



---

---

**THE PLENUM OF THE COMPETITION COUNCIL**

**DECISION**

**No. APD – 6/17 - 37  
of 14.06.2018**

**Chişinău mun.**

The Plenum of the Competition Council,  
acting on the basis of art. 41 of the Competition Law no. 183 of 11.07.2012,  
Parliament's Decision no. 179 of 12.07.2013 regarding the appointment in  
function of the members of the Plenum of the Competition Council, as well as 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 Disposition no. 6 of 03.04.2017, the comments made by the  
parties on the investigation report and the materials accumulated during the  
investigation,

**FINDED:**

On 21.02.2017, the Competition Council received the complaint from the  
„Parcul de Autobuse nr. 1” JSC no. 01/5 din 20.02.2017 subsequently completed by  
letter no. 01/6 of 28.02.2017, in which were reclaimed the actions of „Telautogar”  
LLC regarding the application of conditions alleged to be inequitable to the bus  
services.

According to the complaint, „Parcul de Autobuse nr. 1” JSC considers that by  
the complained action were infringed the provisions of art. 11 par. (2) let. a) and f) of  
the Competition Law no. 183 of 11.07.2012.

As a result of the preliminary examination of the complaint, the Plenum of the  
Competition Council through the Disposition no. 6 of 03.04.2017, ordered the  
initiation of the investigation regarding the signs of infringement of the provisions of  
art. 11 par. (2) let. a) of the Competition Law no. 183 of 11.07.2012 by „Telautogar”  
LLC regarding the imposing of inequitable trading conditions on the bus service.

## **I. The parties involved**

### **Complainant**

**„Parcul de Autobuse nr. 1” JSC, IDNO 1003600059093** – undertaking which activate under Licence A MMII Series no. 045936 valid until 05.03.2019 for the road transport activity against the cost of persons by regular and occasional services (in national and international traffic), as well as on the basis of regular road traffic authorizations in interurban traffic on the regular routes Chişinău - Teleneşti and Chişinău - Vasieni ANTA Series no. 0108818, ANTA Series no. 0108817, ANTA Series no. 0108824, valid until 13.07.2024.

### **Defendant**

**„Telautogar” LLC, IDNO 1013606001154** – undertaking which carries out bus activity, located in Teleneşti city under license A MMII Series no. 050591 valid until 31.12.2020.

Also, „Telautogar” SRL provides services for the road transport against the cost for persons by regular and occasional services (in national traffic) under the License A MMII Series no. 052091 valid until 19.07.2018, as well as on the basis of the authorizations for road transport by regular services in interurban traffic on the regular routes Chişinău - Teleneşti and Chişinău - Văsieni ANTA Series no. 0104367, ANTA Series no. 0104370, ANTA Series no. 0104368, valid until 10.05.2023.

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

The examination of competition issues and the assessment of a cause of competition shall take place in the relevant market.

The determination of the relevant market represents an instrument of the identification and definition of the framework in which competition is exercised. Depending on the nature of the competition issue, the size of the relevant market may be different.

The relevant market is determined by reporting the relevant product market to the 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.

In accordance to point 1 of the contract no. 13 of January 1, 2016, concluded between „Telautogar” LLC and „Parcul de Autobuse nr. 1” JSC, the object of the

contract establishes the relations between the bus station and the carrier in the domain of passenger car and luggage transport on the regular routes assigned to the carrier.

In compliance with art. 5 of the Road Transport Code no. 150 of 17.07.2014, the notion of a bus station means a *specifically delimited space, arranged and equipped to allow the bus / coach stationing to platform, the embarkation or disembarking of persons from buses / coaches, as well as to provide conditions and services for buses / coaches and waiting persons.*

Concurrently, according to art. 86 par. (2) Road Transport Code no. 150 of 17.07.2014, *the bus activity is carried out in specially designed and equipped spaces, meant for the stationing of road vehicles engaged in road transport activities against the cost of persons by regular services, the embarkation / disembarkation of persons and the provision of conditions and services for road vehicles and for pending persons in which specific road transport activities are carried out against the cost of persons by regular services.*

According to 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 transport of persons, 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 the cost, which ensures the transport of persons on the basis of individual travel tickets in accordance with the traffic charts, on definite routes, in which the embarkation / disembarkation of persons transported to / from the vehicle is made at predetermined stopping points.

„Parcul de Autobuse nr. 1” JSC holds the authorization for road transport through regular services in interurban traffic no. 0108818 valid from 14.07.2016 until 13.07.2024 for Chişinău (07:30) - Teleneşti (15:50) route and the authorization for road transport through regular services in interurban traffic no. 0108817 valid from 14.07.2016 until 13.07.2024 for the Chişinău (10:15) - Teleneşti (15:10) route, according to which the starting / arrival point of the end of the route is the bus station from Teleneşti city managed by „Telautogar” LLC.

Also, „Parcul de Autobuse nr. 1” JSC holds the authorization for road transport through regular services in interurban traffic no. 0108824 valid from 14.07.2016 to 13.07.2024 on the Chişinău (15:05) - Văşieni (06:00) route where the bus station from Teleneşti is seen as a stop in transit.

Thus, the activity of a road passenger transport operator against the cost through regular services is done exclusively by the licensed bus stations.

So, in view of the above, considering the action reclaimed by the „Parcul de Autobuze no. 1” JSC for the purpose investigated case the following relevant markets are defined:

- *the market for the provision of regular road passenger transport services against payment;*
- the market for the bus station activity;

### **The relevant geographic market**

According to art. 4 of the Competition Law no. 183 of 11.07.2012, the relevant geographic market refers to the zone in which the enterprises are involved in the offer or demand on the relevant product market where the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring geographical areas through competition conditions that differ appreciably.

Pursuant to licence A MMII Series no. 050591 valid until 31.12.2020, „Telautogar” LLC carries out the activity of bus station in Telenești city.

According to the road transport authorizations ANTA Series no. 0108818, ANTA Series no. 0108817, ANTA Series no. 0108824, valid until 13.07.2024, „Parcul de Autobuze nr. 1” JSC operates on regular routes Chișinău - Telenești and Chișinău - Văsieni.

