



THE PLENUM OF THE COMPETITION COUNCIL

DECISION

**No. APD – 37
of 27.07.2016**

Chișinău mun.

The Plenum of the Competition Council,
acting on the basis of art. 41 par. (1) let. h) of the Competition Law no. 183 of 11.07.2012, the Parliament's Decision no. 179 of 12.07.2013 regarding the appointment in function of the members of the Plenum of the Competition Council and the Parliament's Decision no. 220 of 27.09.2013 regarding the appointment in function of a member of the Plenum of the Competition Council,

analyzing the investigation report on the case initiated by the Plenum of the Competition Council's Decision no. 9 of 14.11.2013, the comments made by the parties on the investigation report and the materials accumulated during the investigation, as well as after the hearings,

HAS FOUND:

On 07.10.2013 the Competition Council received the complaint „Gârle-Agro” L.L.C. concerning the alleged anti-competitive actions of the Ministry of Transport and Road Infrastructure (hereinafter MTID) regarding the refusal to award „Gârle-Agro” L.L.C. the required races on Chișinău - Costești / Ialoveni route.

The Plenum of the Competition Council, by the Provision no. 9 of 14.11.2013, initiated the investigation regarding the signs of infringement of the provisions of art. 12 par. (1) let. a) of the Competition Law no. 183 of 11.07.2012 by MTID.

I. The parties involved

The Ministry of Transport and Road Infrastructure (MTID) - the specialized organ of the central public administration that establishes the transport policy at national level, elaborates the specific strategy and regulations for the development and harmonization of the transport activities within the general policy of the Government and fulfills the role of state authority in transport domain.

„Gârle-Agro” L.L.C. - IDNO 1004600074673, undertaking operating under License no. A MMII-025700 valid until 06.08.2017 for the road passenger transport activity by regular and occasional services (in national traffic), as well as under the Activity Permits on the Chişinău suburban route (Hânceşti, 86 st.) - Costeşti / Ialoveni no. 0113838, no. 0113839, no. 0113840, no. 0113841, no. 0113842, no. 0113843, no. 0113844, no. 0113845, no. 0113846, no. 0113847, no. 0113848 and no. 0113849 of 23.07.2012, valid until 06.08.2017.

II. The relevant market: relevant product market and relevant geographic market

The relevant product market

According to art. 4 of the Competition Law no. 183 of 11.07.2012, the relevant product market comprises all products considered by consumers as interchangeable or substitutable due to their use, physical, functional and price characteristics.

Thus, art. 4 of the Road Transport Code no. 150 of 17.07.2014, distinguishes the road passenger transport by regular services as a separate category of the road passenger transport, and art. 5 of the Road Transport Code no. 150 of 17.07.2014 establishes that by road passenger transport by regular services is meant - the road passenger transport service against cost, which ensures the transport of persons on the basis of individual travel tickets in accordance with the traffic charts, on determined routes, in which the embarkation/disembarkation of persons transported to / from the vehicle is made at predetermined stopping points.

Consequently, taking into account the above, and of the fact that the action reclaimed by „Gârle-Agro” L.L.C. refers to the road passenger transport against cost by regular services, the relevant product market in the sense of the investigated case is defined as the market for the provision of regular passenger transport services against cost.

The relevant geographic market

According to art. 4 of the Competition Law no. 183 of 11.07.2012, the relevant geographic market is a area where the undertakings are involved in the supply or demand of the relevant product market, where the conditions of competition are sufficiently homogeneous and can be distinguished from the neighboring geographic areas which appreciably differs.

Given that the action reclaimed was the refusal of the MTID to award to service to the „Gârle-Agro” L.L.C. additional racing requested on the Chişinău-Costeşti route, the relevant geographic market is defined as the Chişinău route (Hânceşti, 86 st.) - Costeşti / Ialoveni.

Thus, for the purpose of the investigated case, the relevant geographic market is defined as the market for the provision of regular road passenger

transport services against cost on the Chişinău route (Hânceşti, 86 st.) - Costeşti / Ialoveni.

The period of time submissive to the investigation

Taking into account that, according to the information reported in the complaint, the first request of undertaking „Gârle-Agro” L.L.C. the opening of the additional races on the Chişinău-Costeşti / Ialoveni route was sent to MTID on 29.09.2010, the period of time under examination is considered 29.09.2010 - the current moment.

III. Acts and facts found

In the complaint „Gârle-Agro” L.L.C. parvenu to the Competition Council on 08.10.2013 (entry no. 963), were reclaimed the actions of MTID regarding:

- MTID's refusal to meet the requirements of „Gârle-Agro” L.L.C. regarding the opening of additional races on the Chişinău-Costeşti / Ialoveni route;
- the favoring by MTID of another carrier agent - „Pro Et Contra” L.L.C. in assigning the races on the above-mentioned route.

Thus, „Gârle-Agro” L.L.C. invoked the infringement of the provisions of art. 12 par. (1) let. b) and art. 11 par. (1) of the Competition Law no. 183 of 11.07.2012 by MTID.

