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BUSINESS REGULATIONS IN ETHIOPIA:
The Provisions of Commercial Road
Transport Service

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BUSINESS REGULATION IN ETHIOPIA: The Provisions of Commercial Road Transport Service

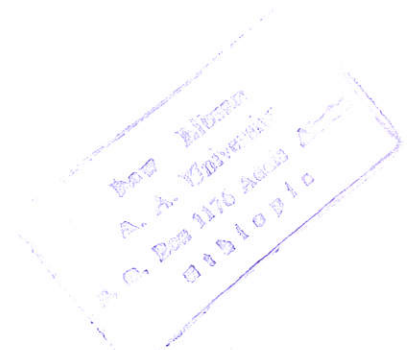
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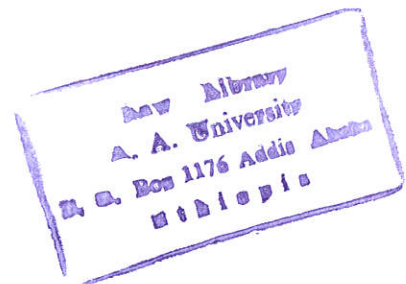
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List of Acronyms

ANDM	Amhara National Democratic Movement
Art.	Article
EFTC	Ethiopia Fright Transport Corporation
EPA	Ethiopian Privatization Agency
EPRDF	Ethiopian People Revolutionary Democratic Movement
EPTC	Ethiopian Passenger Transport Corporation
FDRE	Federal Democratic Republic Ethiopia
Fed.	Federal
Gaze.	Gazette
MOTaC	Ministry of Transport and Communication
NDR	National Democratic Republic
Nega.	Negarit
No.	Number
PMAC	Provisional Military Administrative Council
Proc.	Proclamation
Regu.	Regulation
RTA	Road Transport Authority
RTCB	Regional Transport and Communication Bureaus
TGE	Transitional Government of Ethiopia
TPLF	Tigray People liberation Front



CHAPTER ONE

1. Introduction

1.1. Background of the Study

Almost in all states, government has very wide power to tax, to own and operate business and to take private property for the public interests by the power of eminent domain. It has also broad regulatory power to legislate for the purpose of promoting the health, safety and general welfare of its citizens.

Business regulation is one of the many ways of governmental control on the uses and activities of private economic power. Such legal control limits entry into or exit from the business, regulates the type or amount of products or services offered, sets the price and quality provided and determines the terms of sale and level of profits allowed.

The regulation of business and its activities by the Government is variable depending up on the economic policy adopted by the country, the scope of regulatory power given to the government and the nature of the market. But, whatever approaches or scope of the regulatory mandates, its application to private business involves persons outside the business arena. This deviation from the principle of private control of economic decision making is generally justified on the ground that the public interest requires government control.¹ The rationale is that the market normally fails either to protect or to represent consumers or other public interests adequately. Thus, government regulation provisions the elements of responsibility missing from these markets or services. Keeping regulation within a legal mold- the assignment of the law of regulated business assures that both private and public interests are properly protected.²

The basic purpose of regulatory decision is to assure fair price, reasonable service, adequate quality or whatever particular policy the regulatory scheme is designed to serve.³ In reaching these judgments, government regulators balance assigned public needs with the need to assure an investment climate that will permit the regulated entity to attract capital at reasonable rates.⁴

1 Ogus Anthony, Regulation, Legal Form and Economic Theory, 1996, Clarendon press. Oxford ,PP,28-33
2Gellhorn Ernest and Pierce,Jr. Rechard J.,West Nutshell series, Regulated Industries,2nd Ed,1987,West Publishing Co.,P3.

3Ibid

4Ibid

The market for road transport services has traditionally been the subject of government regulation. Indeed, the sector by its very nature does not operate in isolation. It is not only a question of equity but also of safety that invites regulation in choosing the most qualified candidate to enter into the transportation industry.

In many countries, the public sector usually provides transportation service. In general, the aspiration on the part of the public to engage in transportation service is to promote, provide, or secure an efficient, adequate, economic and properly coordinated transport service. Nevertheless, in many other jurisdictions the task is left to the private sector. However, whether transport services are provided by public or private enterprises, the activities are invariably regulated by a codified set of rules and other restrictions, statutory and discretionary, which circumscribe the freedom of operators to engage as they see fit in economic activities. Rate regulation, entry restrictions, minimum level of services, assigned transport routes are some examples of regulatory controls on transport services.

The economic model that supports such regulations in all modes of transport has been based on the belief that under some circumstances, private markets fail to provide transport services in the most efficient manner. Thus, in order to ensure appropriate, efficient and sustainable services in the interest of citizens, users and operators, the sector should be regulated by government administrators. This indicates that even if the transportation service is privately owned the proper functioning of the system should somehow be regulated. Hence, the whole realm cannot be left to the mercy of the private sector whose sole motive might be profit making.

An interesting but related idea is that if government fails to do any thing or leaves the whole regime to the private sector, that would be ultimately imputable to itself; it would serve as scapegoat for problems. Consequently, it would be accountable to the public or in a democratic order it cannot be insulated from the opinion and say of the public at large at least during elections. We can therefore comprehend that the interference of the governments in a sensitive area of business, transportation, is for own sake. It should spare itself by at least regulating the sector or else it will be a suicidal move.



The purpose, nature, and scope of such regulation will, of course, differ markedly from one transport mode to the next and from one country to the other. Moreover, the purpose, nature and scope of such regulation may also depend on the economic policy adopted by the country. Hence, the liberalized market advances a more limited role for regulation in the event of market failure, even in those markets where neo- liberals accept a positive role for regulation. However, the social institutional school regards regulation as inherent in all markets.

Road transport in Ethiopia can be said to have passed through three distinct historical policy approaches. Before 1974, government was not involved in transport operations but was engaged in issuing rules and regulations for the market economy (regulated private market).⁵ During the Derg regime, the road transport industry was centralized and the operations were assumed by government owned parastatal companies (government monopoly).

The transitional government since 1991 has applied a gradual de-regulation procedure and finally tends to liberalize and de-regulate (unregulated private market). It is clearly expressed in the recent broad Government policy objectives, strategies and priorities that the Government is committed in giving the private sector a substantial role in the economic development of the country.⁶ To this end, the government outlines a program focusing on economic stabilization and structural reform measures particularly in the financial sector, public enterprises and civil service areas aiming at removing cost and price distortions, and improving market related incentives so that progressively liberalizing the economy and reducing the role of the public sector.

The policy and strategy document recognizes that, direct supply of transport infrastructure and services by the public enterprises or regulated monopolies has resulted in high costs and poor quality of services. Consequently, for the purpose of overcoming these inefficiencies the strategy document underlines the need to institutional and regulatory reform in order to introduce commercial processes and competitive pressures in to the industry.⁷

⁵ The Dergue, after assuming government power, has monopolized the economic sector in fact including the transportation sector. for more, see proclamation No.26/1975

⁶ The TGE economic policy Amharic version official document, 1991, Mega publishing enterprise.

⁷ FDRE Industrial development document / Amharic version/, Mega publishing enterprise, AA, Nehasie 1994

1.2. Statement of the Problem

A market economy (also called a free enterprise economy) is an economic system in which the production and distribution of goods and services take place through the mechanism of a free market guided by a free pricing system.⁸ In a market economy, producers and consumers decide on their own volition what they will purchase and produce. Most free market scholars believe that government should be limited to at least: operating a court system for the settlement of disputes; maintaining stable currency (combating inflation); protecting market competition and consumer.⁹ Therefore the government, in order to protect the market from certain imperfections authorized to intervene through regulation or competition laws. Hence, the legislative and executive branches of government are actively engaged in the promulgation and execution of laws and supervise the interactions in the market. Much of these regulations are in the hands of administrative agencies which exercise law making, enforcing and quasi judicial power.

In Ethiopia through the liberalization process starting in 1991, the government has made considerable economic changes by adopting policies of deregulation, privatization and market liberalization. In recognizing the legal right for all market players to freely interact with each other, the Government reserves the power to regulate several business sectors and delegate each ministerial office to play a regulatory role in its own affairs. In this regard, regulating the transportation sector is the jurisdiction of the Ministry of Transport and Communications and The Road Transport Authority.¹⁰ In addition to the policy document that advances liberalizing the service sector, there are regulations designed by the Government in order to oversee the activities in each service sector and a competition law that facilitates the playing field in the market free from unfair and anti-competitive practices. However, even after taking all these reforms, the sector still remains inefficient and ineffective to meet the demand and satisfy the interests of the public at large. Moreover, the legal and practical aspects of the free enterprise transformation system designed by the government according to many are not yet put into practice.¹¹

⁸ Anthony at note 1, PP.16-24

⁹ Ibid

¹⁰ Article 7 of Proclamation No.468/2005, a proclamation to provide for the regulation of transport, Federal Nega.Gaze, 11th year No.58

¹¹ many scholars in the field challenged the practical transformation of the Ethiopian Economy.

Because of these, it becomes a challenge for the regulatory body to safeguard the interest of the public in general and to give simultaneously a reasonable return on the investments made by the operators in particular.

1.3. Objectives of the Study

The basic objectives of this study are examining the role of the FDRE Government in regulating the business activities of the country in general and private commercial transport sector in particular. The research, therefore, aims at evaluating the regulatory role of the government and its compatibility with the principle of free enterprise economic policy and the economic policy the like thereof which the country has launched.¹² Moreover, the study will try to find out the major challenges in governmental regulation of private commercial transport sector and forwarding some recommendations for handling these challenges. More specifically, the study will try to provide the decision makers with sufficient information to justify revision to the existing legislative frame work and road transport regulations. This will enable the commercial private road transport industry to operate more effectively and efficiently, to better respond to transport demands and to give government the best economic return on its infrastructure environments within a safer road environment. More precisely the study aims to:-

- ❖ Evaluate the degree of Government intervention in the sector both at federal and regional levels;
- ❖ Investigate the regulatory roles by government agencies and its limitations;
- ❖ Evaluate the compatibility of the regulations made by the government with the economic policy of the country and,
- ❖ Recommend legal measures (if any) to be taken.

1.4. Significance of the Study

The research is considered to have its own academic and policy significances. More importantly, it is hoped to initiate further study in the subject under consideration. As the study is not only intended to work on the tip of the problem rather to see the causes as well, hence, it is believed to instigate people to be concerned and make a research for such

¹² It is categorical that the country has not embarked upon a free economic policy into to, the major economic sphere, land, for example is not subject to private ownership. See, the FDRE constitution, article 40/8/

is also intended to show the existing situation, it hopefully shows the magnitude of the problem, the system should be designed to combat the problem and show the legal lacuna where it fails. Thus, it may indicate where justified intervention by the Government should be had. Besides, the paper will be critical of unjustified interventions, where they exist, and point to possible ways out.