Therefore, in view of the above, in this case the relevant geographic markets are defined as:

- *the territory of the bus station in Telenești city;*
- *Chișinău – Telenești and Chișinău – Văsieni routes.*

Thus, for the purpose of the investigated case, the following relevant markets are defined:

- *the market for the provision of regular road passenger transport services against the cost on regular routes Chișinău - Telenești and Chișinău - Văsieni;*
- *the market for the bus station activity in Telenești city.*

### **The dominant position**

Art. 11 of the Competition Law no. 183 of 11.07.2012 applies to enterprises that hold a dominant position on one or more relevant markets.

The concept of dominant position is defined in art. 4 of the Competition Law no. 183 of 11.07.2012 as a *position of economic power which a company benefits by allowing it to prevent the maintaining of an effective competition on a relevant market, by allowing it to behave, in an appreciable extent, independently of its competitors, its customers and, ultimately, consumers.*

According to art. 10 par. (5) of the Competition Law no. 183 of 11.07.2012, the *enterprises invested with exclusive rights are considered dominant enterprises in the relevant market to which these rights relate.*

At the same time, according to art. 49 let. d) of the Road Transport Code no. 150 of 17.07.2014, *the road transport operators / undertakings performing road transport operations have the obligation to conclude contracts in the locality where there are several bus stations with one of them, at their free choice, for the provision of road transport services through regular services on the routes assigned to service in the established manner and immediately notify ANTA about the concluded contract.*

Concurrently, in accordance with art. 34 par. (1) and art. 38 par. (14) Road Transport Code no. 150 of 17.07.2014, the road transport programs establish for each route, the bus and public stations used for departures, stops in transit and arrivals (program adopted by the Order of the Ministry of Transport and Road Infrastructure no. 192 of 31.12.2014). The authorization for the road passenger transport through regular services in local, municipal, district and interurban traffic are released only for the routes / races included in the road transport programs and assigned in accordance with this article, in 5 working days from the date of attribution. It is reiterated that the road transport authorization is released to the carriers for the routes included in the program with the circulation timetable, in which the bus stations are predetermined as starting / arrival and transit point.

In the same way, according to art. 90 par. (1) lit. g) of the Road Transport Code no. 150 from 17.07.2014, registered undertakings carrying out bus station activity are obliged to conclude access contracts in the bus station, in accordance with the approved traffic charts, with the road transport operators holding authorization of road passenger transport by regular services in national traffic during the period of validity of the road transport program.

Therefore, as a result of the legal provisions, as well as the fact that in Telenești the bus station activity is carried out under the license only by „Telautogar” LLC, and the road transport operators according to art. 49 lit. d) of the Road Transport Code no. 150 from 17.07.2014 have the obligation to contract in this regard with „Telautogar” LLC for the licenses which they own on the regular races having as starting / arrival point the Telenești bus station, it results that „Telautogar” LLC has a dominant position on the *market of the bus station activity in Telenești*, in relation to these road transport operators.

### **The period of time submissive to the investigation**

After examining the factual circumstances invoked in the complaint, the Competition Council concludes that on 15.02.2017 „Telautogar” LLC ceased the sale

of the tickets for the Telenești - Chișinău races attributed to the road transport operator „Parcul de autobuze nr.1” JSC, due to the lack of a collaboration agreement between the carrier and the bus station.

In this regard, it was found during the investigation that the parties activated in the absence of the contract for the road passenger transport from 01.01.2017 until 23.05.2018, given that the complainant did not agree with the proposed contractual clauses for signing by the defendant, in the draft of the contract for 2017.

Thus, on 24.05.2018 „Telautogar” LLC and „Parcul de Autobuse nr. 1” JSC have concluded the contract for passenger transport no. 16.

Based on the above, the period under review is considered as of 01.01.2017 - until 23.05.2018.

### **III. Acts and facts found**

As a result of the study of the normative framework, and as a result of the examination of the information and materials attached to the file, the following conclusions are reached.

„Telautogar” LLC carries out bus service activity in Telenești under License A MMII Series no. 050591 valid until 31.12.2020. Also, the applicant, the defendant according to License A MMII Series no. 052091 valid until 19.07.2018 and the road transport authorizations ANTA Series no. 0104367, ANTA Series no. 0104370 and ANTA Series no. 0104368, valid until 10.05.2023, is empowered to provide road passenger transport services against the cost through regular and occasional services in national traffic on the regular routes Chișinău - Telenești and Chișinău - Văsieni.

Therefore, „Telautogar” LLC has the following service routes: Chișinău (12:45) - Telenești (08:40), Chișinău (14:30) - Telenești (06:30) and Chisinau (15:05) - Văsieni 6:00). In this regard, it was found that „Telautogar” LLC, in addition to the services provided as a bus station, also provides services of road transport operator on the regular routes assigned to service, being the direct competitor to „Parcul de Autobuse nr. 1 ” JSC wich operates on the same regular routes.

The complainant, „Parcul de Autobuse nr. 1” JSC, considers that „Telautogar” LLC, as a unique provider on the market of the bus station activity in Telenești, requires the acceptance of inequitable conditions stipulated in the draft of the contract no. 13 of 01.01.2017 concerning the road passenger transport and lacks the road transport operator the right to negotiate the contractual clauses stipulated therein.

Thus, it is noted that following the misunderstandings between the parties at the signing of the contract, „Telautogar” LLC stopped the sale of the tickets for three days in February 2017 to the „Parcul de Autobuse nr. 1” JSC due to the lack of the collaboration contract.

„Parcul de Autobuse nr. 1” JSC, considers that „Telautogar” LLC, through its behavior, infringe the provisions of art. 11 par. (2) let. a) and f) of the Competition Law no. 183 of 11.07.2012.

At the same time, „Parcul de Autobuse nr. 1” JSC informed that starting with 2010 year, after the change of the owner of the bus station in Telenești, problems started to appear at the conclusion of the collaboration contract between the parties.

Also, „Parcul de Autobuse nr. 1” JSC, informed that his bus was traveling on a route with a small number of passenger, at the same time „Telautogar” LLC performed additional routes outside of the traffic timetable with 100% boarding.

