space or the most suitable regulatory mechanisms in their particular context. Therefore, regulatory sandboxes would allow local administrations to design the most suitable public-private collaboration mechanisms (data sharing, etc.). Based on this experience, it is very likely that the regulation finally adopted would gain in efficiency and effectiveness.

However, these pilot tests could be problematic in terms of competition since the operator or operators participating in them are at a clear competitive advantage over the others, so it is vital that they are designed with the aim of minimising such risks. Broadly speaking, controlled regulatory environments, whose final objective should be the adoption of a definitive regulation, must be limited in time, in which the participating operators have been selected on the basis of a public, transparent procedure that respects the principles of concurrency and competition and which, once a definitive regulation of the activity has been adopted, does not entail the granting of privileges to the participants of the regulatory sandbox.

(iii)

MAXIMISE CONCURRENCY IN SITUATIONS WHERE THERE ARE LIMITED OPERATORS

As we have pointed out, before opting for a regulation that limits the number of operators, a good analysis of the potential degree of occupancy of the public domain is necessary to determine when and to what extent the intervention of the administration is necessary.

In any case, if the analysis concludes that a closed system of licenses and operators should be chosen, it is necessary that this system maximises concurrency. In other words, it is necessary that both the selection procedure and the specific conditions to be established have as little impact as possible on the level of competition.

In these cases of limiting operators and/or licenses based on the regulations governing the public domain (the legal basis used by most municipalities that have chosen to regulate shared mobility in their respective municipalities), the allocation of licenses or selection of operators

is carried out through competition (or, in some cases, lottery)¹⁹. From a competition point of view, it is worth noting that the contest is preferable to the lottery because it allows to seize, at least, the benefits of the so-called competition for the market²⁰. Therefore, criteria (objective and transparent) should be established to allow the selection of the most competitive bids.

19 - Article 92 of Law 33/2003, of 3 November, on the Assets of Public Administrations; Article 77 of Royal Decree 1372/1986, of 13 June, approving the Regulations on the Assets of Local Entities.

20 - As in the case of public procurement, in the procedure for selecting operators, competition FOR the market would replace competition IN the market: the various operators interested in being selected would compete against each other (on the basis of different offers in terms of price, quality or other characteristics) in the administrative selection procedure.

Likewise, from a competition perspective, it is essential:

- To limit the period of validity of these licences as much as possible to ensure that such competition for the market takes place on a regular and recurring basis. In this respect, low entry costs should facilitate the establishment of relatively short lead times.
- That licences are not transferable to avoid the creation of monopoly or regulatory rents.
- That obligations are established for operators to facilitate the transition of users from exiting operators to new entrants. For example, by facilitating the portability of user data always after validation of the user and in compliance with data protection regulations (as mentioned in the first recommendation, the creation of a data space can help).

A model to be assessed for the granting of licenses for the sharing activity is that of the assignment of the radio spectrum, although in the latter case we are dealing with concessions for the private use of the public space²¹ instead of a special common use such as sharing.

21 - See, for example, Order ETD/534/2021, of 26 May, which approves the specific administrative clauses and technical specifications for the granting by auction of concessions for the private use of the public radioelectric domain in the 700 MHz band and calls for the corresponding auction.

In any case, the concession for the use of the radio spectrum has similar aspects to the licenses for special common use of the public space used in shared mobility;

that is, the need for the administration to manage the use of a limited public resource by maximising the level of concurrency for the market (during the procedure for the allocation of titles) and competition in the market once the authorisations (concessions or licences, as the case may be) have been granted.

Traditionally, concessions for the exclusive use of the radio spectrum are made through upward auctions in several lots in which the use of the spectrum is awarded to the highest bidder and with limitations in relation to the lots or amount of spectrum assigned to each operator. It is also worth mentioning that such radio spectrum concessions are conditioned to an efficient and effective use of the spectrum.

Beyond legal considerations as to whether the current regulation would allow local authorities to carry out a similar allocation by auction, the fact of allocating shared mobility licences to the operator with the highest bid would mean, due to the characteristics of the market, that this extra cost would have a direct impact on the price of the service. However, an alternative could be to design a similar system with falling prices.