1.5. Scope of the Study

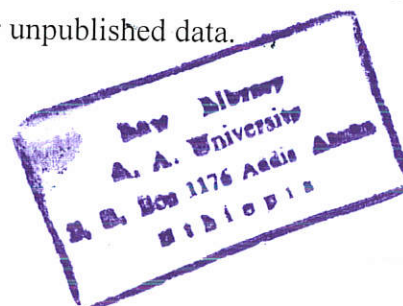
The study will focus on the multiple forms of government regulations both direct and indirect, and the various institutions entrusted with regulating one or another aspect of private commercial transport sector in Ethiopia. For the most part, it will concentrate on the service aspects of private commercial transport regulation and those constituent parts that create the service. Particularly, those aspects of the regulations which are immediately tied-up with the private commercial transport service as direct and those that relate to the component inputs which together make the service possible as indirect regulation will be the coverage.

Because of the need for special regulation, air railway and marine transport services are excluded from the scope of the research. Moreover, Freight Transportation service and public transport service by the government are not the ambit of the study.

1.6. Research Methodology

The study will be conducted by using a comparative analysis of related literatures, policies and laws of the country. It also includes data from interviews and/or questionnaires to pertinent officials, service providers and customers. And in some instances, data from observation may be presented quantitatively, while, mostly relying on qualitative research methods.

Most data in this study will be drawn from policies, proclamations, regulations, directives, books and periodicals. In addition to this, information gathered from interviewee and/or questionnaires are used. Moreover, observation will be used as a data gathering tool on condition where there are no accesses to published or unpublished data.



1.7. Organization of the paper

The Paper is divided in to five chapters. The first chapter deals with more of introductory remarks. The second essentially is concerned with the theoretical foundations of all forms of government regulations in general and transport regulations in particular. It tries to give emphasis on the historical development of road transport regulation in Ethiopia since the early 1943 up to the present mainly focusing on its dynamic character. It also spells out the rationale behind the whole body of road transport regulations and examines the manner in which the regulations are pursued.

The third fourth and fifth chapters contain the main body of the paper. The third chapter addresses Road Transport regulation and the practice in Ethiopia. And, the fourth deals with Regulatory perspectives of Road Transport and the practice in Ethiopia, the fifth is about the types of private commercial road transport service and the regulatory schemes adopted by the government of Ethiopia in each service sector. Finally, the paper winds up with concluding remarks and recommendations.

CHAPTER TWO

2. GOVERNMENT REGULATION OF BUSINESS:

2:1 GENERAL OVERVIEW

2.1.1. Theories and Principles regarding the Role of State in the Business Activities of a Country.

The role of the state in economic development is one of the oldest topics in economics. Scholars from many parts of the world have examined the roles of states in instituting comprehensive political reforms and shaping national economic development.

In the advanced industrial countries too, people have expended a lot in studying social programs and the role of government in dealing with economic problems. Hence, effective state intervention is now assumed by many to be an essential part of a successful economic intervention. There are a number of economic arguments as to why state intervention is crucial for economic makeover.

One argument is that state intervention is required to rectify market failure, which is the inability of a market economy to reach certain desired outcomes in resources use.¹³ The market accomplishes a number of things at once, many of them decisive for economic efficiency. Such as, the market coordinates the activities of a number of economic units. More over, it makes the varied knowledge and energy available in ways that elude any form of administrative coordination. Importantly, the market signals supply conditions.

Put in a nut shell, the market responds to shortage and abundance - as well as variable needs and wants. In line with this, the market provides incentives for responding to changing demand and supply situations; more over it channels resources required for such responses. At the same time, however, it also allocates income in disregard of presentations of equity, leaving some needs unmet, and it creates concentration of economic power or monopolies.¹⁴ It is argued that without state intervention, collective goods will be inadequately provided, negative externalities will not be controlled and the rate of accumulation will suffer

¹³ Rueschemeyer, D. and L. Putterman 1992 "Synergy or Rivalry" in L. Putterman and D. Rueschemeyer (eds) State and Market in Development. Boulder: Lynne Rienner publishers. P. 243

¹⁴ . Ibid

accumulation will suffer correspondingly¹⁵ the state should therefore, undertake activities that would compensate these and other market failure.

Since, intervention may also be needed when market fail to bring about industrial or economic development, at times the private sector may not initiate industrialization because it may be undercapitalized and hence unable to take short term loses due to the underdevelopment and an efficiency of capital market or future profits may not compensate for current losses or investgate in manufacturing may be less profitable than, say, speculating in land or importing foreign products. In all of these instances state intervention of any form or another may be needed.¹⁶

Another argument that may apply mainly to developing countries is that late industrialization would not be possible without possible state intervention.¹⁷ Late industrializes can grow only by borrowing technology from industrialized countries.¹⁸ This denies them a competitive advantage from new products and processes. Governments must therefore protect and subsidize their domestic industries for them to develop in a far more pervasive fashion and become competitive in the world market.¹⁹

Furthermore, proponents of state intervention seem to hold that protection of infant industries in developing countries from the competition of industries in already developed countries is essential for national development.²⁰ This idea is normally an antithesis of the neo liberals who hold that resource should be allocated according to competitive or relative advantage.²¹ Thus, long term growth is seen to be the result of effectively allocating resources in the short term. However, proponents of infant industry protection argue that resources should be allocated inefficiently in the short term in order to achieve more rapid long term growth.²²

¹⁵ Rueschemeyer, D. and P. Evans, 1992 the State and Economic Transformation: Towards and Analysis of the conditions underlying Effective Intervention. in L. Putterman and D. Rueschemeyer (eds) State and Market in Development. Boulder: Lynne Rienner Publishers P. 45

¹⁶ Amsdan, A.H. 1992 "A Theory of Government Intervention in late Industrialization, in L. Putterman and D Rueschemeyer, (eds.), state and market in Development. Boulder: Lynn Reinner publishers, P. 59

¹⁷ Ibid, P. 53

¹⁸ Ibid

¹⁹ Ibid

²⁰ Graham, G. World Bank, Backing for investors, Financial times, /London/ September 13, 1994, P. 416

²¹ Ibid, P. 416

²² Ibid

Summarily, we can see that state intervention can bring both positive as well as negative outcomes. One should therefore, ask what factors determine the effectiveness of state intervention. A distinction is often made between “hard” and “soft” state. Soft states are generally thought to be responsive to a variety of interest groups, with the latter playing an important role in defining government policies. Hard states are able to resist these influences so as to define autonomous goals and policies.²³ It is therefore, argued that an autonomous state is necessary pre-requisite for state-driven economic development. The success of East Asia /with the exception of Hong-Kong/ is often attributed to the existence of such hard states in those countries.

What accounts for effective intervention by the state may differ from one country to another depends on the stages of development. What works for Indonesia or Ethiopia may not work for Japan or the US. Every state has its own peculiar features. Despite these differences, however, a study by the World Bank provides a broad framework for addressing the issue of effective state intervention.²⁴ According to this study, the path to an effective state intervention is a two-stage process. The first is matching the states role to its capacity. The state must focus its capability on those tasks it can and should under take.

Where state capability is weak, how the state intervenes and where - should be carefully assessed. Many states try to do too much with few resources and little capability and often do more harm than good. A sharp focus on the fundamentals would improve effectiveness.²⁵

It is really a puzzling task to try to match the state’s role to its capability. It is also critical to outline the things relevant to the task and more so to choose what should indispensably be included. The task is not automatic in its nature; it involves deciding how to do things - how to deliver basic services, provide infrastructure, and regulate the economy. The choices here are diverse and must be adaptable to the circumstances of each country. The World Bank study, however, suggests that getting the fundamentals right should be the

²³ Myrdal, G. 1968, *Asian Drama: an Inquiry in to the poverty of Nations*, New York: Pantheon pu.Inc.P.423

²⁴ World Bank 1997, *World Development Report*, Washington. D.C: World Bank. P.2.

²⁵ Ibid,P3

first job of every state. The study singles out five fundamental tasks at the core of every government's mission.²⁶

- Establishing a foundation of law;
- Maintaining a good policy environment, including macro economic stability;
- Investing in basic social services and infrastructure;
- Protecting the vulnerable; and
- Protecting the environment.

These fundamentals should be adhered for the sake of stable and sustainable development. Since marginalization often breeds lawlessness, public policies can ensure that growth is shared and that it contributes to reducing poverty and inequality. Therefore, the concern should not be anchored on growth alone but also on the allotment of the proceeds on a fair share basis at least in terms of basic education and health. Safeguarding the public against material and personal insecurity is another task to accomplish. Where poverty and economic marginalization stem from ethnic and social differences, policies must be carefully crafted to manage these differences.²⁷ This is simply comprehensible because ethnic cleavages are sensitive to economic and political responses; hence, measures that cross cut these differences be designed. Moreover, when markets are undeveloped, the state can encourage market development.

*Many of today's industrial economies used various mechanisms to spur the growth of markets in their early stages of development. More recently, Japan, the Republic of Korea, and other countries in East Asia used a variety of mechanisms for market enhancement, in addition to securing the economic, social and institutional fundamentals. Sometimes, these interventions were quite elaborate . . . other times they were less intrusive*²⁸

The second stage of the path to effective state intervention is raising the state's capability by reinvigorating public institutions. This is done by introducing different mechanisms the list of which ranges from implementing methods to help check arbitrary state action and combat entrenched corruption to encouraging popular participation. Hence, minimizing or

²⁶ Ibid. P.4

²⁷ Ibid P. 6

²⁸ Ibid. P. 6-7

of corruption and establishing rule of law is one important aspect. Besides, setting up rules and regulations for subjecting state institutions to greater competition is a vital measure. This in turn is used to increase efficiency; the performance of state institutions. In addition to these, improving pay and incentives, making the state more responsive to people's needs, bringing government closer to the people through border participation and decentralization should be encouraged.²⁹

2.1.2. Rationales for Government Intervention Through regulation

The procedure of government intervention in business activities presupposes underlying political assumptions within which it is launched³⁰. Hence; it is upon certain pre-existing economic relations that a system of control, supervision, restraint and guidance is ordinarily placed over. In any political system therefore, the Government will be authorized to take actions aimed at monitoring a system of market relations or else it will be left free and unchecked.³¹

The term regulation is usually used to denote extreme cases. On the one hand, it signifies the use of mechanisms to indulge in every specific activities performed mainly under the guise of making good deficiencies or managing abuses on the part of particular procedures or services provided. On the other hand, the term is used to denote general regulatory regimes for an entire economy or only particular types of free enterprises. Consequently, there is no universally accepted definition of regulation.³² It is also not unusual to find out different interpretations of regulation depending on the level of organization and the country of origin.