From the materials attached to the complaint it is concluded that in 2010 „Transport” JSC, by letter no. 19 of 26.05.2010 signed by the director [...] (currently [...] is the administrator of „Telautogar” LLC, which was created as a result of the reorganization by separation of „Transport” JSC and registered by the Orhei Territorial Office of the State Registration Chamber by Decision of 09.04.2013 informed that until 26.05.2010 „Parcul de Autobuse nr. 1” JSC did not concluded a collaboration contract with Bus station, and regarding the act of divergence no. 1 submitted by „Parcul de Autobuse nr. 1” JSC has stated that it disagrees with the exclusion from the contract no. 11 of 2.2.4, 2.2.5, 2.2.14, 3.1.2 let. b), d), e), pt. 3.2. 3.4; 5.3; 5.5.

Thus, in 2010 between „Transport” JSC from Telenești and „Parcul de Autobuse nr. 1” JSC was concluded the contract no. 11 of 01.01.2010 without accepting the modifications proposed by „Parcul de Autobuse nr. 1” JSC through the act of divergence.

In 2013 „Transport” JSC by letter no. 03 of 18.02.2013 signed by the director [...] communicated that „Transport” JSC does not agree with the act of divergence of the collaboration contract between the bus station and the carrier and informed „Parcul de Autobuse nr. 1” JSC that if until 20.03.2013 does not present itself at Telenești station for the negotiation and signing of the contract, „Transport” JSC will have to stop the sale of the travel tickets to the assigned routes „Parcul de Autobuse nr. 1” JSC. And in 2015 „Parcul de Autobuse nr. 1” JSC at the contract proposed by „Telautogar” LLC no. 15 of 01.01.2015 filed an act of divergence requesting the modification and exclusion of clauses from the respective contract.

Anyway, by letter no. 5 of 06.03.2017, „Telautogar” LLC informed that until 2016 the collaboration contract between the Auto Station and the carrier was concluded according to the Order of the Ministry of Transport and Road Infrastructure no. 132 of 21.04.2010 approving the model contract for cooperation between the bus station and the carrier. In 2016, at the elaboration of the contract between

„Telautogar” LLC and the transporters was taken as a base the collaboration contract between „Gările și Stațiile Auto” SO and the carriers, the contracts for 2016 being the same for all the carriers, they signing them, including also „Parcul de Autobuse nr. 1” JSC.

Also, „Telautogar” LLC informed that considering that the contracts concluded between these and the carriers expired on 31.12.2016, the transport operators were to present themselves until 01.01.2017 to negotiate and sign a new contract. The contract proposed for signing for 2017 year is identical with contract from 2016, except for the penalties that have been reduced. „Telautogar” LLC mentioned that of the 15 carriers with which it collaborated in 2016, 14 have presented and signed a new contract for the 2017 year exception for „Parcul de Autobuse nr. 1” JSC, the contract terms for 2017 being the same for all carriers.

At the same time, „Telautogar” LLC by letter no. 5 of 06.03.2017, informed the Competition Council that at the beginning of January 2017, „Parcul de Autobuse nr. 1” JSC did not submit to negotiate a new contract, thus, by the driver employed at „Parcul de Autobuse nr. 1” JSC was sent a draft contract of collaboration to get acquainted, but not to be signed.

By letter no. 01/5 of 14.02.2017 addressed to „Telautogar” LLC and to the Ministry of Transport and Road Infrastructure, „Parcul de Autobuse nr. 1” JSC informed that it was notified by the drivers that meet the Chișinău-Telenești route about the fact that from 15.02.2017 they will not be admitted to the Telenești bus station because of the lack of the collaboration contract. Also, „Parcul de Autobuse nr. 1” JSC, through this letter, requested from „Telautogar” LLC to send a stamped and signed contract of collaboration to be examined and to be exposed on it.

Similarly, it is noted that by letter no. 01/13 of 03.03.2017 „Parcul de Autobuse nr. 1” JSC has communicated that it did not officially receive the service contract from „Telautogar” LLC, but received a contract that is not signed and stamped, transmitted through the driver which activates on Chișinău-Telenești route, having doubts about its authenticity, but nevertheless made the act of divergence on this draft contract.

In other train of thoughts, „Telautogar” LLC, by letter no. 5 of 06.03.2017, informed the Competition Council that the ceasing (as a 3 day warning) of the sale of the tickets for the services assigned to „Parcul de Autobuse nr. 1” JSC was made on the basis of the lack of collaboration contract between the bus station and the road transport operator. At the same time, the defendant mentions that during the 2016 year by „Parcul de Autobuse nr. 1” at the Chișinău 7.30 - Telenești 15.50 race were committed 275 suspensions of the race without any explanation, the amount of the fines according to the collaboration contract no. 13 of 01.01.2016 will be 27500 lei, but no leu has been collected from the account of the road transport operator.

With reference to the contractual clauses, it is mentioned that „Parcul de Autobuse nr. 1” JSC through the acts of divergence of 2010, 2013, 2015 and 2017 requested the modification of the amount of penalties and the exclusion of some of them. Thus, in Table 1 the information regarding the evolution of the penalties categories established by „Telautogar” LLC, for the „Parcul de Autobuse nr. 1” JSC and their quantum.