During the preliminary examination of the complaint it was found that the infringements provided by art. 11 of the Competition Law no. 183 of 11.07.2012 can not be incriminated MTID, since, according to art. 10 par. (1) of the Competition Law no. 183 of 11.07.2012, a dominant position on one or more relevant markets may be held by an undertaking, a group of undertakings or jointly by two or more undertakings or several groups of undertakings. Thus, taking into account that the MTID is a central public authority and not an undertaking which holds a dominant position, the defendant can not be the subject of the composition of the breach of art. 11 of the Competition Law no. 183 of 11.07.2012.

Therefore, in the investigation initiated by the Plenum of the Competition Council's Disposition no. 9 of 14.11.2013 were examined the signs of infringement of art. 12 par. (1) let. a) by MTID by refusing to assign the requested races of „Gârle-Agro” L.L.C. on 18.03.2013.

Thus, by letter no. 5 of 18.03.2013, „Gârle-Agro” L.L.C. requested from MTID the supplementation of the Chişinău-Costeşti / Ialoveni route, enclosing the package of necessary documents for the opening of new races according to the Regulation of passengers and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006, with the following time schedule:

- from Chişinău - 8:50; 9:40; 10:15; 10:50; 11:15; 11:45; 12:45; 13: 15; 16:00; 16:15; 17:20; 19:45; 20:30; 21:20.
- from Costeşti - 07:10; 7:45; 8:10; 9:15; 9:50; 11:00; 11:45; 12:35; 13:45;

14:30; 16:30; 17:05; 18:40; 19:45.

MTID, by letter no. 02 / 8-591 of 29.03.2013, informed the carrier that, taking into account the analysis carried out by I.P. „ANTA”, presented by letter no. 08 / 3-1-781 of 27.03.2013, as well as the existing routes in the requested direction, according to the provisions of points 17¹, 20 and 35² of the Regulation of passengers and luggage transport, approved by the Government’s Decision no. 854 of 28.07.2006, MTID can not solve the problem.

I.P. „ANTA” analyze was presented to MTID by letter no. 08 / 3-1-781 of 27.03.2013 and provides that during the last three months until the date of submission of the request „Gârle-Agro” L.L.C., there were performed 3 172 races, suspended 14, transported 40 717 passengers, the passenger flow representing about 12.8 passengers at race. At the same time, I.P. „ANTA” mentions that in the direction requested by „Gârle-Agro” L.L.C. there is an increased number of races and the opening of new races **will affect the activity of the carriers wich serve the existing direct and transit races.**

According to I.P. „ANTA” letter, Costești town is served by the following routes:

- Chișinău-Costești, on which activates the carriers „Pro Et Contra” L.L.C. and „Gârle-Agro” L.L.C.
- Chișinău-Hansca, on which activates the carriers „Seralex Auto” L.L.C. and „Pro Et Contra” L.L.C.
- Chișinău-Molești, on which activates the carriers „Verlos Trans” L.L.C., „Zinaida Negru” I.E. and „Rezmerița” L.L.C.

Therefore, from those reported by I.P. „ANTA” shows that the refusal to assign the right to serve the requested races by the carrier „Gârle-Agro” L.L.C. it would be aimed to protect the interests of „Pro Et Contra” L.L.C., which operate both on the direct route Chișinău-Costești and on the Chișinău-Hansca route passing through Costești, but also the interests of „Seralex Auto” L.L.C., „Verlos Trans” L.L.C., „Zinaida Black” I.E. and „Rezmerița” L.L.C., which operate on the Chișinău-Hansca and Chișinău-Molești routes with passage through Costești.

In other news, it is mentioned that, following the analysis of the races schedule requested by „Gârle-Agro” L.L.C. by letter no. 5 of 18.03.2013 and the schedule of the races presented by I.P. „ANTA”, it is noted that eight races requested by „Gârle-Agro” L.L.C. with departure from Chișinău (8:50, 11:15,

¹ Pt. 17 provides that regular routes are organized on the basis of an analysis of the economic and social links between localities, taking into account the frequency of population movements, the correlation with other types of transport and the passenger transport routes in operation. The basis for the organization of regular passenger transport is **the analysis of the requirements of the population**, economic agents, public administration authorities, the existing situation and other factors.

² Pt. 35 stipulates that at the transport in the second-level administrative-territorial unit, the interval between routes (races) must be at least 15 minutes.

12:45, 16:00, 16:15, 19:45, 20:30, 21:20) and five departures from Costești (11:45, 12 : 35; 13:45; 19:45) do not overlap with the hours of departure for the existing races, and it is possible to assign the right to serve these races to „Gârle-Agro” L.L.C.

Therefore, it is noted that the MTID's refusal to award 8 races with departure from Chișinău (8:50, 11:15, 12:45, 16:00, 16:15, 19:45, 20:30, 21: 20) and 5 races departing from Costești (11:45, 12:35, 13:45, 14:30, 19:45) can not be based on the provisions of pt. 35 of the Regulation on passengers and luggage transport, approved by Government's Decision no. 854 of 28.07.2006, according to which the interval between routes (races) must be at least 15 minutes, and therefore it is considered unfounded.