In Europe for example, regulation typically refers to the whole kingdom of legislation, governance and social control while in the United States, regulation has more specific meaning namely, the constant and attentive control exercised by a public agency over activities that are generally regarded as desirable to society.³³

²⁹. Ibid. P. 3

³⁰. Accordingly, an indication of the different political assumptions is briefly made under the heading "Theories, Principles and Practices regarding Government Intervention" just above.

³¹. I. Begg: "Introduction: Regulation in the European Union", In Journal of European Public Policy, London, No.3/4, 1996, P.528.

³². Ibid

³³. P.Selznik: "Focussing Organizational Research on Regulation," in R.G.Noll (ed.): Regulatory Policy and other Social sciences, Barkley university of California Press, 1985, PP.366-367.

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While in both, the principal purpose of regulation has been protection and promotion of public interest, in the United States there is preference for specialist of independent agencies that are bestowed with regulatory powers.³⁴ However, in Europe and even more so in developing countries regulatory power typically resides with the relevant state department or government ministry.³⁵

In any state, regulatory regime is usually intended to enhance the efficiency of markets and ensure the provision of social rights. Therefore, the intervention of government in any business activity has economic and social foundation. The social foundation of regulation however, is often justified on the basis of an economic rationale and social regulation is widely regarded as secondary to economic regulation.³⁶ Different writers made different arguments for regulation at different times. The principal arguments are:³⁷

- Guaranteed Provisions /in many markets service providers may be unable or unwilling to offer a service/;
- Market power /economics of sale or other features of a particular market can lead to monopoly power where producers or providers restrict output /service and raise price (thereby realizing economic rents) and/or restrict competitive access to the market/;
- Externalities /the well-being of one economic agent can be directly, and adversely, affected by the actions of another /e.g., as a result of pollution/;
- Information deficiencies /producers and providers typically possesses more information on the product/service than consumers and
- Excessive competition/ if there are too many producers or service providers in a market then price will be low, and revenue insufficient, to cover costs and ensure future investment./

Moreover, the principal social arguments for regulation are to ensure employment security, safeguard workers' terms and conditions of employment including health and safety,

³⁴.Ibid

³⁵.Ibid

³⁶.See S.Wilks: "Regulatory Compliance and Capitalist Diversity in Europe": in Journal of European Public Policy,London,No.3/4,1996,P.538

³⁷.Gellhorn Ernest and Pierce. Jr .Richard J., Regulated Industries in a nutshell, (2nd Ed.) West publishing Co. 1987,P.11

guarantee appropriate training to minimize accident and maximize productivity, service quality and effective representation of employment interests.³⁸

These objectives can be pursued directly through public regulation, by means of self regulation or through self regulation with in a statutory framework.³⁹ If price is too high, for example, competitors will enter the market; thereby resulting in increase of output and price will then fall. Provision of alternative services may do the same. If service provided by the private enterprise is poor, encouraging competition may remedy the problem. Encouraging the firm itself to improve performance is another possibility.⁴⁰

According to neo-liberals, regulation is only necessary in the event of market failure.⁴¹ Social regulation is not only secondary, justified principally in terms of health, safety or minimum training standards, but is typically regarded as inherently technical, placing unnecessary constraints and obligations on the firm.⁴² Thus, for neo-liberals competition is always preferred to regulation. They further argue that the principal purpose of regulation should be to ensure free competition. Then, the neo- liberal position can be summarized by the maxim of: “*competition where possible and regulation only where necessary*”.

In contrast to the neo-liberals’ approach where competition is given priority over regulation, many observers of the social-institutional school speak of free markets as neither natural nor desirable.⁴³ In this view, markets are envisaged as social institutions, governed by a set of rules many of which are framed by public authorities. According to them, markets are created by government, ordered by institutions and sustained by regulations.⁴⁴ The key question, therefore, is not whether to regulate markets but what and how to precisely regulate.

³⁸ Prof. Peter Turnbull, Regulation, Deregulation or Re-regulation of Transport, Discussion paper No.4, Sector Publications, Geneva, 1999, P.3

³⁹ Ibid

⁴⁰ Seheartz Louis B. Free enterprise and Economic Organization, Legal and Related Materials, (2nd ed., 1995,), The foundation Press Inc. P.6

⁴¹ Samuels Warren J. and Schmid A.Allan, (eds.), Law and Economics: An Institutional perspective, Kluwer Nijhoff Publishing, Boston-Haguel-London, 1992), P.576

⁴² Ibid

⁴³ Willks, at note36, P.542

⁴⁴ W.Streeck, Social Institutions and Economic performance, (1992), London, Sage, P.178

Regulation, in other words is not about market failure but the very constitution and definition of the market. According to this perspective, as all markets are deeply embedded in society, regulation must embrace labor as well as product markets, especially as the former can strongly influence firms' behavior in the latter.⁴⁵ Firms must therefore look to reduce costs by improving productivity and seek competitive advantage in the product market through service quality, reliability, punctuality, etc. Such action is widely regarded to be in the "public interest" demonstrating that social constraints can be highly predictive by promoting efficiency through greater equality.⁴⁶ Thus, regulation enables as well as constructions the activities of service providers. For the social institutional school therefore, competition and regulation are complementary rather than alternatives. More importantly, the purpose of regulation is "fair competition", which by definition must be socially constructed rather than, "*free competition*" which typically denotes competition with out regulation.

According to Wilks, compliance is the life blood of regulation.⁴⁷ In line with this, he states "*All regulation relies on the willing cooperation of the regulatory targets that cooperate through respect for the legitimacy of the regulations, and trust in the procedures of the regulators.*"⁴⁸

Accordingly, the ideal regulatory system would be one enforced through information and guidance rather than heavy-handed bureaucracy with threats and sanctions.

In summary then, whereas the social-institutional school regards regulation as inherent in all markets, neo-liberals advance a more limited role for regulation in the event of market failure.

Markets for transport services have been traditionally the subject of government regulation. The economic model that supports such regulations in all modes of transport is based on the belief that, under some circumstances, private markets fail to provide transport services in the most efficient manner.⁴⁹ Thus, in order to secure both economic and social benefits from

⁴⁵ Ibid

⁴⁶ .Willks, at note 36,P.542

⁴⁷ .Ibid

⁴⁸ .Ibid

⁴⁹ .Streeck, cited at note 44,P.193

the provision of transport services it is necessary to have regulatory policy. Moreover, the basic principles that guide regulatory policy should reflect the contribution of transport to both social and economic needs. It is categorical that access to safe, reliable and affordable passengers' transportation system is indispensable for every citizen.

Moreover, its contribution is immense for economic development at large. It is quite interesting to note that the influence works both ways; transportation improvements stimulate economic growth, just as economic growth increases the demand for transport services.

2.2. Objectives and Mechanisms of Regulation

It is understandable that different general objectives and mechanisms are touched upon as incidental discussions associated with the treatment on the notions of intervention and regulation. Nonetheless, a brief account of these basic concepts is deemed to be made to show the frequently occurring practical objectives and mechanisms. Hence, an independent discussion of the ideas is considered worthwhile and is in order.

2.2.1. Objectives of Regulation

We have already noted that economic regulation generally relies for its enforcement on administrative agencies whose processes and procedures are governed by principles of administrative law. These principles are highly influenced by regulatory objectives and vice versa. While, numerous particular regulatory objectives have been identified; generally they may be classified under three headings.⁵⁰ The most important objective of almost every regulatory scheme is economic efficiency.⁵¹ This is tantamount to saying that allocation of resources to their most highly valued use and are used most efficiently in production. Put it differently, to have precise set of low level based on costs which are prudently incurred.

A related and historically important objective of economic regulation of common carriers is the requirement that all users be served on an equal and non-discriminatory basis.⁵² As

⁵⁰ . Louis B. Cited at note 40,193

⁵¹ .Ernest and Richard J. Cited at note 37,P.11

⁵² .Ibid

opposed to the usual rule in the private markets, a regulated business cannot discriminate without an accepted justification.

The final set of regulatory objectives—minimum service, reliability, honesty and fair dealing, informed choice and full disclosure of relevant information and health, safety and environmental protection—are more recent in origin and do not require full scale intervention in the business.⁵³

As a result, they need not involve displacement of market forces or of traditional controls over the exercise of private economic power such as antitrust laws.

2.2.2. Mechanisms of Regulation

Almost four different methods of regulatory weapons are used to accomplish the above mentioned regulatory objectives.⁵⁴ Among these, the most common and all-inclusive system is cost-of-service ratemaking, whereby the regulator seeks to determine the regulated transportation costs including the cost of raising capital as an introduction to determine the revenues needed to cover its costs.⁵⁵ And, from this revenue calculation the charge figures the price that can be charged by the firm for its services. Moreover, these prices will include an opportunity cost to recover a competitive regime on investment.

Where the regulated transportation serves several classes of customers or provides different services, the regulatory must also determine the rate structure or price charged for each class of service.⁵⁶

A second less precise way of regulation results the allocation of scarce resources—*especially where the scarcity is due to government regulation as with liquor licenses, hospital certificates of need or airline routes*—is to assign the task to the regulatory agency under a “public interest” standard.⁵⁷ Instead of concentrating on the price at which the regulated firm sells its product or service, the focus here tends to be on the applicant itself. This regulatory

⁵³.Ibid

⁵⁴.Ibid,P.16

⁵⁵.Ibid

⁵⁶.Ibid

⁵⁷.Ibid

approach is taken where a valuable license is to be awarded without the use of market price i.e., auction or other simple objective measures e.g., lottery, chronological listing since the license is in effect being awarded below the market price, there are invariably more qualified applicants than allocations.⁵⁸ Thus, the regulators are required to choose which among the competing applicants is “best” qualified.

Historical based system is the third regulatory method. Partly because of the difficulties of applying either the cost of service or public interest methods prices and allocations are often set on an historical basis. Where price or wage controls are imposed on an economy-wide basis the only practical method is a historically based system and any other approach seems administratively impossible.⁵⁹ Similarly historic data are often likely to be more objective and reliable than the public interest approach in allocating scarce goods.⁶⁰

The standard setting method is the fourth approach where by minimum or other requirements are established by the regulatory commission for businesses and individuals to follow.⁶¹ Health and safety requirements are common examples. As with the public interest allocation method, the primary question here is where to set the standard- for example at the level of current technology for air pollution or one that forces technology to improve. Increasingly, regulators are focusing on cost benefit analysis. This is done for instance by using the least costly alternatives, most cost effective requirements or similar methods. Where precise standards cannot be formulated, individualized screening is often relied upon to supplement reliance on agency standard setting as a tool of regulatory compliance.