In short, if the local administration chooses to limit the number of licences and operators in the market (an option that must be fully justified on the basis of a rigorous analysis of necessity and proportionality), it is necessary to design a system for awarding licences that maximises competition in each award procedure. In addition, in the event that, as a result of a new licensing or operator selection procedure, operators are replaced, measures should be considered to facilitate the transition of users from exiting operators to new operators.

(iv)

RESPECT THE PRINCIPLE OF COMPETITIVE NEUTRALITY WHEN THE ADMINISTRATION DECIDES TO PARTICIPATE IN THE MARKET THROUGH AN ECONOMIC INITIATIVE

In some cases, some local authorities may choose to act as public operators in the shared mobility market. We can find ourselves in cases in which, where the private offer does not cover it (because it is insufficient or simply non-existent - which is surely a very exceptional case -), the respective city councils consider the option of providing this service or economic activity. Even more so when there is, as we pointed out at the beginning of this document, by virtue of the new law on climate change, a clear obligation for municipalities of a certain size and above to encourage the development of this type of mobility.

In this case, beyond compliance with the requirements established in the local regime legislation, the local public administration must be especially careful with the maintenance of competitive neutrality, since it is an activity or service that is provided in free competition with the private sector (we are not dealing with an essential reserved public service) and, therefore, situations may arise that have the potential to alter the conditions of competition in the market. We are talking, for example, about when a public company establishes a policy of continuous losses, because it has public funding or offers goods and services below cost price, it does not compete on equal terms with private operators who, in extreme cases, may be driven out of the market. In short, the public company must act with the same investment and profitability criteria as market operators. These risks to competition are increased when the administration intervening in the market as a public economic operator also has the capacity to regulate that market as the holder of public powers of organisation and control, as in the case of shared mobility services²².

²² - On the principle of competitive neutrality see: "Competitive Neutrality: Maintaining a Level Playing Field Between Public and Private Business", OECD, (2012), available here:

<https://www.oecd.org/competition/competitive-neutrality-maintaining-a-level-playing-field-between-public-and-private-business.htm>

OECD Guidelines on Corporate Governance of State-Owned Enterprises, (2015), available here:

<https://www.oecd.org/daf/directrices-de-la-ocde-sobre-el-gobierno-corporativo-de-las-empresas-publicas-edicion-2015-9789264258167-es.htm> and "Recommendation of the Council on Competitive Neutrality", OECD, (2021), available here: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0462>

Therefore, in addition to analysing the competitive impact of their intervention in the market (analysis to be carried out in all cases in which local authorities decide to provide new public

services or exercise the right of public initiative in economic activity), local authorities must²³, in their role as regulators of the activity, ensure that the legal framework they establish guarantees a level playing field and fair competition in the market in which the public operator carries out its activity. In other words, the position of public operators should not be privileged in such a way that they obtain competitive advantages that are not available to other operators and use them to attract or maintain customers.

²³ - On the market impact of the economic initiative of local authorities, see Colomé Nin, A. and Grau Arnau, S. (2018). *La (re)municipalización y demás decisiones de las administraciones locales sobre servicios*. *Anuario de la Competencia 2017*, 49-83.

This problem was briefly highlighted by the ACCO in relation to the service of Bicing in the city of Barcelona²⁴:

²⁴ - *Regulatory Report No. 37/2018 on the municipal regulation of the services of bike sharing and motorbike sharing of the Barcelona City Council, issued by the Catalan Competition Authority (ACCO) dated March 27, 2019 (p. 11 and 12).*

"Finally, to conclude these general considerations, it is necessary to highlight the risks that, in the ACCO's opinion, derive from this regulatory action for the maintenance of competitive neutrality. With the approval of the new regulation, the City Council becomes the regulator of a sector in which it is, at the same time, an economic operator, through the Bicing service, a situation in which it is necessary to be especially careful: the new bicycle sharing service operators, regulated by the regulation approved by the City Council, are in direct competition with the Bicing service offered by the City Council. (...)