At the same time, in the complaint received from „Gârle-Agro” L.L.C. on 08.10.2013, are described several cases of unjustified refusals to award to the carrier „Gârle-Agro” L.L.C. of the races on Chișinău-Costești / Ialoveni route from MTID in favor of „Pro Et Contra” L.L.C., which took place until 14.09.2012, when the Competition Law no. 183 of 11.07.2012 entered into force, but are still effective, as follows:

1. By letter no. 39 of 29.09.2010 „Gârle-Agro” L.L.C. requested from MTID to open additional racing on the Chișinău-Costești / Ialoveni route, annexing a series of necessary documents according to the Regulation on passengers and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006.\

„Gârle-Agro” L.L.C. states that MTID has not responded to this address.

Subsequently, on 20.10.2010 MTID, taking into consideration the information presented by I.P. „ANTA” and taking into account the provisions of pt. 35 of the Regulations for passenger and luggage transport, issued the Order no. 282, through which carrier „Pro Et Contra” L.L.C. to him was given the right to serve additional racing on the Chișinău-Costești / Ialoveni route.

It should be noted that in the preamble of the Order no. 282 of 20.10.2010 it is specified that „Pro Et Contra” L.L.C. filed the request for the assignment of the right to serve new racing on 28.09.2010, with the registration number at MTID 6284, namely with one day before the request submitted by „Gârle-Agro” L.L.C.

In the request of 29.09.2010 „Gârle-Agro” L.L.C. requested additional racing on this route, as:

- from Costești - 07:45; 9:45; 10:20; 12:45; 13:40.
- from Chișinău - 10:30; 12:40; 13:40; 16:40; 17:40.

On the other hand, by Order no. 282 of 20.10.2010 MTID allowed to open the following races for „Pro Et Contra” L.L.C.:

- from Costești - 05:15; 5:30; 7:20; 12:50; 13:14; 15:15; 15:30; 15:45;

18:10.

- from Chişinău (Hânceşti, 86 st.) - 11:30; 12:30; 13:25; 13:45; 14:15; 15:45; 16:30; 16:45; 19:30.

Pursuant to pt. 35 of the Regulation on passengers and luggage transport approved by Government's Decision no. 854 of 28.07.2006 „In the suburban transport the interval between the routes (races) must be at least 15 minutes.”

From the schedules required by „Gârle-Agro” L.L.C. and schedules of „Pro Et Contra” L.L.C. it is noted that „Pro Et Contra” L.L.C. has obtained the right to serve several races that are less than 15 minutes shorter than the races requested by „Gârle-Agro” L.L.C., as follows:

- 4 races from Chişinău at 12:30, 13:45, 16:30 and 16:45, while „Gârle-Agro” L.L.C. has requested the opening of three races at 12:40, 13:40 and 16:40.
- 1 race from Costeşti at 12:50, while „Gârle-Agro” L.L.C. requested the opening of the race at 12:45.

Pursuant to pt. 19 of the Regulation on passengers and luggage transport, approved by Government's Decision no. 854 of 28.07.2006, the documents for obtaining the right to serve the regular routes shall be submitted for examination to the specialized organ of the central public administration or to the local public administration of the second level, taking into account their competencies in accordance with the established order, and shall be examined in within 30 days of the date of filing the request. At the same time, in the case of two or more requests for obtaining the right to operate the regular passenger route (race), their assignment shall be in accordance with the Rules of the award contest of the right to serve the regular passenger routes, which are set out in the Annex no. 3 of the abovementioned Regulation.

Therefore, in view of the fact that, according to the provisions of pt. 19 of the Regulation on passengers and luggage transport, the MTID has the obligation to organize a competition for the right to serve the regular passenger routes if two or more requests for the obtaining of the right to serve the regular passenger route (race) were submitted at a time interval of less than 30 days, and „Pro Et Contra” L.L.C. and „Gârle-Agro” L.L.C. have applied for the opening of some Chişinău-Costeşti / Ialoveni routes for less than 30 days (28.09.2010 - „Pro Et Contra” L.L.C. and 29.09.2010 - „Gârle-Agro” L.L.C.), the MTID favored „Pro Et Contra” L.L.C. to the detriment of „Gârle-Agro” L.L.C. by assigning the courses according to Order no. 282 of 20.10.2010 in the absence of a contest.

2. By letter no. 02 / 6-678 of 28.03.2012 MTID refused to award the requested races by the request no. 6 of 24.02.2012 on the grounds that „Taking into account the results of the examination conducted by I.P. „ANTA” (copy of letter I.P. „ANTA” no. 08 / 3-1-636 of 19.03.2012 is attached), taking into account the

provisions of pt. 35 of the Regulation on passengers and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006 the ministry can not solve the problem approached".