2.2.3. General Scope of Transport Regulation

Transport is a basic need and right of citizens and is recognized as essential for economic and social development of a country. Besides, by the adequate infrastructures i.e., road, railways, ports, airports, pipelines, cableways, etc. movements of people and goods are highly influenced by the transport organizations and performances.

⁵⁸ .Ibid

⁵⁹ .Ibid

⁶⁰ .Ibid

⁶¹ .Ibid

Transport regulations, issued by the government administrations are meant to ensure appropriate, efficient and sustainable transport services. These regulatory measures are meant to serve in the interest of citizens, users and operators.⁶²In serving the interest of the citizens, public regulations should be appropriate in the sense that they should respond to the needs, quality and demand of all citizens regardless of their location and revenue. Regulations should be geared in making transport efficient in the use of the different economic resources involved. Sustainability is assessed in terms of environment and safety.

The regulatory instruments include, the claim for restriction of certain activities to a limited number of enfranchised operators, fixing of passengers fares and freight rates, requirements of certain services to be provided even though they are not financially viable and the establishment of standard for safety, noise levels and exhaust production.

The market of transport services has been a subject of excessive government regulation and public ownership. Government regulation in transport service extends to a number of aspects. The range of regulation on transport that have been applied in many circumstances world wide includes rate regulations, entry restriction, minimum level of service regulation.⁶³ Accordingly, governmental intervention with specific regulations has justified correcting the market. The intervention may be direct/legislative and administrative regulation of prices, quality of services, entry and exit/or indirect /antitrust regulation intended to control firms in the unfettered exercise of their market power/.⁶⁴

⁶² Willks, Cited at note 36, P.434.

⁶³ .Ibid

⁶⁴ .Ibid, P.436

CHAPTER THREE

3. ROAD TRANSPORT REGULATION IN ETHIOPIA: - THE LAW AND PRACTICE

3.1. Historical background of road transport regulation in Ethiopia

Road Transport Policy in Ethiopia can be said to follow historically the three distinct approaches described below: between 1943 and 1974 Government was not involved in transport operations but was engaged in issuing rules and regulations for the market economy/regulated private market/. During the Dergue regime, the road transport industry was centralized and the operations were assumed by government owned parastatal companies /government monopolies/. In the period after 1991 it more or less remains unregulated basically because of the influence of the market economy the country has oriented. A brief account of the historical aspects of road transport regulation in Ethiopia in each of the periods indicated is given below.

3.1.1. The Post-1943 and Pre-1974 Phase

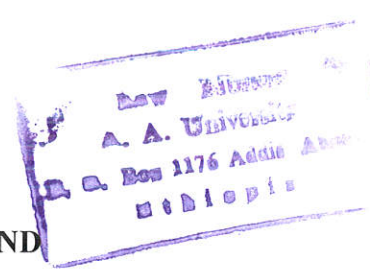
This period marks the first comprehensive attempt to regulate road transport in Ethiopia. The early part of this period, being a continuation (*interrupted by the Italian occupation*) from the earlier phase was characterized by a limited road network and a relatively modest vehicle population.

It was a period of beginning national reconstruction representing the start of modernization in the history of contemporary Ethiopia. The first legal framework for the control and regulation of road transport in Ethiopia was launched by the enactment of the 1943 transport Proclamation.⁶⁵

The enactment of the transport proclamation was a programmatic ⁶⁶ move certainly progressive for the time. The lack of proper documentation or lack of access to the legislative history of this proclamation beyond what is indicated in the preamble of the proclamation made it a bit difficult to precisely know the real reason that has necessitated its enactment. Nevertheless, it would not be unreasonable to guess that this proclamation could not have

⁶⁵ .Transport Proclamation, Proclamation No.35 /1943,Nega.Gaze.,year 2,No.7

⁶⁶ .It was programmatic in the sense that this law was to sophisticated for the period. There were few vehicles and the road length was limited.



been a response to a pressing need for the regulation of road transport, rather a product of “*Imperial benevolence*” in law-making-most likely triggered by British influence in post-liberation Ethiopia.⁶⁷

The Transport proclamation of 1943, provided among other things, for the registration and licensing of motor vehicles (Arts. 3-17); established rules and procedures for the granting of driving licenses (Art. 29-49); created the Transport Board (Article 18) and empowered it especially with the authority of granting, revoking or amending licenses for the operation of public service and commercial vehicles (Arts.20-23).

The most pertinent section of this proclamation is the composition and function of the Transport Board and the procedure for the granting, revocation and amendment of transport licenses for public service and commercial vehicles.⁶⁸

Article 18 of the proclamation indicates the composition of the Board. Accordingly, the Transport Board was composed of the Director of Transport (Chairman of the board); the Director of Municipality-Addis Ababa; the judicial advisor; a member nominated by the Minister of Interior; a member nominated by the Minister of Communications (Secretary of the Board). The composition of the Board was reflective of the belief that the duty of the board would be better facilitated by the inclusion of the representatives of the various institutions enumerated above. This again seems that all stakeholders should some how be involved in the decision making so that they all will assume that it is their duty to implement decisions.

Particularly, the participation of the Municipality of Addis Ababa and the Minister of Interior representing the other Municipalities could be principally explained by their want to share in the financial proceeds from the licensing of vehicles that were paid by way of fees and charges.

The presence of the judicial advisor may have been to give legal advice and to serve as liaison between the transport board and the court in the judicial execution of transport

⁶⁷Richard Pankhurst, Transport and Communications in Ethiopia, 1935, The Journal of Transport History, Volume 5, No. 2, November 1961, P. 75

⁶⁸ For more, see section III Art. 18 of transport Proclamation, cited at note 65.

policies when transport legislations are violated. Moreover, the representation of the Ministry of Commerce may be explained by the concern of this Ministry with the transport business, the importation of transport vehicles, the control of price over motor fuel, etc.⁶⁹

The function of the Board was to advise the Minister of Communications on all matters affecting transport including the control and rationing of motor fuel. Besides, Article 17 indicates that the board is there to consider applications for licenses of public service and commercial vehicles; to approve the fares and rates chargeable by the holders of public service and commercial vehicle licenses. More importantly, it was the board which had the power of granting transport operation licenses.⁷⁰

In the granting of licenses, the Board was bound to have regard to the extent to which the route in respect of which the application was made was already served⁷¹, the extent to which the proposed service was necessary or desirable in the public interest⁷², the applications reliability, character and financial stability, and the facilities at his disposal for carrying out mechanical repairs.⁷³

Furthermore, the board was empowered to attach any condition it deemed proper upon the granting of a transport license. It is interesting to note that the Transport Board made it a condition precedent for the granting of license that owners of transport vehicles submit insurance certificates showing that they had insured themselves against third party liability claims.⁷⁴ This seems a measure of safeguard in favor of the rest of the community for damage that the owners might inflict

⁶⁹.By virtue of the Ministers definition of power order, order No.1 of 1943 the Ministry of Commerce, Industry and Planning was empowered to fix prices of motor fuel. See Art.32 (I) of the order .Besides, the "Import goods (price control) Amendment Proclamation of 1943(Art.4) empowered the Ministry to control price over motor fuel. It must have been this justification affiliation that necessitated representation of this ministry in the transport board.

⁷⁰ Art 21 of the proclamation cited at note 65

⁷¹.Ibid, Art.21(II) (a) (1).

⁷².Ibid, Art.21(II)(a) (2)

⁷³ .Ibid, Art.21 (II) (a) (4))

⁷⁴ .Road Transport Board Minutes,1964,Archives,Road Transport Administration,P.43

Formally speaking, the 1943 Transport Proclamation was imprecise and extremely confusing; its jurisdictional allocation to the Ministry of Interior on the one hand and the Ministry of Communications on the other hand resulted in confusion and mal administration.

The registration and licensing of all vehicles (vehicles for private and commercial transport purposes alike) was assigned to “Licensing Officers” who were appointed by the Ministry of Interior pursuant to Art.2 and 4 of the Transport Proclamation.

The granting of driving licenses was subject to the discretion of “Testing Officers” who were appointed by the Ministry of Communications pursuant to Art.32 of the Proclamation.

The technical fitness of public service and commercial vehicles was subject to the scrutiny of what were known as “examiners”. These examiners were appointed by the Ministry of Communications pursuant to Art.21 (VI) of the proclamation.

Generally speaking, the system of regulation and control of the road transport activity was getting disorganized and proper enforcement of the 1943 proclamation was impeded by the impotence of the transport board. This was attributed to its failure to effectively discharge its responsibilities because of the lack of systematic coordination between the activities of the different members of the transport board.

Owing to these and other factors, the 1943 proclamation became obsolete and necessitated the enactment of a new legislation.⁷⁵ Consequently, the Road Travel and Transport Proclamation number 256 of 1967 was promulgated. This proclamation repealed the transport proclamation, Proclamation No. 256/1967 (amendment) proclamation, Proclamation No. 59/1944), the Maintenance of Roads Proclamation, Proclamation No. 65 of 1944, the Classification of Roads Proclamation No. 1944, the Federal Transport Proclamation, Proclamation No. 129 of 1952 and all legislations previously in force in Eritrea relating to matters provided for in this new Proclamation.⁷⁶

⁷⁵ The reasons were indirectly indicated in the preamble of the proclamation that followed. See, Proclamation No. 256/1967, Road Travel and Transport Proclamation, Neg. Gazette, Order No. 49 of 1967

⁷⁶ *Ibid*, Article 2

The Road Travel and Transport Proclamation of 1967 gave the rights of supervision and control of travel on the road to the Ministry of Communications.⁷⁷

Road Transport Administration was created as an autonomous public authority of the government. The administration's principal purpose was to control, regulate and supervise the carrying of private and public commercial road transport in Ethiopia.⁷⁸ Moreover, the administration was given the power to supervise and control the ownership, operation and use of vehicles and the transportation of goods and passengers by enterprises engaged in private and public commercial road transport.⁷⁹ Hence, in contrast to the 1943 Proclamation, the Road Travel and Transport Proclamation of 1967 eliminated the jurisdictional overlaps and problems of the previous tripartite institutional transport board. Moreover, the technical aspect control and supervision which was reserved to the Ministry of Communication was clearly differentiated from the commercial transport licensing aspect of control and supervision. Another aspect which was introduced by the road travel and transport proclamation was the institution of public commercial road transport associations.⁸⁰

3.1.2. During the Dergue Regime

Under the Government Ownership and Control of the Means of Production Proclamation No.26/1975, all major economic sectors whether service rendering, production and distribution were transferred to the state. Road transport is one of the biggest essential economic sectors of the nation. Surprisingly however, it was exempted from nationalization and categorized as an activity that may be undertaken by the private sector.⁸¹

This measure was taken pursuant to the economic policy of the National Democratic Revolution/NDR/ program. According to the program, the highest campaign that should be made is the fast building of a strong revolutionary national economy. To pursue such objectives, it was decided that the economic sector under the ownership of the masses shall be developed with the highest share; and on the other side the economic sector under the

⁷⁷.Ibid Article 5(1)

⁷⁸ .Ibid Article 10

⁷⁹ Ibid

⁸⁰ Ibid Article 17ff

⁸¹ .The Economic Policy of the National Democratic Revolution Program(NDM)

private ownership must be organized to operate in consistency with the economic policy of the central government.⁸²

Although private commercial road transport activity was left to remain under the private sector, to ensure that the operational management of the road transport activity was geared towards the economic, social and political objectives and needs of the nation, it was subjected to the necessary government control and regulations.