Without going into detail in the analysis of the functioning of the Bicing service offered by the Barcelona City Council, as it is not the object of this document, doubts arise about the compatibility with the aforementioned principle of competitive neutrality regarding the municipal financing of the Bicing service (which can make a service sustainable that perhaps is not) or the impact of it on some aspects of the municipal regulation of sharing activities. To give some examples, to determine the number of licenses for bike sharing, the number of existing Bicing vehicles is taken into account; on the other hand, this activity involves an occupancy of public space, which is forbidden to the private initiative of sharing services and that, at the same time, conditions the number of available licenses".

(v)

LIMIT THE REQUIREMENTS FOR THE EXERCISE OF THE ACTIVITY TO THOSE RELATED TO SAFETY AND THE USE OF PUBLIC SPACE

Likewise, a brief mention should be made of one of the aspects that also concerns the local administration when it comes to regulating these services, that is, the safety problems that this type of activity can cause, both for users who may not be used to using this type of vehicle and for the citizens with whom they coexist in the public space.

In any case, from the point of view of competition, it is not considered justified to establish additional requirements or conditions for this type of activities to those already established, in general, in traffic regulations (municipal by-laws, for example, on pedestrian and vehicle traffic) for the same type of vehicles, but private.

Thus, for example, parking rules should be the same for the same type of vehicle, regardless of whether it is for shared use and subject to economic or private exploitation. Likewise, for vehicles with similar characteristics, in terms of traffic rules, such as bicycles and electric scooters, differential treatment does not seem justified. It would therefore be necessary to standardise both the rules and, if they exist, the parking areas for equivalent vehicles.

Linked to this safety perspective is the requirement, provided for in some regulations, to have civil liability insurance. On occasions, both the legislation and the municipal by-laws on traffic or use of public space (depending on the type of vehicle in question) already provide for the obligation to have insurance of this type for any vehicle in transit, so the need for additional insurance should be reconsidered when the risk to be covered is the same as for private vehicles of the same type. In any case, care should be taken to ensure that the amounts established, in the event that specific and/or additional liability insurance is considered duly justified, are not disproportionate.

(vi)**REGULATE FROM AN INTERMODAL TRANSPORT PERSPECTIVE THAT TAKES INTO ACCOUNT ALL MODES OF SHARED TRANSPORT, INTEGRATION WITH PUBLIC TRANSPORT AND INTER-ADMINISTRATIVE COOPERATION**

Lastly, the different modes of shared mobility vehicles should be seen as complementary to each other, since they can be used by the majority of users indistinctly and can be offered by the same operators. Therefore, from a competition point of view, there are no reasonable grounds to justify allowing the development of some of these modes in some cases, as is the case of bike sharing and moped sharing, and preventing the development of other activities with practically identical characteristics, as is the case of shared electric scooters, which are subject to practically the same use and traffic regulations as bicycles. For this reason, it is advisable to regulate transport in cities from an intermodal perspective that considers shared mobility vehicles in their entirety and, as far as possible, their integration with the public transport network. In this sense, experiences such as the one initiated in 2016 between Ferrocarrils de la Generalitat de Catalunya and eCooltra²⁵ or the one announced more recently by Trenitalia with Helbiz, Bird and Cooltra²⁶ to integrate pricing or offer last-mile discounts could serve as an example. Obviously, from a competition perspective, these initiatives should not be exclusive to some operators, discriminating against others who would like to establish similar collaborations.

²⁵ - <https://www.consumocolaborativo.com/2016/09/06/fgc-y-cooltra-promueven-la-moto-electrica-compartida-en-barcelona/>

²⁶ - https://www.trenitalia.com/it/offerte_e_servizi/completa-il-tuo-viaggio-con-i-nostri-partner.html

On the other hand, the need to integrate shared mobility services in the same urban continuum should be explored. We are talking about large urban areas, under the responsibility of different local administrations. In these environments it makes sense for the provision of shared mobility services to be as homogeneous as possible so that users can move around the continuous urban area indistinctly. At the same time, clustering different contiguous urban areas should allow operators to exploit economies of scale and efficiencies inherent in network effects. But this will only be possible if there is real inter-administrative cooperation²⁷.

²⁷ - *Along these lines, the Barcelona Metropolitan Area has signed collaboration and delegation agreements with different City Councils in the field of promoting shared mobility, with the aim of establishing a metropolitan-level regulation of this type of activity.*



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