Two days after sending the response to „Gârle-Agro” L.L.C. (MTID letter 02 / 6-678 of 28.03.2012), MTID issued the Order no. 82 of 30.03.2012, through which assigned to the carrier „Pro Et Contra” L.L.C. the right to serve additional racing on the Chişinău-Costeşti / Ialoveni route, with the following schedule:

- from Chişinău (PC Hânţeşti, 86) - 10:35; 14:45; 15:15; 17:15; 17:45; 18:30; 20:00; 20:45.
- from Costeşti - 05:00; 9:35; 10:20; 16:00; 17:14; 19:00; 19:15; 20:00.

In the address on 24.02.2012, „Gârle-Agro” L.L.C. requested MTID to open new routes on the Chişinău-Costeşti / Ialoveni route with the following schedule:

- from Chişinău - 10:39; 12:45; 13:45; 14:45; 16:10; 17:20; 17:45; 18:25; 21:00.
- from Costeşti - 07:45; 9:45; 10:25; 11:05; 12:35; 13:45; 14:30; 14:30; 16:30; 17:20.

In his analysis I.P. „ANTA” found that a part of the hours requested by „Gârle-Agro” L.L.C., departing from Chişinău - 13:45; 14:10; 17:20; 18:25 and from Costeşti - 07:45; 11:05; 12:35; 16:30; 17:20, is less than 15 minutes from the hours of departure to the existing races, while the schedule of the other races requested by „Gârle-Agro” L.L.C. (from Chişinău - 10:39; 12:45; 14:45; 17:45; 21:00 and from Costeşti - 09:45; 10:25; 13:45; 14:30) do not overlap with the hours of departure to existing races.

At the same time, comparing the schedule of the races requested by „Gârle-Agro” L.L.C. and the schedule of „Pro Et Contra” L.L.C., it is found that two of the races departing from Chişinău awarded to „Pro Et Contra” L.L.C., at 14:45 and 17:45, coincide with the schedules requested by „Gârle-Agro” L.L.C.

It is also noted that „Pro Et Contra” L.L.C. has obtained the right to serve the race in Chişinău at 10:35, while „Gârle-Agro” L.L.C. requested the opening of the race at 10:39. At the same time, „Pro Et Contra” L.L.C. has obtained the right to serve two races from Costeşti at 09:35 and 10:20, while „Gârle-Agro” L.L.C. requested the opening of the races at 09:45 and 10:25. Therefore, it is noted that the races requested by „Gârle-Agro” L.L.C. are less than 15 minutes away compared to the „Pro Et Contra” L.L.C.

Thus, taking into account that both „Pro Et Contra” L.L.C. as well as „Gârle-Agro” L.L.C. filed the requests for the opening of some routes on Chişinău-Costeşti / Ialoveni route at less than 30 days („Gârle-Agro” L.L.C. filed the request for opening of new races on 24.02.2012 and „Pro Et Contra” L.L.C., according to the extract from the MTID entry register, presented by letter no. 07-03 / 812 of

25.11.2013, - on 13.02.2012), and MTID by Order no. 82 of 30.03.2012 allowed the opening of the race for „Pro Et Contra” L.L.C., in the absence of a contest, MTID favored „Pro Et Contra” L.L.C. at the expense of „Gârle-Agro” L.L.C.

At the same time, by letter no. 07-03 / 164 of 13.03.2014, the MTID informed that starting with 01.04.2013, no additional races were opened on the Chişinău-Costeşti / Ialoveni suburban regular route, and the city hall of Costeşti Ialoveni rayon, by letter no. 451 of 09.06.2014, announced that, at present, the opening of new races is not necessary for the inhabitants of Costeşti village, Ialoveni rayon.

However, by letter no. 26 of 25.11.2015 „Gârle-Agro” L.L.C., announced that on 31.12.2014 the MTID Order no. 192 regarding the approval of the international road transport program and the issuance of the passenger transport authorizations through which additional races were opened on the Costeşti-Chişinău route (Chişinău 17:30, 18:20, 19:20 - Costeşti 6:55, 07: 07, 8:10) being awarded to „Pro Et Contra” L.L.C.

Thus, „Gârle-Agro” L.L.C., considers that at the opening of additional races on the route Costeşti-Chişinău (Chişinău 17:30, 18:20, 19:20 - Costeşti 06:55, 07:07, 08:10) attributed to „Pro Et Contra” L.L.C, were violated the provisions of art. 37 par. (4) of the Road Transport Code no. 150 of 17.07.2014, which stipulates that there must be a 15 minute interval between the departures from the stations and the common routes with a racing included in the rayon transport program, because on the Chişinău-Costeşti / Ialoveni route there are already races from Costeşti at 06:45, 07:00, 07:20, 07:35, and from Chişinău at 18:30, 19:05, 19:30.