To pursue the objectives of developing efficient and expanding road transport system and for the effective regulation and control of road transport activities, the primary measures taken by the PMAC was the establishment of a public regulatory organ, i.e. Road Transport Authority by Proclamation number 107 of 1976. Road Transport Authority was established as an autonomous public authority with an independent legal personality. Although it carries out its function independently, it was accountable to the Ministry of Transport and Communications. It was made to assume the rights and duties of the former Road Transport Administration which was established under Proclamation number 49 of 1967.

The purpose of the authority according to the new proclamation was to ensure that road transport services adequately provide for the safety and comfort of passengers, the safety of goods carried, and the provision of adequate regular, efficient and dependable services to the public⁸³.

Moreover, it was given the responsibility to develop domestic and international road transport works and construct, maintain and operate terminals for commercial road transport vehicles as well as enforce road transport laws, regulations and international conventions and agreements to which Ethiopia is a party.⁸⁴ The authority had all the powers to control and regulate vehicles operators using the road and license and control persons driving vehicles on the road. It used to register licenses and controls commercial road transport organizations and vehicles as well as determines and enforces the rates and tariffs to be charged by commercial road transport.⁸⁵

⁸² Ibid

⁸³ Article 7 of Road Transport Proclamation, Proc.No.107/1976, Nega. Gaze., year 36, No.9

⁸⁴ Ibid

⁸⁵ Ibid, Art.8(1),(2),(4),(5)

Under the road transport regulations existed prior to the issuance of proclamation 107/1976, the regulatory and administrative powers of controlling the road transport activity was divided among different government institutions and owners organized in a board. Such a system had created functional overlaps and lacked systematic coordination in plan. However, under proclamation 107/76 all powers of control and regulations were entrusted to the authority.

3.1.3. Road Transport Regulation in Ethiopia: Post 1991

Ethiopia has ventured on a new economic and political orientation following the down fall of the Derg. The country has shifted from a unitary state to a federal system, with devolution of powers to the regional states and their communities. The previous command economy has been replaced by a market economy based on private investments and competition. An economic reform agenda has been initiated by the transitional government and supported by international organizations since 1992. In line with this direction, some important policy measures were taken including market deregulation, instituting the private sectors' role in the economy such as lifting restrictions in investment licensing, investment capital ceiling, privatizing small and medium scale state enterprises, opening up the financial sector-bank and insurance for private participation, liberalizing the external sector etc.⁸⁶ Currently, the government has focused on agricultural-led industrial development as a mechanism for economic growth.⁸⁷ The general direction of the economic program is that market forces shall lead the economy and the private sector shall be the prime mover of growth and development.⁸⁸ Such a system allows the invisible hand of the market to play determinate role in the main business center of the nation. Accordingly, the policy restricted the role of the government as one of facilitator.⁸⁹

It is well-established that even if all other structures are in practice to support the market, it cannot be assumed that those actors will act independently of each other in the market place or that the interaction of market forces will automatically maximize consumer welfare. Hence, the need is paramount for governmental intervention at least to correct and enhance

⁸⁶ . FDRE Industrial Development Strategy/Amharic version/,Mega Publishing Enterprises. ,AA,1994,P.13

⁸⁷.Inid

⁸⁸ .Ibid,P.5

⁸⁹ .Ibid,P.14

the market. Therefore, the policy gave a possibility for government intervention for the above purposes in case where there is market failure. The government issued different regulations and a competition policy to stabilize the economy and harmonize the conflicting interests of the society and the private sector.

As a developing country, the country shall embark upon involvements by the government in regulating the market. The private sector can not be trusted as the sole role player in the economy. As is indicated somewhere in the paper it should be the responsibility for the government to come in to the picture when the market fails to carryout basic public responsibilities.

This notion is even recognized and practiced in developed countries. As is well known, the “*hands off*” principle of Adam Smith is not implemented in toto. Virtually, market economies even adopted a modified version of this approach mainly as a response to popular demands and pressures from the socialist political orientation pervading in the world at large and proliferation of political parties embracing the ideology in the countries.⁹⁰

As a response to the particular social context in the respective countries, practically developing countries have utilized a combination of the use of the market and the government to drag themselves out of the abyss of poverty. The scenario for countries like Ethiopia should even be that the government involves itself more in the protection of popular interests. It should be quite understandable that market economy and government intervention are not mutually exclusive.

The government can not oust the forces of market as was previously practiced. Nonetheless, the government should not leave the people to the general whim of the private sector that would just adhere to their profit-loss analysis. There are certain sectors of the economy which are not profitable at least immediately hence not attractive to the private sector. The problems of inter jurisdictional spill over effects are other concerns for government involvement. Nonetheless, by way of reiterating what was already said, the government

⁹⁰ The colored peoples’ movement in the United States and the proliferation of Radical political Parties in many capitalist countries are believed to be triggered by the 1917 Bolsheviks Revolution that ushered in Russia, which appeared as an anti thesis to the Lassies fare doctrine.

should not vie to replace the market. Moreover, the government should aspire to gradually hand over its hold to the private sector, of course including its regulatory power. The ripeness of the time should be determined not only by the government but by circumstances and the demands of the time. Generally however the will should be there and proper questions be entertained accordingly.

In line with this, such indicative measures as introducing a new investment policy,⁹¹ a new labor law⁹², revised taxation rates⁹³ and adjustment of the true value of national currency were taken by the government to encourage the private sector. It is even recognized that the private sector is indispensable to the economic development.⁹⁴ As a move forward in this direction, the government has established the Ethiopian Privatization Authority /EPA/; to facilitate its commitment to the private sector. The Ethiopian Privatization Authority /EPA/ is established to make the private sector play an important role in the changing process of governmental role.⁹⁵ Thus, EPA has sold 228 previously government owned enterprises from 1987 to April 1998. Although the bulk of these were state owned retail shops /133/, hotels and restaurants /23/, they also include 47 industries, 19 agricultures, 12 agro-industries and 1 mine.⁹⁶ As well, an authority facilitating the competitive bidding of 18 enterprises was set up accordingly negotiated the sale of 3 enterprises.⁹⁷

What is more, a number of pertinent and specific issues including trade point regulation to collect; compile; process and appropriately disseminating trade related information are addressed.⁹⁸ The enactments or issuances of law against corruption,⁹⁹ the civil service reform

⁹¹.TGE, Proclamation to provide for the encouragement, expansion and coordination of investment Proc.No.15/92,Nega.Gaze.51st yearNo.11

⁹².FDRE Labor Proclamation No.337/2003,Fede.Nega.Gaze.,10th year No.12

⁹³.TGE, the Council of Ministers ,Income Tax Amendment Regulation,No.125/93,Nega.Gaze.,53rd year ,No.3

⁹⁴.Preamble of the Ethiopian Privatization Agency establishment ProclamationNo.87/94,Fed.Nega.Gaze.,53rd year,No.67

⁹⁵.Ibid

⁹⁶.Official quarterly Report of EPA,1998, No.6,P.32

⁹⁷ Ibid

⁹⁸.Article 4 of the Ethiopian Trade point establishment proclamation ,Proc No.20/97,federal Negaarit Gazette,

⁹⁹ .FDRE proclamation to provide for the Establishment of the Federal Ethics and Unit Corruption Commission, Proc.No235/2001, Federal Negaarit Gazette,7th year No,23..

program was also made.¹⁰⁰ Despite some contentions, accompanying some of these laws, it remains that they are positive practical measures taken by the government.¹⁰¹

Back to the historical setting of the regulation of the road transport sector, although some indications were given during the period of the Transitional Government¹⁰², there is no official document issued by the present government of the Federal Democratic Republic of Ethiopia /FDRE/indicating clearly the government policy in the transport sector.

The government strategy for the development of the road transport sector is some how in tune with the economic development strategy based on market economy, private investment and competition. The government has developed investment programs for the road network rehabilitation and has taken action to establish the foundations of competitive road transport market. In particular, the government road transport strategy is based on the rehabilitation of the main road network and the developments of an efficient road transport industry, even if the dispersed population still relies on human and animal transport.

3.2. Level of government intervention in the sector

Transferring the basic principles of economic development policy adopted by the government, it can be said that Ethiopia's road transport policy today is based on competitive and free market principles. The role of the government is to formulate and enforce rules/regulations, control of monopoly situations, promotion of competitive markets, liberalizing entry/exit and prevention of safety and environmental problems.

Except in particular cases, special measures were needed to be taken to face emergency situations, the government has withdrawn from management and operations in the transport sector and revise regulations. The government should become the real facilitator and regulator for transport services to be appropriate, efficient and sustainable to the benefit of

¹⁰⁰Civil service Reform Proclamation, No.286/2002, Federal Negarit Gazette.

¹⁰¹. For instance, Proc.No.97/1998, Proc. No. 98/1998, and Proc. No.216/2000 which serve to restrict the rights of mortgagors, while extending the rights of banks were enacted. Many people hold that these proclamations have the effect of ousting the jurisdiction of courts. Moreover, proclamations, 235/2001 and 239/2001, which pertain to the Ethics and Anti-corruption commission are enacted in which in which some allege have been incorporated provisions that put in to question some fundamental constitutional rights. Many more can be cited in this regard. The income tax proclamation and the 2002 lease Proclamation are cited in this regard.

¹⁰².TGE economic policy official document, Amharic version, 1991, Mega publishing enterprise

citizens, users and operators. Moreover, in order to achieve these regulatory goals the road transport regulations should focus at least on five specific aspects. These are:-

Protection of market /regulations have to ensure that in each subsector there is a sufficient number of competitors and that there is no danger of monopoly or oligopoly of services;/ protection of safety for citizens, operators, workers and users; protection of environment from pollution, noise, erosion, etc.; protection of socially needy groups with specific subsidy of transport service and rate; and protection of the infrastructure against damages caused by operators or users.