**Table no. 1: The evolution of the categories and the amount of penalties established by „Teleautgar” LLC towards the carrier**

No.	The model contract approved by the MTID Order no. 132 of 21.04.2010	Contract no. 11 from 01.01.2010 between „Transport” JSC and „Parcul de Autobuse nr. 1” JSC	Contract no. 13 of 01.01.2016 between „Telautogar” LLC and „Parcul de Autobuse nr. 1” JSC	The draft contract for the year 2017 proposed for signing „Parcul de Autobuse nr. 1” JSC
1.	<p>For each suspended route:</p> <ul style="list-style-type: none"> <li>• <b>20 lei</b> – for the suburban route – if the means of transport has not been presented or has been presented for the boarding of the traveling public with a delay of more than 30 minutes;</li> <li>• <b>50 lei</b> –for the interurban route - if the means of transport has not been presented or has been presented for the boarding of the passengers with a delay of more than one hour;</li> <li>• <b>100 lei</b> - for the international race - if the means of transport has not been presented or has been presented for the boarding of the</li> </ul>	<p>For each suspended race:</p> <ul style="list-style-type: none"> <li>• <b>20 lei</b> – for the suburban route – if the means of transport has not been presented or has been presented for the boarding of the traveling public with a delay of more than 30 minutes;</li> <li>• <b>50 lei</b> –for the interurban route - if the means of transport has not been presented or has been presented for the boarding of the passengers with a delay of more than one hour;</li> <li>• <b>100 lei</b> - for the international race - if the means of transport has not been presented or has been presented for the boarding of the</li> </ul>	<p>For each suspended race:</p> <ul style="list-style-type: none"> <li>• <b>40 lei</b> - for the suburban route if the vehicle has not been presented or has been presented for the boarding of the traveling public with a delay of more than 30 minutes;</li> <li>• <b>100 lei</b> - for the interurban or international route - if the vehicle has not been presented or has been presented for the boarding of the public with a delay of more than 30 minutes.</li> </ul>	<p>For each suspended race:</p> <ul style="list-style-type: none"> <li>• <b>30 lei</b> - for the suburban route if the car has not been presented or has been presented for the boarding of the traveling public with a delay of more than 30 minutes;</li> <li>• <b>50 lei</b> - for the interurban or international route - if the vehicle has not been presented or has been presented for the boarding of the traveling public with a delay of more than 30 minutes.</li> </ul>

	traveling public for more than one hour.	traveling public for more than one hour.		
2.	For each case of the dispatch of the vehicle in the route without the registrations in the documents about the technical status of the vehicle or about the support by the crew of the medical examination - <b>50 lei.</b>	For each case of dispatch of the vehicle in the route without the registrations in the documents about the technical status of the vehicle or about the support by the crew of the medical examination - <b>50 lei.</b>	For each case of dispatch of the vehicle in the route without the registrations in the documents about the technical status of the vehicle or about the support by the crew of the medical examination - <b>50 lei.</b>	For each case of dispatch of the vehicle in the route without the registrations in the documents about the technical status of the vehicle or about the support by the crew of the medical examination - <b>50 lei.</b>
3.			For the release of the tickets by the drivers on the territory of the bus station, as long as the cash desk work - <b>200 lei.</b>	For the release of the tickets by the drivers on the territory of the bus station, as long as the cash desk work - <b>200 lei.</b>
4.	For the not entrance of transit routes in the bus station - <b>70 lei.</b>	For the not entrance of transit routes in the bus station - <b>70 lei.</b>	For the not entrance of the transit routes in the bus station- <b>70 lei.</b>	For the not entrance of the transit routes in the bus station- - <b>20 lei.</b>
5.		For the boarding of passengers without tickets by the drivers in the territory of the „Bus Station” or their straightening out of the territory of the „Bus Station” for boarding, an act on this infringement shall be drawn up and a fine shall be collected in the sum of the cost of a ticket up to the final point on this route for each passenger without ticket.	For the boarding of passengers without tickets by the drivers on the territory of the Bus Station: or their straightening out of the territory of the Bus Station to be picked up - <b>100 lei.</b>	For the boarding of passengers without tickets by the drivers on the territory of the Bus Station: or their straightening out of the territory of the Bus Station to be picked up - <b>100 lei.</b>
6.		For the detection of theft cases at the additional payments by the drivers (carriers) from the passengers and the purchase of the tickets by them (the	For the detection of theft cases at the additional payments by the drivers (carriers) from the passengers and the purchase of the tickets by them (the carriers) at the	For the detection of theft cases at the additional payments by the drivers (carriers) from the passengers and the purchase of the tickets by them (the carriers) at the

		carriers) at the „Bus Station” cash, the contribution of the drivers to the purchase of the short tickets by passengers (up to the close points and not to the final point) - <b>100 lei.</b>	„Bus Station” cash, the contribution of the drivers to the purchase of the short tickets by passengers (up to the close points and not to the final point) - <b>100 lei.</b>	„Bus Station” cash, the contribution of the drivers to the purchase of the short tickets by passengers (up to the close points and not to the final point) - <b>100 lei.</b>
<b>7.</b>		For each case of infringement of the dispositions of the „Bus Station” administration - <b>50 lei.</b>	For each case of infringement of the dispositions of the „Bus Station” administration - <b>50 lei.</b>	For each case of infringement of the dispositions of the „Bus Station” administration - <b>50 lei.</b>
<b>8.</b>		For the not entrance on the arrival platform of „Bus Station” for the purpose of disembarking passengers and the non-execution of registrations at the „Bus Station” dispatcher - <b>100 lei.</b>	For the not entrance on the territory of the Bus Station for the purpose of disembarking the passengers and the non-execution of the registrations at the Bus Station dispatcher - <b>100 lei.</b>	For the not entrance on the territory of the Bus Station for the purpose of disembarking the passengers and the non-execution of the registrations at the Bus Station dispatcher - <b>100 lei.</b>
<b>9.</b>			For the violation of the hygiene and sanitary regime on the territory of the Bus station - <b>50 lei.</b>	For the violation of the hygiene and sanitary regime on the territory of the Bus station - <b>100 lei.</b>
<b>10.</b>			For the refusal to embark and carry passengers with pre-purchased tickets from the Bus Station cash desks - <b>in the amount of tickets sold.</b>	For the refusal to embark and carry passengers with pre-purchased tickets from the Bus Station cash desks - <b>in the amount of tickets sold.</b>

*Source: the contracts concluded between „Telautogar” LLC and „Parcul de Autobuse nr. 1” JSC.*

Based on the data presented in Table 1, it result that the penalty categories applied to „Parcul de Autobuse nr. 1” JSC and their amount had a progressive evolution manifested by the inclusion of new penalties and the increase of the amount of the existing ones until 2016 in relation to the penalties which were established by the model contract approved by the Order of the Ministry of Transports and Road Infrastructure no. 132 of 21.04.2010. In 2017, the penalties that were included in the

2010 model contract were reduced compared to 2016, the others remaining unchanged, with the exception of the penalty for the violation of the hygiene and sanitary regime and the public order in the territory of the bus station which in 2017 increased from 50 lei to 100 lei. Thus, the ones outlined above denotes that the penalties and their amount are unilaterally established by „Telautogar” LLC.