In other words, pt. 20 let. b) of the Regulation on passenger and luggage transport, approved by the Government’s Decision no. 854 of 28.07.2006, which was the basis of MTID's refusal to open new races on the route Chişinău-Costeşti / Ialoveni nr. 02 / 8-591 of 29.03.2013, provides that *the opening of the new route(race) is denied if the requested route (race) or other routes in the respective direction, on the timetable of which the given locality is included, activate another carrier fully satisfying the requirements of the transport population.*

In this respect, on 12.04.2012, the Administrative Council of the National Agency for the Protection of Competition (ANPC CA) adopted the Decision no. APD-63-11/25, which stated that: *The provisions of let. b) pt. 20 of the Regulation of passenger and luggage transport approved by Government’s Decision no. 854 of 28.07.2006 creates premises for the violation of art. 9 par. (1) let. c) and d) of the Law no. 1103-XIV of 30.06.2000 on the protection of competition and are contrary to the principles stipulated in art. 4, par. (1), (3), (4) of the Law no. 1103-XIV of*

*30.06.2000 on the protection of competition*³.

In the aforementioned Decision, the ANPC CA has found that the redaction of let. b) pt. 20 of the Regulation of passenger and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006, contains the phrase *that fully satisfies the requirements of the population in transport*, which is unclear and, with an unequivocal interpretation, admits that the public administration authorities abuse their attributions and restrict the competition on the passenger transport market.

The criterion *of satisfaction of the requirements of the population* is ambiguous and impossible to assess and constitutes a legal barrier to entry for potential competitors, limiting competition on the passenger transport market.

Thus, it is noted that MTID's repeated refusal to assign the routes requested to the carrier „Gârle-Agro” L.L.C. was based on a provision of the Regulation of passenger and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006, which, according to the CA of ANPC no. APD-063-11/25 of 12.04.2012, creates premises for the infringement of the competition law.

In the context of ANPC CA's Decision no. APD-063-11/25 of 12.04.2012, by letter no. 02 / 3-1043 of 16.05.2012, MTID announced that the new project of the Road Transport Code contains a comprehensive and exhaustive framework regulations concerning the procedure the assignment of the right to operate on regular passenger routes by issuing an authorization for the operation of routes based on the principles of promoting competition between road transport operators and guaranteeing equal and non-discriminatory access on the public transport market.

However, it is noted that the principle *„transport needs of the population”* is also found in the Road Transport Code no. 150, adopted on 17.07.2014. Thus, according to art. 6 par. (2) let. j) the administration of the road transport shall be organized in accordance with the principle of ***satisfying the transport needs of the population and economic agents on the territory of the administrative-territorial unit through quality services in accordance with the normative documents.***

At the same time, according to art. 12 par. (2) of the Road Transport Code no. 150 of 17.07.2014, *the local public administration authorities develop and approve, after coordination with the central specialized organ, medium and long-term strategies for the development and modernization of road transport, taking into account urban and spatial planning plans of the territory, economic and social development programs of the localities and the transport needs of the population.*

³ Law no.1103-XIV of 30.06.2000 on the protection of competition was abrogated by the Competition Law no. 183 of 11.07.2012.

According to art. 13 let. a) of the Road Transport Code no. 150 of 17.07.2014 district councils, in the context of the necessity of organizing road transport against cost in rayon traffic, *approves and updates the rayon road transport programs after obtaining the positive opinion of the central specialized organ according to **the transport needs of the population.***

Also, according to art. 14 lit. c) of the Road Transport Code no. 150 of 17.07.2014, the local and municipal councils, in the context of the necessity of organizing the road transport against cost for the local traffic, *elaborate, approve and update, according to their competence, the local road transport programs in accordance with the **transport needs of the population.***

The notion of road transport program is defined in art. 5 par. (1) of the Road Transport Code no. 150 of 17.07.2014 as the program that establishes the routes and necessary routes, the traffic charts, route heads, car stations, public stations, as well as the necessary number of vehicles and their minimum capacity in order to carry out road transport of persons against cost through regular services.

Also, according to art. 38 par. (10) let. b) of the Road Transport Code no. 150 of 17.07.2014, the assignment of the routes / races included in the road transport programs is organized in the case of the modification of the road transport programs, annually, between 1 january-15 february.

Therefore, considering that the approval and the modification of road transport programs will be carried out, first and foremost, on the basis of the analysis of the population's requirements, it results that the assignment of new races on a certain route will take place in strict dependence on the analysis of population requirements .

Thus, it is found that the principle of *meeting the requirements of the population in transport*, which is found in point 20 let. b) of the Regulation of passenger and luggage transport approved by Government's Decision no. 854 of 28.07.2006, qualified by the Decision of the National Agency for Protection of Competition no. APD-63-11 / 25 of 12.04.2012 as incompatible with the provisions of the competition law, is kept in the Road Transport Code no. 150 of 17.07.2014, without specifying the criteria used by the central and local public authorities to analyze the transport requirements of the population or the degree of satisfaction of the transport needs of the population.