3.3. Actors /Parties involved in Regulating the Road Transport

3.3.1. Ministry of Transport and Communication

Proclamation No.4/95 empowers the Ministry of Transport and Communication/ MOTAC/ to prepare draft laws and regulations for transport, to facilitate the integration and coordination of all modes of transport. Moreover, the ministry is empowered to regulate road transport services linking regions and to issue directives concerning the registration and inspection of land carriers. More importantly, it is authorized to allow operating permits, to license operators and organize the training of manpower necessary for transport.¹⁰³

3.3.2. Road Transport Authority

Road Transport Authority was established as an autonomous public authority with an independent legal personality. Although it carries out its function independently it was accountable to the Ministry of Transport and Communications.¹⁰⁴ It was made to assume the rights and duties of the former Road Transport Administration which was established under proclamation number 49 of 1967. However, its functions were to be carried out in accordance with the new proclamations. The purpose of the Authority is to ensure that road transport services adequately provide for the safety and comfort of passengers, the safety of goods carried, and the provision of adequate regular, efficient and dependable services to the

¹⁰³ .Article 18 of proclamation No.4/1995,a proclamation to establish the powers and duties of the Executive organs of the State ,Federal Nega.Gazett,

¹⁰⁴ .Article 7/1//a/ of Proclamation No.468/2005,a proclamation to provide for the Regulation of Transport, Fed.Nega.Gaze,11th year No.58

public.¹⁰⁵ The authority moreover is given the responsibility to develop domestic and international road transport works and construct, maintain and operate terminals for commercial road transport vehicles as well as enforce road transport laws, regulations and international conventions and agreements to which Ethiopia is a party.¹⁰⁶ Generally speaking the authority is established to promote the developments of all aspects of road transport and ensure that it serves the broad masses. The Authority in accordance with the law has all the powers to control and regulate vehicles operators using the road and license and control of persons driving vehicles on the road. It registers licenses and controls commercial road transport organizations and vehicles as well as determines and enforces the rates and tariffs to be charged by commercial road transport.¹⁰⁷ Moreover the Authority is empowered to prepare and submit policy proposals to the ministry relating to transport and implement same upon approval.¹⁰⁸

3.3.2.1. Regulatory Powers of the Authority

Regulatory power is an authority which is exercised by the government or its organs to exert a restraining or directing influence over the activity of others. Such act of government includes measures of guidance, supervision and management of the activities of others in accordance with a given set of rules.

Road Transport Authority was established as an autonomous public authority of the government. All public administrative authorities to which personality has been expressly given by administrative laws are regarded as subject of rights. The authority in accordance with the law has all the powers to control and regulate vehicles, vehicle operators using the road and control of persons driving vehicles on the road. It registers, licenses, and controls commercial road transport organizations and vehicles as well as determines and enforces the rates and tariffs to be charged by commercial road transport.

The authority has the power and duty to prepare and implement trip schedule for public commercial road transport vehicles to serve the need of the masses, enforce disciplinary

¹⁰⁵ .Ibid Art.6

¹⁰⁶ .Ibid Article7/1/c/

¹⁰⁷ .Ibid Article7/2//g/

¹⁰⁸ .Ibid Article 7/1//a/

measures and controls the quality of services. It has the power to enforce public commercial road transport vehicles to operate in areas having shortage of transport.

To control vehicles and commercial road transport, the authority registers the owners of transport vehicles, sets out the standard technical conditions for operating and duly registers those entitled. Moreover, it determines the size and weight of freight that should be carried on different highways and the numbers of passengers that a commercial road transport vehicle shall carry.

To make sure that the above standards are met, controllers from the authority are dispatched to different routes where public commercial vehicles operate, and whenever they encounter any violation they automatically report the matter to the authority. Moreover, the authority has a size and weight control division which in a similar way controls the size and weight of freight commercial vehicles.

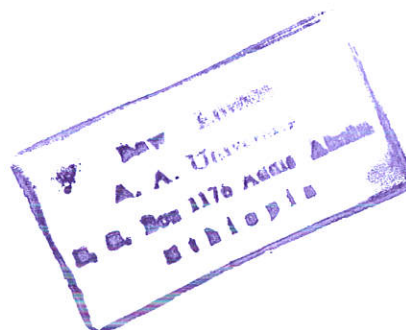
The authority has the power to approve and/or prepare and implement trip schedules for public commercial road transport vehicles. However, the commercial transport associations are also given the power to prepare trip schedules under Article 16 of the same law though the trip schedule prepared by the associations is subject to approval by the authority.

The authority is also given the power to compel public commercial road transport vehicles to operate in areas lacking transport services.¹⁰⁹ Whenever urgent government requests or shortage of transport services appear, the authority has the power to direct them to the areas where they are needed most irrespective of the trip schedule the vehicles are set for.

3.3.3. Regional Transport and Communication Bureaus

There are two levels of laws, which define the power and duties of the regional transport bureau. One is the definitions of powers and duties of the Central and Regional executive organs of the FDRE government, proclamation No14/93 .And the other is the proclamation issued by each Regional States Administrations defining the power and duties of their respective Transport and Communication Bureau. These Bureaus are accountable to the Regional state Executive Office and not to RTA. It is also noted that in various regions the

¹⁰⁹.Ibid Article 7/2//n/



Transport bureau is organized as a department of a wider Trade, Industry and Tourism Bureau in charge of all forms of transport and communications and also responsible for trade, commerce and tourism as well.

3.4. Road Transport Service Operators

Before 1991 road transport service in Ethiopia was totally regulated/monopolized/ by the Government. The Ministry of Transport centrally controlled the sector. While publicly owned corporations /EFTC/ and Ethiopian Passenger Transport Corporation /EPTC/ provided freight and passenger transport services. Private activities were confined to a few single truck owners & small Garage operators under the two corporations and there were no incentives for improvement of private services.¹¹⁰

The Introduction of market economy in 1991 liberalized the market for transport services to all persons /individuals, associations, companies/to engage in the business. Hence, today the transportation market holds individuals, parastatal enterprises, associations and share companies.¹¹¹

In this line according to the final report on road transport regulation study made by Road Transport Authority, presently there are two parastatal enterprises, parastatal Anbessa bus company (owned around 530 large busses) serving in Addis Ababa and Jimma; parastatal Walia inter-urban bus company (owned around 220 large busses) operating in the whole country; around 9000/nine thousand/ private mini-busses, operating in Addis and in short distance services in the country, around 7000/seven thousand/ private taxis operating in Addis Ababa and other towns of the country and around 3.500/three thousand five hundred/ buses of different dimensions, operated by private associations or share companies for inter-urban public transport.¹¹²

Urban public transport service is assured by taxis and buses which are divided into large /more than 45/ medium (21-44 seats) and small busses /7-21 seats/. Large buses of the city transportation service are owned by Anbessa Parastatal City Buss transport Service

¹¹⁰ Article 16 of proclamation No.107/1976, Road Transport proclamation, Negarit Gaze., 36th year No.9

¹¹¹ Article 12 (1) and (2) of proclamation 486/2005, cited above at note 104.

¹¹² Study on Road Transport Regulations, final report, 1999, Road transport Authority archive, P. 25

Company while the majority of small buses /mini-buses/ are privately owned and operate in urban areas and surroundings.

For what concerned inter-urban bus transport, it can be estimated that around 30-35% of the national bus fleet is operating out side urban areas serving as inter-urban passenger transport.¹¹³ Moreover, the inter-urban bus fleet is composed of 25% of minibuses, 35% of medium buses owned by associations and 40% of large buses mostly owned by share companies and Walya and Selam parastatal inter-urban bus transport companies.¹¹⁴

Anbessa City Bus Service Enterprise had held an exclusive license for urban bus services within the country and in practice it still dominates the city bus service in Jimma\ and Addis Ababa.

There are also party owned enterprises; in particular those established through the so called “endowment” mechanisms are engaged in the transportation service. Trans Ethiopia Freight Transportation and Selam Bus Passenger Transport Company, which are owned by TPLF and Blue Nile freight Transportation Company, which is owned by ANDM are engaged in transport services.

Consequently, though it is unfair to deny in one way or another liberalization of the transportation market in terms of entry /exit, many argues that essential refinements are needed to keep away from imperfect competition due to the presence of monopolistic power of the above mentioned parastatals.

As it is indicated in the policy document, government intervention is just and well recognized in a situation when the private sector is unable to respond for the interest of the general public. However, it is also well-known fact that government intervention is unjust and even destructive when such intervention is used to dominate the market. This may be demonstrated by the actual practice of the Ethiopian government. It intervenes in the city bus transportation service intending to correct the malfunction/the failure of the private operators. However, the effect highly wounds the interest of the public. On the one hand the government is inefficient and even unable to satisfy the city bus transportation service

¹¹³ Ibid

¹¹⁴ Ibid

demand of the public; on the other it restricts the private persons from providing this service. Hence, the intervention turns in to fruitless and even divergent to market principle.

CHAPTER FOUR

4. Regulatory Perspectives of Road Transport and the Practice in Ethiopia

As pronounced in the November 1991 economic policy of the TGE and as reflected in the corresponding sector policy and strategy, the government in Ethiopia's economic policy calls for a greater role for the private sector and a change to market determined decisions. This economic policy limits the role of the government to policy formulation, sector regulation and their enforcement in order to improve the efficiency of the sector.

The regulatory aspect in road transport assumes diverse character. It markedly relates to the transport owners, the vehicles in operation, people closely connected with the provisions of the transport service, the general public and the road upon which the activity is undertaken.

Some regulations are direct and closely related with the commercial activities on the roads and others are indirect which are ultimately connected with the activity.

Direct regulation includes the licensing of road transport operators, the determination of the overall import of transport vehicles, the fixing of transport tariffs, the encouragement, creation and supervision of road transport associations, the general supervision and overseeing of road transport operators which partly consists of the ensuring of compliances with safety requirements and the adjudication of disputes arising among transport operators and finally the integration and coordination of road transport within itself and with other modes of transport in light of the overall country- wide transport plans.

Indirect regulation also includes the registration of all commercial vehicles, the control and registration of vehicle ownership, the registration of traders involved in transportation business and the issues of licenses to importers of transport vehicles, the regulation of insurance companies and lastly the regulation of transport workers unions.

In this section, the paper mainly focuses on indispensable direct and indirect regulations in relation to commercial passenger transport service and tries to explore each first in light of the existing laws in force and then with reference to actual practices.