At the same time, by letter no. 02/11 - 835 of 26.04.2017, the Ministry of Transport and Road Infrastructure announced that the Order no. 132 of 21.04.2010, approving the model contract for cooperation between the bus station and the carrier, is in force, therefore it has legal power.

Also, the Ministry of Economy and Infrastructure by letter no. 14/4 - 670 dated 25.01.2018 informed the Competition Council that the model contract for cooperation between the bus station and the carrier approved by Order no. 132 of 21.04.2010, has binding force between the contracting parties, who are obliged to execute exactly the services assumed by this contract.

Following the examination of the model contract for services between the carrier and the bus station, approved by the Order of the Ministry of Transport and Road Infrastructure no. 132 of 21.04.2010, in relation to the draft contract no. 13 of 01.01.2017 which was proposed for signature by „Telautogar” LLC to the complainant, it is noted that there are some essential differences between them, in the part related to the contractual clauses regarding the unilateral withholding of the penalties, the amount and the nature of the penalties is different, the settlement term is provided under certain conditions that vary according to the sales obtained by the carriers.

Therefore, in the model contract approved by the Order of the Ministry of Transport and Road Infrastructure there is no clause on the unilateral detention of penalties, the amount of the penalties is different, the settlement term is provided under certain conditions which vary according to the sales obtained by the carriers.

As regards the establishment and retention of penalties / fines, the Competition Council concludes the following. According to art. 90 par. (1) let. e), j) and k) of the Road Transport Code no. 150 of 17.07.2014, the registered undertakings carrying out bus station activity have the following obligations:

- *To keep the registration of the departures and arrivals races, as well as the chronological order of their execution, in the register of records;*
- *to check and admit to the service only the road vehicles meeting the sanitary requirements;*
- *to verify and admit the serving races only on the basis of the required documents required to be present at the board of the road vehicle provided in this Code.*

Concurrently, according to art. 8 par. (1) of the Road Transport Code no. 150 of 17.07.2014, *the authority that ensures the implementation of public policy documents and national development strategies in the domain of road transport, **controls and supervises the compliance of the national and international legislation in the domain by the road transport operators and by the undertakings performing activities related to the road transport** is ANTA.*

Similarly, in accordance with point 7 par. (26) and (28) of the Government Decision no. 539 of 23.04.2008 regarding the creation of ANTA Public Institution, the main tasks of ANTA are:

- *the monitoring and the control of the road transport activity and to its related activities, carried out in the traffic and / or at the premises of the road transport operators and / or at the premises of the activities, including their related, according to the legislation in force, by the authorized inspectors to this purpose, through the decisions of the ANTA management;*

- *the application of contraventions sanctions, within the limits of their competence, according to the law.*

In accordance with art. 197 par. (8) of the Code of Contravention no. 218 of 24.10.2008, *the carrying of the road passenger transport by regular services at other starting hours or on another itinerary than those stipulated in the circulation schedule, according to the permissive act, except for carrying out additional races in accordance with the provisions of art. 90 par. (4) and (5) of the Road Transport Code shall be sanctioned by a fine of 30 to 60 conventional units with or without 2 penalty points applied for the individual, with a fine of 150 to 200 conventional units for the legal entity.*

At the same time, according to art. 204 par. (6) and (7) of the Contravention Code no. 218 of 24.10.2008, *the admission of the departure without a travel ticket from the territory of the bus station to the road passenger transport by regular services by the driver of the means of transport or by the person responsible for the approval of the outgoing of the transport unit from the territory of the bus station, is sanctioned with a fine from 12 to 18 conventional units and the omission of the issue of travel tickets in urban transport or in the carriage of persons by regular services by the driver of the means of transport or by the person responsible for taxing the travel shall be sanctioned with a fine of 12 to 18 conventional units.*

According to art. 407 par. (1) of the Code of Contravention no. 218 of 24.10.2008, *the contraventions stipulated in art. **197 par. (1) to (10)**, and art. **204**, is determined by the specialized **organs of the public administration in the domain of road**, electric, railway and naval transport, according to the type of transport corresponding to the competence.*

Also, in accordance with art. 354 Contravention Code no. 218 of 24.10.2008, *hooliganism not too serious, that is to say insulting in public places of the individual, other similar actions that disturb the **public order** and the peace of the individual, shall be sanctioned by a fine of 6 to 30 conventional units or unpaid work in community benefit from 20 to 60 hours.* Concurrently, according to art. 400 of the same Code, the contraventions provided in art. **354**, are founded and examined by the police.

In the same vein, it is reiterated that the penalty categories established for the applicant had a progressive evolution by including additional penalties in the draft contract for 2017 proposed for signature in relation to the model contract approved by the Order of the Ministry of Transport and Infrastructure Road no. 132 of 21.04.2010. Thus, in the draft contract for passenger transport for 2017, the following additional penalties were found as follows:

a) for the release of tickets by the drivers on the territory of the bus station, with the condition that the cash desk work - **200 lei**;

b) for the boarding of passengers without tickets by the drivers in the territory of the bus station: or their straightening out of the territory of the bus station for embarkation - **100 lei**;

c) for the detection of the cases of avoidance of additional payments by the drivers (carriers) from the passengers and the purchase of the tickets by them (the carriers) in the cash desk of the bus station, for the contribution of the drivers to the purchase of the short tickets by passengers (up to the points close to the final point) - **100 lei**;

d) For each case of infringement of the provisions of the bus station administration - **50 lei**;

e) For the not entrance on the territory of the bus station for the purpose of disembarkation of the passengers and the non-execution of the writings at the bus station dispatcher - **100 lei**;

f) For the infringement of hygienic-sanitary regime and public order on the territory of the bus station- **100 lei**;

g) For the refusal to embark and carry passengers with pre-purchased tickets from bus station cash desk - **in the amount of tickets sold**.