Therefore, it is noted that as long as the legislation and normative acts regulating the provision of regular road passenger transport services against cost do not provide clear criteria for assessing the concepts of ***transport needs of the population*** and ***satisfying the transport needs of the population***, these notions can not be used as basic principles of road transport management in the Republic of Moldova, they can not be the basis for the elaboration or modification of the road

transport program and can not be taken into account in elaborating medium and long term strategies for the development and modernization of road transport.

The provisions of art. 6 par. (2) let. j) and art. 12 par. (2) of the Road Transport Code no. 150 of 17.07.2014 which refers to the ***transport needs (requirements) of the population***, creates the premise that, in the absence of concrete criteria for assessing the transport needs of the population, the analysis that will underlie the modification of the road transport program and, indirectly, to assign new races on a given route, to be interpretable and subjective, which could serve as a basis for unfair decision-making for market transporters, will create barriers to entry for new operators and will have a negative impact on the competitive environment on the market for the provision of regular road passenger transport services against cost.

In this context, we mention that the lack of clear criteria for assessing the transport needs of the population was the basis of the MTID's unjustified refusal to attribute to the carrier „Gârle-Agro” L.L.C. the races requested by letters no. 6 of 24.02.2012 and no. 5 of 18.03.2013 on the Chişinău-Costeşti / Ialoveni route, which is more than 15 minutes away from the existing routes, in order to protect the interests of the other carriers operating in the respective direction, especially the interests of „Pro Et Contra” L.L.C.

In other news, art. 3 par. (1) of the Law no. 780 of 27.12.2001 on the legislative acts stipulates that the *legislative act has a state character, coercive, general and impersonal*, and according to art. 2 of the Law no. 317 of 18.07.2003 on normative acts of the Government and of other central and local public administration authorities, *the normative act is the legal act, issued by the Government and other central and local public administration authorities under constitutional and legal norms, which establishes binding rules repeated application to an indeterminate number of identical situations*. At the same time, according to art. 12 paragraph (3) of the aforementioned Law, *the problems requiring detailed regulation are usually elaborated in the form of draft regulations, instructions, statutes, rules, to be approved by Government Decision*, and art. 33 par. (1) stipulates that *the normative act must establish **necessary, sufficient and possible rules, leading to the highest normative stability and efficiency**. The solutions contained in it must be thoroughly based on the social interest, the state policy and **the requirements of correlation with all the internal regulations**, as well as the harmonization of normative acts with the regulations of the Community legislation and with the international treaties to which the Republic of Moldova is part.*

Therefore, in view of the above, it is found that at the drafting and approving of the normative act the *Regulation on passenger and luggage road transport*,

stipulated in art. 3 let. a) of the Road Transport Code no. 150 of 17.07.2014, necessary, sufficient and possible rules should be established leading to the highest regulatory efficiency, including concrete criteria for assessing the transport needs of the population, to be taken into account by public central and local authorities in the application of legislative and normative acts in the field of road passenger transport against cost on regular routes.

At the same time, the Competition Council mentions that the provisions of art. 37 par. (2) of the Road Transport Code no. 150 of 17.07.2014, according to which a route can not be entered as a new route in the rayon or interurban transport program if more than 70% of the proposed route length overlaps with an existing route in the respective road transport program, also creates preconditions to limit competition between carriers.

In accordance with art. 59 of the Competition Law no. 183 of 11.07.2012, on 06.11.2015 by letters no. APD-03 / 418-1823 to the Ministry of Transport and Road Infrastructure, and no. APD-06 / 419-1824 to „Gârle-Agro” L.L.C., the Competition Council submitted the report on the investigation initiated by the Plenum of the Competition Council’s Disposition no. 9 of 14.11.2013.

By letter no. 26 of 25.11.2015 „Gârle-Agro” L.L.C. submitted comments on the investigation report, these comments were taken into account and included in the investigation report.

MTID by letter no. 07-03 / 859 of 22.12.2015 submitted observations in which communicated that the legality of Order no. 282 of 20.10.2010 and Order no. 82 from March 30, 2012 through which MTID allowed the opening of races for „Pro Et Contra” L.L.C, it was confirmed by the Supreme Court of Justice ruling 01.02.2012, civil file no. 3r-92/2012 and the Decision of the Supreme Court of Justice of 17.07.2013, civil file no. 3ra-1183/2013, Decision of the Chişinău Court of Appeal of 05.02.2015, civil file no. 3a-1785/14 and the Conclusion of the Supreme Court of Justice of 09.09.2015, civil file no. 3ra-1034/15.

At the same time, MTID announced that these Decisions are irrevocable and binding, being respected by the parties and all public authorities, including the Competition Council.

In the context of the above, the Competition Council found that, by Decision of the Supreme Court of Justice of 01.02.2012, the action of LLC „Gârle-Agro” against MTID, accessory intervention „Pro Et Contra” L.L.C., was denied regarding the appeal of the administrative act (Order no. 282 of 20.10.2010 and Order no. 189 of 30.06.2010). Thus, the court investigated whether the provisions of the Regulation on passenger and luggage transport, approved by Government’s Decision no. 854 of 28.07.2006, and the Rules for awarding through competition the right to service the regular passenger routes At the same time, the court did not

investigate if were or not violated the provisions of the Competition Law no. 183 of 11.07.2012, and did not investigate MTID's actions in terms of its impact on competition in the market for the provision of regular passenger transport services against cost.