4.1. Entry/License/Regulation

This refers to the permission given to persons who apply to engage in transportation business. The performance of this licensing function is commonly referred to as the “regulatory entry” or “entry control” because no operators lawfully enter the business of transportation without acquiring properly certified or licensed operating permits. Entry /license/ regulation is usually used as a checking point on the satisfaction of standardized pre-conditions set by the regulatory agency.

Entry in transportation business is usually governed by public interest and the national transportation policy adopted by the government. The government usually regulates entry into the business of transportation service seeking to check whether the applicant is able to provide the service or not. In any business setting minimum standard is essentially expected to be fulfilled by any applicant. The government is there basically, to check the satisfaction of these preconditions. Hence, if the applicant is able to satisfy these pre-conditions, the Authority has to furnish the license /ticket of admission /which authorizes the applicant to participate in the business. Therefore, we could conclude that, entry /license regulation is primary and most important business guideline set by the regulatory agency for the purpose of controlling the satisfaction of required duties expected from the applicant.

Thus, the term entry/license is used to point out the preliminary process of business operation and effective tool by which the law safeguards the interest of the general public from inefficient and destructive transportation market.

According to Article 7(1) of Proclamation N^o 468/2005, a Proclamation to Provide for the Regulation of Transport, the Road Transport Authority has powers and duties to ensure that the road transport services adequately provide for the safety and comfort of passengers, the safety of goods carried and the provision of adequate, regular, efficient and dependable service to the public.¹¹⁵

Moreover, the Authority is given the responsibility to develop domestic and international road transport works and construct, maintain and operate terminals for commercial Road

¹¹⁵ . Article 7(1) of proclamation No. 468/2005, cited above at note 104.

Transport vehicles. As well, it enforces road transport laws, regulations and International Conventions and Agreements to which Ethiopia is a party.¹¹⁶

Article 7(2) (a) of the same law further extends the power of the Authority to the determination of the operations, equipment, weight, size, number of passengers, and load of vehicles using the road and issue approval certificate for registration accordingly. The powers to issue certificate of competence, follow up persons and enterprises engaged in cross country and international commercial transport are also given to the Authority. Besides, the Authority follows up the importation, manufacture or assembling of vehicles in Ethiopia and issues technical specification of vehicles.¹¹⁷ However, the jurisdiction of the Authority is limited to the territory of the federal states and /or to cross country and international commercial transportation.¹¹⁸

This in turn entails that transport services operating in the territory of the regional states are under the jurisdiction of the respective regions. Article 3 of the Proclamation underlines this power of the regional states to control, regulate and supervise all vehicles including commercial vehicles that operate in their own respective regions. However, understanding its wider nature and in order to protect the balanced and competitive development of inter - regional commercial road transport services, the responsibility and control was put under the Federal Transport Authority.¹¹⁹ Hence, the registration and control of commercial road transportation linking two or more regional states has been sufficiently included under the RTA's power. But the respective Regional Transport and Communication Bureaus have extended their power for the controls of regional commercial vehicles to include enter-regional commercial vehicles.¹²⁰ This is a clear case of framework power, which allows substantial exercise of power to regional governments. Consequently, this interference of the regional transportation bureau in the administration of the inter-regional operations has confused the situation compromising safety and effective operation. Moreover, there are allegations of problems associated with tax assessment. Furthermore conflict of interests will normally result in the possibility that conflict of laws would be heeded to. This seems as a

¹¹⁶ . Ibid

¹¹⁷ .Ibid Article 7(2) (b) (c)

¹¹⁸ .Ibid Article 7(2) (b)

¹¹⁹ Interview with the 14 cross country transport operators, 14, October, 2007

¹²⁰.Ibid

consequence of the different interpretation of the division of powers and duties between the Federal and the Regional Road Transport Authorities and amongst the regions themselves in the administration of enter- regional commercial road transport.

Moreover, it should be noted that Road Transport Authority has no power to issue business permit for passenger commercial transport operators. The power was vested on the Ministry of Transport and Communications.¹²¹ However this is altered to be the power of the ministry of trade and industry.¹²² This case is so by invoking Article 48(2) of the Proclamation which impliedly repealed the previous practice because it contradicts the power given to the Ministry. The Commercial Registration and Business Licensing Proclamation No.67/1997 also emphasizes that the Ministry of Trade and Industry is also empowered to register persons and enterprises engaged in commercial road transport operations. The RTA is therefore the authority which certifies the technical and operational capability of the applicant in the business. Since business registration is now handed over to the Ministry of Trade and Industry, the special Commercial Vehicle Registration Regulation clarifies the power of the RTA to include only aspects of safety, efficiency, sufficiency, regularity, competitiveness and comfort of the service which RTA is only authorized to enforce and control.¹²³ Importantly, registration by the Ministry of Trade and Industry gives the operators the status of traders.

On the other hand RTA registers and gives licenses verifying the professional and organizational competence of the operator. Besides, verification also should be made on the safety aspect/both goods and passengers/and road worthiness of the vehicle to be deployed in the trade.¹²⁴

Associated with this may arise misinterpretation and confusion in this regard as operators are required to register with, and to obtain license for their business activities in road transport from the Ministry of Trade And Industry or from the Regional Bureaus. On the other hand there is another requirement set by Proclamation No.468/2005, a Proclamation to provide for

121. Article 18/5/ of proclamation No4/1995, cited above at note 103

¹²² see appendix part of the proclamation NO.67/1997, commercial registration and business licensing Proclamation, *Federal Negarit Gazette* 3rd year No.25

123..Interview with Ato Hunyalew Tessema ,Road Transport Bureau Officer, 10, Dec/2007 ,Bahir Dar,

124..Ibid

the Regulation of Transport, to register and get license from RTA. The presence of two independent institutions authorized to issue business permit inevitably creates problem. There can however be a way out in limiting the Ministry of Trade and Industry on the issuance of work permits and in the registration of persons in the commercial registry.

Moreover, the RTA focuses on special aspects of safety, efficiency and competitiveness of the service and on its verification the permission by the Ministry depends. The role of RTA is limited only to the issuance of certificate on the technical and professional qualifications and competence and similar matters related to the commercial activity's health and sanitary conditions, environmental protection and safety measures of persons and enterprises engaged in commercial road transport.¹²⁵

We can apparently hold that the only possible problem that may arise is in the unclear comprehension of the works of the two organs which carry out separate but related tasks.

In the road transport services, safety, efficiency, comfort, regularity and sufficiency of roads and vehicles are some of the important considerations.

It is commendable that because the RTA has the expertise on vehicles, other related tasks; and the idea of avoiding the problem of understanding the respective roles of the organs, the RTA should carry out both functions. This again creates ease on the part of the applicants as it minimizes the functioning of the bureaucracy.

Nevertheless, it seems that the insistence to maintain status quo may possibly be because of considering not burdening the RTA by daily routine tasks of registration which may not be compatible with expertise duty. Thus, it requires a balanced evaluation of the different considerations to make a decision.

Before the de-regulation of entry/exit, the licensing of public transport operation business in practice starts by making an application to the Ministry of Trade and Industry and the Road Transport Authority.

¹²⁵.Interview with Ato Abera Tadesse ,Legal expert in RTA14, Dec. /2007,Addis Ababa

In this respect, the applicant fills a form provided by the Road Transport Authority. The form, among other things, provides particulars regarding a declaration of the financial ability of the applicant, the routes sought to be made available for service, the applicant's occupational engagement, etc.

After filling up the form against the payment of the prescribed fee, the application is kept in a special file¹²⁶.

All the applications filled within a given period are submitted to the head of the passenger division of the Road Transport Authority or Regional Bureau. And after the passenger division examining the same, instructs that a "fact-finding survey-team" be sent to a particular area relating to the routes sought to be served by the applicants, which the team shall survey how much transport needs.¹²⁷ The team studies the overall economic activity of the area and the movement of traffic, examine to that extent an area is provided with transport facilities; finds out whether an area is accessible for motor transport and generally makes a reasonable appraisal of the transport needs to the area.¹²⁸ After studying a particular area, the team submits a report relating to the study made, which includes, among other things, a proposal mostly consisting of a rough estimation of the number of transport vehicles that should be allowed to operate to fill the gap in case demand over supply.

It is upon this "on-the-spot" observation report that the committee makes its recommendations.¹²⁹ All the applications from the branch offices and the head office are submitted to an "application appraisal committee" mostly composed of the legal advisors, the heads of the passenger and freight divisions and executive secretary of the administrator.¹³⁰ The list of applicants is submitted to the committee which considers each application, listens to the report submitted by the study team. Eventually, after a discussion

¹²⁶.Interview with the 19 Road transport service Operators, 26, Nove. -12, Dece. /2007, Addis Ababa, Bahir Dar, Dessie.

¹²⁷.Interview With Ato Abebe Ayalew, Head, Passenger Division at RTA, 19, Dec. /2007

¹²⁸ .Ibid

¹²⁹ .Ibid

¹³⁰ .Ibid

of the matter recommends as to which of the applicants may be granted license in a particular route.¹³¹

This recommendation is communicated to the Ministry of Trade and Industry that makes a final decision with respect to the granting of the license depending on the given recommendation.¹³²

Upon the decision of the Ministry on the granting of the license, a letter is written to a particular vehicle importer or agent authorizing the applicant to order a new vehicle. After the letter is communicated to the importer or agent, the applicant is required to submit a receipt showing that the importer or agent has accepted earnest from the applicant evidencing the fact that the applicant has concluded a contract of sale with the importer.¹³³

Upon receipt of this evidence, the Ministry gives the applicant a “provisional permit” stating that the application has been accepted and that the applicant is required to start operation within 6/six/ months from the issuance of this “provisional permit”. This period is thought to suffice for the vehicle to be imported upon order by the applicant. Upon delivery, the applicant is required to notify the Ministry immediately.

Before the lapse of the six months, the applicant whose vehicle has been delivered notifies the Ministry. The Ministry instructs that the fitness of the vehicle be examined and, after which examination and upon a finding of fitness for the purpose of passenger transport, grants the applicant the transport license.

Two things are thus worth considering in this licensing practice. The first relates to the function of the “fact-finding-survey team.” As we have observed, the role of this team in the licensing process is quite crucial because it is on the basis of its reports that the decision to grant or not to grant license mainly rests. A wrong appraisal by the team will inevitably lead to wrong decisions. Wrong decisions may mean either depriving an area of an indispensable public service and in turn discouraging investment in transport operation, or to the contrary, they may lead to excess capacity.

¹³¹.Ibid

¹³².Ibid

¹³³.Ibid

The report of the team is highly likely to be defective because of the time limitation in its period of stay in a particular area. It would be quite unrealistic to assess the overall economic activities of a region from a superficial survey of the area within a week or two which the team makes use of. Thus, the fair appraisal of whether the area is “already adequately served” or that new entrants would substantially and adversely affect the established interest of existent transport operators cannot be ascertained with reasonable certainty.