Taking into account the specifics of the infringements subject to the penalties referred to let. b), c) and e), it is concluded that these fall within the legal norms stipulated in art. 197 par. (8) and art. 204 par. (6) and (7) of the Code of Contravention no. 218 of 24.10.2008. In these circumstances, premises are created as the road transport operators to be penalized twice for the same act (*non bis in idem*), by the bus station under the contract, and by the ANTA control organ under the Code of

Contravention and the legislation in force .

Regarding the penalty for the breach of public order on the territory of the bus station let. f), it is mentioned that it falls within the legal norm provided in art. 354 of the Code of Contravention no. 218 of 24.10.2018. In this regard, the Ministry of Internal Affairs under art. 400 of the Code of Contravention no. 218 of 24.10.2008, is responsible for establishing facts that breach public order. Therefore, based on the provisions of art. 354, mentioned above, (which expressly provides the liability of the individuals), the road transport operator may be liable to be sanctioned by the bus station for the act of an individual (the driver), moreover the bus station is not competent to find and apply fines / penalties for acts that violate public order.

The circumstances mentioned above reveal that the competent authority to find infringements committed by road transport operators is ANTA, therefore it is entitled to apply penalties / fines to road transport operators and noway the bus station. At the same time, the bus station is not entitled to find and apply penalties / fines to the road transport operators for the violation of public order on the territory of bus station, the competent organ being the Ministry of Internal Affairs.

In another train of thoughts, it is noted that on 24.05.2018 „Telautogar” LLC and „Parcul de Autobuse nr. 1” JSC have signed the contract for road passenger transport no. 16. As a result of its examination, it is concluded that „Telautogar” LLC has ruled out the unfair terms in the part related to the nature of the fines and penalties which do not fall within the competence of the bus station, except for the clauses set out in pt. 3.1.2. c) and e), as follows:

- for the detection of the cases of contribution of the car drivers , of carrier to the purchase of short tickets by passengers - 50 lei;
- for the not entrance on the territory of bus station for the purpose of disembarking passengers and the not making registration to the dispatcher of the bus station - 50 lei.

At the same time, it is reiterated that „Parcul de Autobuse nr. 1” JSC claimed in the complaint that „Telautogar” LLC being a direct competitor to it, intentionally and simultaneously with „Parcul de Autobuse nr. 1” JSC race maked extra races outside of the traffic chart to deprave it of passengers.

According to art. 90 par. (4) and par. (5) of the Road Transport Code no. 150 of 17.07.2014, *the holders of the license for carrying out the bus station activity have the following obligations: On holiday days and weekends with increased passenger flow, the bus station leader has the right to involve additional road vehicles of the road transport operators performing regular services road transport in the given locality or direction. At the additional involvement of road vehicles for the regular services of road transport, according to par. (4), priority shall be given to the road transport*

*operator which carries out a regularly authorized service and, in the event of its refusal, it appeals to the other transport operators which perform regular services in the given locality or direction.*

By letter no. 08 / 3-1-3393 of 25.04.2017 ANTA announced that the Chişinău - Teleneşti route is served by the following road transport operators: „Popovici Ştefan” IE, „Telautogar” LLC, „Galprim” LLC, „Familia Harea” IE „Tatiana Corman” IE, „Parcul de Autobuse nr. 1” JSC, „Carcea Nina” IE, „Andrei Harea” IE.

In the same vein, according to letters no. 5 of 06.03.2017, no. 9 of 26.05.2017 and no. 16 of 11.12.2017 sent by the complainant to the Competition Council concludes that during the period January 2016 - November 2017 all additional races were performed by „Telautogar” LLC with the exception of seven additional races performed by „Andrei Harea” IE, „Popovici Ştefan” IE, „Galprim” IE and „Fanus-Trans” LLC.

It is also concluded that the performing of additional races have been arranged on holidays and rest days, days with increased passenger flow.

At the same time, it is mentioned that most of the additional races were performed at 16:30 and 16:40 (according to the road transport authorizations „Parcul de Autobuse nr. 1” JSC perform the regular races from Teleneşti bus station at 15:10 and 15:50 .

According to the same idea, during the period January 2016 - January 2017 „Telautogar” LLC performed 5 additional races between the hours of departure from the bus station of the races performed by „Parcul de Autobuse nr. 1” JSC. Thus, the table below shows the information regarding the additional races performed by „Telautogar” LLC in relation to the hours of departure from the bus station of „Parcul de Autobuse nr. 1” JSC.

**Table nr. 2: The performing of the additional routes by „Teleautogar” LLC in relation to the departure times from the bus station of „Parcul de Autobuse nr. 1” JSC**

<b>Date</b>	<b>Departure times from Teleneşti bus station for the routes performed according to the program by „Parcul de Autobuse nr. 1” JSC</b>		<b>Times of additional routes performed by „Telautogar” LLC</b>
07.02.16	15:10	15:50	15:30
08.03.16	15:10	15:50	15:30
09.05.16	15:10	15:50	15:10
27.11.16	15:10	15:50	15:30
08.01.17	15:10	15:50	15:30

*Source: the letters no. 5 of 06.03.2017 and no. 9 of 26.05.2017*

By letter no. 01/36 of 15.08.2017, „Parcul de autobuse nr. 1” JSC announced

that at the route with 15:10 start time from Telenești bus station were sold: 15 tickets for 07.02.2016, 19 tickets for 08.03.2016, 19 tickets for 27.11.2016 and 20 tickets for 08.01.2016. Regarding the route from 09.05. 2016, it is mentioned that this has been not done.

At the same time, „Parcul de autobuse nr. 1” JSC said that it started serving the route with the departure time of 15:50 from Telenesti bus station starting with March 2017. It is also mentioned that the capacity of the bus is 20 persons. Consequently, the means of transport of the „Parcul de autobuse nr. 1” JSC, which served the regular route with 15:10 departure time, it was practically embarked to maximum.