In the same context, by the Decision of 25.02.2013, the Chişinău Court of Appeal dismissed as unfounded the action of „Gârle-Agro” L.L.C. against MTID, intervener accessory „Pro Et Contra” L.L.C. regarding the annulment of the MTID’s Order no. 82 of 30.03.2012, because, at the issuance of Order no. 82 of 30.03.2012, MTID did not violate its competence, followed the established procedure and the provisions of the legislation in force. Subsequently, following the recourse declared by „Gârle-Agro” L.L.C., the Supreme Court of Justice, by its Decision of 17.07.2013, dismissed the recourse declared by „Gârle-Agro” L.L.C. and upheld the Chişinău Court of Appeal's Decision of 25.02.2013. As a result of the examination of the Decisions issued by the Chişinău Court of Appeal and the Supreme Court of Justice, it is found that the court of first instance and the court of recourse examined the legality of the MTID Order no. 82 of 30.03.2012, in particular in the light of the provisions of pts. 3, 17, 19 of the Regulation on passenger and luggage transport, approved by the Government’s Decision no. 854 of 28.07.2006.

In the same vein, we reiterate that by the Conclusion of 09.09.2015 the Supreme Court of Justice considered inadmissible the recourse declared by „Gârle-Agro” L.L.C. against the Decision of the Chişinău Court of Appeal of 05.02.2015, through which was rejected the appeal of „Gârle-Agro” L.L.C. and upheld the Decision of the Botanica Court, Chişinău mun. of 24.04.2014 through which was rejected the action to oblige the MTID to issue the administrative act and to descend the regular race on the Chişinău-Costeşti / Ialoveni route, with assignment for service „Gârle-Agro” L.L.C.

In the decision of 05.02.2015 the Chişinău Court of Appeal took into account the fact that, according to ANTA's analysis, the opening of additional races on the route under consideration will affect the economic activity of the carriers servicing the existing routes, as well as the fact that the 5 carriers operating on that route fully meet the transport needs of the population. At the same time, in the Chişinău Court of Appeal's Decision of 05.02.2015, the „Gârle-Agro” L.L.C. invocation was mentioned, of MTID's infringement of the provisions of art. 12 par. (1) of the Competition Law no. 183 of 11.07.2012 by favoring „Pro Et Contra” L.L.C. in relation to „Gârle-Agro” L.L.C., however, the court has not been exposed to it.

Thus, in its Decision of 05.02.2015, the Chişinău Court of Appeal did not investigate if have been or have not been violated the provisions of the Competition Law no. 183 of 11.07.2012, and did not investigate MTID's actions in

terms of its impact on competition on the market for the provision of regular passenger transport services against cost.

Therefore, the findings of the Competition Council's investigation report regarding that MTID, in the absence of specific evaluation criteria for assessing the transport needs of the population, violated the provisions of the Competition Law no. 183 of 11.07.2012 by refusing to assign to the carrier „Gârle-Agro” L.L.C. the requested races on Chişinău - Costeşti / Ialoveni route on 29.09.2010, 24.02.2012 and 18.03.2013 and by awarding to „Pro Et Contra” L.L.C. of races at less than 15 minutes than those requested by „Gârle-Agro” L.L.C. do not contradict the Decisions mentioned by MTID.

IV. Legal qualification of actions found

Analyzing the actions described above, the Competition Council notes the following:

- MTID unjustifiably refused to assign the routes on the Chişinău-Costeşti / Ialoveni route requested by the carrier „Gârle-Agro” L.L.C. by letters of 29.09.2010 and 24.02.2012 and favored „Pro Et Contra” L.L.C. by assigning them through Orders no. 282 of 20.10.2010 and no. 82 of 30.03.2012 of races less than 15 minutes than those requested by „Gârle-Agro” L.L.C., thus limiting the right of the undertaking „Gârle-Agro” L.L.C. the provision of passenger transport services against cost on a regular route Chişinău-Costeşti / Ialoveni and establishing discriminatory conditions of activity for „Gârle-Agro” L.L.C. in relation to „Pro Et Contra” L.L.C.

- MTID's refusal to open new routes on the Chişinău-Costeşti / Ialoveni route on 29.03.2013 at the request of the carrier „Gârle-Agro” L.L.C. has been unfounded based on the provisions of pts. 17, 20 and 35 of the Regulation on passenger and luggage transport, approved by Government's Decision no. 854 of 28.07.2006, and limited the undertaking's right „Gârle-Agro” L.L.C. to provide passenger transport services against cost on a regular route Chişinău-Costeşti / Ialoveni.