In another train of thoughts , „Telautogar” LLC motivated the performing of additional routes only by it because the road transport operators do not want to perform additional routes, because the additional routes are usually performed at late hours and they do not want to return from Chișinău without passengers. Also, the defendant also informed that from the „Parcul de autobuse nr. 1” JSC has never received a request to carry out additional routes on days with increased passenger traffic. The road transport operators („Parcul de autobuse nr. 1” JSC, „Popovici Ștefan” IE, „Galprim” LLC, „Familia Harea” IE, who are authorized to serve the Chișinau-Telenești route) said that they were not been informed about the additional routes by the bus station. Proves on the carrier's refusal to carry out the additional routes or the notification by the bus station about them have not been submitted.

Taking into account the legal provisions wich regulate the legal regime regarding the allocation of additional routes, more exactly art. 90 par. (4) and par. (5) of the Road Transport Code no. 150 of 17.07.2014, concludes that the legislator did not expressly specify by what method the road transport operator should be informed when additional routes are arranged by the bus station, in these circumstances it is difficult to prove the facts related to the notification of the additional routes or the refusal to do these. Moreover, taking into account that „Telautogar” LLC operates on the regular Chișinau - Telenești route, it also has priority in the service of additional routes, therefore, this denotes that „Telautogar” LLC falls within the legal limits stipulated in art. 90 par. (4) and par. (5) of the Road Transport Code no. 150 of 17.07.2014.

In another train of thoughts, it is mentioned that most of the road transport operators („Galprim” LLC letter no 27/02 of 27.02.2018, „Familia Harea” IE letter no. 001 of 05.03.2018, „Tatiana Corman” IE letter entry no. 174 of 23.03.2018, „Carcea Nina” IE letter entry no. 214 of 26.01.2018, „Andrei Harea” IE letter entry no. 342 of 01.02.2018) informed that the carrying out of the additional routes did not affect their activity. Other road transport operators „Popovici Ștefan” IE by letter entry no. 210 of 26.01.2018 and „Parcul de autobuse nr. 1” JSC by letter no. 01/67 of

15.01.2018, reported that the performing of the additional routes affected their activity, without bringing any relevant evidence that denotes this fact. Thus, „Popovici Ștefan” IE invoked him that the allocation of additional routes affected its activity because the total passenger flow was withdrawn in the second half of the day. This argument can not be taken into account as it is at the discretion of passengers to decide in what half of the day to travel. Moreover, according to the ANTA Series road transport authorization no. 0105472 valid until 07.06.2023, „Popovici Ștefan” IE operates on regular routes on all days of the week, but additional routes are only available on days with increased passenger traffic, which usually take place on the weekends, as well as on holiday days.

Based on the above, during the analyzed period (January 2016 - November 2017) it is concluded that „Telautogar” LLC did not prejudge the activity of „Parcul de autobuse nr. 1” JSC by arranging additional races on the regular route Chișinău - Telenești. Thus, relevant evidences in this regard has not been identified indicating that the additional routes have caused damages to the road transport operators.

By letters no. APD - 05/144 - 832 and no. APD - 05/145 - 831 of 10.04.2018, the Competition Council, pursuant to art. 59 of the Competition Law no. 183 of 11.07.2012, sent to „Telautogar” LLC and „Parcul de autobuse nr. 1” JSC the copy of the investigation report in order to give the right to comment on it. „Parcul de autobuse nr. 1” JSC did not submit observations on the investigation report. „Telautogar” LLC, in accordance with the provisions of art. 58 par. (1) of the Competition Law no. 183 of 11.07.2012, for the exercise of the right to defense, by letter no. 14 of 10.05.2018, submitted observations on the investigation report. It is also concluded that no additional relevant evidences and information has been submitted.

#### **IV. The legal qualification of the actions found according to the provisions of the Competition Law no. 183 of 11.07.2012.**

In accordance with the provisions of art. 11 par. (1) and (2) let. a) of the Competition Law no. 183 of 11.07.2012, it is forbidden to use a dominant position on the relevant market insofar as it may affect the competition or injure the collective interests of final consumers by imposing, directly or indirectly, inequitable selling prices or other inequitable trading conditions.

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

Regarding the actions of „Telautogar” LLC concerning the disposition of the additional races, it is concluded that during the investigation no relevant and conclusive evidences was found which indicates the fact that the defendant has committed an abuse of a dominant position, therefore the reclaimed action does not fit in the

provisions of art. 11 par. (1) and (2) let. a) of the Competition Law no. 183 of 11.07.2012, which would justify the application of corrective measures or sanctions because the given action did not affect the competition because according to art. 90 par. (4) and par. (5) of the Road Transport Code no. 150 of 17.07.2014, the carrying out additional races by „Telautogar” SRL, was disposed within the legal limits, without prejudice to the activity of the road transport operators.

With reference to the actions of the undertaking „Telautogar” LLC regarding the imposition of some inequitable trading conditions to the bus station activity, it is established that during the investigation sufficient relevant and conclusive evidences have been established which denotes the fact that the defendant has committed an abuse of a dominant position, was violated art. 11 par. (1) and (2) let. a) of the Competition Law no. 183 of 11.07.2012, for the following reasons:

1. In accordance with art. 8 par. (1) of the Road Transport Code no. 150 of 17.07.2014, pt. 7, par. (26) and (28) of the Government Decision no. 539 of 23.04.2008 regarding the creation of ANTA public institution, art. 407 of the Code of Contravention no. 218 of 24.10.2008, the competent control authority to detect and apply fines to road transport operators for the infringement of the legislation in force is ANTA. Also, according to art. 400 of the Code of Contravention no. 218 of 24.10.2008, the competent authority to find and apply fines for the infringement of public order is the Ministry of Internal Affairs. Thus, the ascertainment made by the bus station of violations committed by road transport operators is contrary with the legal provisions because the bus station is not the authority with control function.

2. The enforcement action towards the complainant the inequitable trading conditions provided in the contract was manifested by the ceasing of the sale of the three-day tickets on the routes assigned to „Parcul de Autobuse nr 1” JSC. The reason that stood at the base of this cessation was the disagreement of the road transport operator to sign the draft contract for 2017 with „Telautogar” LLC. At the same time, during the hearings dated 11.06.2018 „Parcul de Autobuse nr 1” JSC stated that the settlement of the financial means obtained from the sales of tickets are made with great delays by „Telautogar” LLC, a fact confirmed by the accounting certificate of 12.06.2018, (letter No. 2256 of 13.06.2018).

Taking into consideration the factual and legal circumstances exposed in the present investigation, the action of the defendant company „Telautogar” LLC, manifested by the imposition of penalties and fines not falling under the bus station competence, stipulated in the draft contract for 2017 proposed for signing, „Parcul de Autobuse nr 1” JSC meets the constitutive signs of the act provided in art. 11 par. (1) and (2) let. a) of the Competition Law no. 183 of 11.07.2012.

In the same vein, it is concluded that the other road passenger transport

contracts concluded between „Telautogar” LLC and the road transport operators for 2017 are identical to the draft contract for 2017 proposed for signature by the complainant.

Thus, the abuse of a dominant position was committed on the market of the bus station activity within the territory of the bus station from Telenesti city.

In accordance with art. 71 let. a) of the Competition Law no. 183 of July 11, 2012, the Plenum of the Competition Council has the right to impose, by decision, to undertakings, fines if, deliberately or negligently, these undertakings violate the provisions of art. 5 and 11.

Depending on the duration in accordance with the provisions of art. 72 par. (5) let. a) of the Competition Law no. 183 of 11.07.2012, the act fits on average durations (from one year to five years) - factor 1.2.

Depending on the gravity of the act according to art. 72 par. (3) let. a) of the Competition Law no. 183 of 11.07.2012, the act falls to small gravity infringements, since the action regarding the imposition of inequitable trading conditions on the bus station services was committed by „Telautogar” LLC out of imprudence. In this regard, by letter no. 5 of 06.03.2017, the defendant informed that in 2016 the contract for the road passenger transport was based on the contract of collaboration between the carrier and „Gărilor și Stațiile Auto” SO, for the 2017 the same contract was concluded but only the fines were reduced. Thus, the Competition Council concludes that „Telautogar” LLC, at the elaboration of the contract for 2017, was focused on the contracts concluded between the road transport operators with „Gărilor și Stațiile Auto” SO. This fact indicates that „Telautogar” LLC considered that these contracts are developed within the limits of the legal norms, in the context of the fact that "Railway stations and Auto Stations" is the largest undertaking that carries out bus station activity.

The action of „Telautogar” LLC regarding the imposition of unfair trading conditions at the bus station service, according to the findings of the investigation, affected the market at local level, given that „Telautogar” LLC provides bus station activity only in the city. Telenesti, serving 15 road transport operators from about 191 road transport operators providing the same type of activity (data obtained from the Activities Classifier of the Moldovan Economy for 2016). Taking into account the reduced number of road transport operators that collaborate with „Telautogar” LLC, as well as the fact that the local bus station activity is performed locally, it is noted that the given action is of low gravity.

Thus, the basic level of the fine for the gravity of the act according to art. 72 par. (3) let. a) of the Competition Law no. 183 of 11.07.2012, was set at [...] of the total turnover registered in 2017.

According to art. 72 par. (1) of the Competition Law no. 183 of 11.03.2012, the basic level of the fine for the infringement of the material norms of the competition law is determined according to the gravity and duration of the act. The basic level is obtained by multiplying the percentage by gravity with the factor related to the duration of the infringement ([...] depending on the gravity of the act multiplied with 1,2 related factor of the average duration of the infringement).

Pursuant to letter entry no. 687 of 13.06.2018 „Telautogar” LLC for the 2017 year achieved the turnover in the amount of [...] lei.

According to art. 36 par. (5) of the Competition Law no. 183 of 11.07.2012 the amounts representing fines or other sanctions applied by the Competition Council are made to the state budget, according to the law, and are to be transferred to the revenue IBAN code MD83TRGAAA14311701000000.

In accordance with art. 43 par. (2) of the Execution Code no. 443-XV of 24.12.2004, if the amounts are collected for the benefit of the state, the quality of beneficiary is exercised by the Ministry of Finance, fiscal code 1006601000037.

**Debtor** is „Telautogar” LLC, Telenești cty., Dacia Street 6, MD-5800, IDNO - 1013606001154, [...].

Based on the findings set out above, according to art. 39, art. 41 let. h) and let. p), art. 71 let. a) and art. 72 of the Competition Law no. 183 of 11.07.2012, the Plenum of the Competition Council

#### **DECIDES:**

1. To ascertain the infringement of the provisions of art. 11 par. (1) and (2) let. a) of the Competition Law no. 183 of 11.07.2012 by „Telautogar” LLC by imposing the „Parcul de Autobuse nr. 1” JSC to unfair trading conditions for the bus station activity related in the part to the contractual clauses regarding the nature of the penalties and fines which do not fall within the competence of the bus station, stipulated in the draft contract for the road passenger transport for 2017 in point 3.1.2. let. e), f), h) and k).
2. To apply to the undertaking „Telautogar” LLC a fine for the infringement of the provisions of art. 11 par. (1) and (2) let. a) of the Competition Law no. 183 of 11.07.2012 in the amount of 3 485.79 lei (three thousand four hundred eighty-five, 79 bani).
3. The amount stipulated at pt. 2 shall be paid to the state budget for a period of 60 working days from the date of notification of this decision, with the mention „fine applied by the Competition Council in compliance with the Competition Law no. 183 of 11.07.2012”.
4. Oblige „Telautogar” LLC, until 15.09.2018 to exclude from the road passenger

transport contract no. 16 of 24.05.2018, concluded between „Telautogar” LLC and „Parcul de Autobuse nr. 1” JSC the clauses stipulated at pt. 3.1.2. c) and e) and to inform the Competition Council about the actions undertaken until 01.10.2018.

5. Oblige „Telautogar” LLC, until 15.09.2018, to amend all contracts for road passenger transport, so as to ensure compliance with the provisions of art. 11 par. (1) and (2) let. c) of Competition Law no. 183 of 11.07.2012 and to inform the Competition Council about the actions undertaken until 01.10.2018.
6. This Decision shall enter into force on the date of its adoption and will be communicated to the parties.

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

**Viorica CĂRARE**