- The criterion *satisfies the transport requirements of the population*, used to open new routes and races according to the provisions of let. (b) pt. 20 of the Regulation on passenger and luggage transport, approved by Government's Decision no. 854 of 28.07.2006, which was qualified by the Decision no. APD-63-11 / 25 of 12.04.2012 of CA of NAPC as creating premises for the infringement of the provisions of the competition law, is maintained in art. 6 par. (2) let. j), art. 12 par. (2), art. 13 let. a) and art. 14 let. c) of the Road Transport Code no. 150 of 17.07.2014.

- The Road Transport Code no. 150 of 17.07.2014 does not provide criteria

for determining the transport needs (requirements) of the population, this criterion being ambiguous and creating premises for the subjective interpretations by the public authorities in the elaboration and modification of road transport programs, which could have negative effects on the competitive environment.

Therefore, in view of the above, it is noted that the existing normative acts do not stipulate the criteria for assessing the transport needs of the population, which is a principle stipulated in art. 6 par. (2) let. j), art. 12 par. (2), art. 13 let. a) and art. 14 let. c) of the Road Transport Code no. 150 of 17.07.2014 and at the pt. 20 let. b) of the Regulation on passenger and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006, which creates premises for the infringement of art. 12 of the Competition Law no. 183 of 11.07.2012 by the central and local public administration authorities with attributions in the field of road transport.

It is also noted that the refusal of the MTID to award the courses requested by „Gârle-Agro” L.L.C. on 29.09.2010, 24.02.2012 and 18.03.2013 was unfounded and privileged the transport agents operating in the respective direction, especially the transport agent „Pro Et Contra” L.L.C., to which they were awarded without contest by the orders no. 282 of 20.10.2010 and no. 82 of 30.03.2012 races at less than 15 minutes from those requested by „Gârle-Agro” L.L.C. Therefore, it is found that MTID violated the provisions of art. 12 par. (1) let. a) and b) of the Competition Law no. 183 of 11.07.2012 by limiting the right of undertaking „Gârle-Agro” L.L.C. to carry out the road passenger transport activity against cost for the requested races on the Chişinău-Costeşti / Ialoveni route and to establish discriminatory conditions for the activity of „Gârle-Agro” L.L.C. in relation to „Pro Et Contra” L.L.C.

Based on the findings set out above, under art. 39, art. 41 and art. 46 of the Competition Law no. 183 of 11.07.2012, the Plenum of the Competition Council

DECIDES:

1. To ascertain the MTID infringement of the provisions of art. 12 par. (1) let. a) and b) of the Competition Law no. 183 of 11.07.2012 by refusing to assign to the carrier „Gârle-Agro” L.L.C. the requested races on the route Chişinău - Costeşti / Ialoveni on 29.09.2010, 24.02.2012 and 18.03.2013 and establishing discriminatory conditions for „Gârle-Agro” L.L.C. in relation to „Pro Et Contra” L.L.C. by awarding to „Pro Et Contra” L.L.C. by Orders no. 282 of 20.10.2010 and no. 82 of 30.03.2012 of races at less than 15 minutes from those requested by „Gârle-Agro” L.L.C. without a contest.

2. To ascertain the fact that the existing normative acts do not stipulate the

criteria for assessing the transport needs of the population, which is a principle stipulated in art. 6 par. (2) let. j), art. 12 par. (2), art. 13 let. a) and art. 14 let. c) of the Road Transport Code no. 150 of 17.07.2014 and in pt. 20 let. b) of the Regulation on passenger and luggage transport, approved by the Government's Decision no. 854 of 28.07.2006, which creates premises for the infringement of art. 12 of the Competition Law no. 183 of 11.07.2012 by the authorities of central and local public administration with attributions in the field of road transport.

3. To oblige MTID to cancel, within 30 days of receipt of this Decision, Order no. 282 of 20.10.2010 and Order no. 82 of 30.03.2012, which assigned to the carrier „Pro Et Contra” L.L.C. the right to serve additional races on the Chişinău - Costeşti / Ialoveni route.

4. To oblige MTID, following the enforcement of pt. 3 of this Decision, within 45 days, in accordance with the regulations in the field and in compliance with the competition rules, to make a competition for the award the right of serve for supplementary races Chişinău - Costeşti / Ialoveni route withdrawn from the management of the carrier „Pro Et Contra” L.L.C. following the annulment of Order no. 282 of 20.10.2010 and Order no. 82 of 30.03.2012.

5. To recommend to MTID as in the Regulation on road transport of passenger and luggage, is going to be developed and approved in accordance with the provisions of art. 3 let. a) of the Road Transport Code no. 150 of 17.07.2014, and to establish concrete criteria for assessing the transport needs of the population, in order to ensure equitable conditions of access of the carriers to the market for the provision of regular passenger transport services against cost.

6. To oblige MTID to inform the Competition Council within 90 days from the receipt of this Decision about the implementation of par. 3 and 4 of this Decision with the attachment of the confirmatory documents.

7. This Decision shall enter into force on the date of its adoption and shall be communicated to the Parties.

**President of the Plenum of the
Competition Council**

Viorica CĂRARE