Another weakness in the licensing practice relates to the indirect control over the importer of vehicles through the licensing process. Theoretically and legally, transport operators which are vehicle importers are not free to conclude contracts of sale of new vehicles unless authorized by the Road Transport Authority. This means that importers are not allowed import either upon an order of a client without the authorization of RTA, or they cannot, by their own initiatives to import vehicles into the country and keep in their stock without getting the consent of RTA. In this case, Art 13 of the Road Travel and Transport Proclamation precludes the unilateral decision of importers to import vehicles into the country.

4.2. Price Regulation

Price regulation refers to the costs charged by the transport operators in exchange of services provided by them. Road transport costs are usually represented by the vehicle operating costs, the costs of time /persons, vehicles and goods/, driver crew and company organization. It also includes costs of road maintenance which is paid mostly by fuel taxes to the road fund. Thus, transport operators recover their transport costs applying road transport tariffs, which allow them to gain a reasonable profit from the service given.

The determination of public transport tariffs is more complex to be established, since social considerations should complement the economic efficiency of services. Such pricing system vary with distance, vehicle size, vehicle use and company organization, quality of service, road condition and demand pattern, extent of regulation and extent of competition.

In order to make the public transport accessible to all citizens, tariffs shall be reasonable and take into account the economic capacity of the society. In some developed countries,

transportation cost is determined by the market itself. However, it seems undeserved to leave the determination process to the market particularly when the market is incompetent, inefficient to satisfy the demand and inaccessible to all citizens.

Reasonable pricing system is a blessing of users both as a social service and economically stimulating factors of production and exchange. Thus, even in a free enterprise economic system, government intervention and tight control in commercial transport service operation becomes necessary as this is closely connected with fundamental social services. Rational passenger transport service is unthinkable if the determination of transportation cost is left to transport operators who are basically interested in making money.

Particularly, under monopolistic condition, the difference and inequality in the distribution of income among the public becomes very broad. In organized society, therefore, the government has a duty to ensure the provision of adequate passenger transport services at reasonable cost and standard. It is on this assumption that government regulatory agencies are authorized to intervene in pricing regulation. Pricing of transportation service shall not be left entirely to the demand and supply mechanism of the market.

In Ethiopia, the power to approve and enforce the rates and tariffs to be charged by commercial road transport service providers is vested with the Road Transport Authority.¹³⁴ However, even in such situation the Authority simply provides proposal forms for anyone engaged in cross country and international passenger transport.¹³⁵ Accordingly, the Authority makes reference to the proposal submitted to it for its work. In addition to this, and by taking into account all the benefits that the persons, organizations or associations involved in commercial road transport business should get from the service provided and the capacity of the users to pay, the Authority approves the proposed tariff.

One can easily understand from the above assertion that, the law grants the opportunity for transport operators to have their own proposal in respect of quality and efficiency of the service offered by them. That means, any person is entitled to have a tariff proposal that

133. Article 7(2)(g) of the Road Transport Regulation, cited above at note 104

134. Ibid

he/she/it intends to charge in exchange of his/her/its service and submit it to the Authority for approval.

Usually, in their effort to make proposals, the persons take into consideration the demand in the market and other available situations which would enhance their personal interests. Consequently, there is a possibility of submitting different tariff proposals to the Authority depending upon the quality of service offered by each operator, the standard of the road and other conditions. Ultimately, the Authority approves the proposed tariff by taking all these possible conditions into account.

The existing transportation law in this regard seems to adhere to the free market economic policy the country has ventured upon. Even though the proposed tariff is subject to final approval by the Authority, the law authorizes the operators to make their proposal free from any intervention of government agency /direct or indirect/. In this case, there may be different tariff schedules proposed and submitted to the authority for approval and the Authority is expected to approve the proposed tariff schedule depending on the quality, efficiency and standard of service offered by each operator. The competition law of the country restricts the operators from proposing tariff schedule collectively.¹³⁶ Because by making so, the operators may harm the competitiveness of the market which is the basis of free enterprise.

Coming to the practical situation, one can dig up a monopolistic governmental pricing system commonly applied to all transport operators. No individual transport operator proposal has been accepted by the Authority.¹³⁷ Even the transport associations don't have any real power, except the power to negotiate with the Authority upon the tariff schedule indirectly proposed by the Agency.¹³⁸ Moreover, the number of existing transport operators' associations is very few with each having few members in particular in the taxi transport service sector. Consequently, the tariff negotiation with these few associations is challenged with a problem of getting the consents of all taxi transport operators.

¹³⁶. Article 6/2//a/ of Proclamation No.326/2003, Trade Practice Proclamation, Federal Negarit Gazette,9th Year, No.49

¹³⁷. Supra at note.125

¹³⁸. Ibid

Both the proposal/indirectly/ and the approval/directly/ are made by the Authority. Even, the tariff is the same in all services. No special tariff for special and qualitative service is accorded. Every thing regarding tariff is handy and all service providers are obliged to accept and comply with the ready-made tariff schedule. To put it in a nut shell, no one is allowed to have different tariff even for different services.¹³⁹

In a competitive market, the services offered and the prices charged by the transport operators should be different and the customer should get several alternatives either in terms of quality or price .But once the pricing system is monopolized by the Authority, no different services either in terms of quality or price is expected from the transport operators.

Thus, the existing fact is contradictory even to the competitiveness of the transportation market recognized by government business policy. As far as the notion of competition among the operators is concerned, it is exhibited neither in terms of price nor in terms of quality. Even though the government has somehow left the market for individual operators; it still monopolizes the pricing mechanisms.¹⁴⁰

As a matter of reality, therefore, the market is inefficient to satisfy the demands of the general public either in terms of price or quality.

4.3. Regulations in Relation to Competency and Behavior of Drivers

Driving is not a simple task performed by any ordinary person. It needs a special skill and qualification on the technical, mechanical and other related aspects of vehicles.

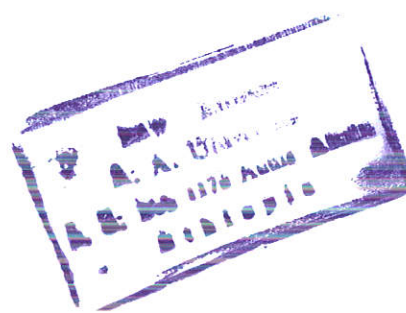
Poor driving capacity usually causes harm on the life and property of persons. Hence, in almost all countries of the world the capacity to drive a vehicle is subject to regulatory controls and this is usually done through the system of operators' license.

In Ethiopia too, the capacity of a driver is administered by the Motor public/Vehicle Operators License Regulation, Legal Notice No. 362/1961.¹⁴¹ Accordingly, the official recognition to operate a particular type of vehicle is made by way of a certain class of

¹³⁹ .Ibid

¹⁴⁰ .Ibid

¹⁴¹ Article 6(1-6) of legal Notice No. 362/1961, A Regulation issued pursuant to the Road Travel and Transport proclamation 1960, Nega. Gaze No. 9, 1960.



operators' license which corresponds with the type of vehicle/big or small/ and the purpose for which the vehicle is to be used/commercial or non-commercial, private or public/.

The higher the class of license sought the more qualification and driving experience is required.¹⁴² Moreover, each class of operators' license requires the fulfillment of minimum age limit and driving experience.¹⁴³

As a result, 16 and above years in case of first class driving license; 18 and above years in case of second class driving license; 21 and above years of age or above one year experience with second class driving license in case of third class driving license and above 21 years of age or above one year experience with third class driving license in case of fourth, fifth and sixth class driving licenses is expected to be satisfied by the applicant.

No license is given to a person under 16 years of age.¹⁴⁴ This has some problems associated with it in that even the age of 16 may contradict with the general limitation set by the law.¹⁴⁵ There is a general consensus concerning the age limit set by the law to perform juridical acts; hence it requires compelling reasons to set an exception. In this case, however, with the great responsibility that pertains to life and property, it seems the exception is not that justified.

Furthermore, one may acquire the next class driving license simply by having 1 year experience in the subordinate class driving license. This means, the new applicant for the second class driving license shall satisfy either 21 or above years of age or above one year experience with first class driving license, and the same is true in all other classes.

In this case therefore, the age limit requirement, the improvements in competency which are instrumental in having the license seem to be waived. This must be seriously scrutinized taking into consideration the responsibility to be assumed next and not just the increment in the number of years that lapsed.

¹⁴² . Ibid

¹⁴³ . Ibid Art. 7

¹⁴⁴ .Ibid

¹⁴⁵ See article 192 of the civil code of the empire of Ethiopia and Article 215 of The Revised Family Code Of Ethiopia

Concerning the necessary qualifications attached to the attainment of any class of operations' licenses, the following requirements are expected to be satisfied by the applicant:¹⁴⁶

- A. Knowledge of the traffic rules: it includes the applicants' knowledge of traffic rules, the meaning of various traffic markings, signs and signals, the speed limits and any other rules set for the operation of motor vehicles on the roads as set forth in laws or regulations in force.
- B. Competency to drive: it refers to the practical demonstration which determine the applicants ability to handle and operate effectively and safely including the applicants control of the vehicle at all time, applicants ability to operate the vehicle smoothly and confidently, and the applicants conscientious compliance with all relevant traffic rules, observance of all road signs and signals and observance of speed limits.
- C. An acceptable physical fitness: in this case the examination includes the vision, hearing and general health of the applicant. Moreover, the law extends this examination even to the renewal of the license; the officer is entitled to order the examination again whenever he/she has reasonable cause to suspect the existence of any physical disease, disability or conditions that compromise with the safe operation of the motor vehicle.

But, this examination is not put into practice so far. Once the operator is granted the operators' license, he/she is not subject to re-examination. The writer conducted an interview with 10/ten/ drivers on this issue and all the interviewees have ascertained that, they are not re examined by the officers.¹⁴⁷ They further said that, there are even some persons with defective vision or hearing operating a vehicle. But no one requires them to be re-examined or refuses to renew their license.¹⁴⁸ This makes the license a life term certificate.

The basic purpose of the renewal is to check and reassure at least the satisfaction of necessary physical conditions. But, practice has attested that the renewal of operators' license is targeted primarily on the collection of fees generated from the service. This in turn jeopardizes or compromises public safety at large.

¹⁴⁶..Article 9 and 10 of Legal Notice No. 362/1969, Regulations Issued Pursuant To the Road Travel and Transport Proclamation, 1967, *Nega. Gazze*.No.9

¹⁴⁷. Interview with the 10 drivers December 12-15,2007 Addis Ababa

¹⁴⁸.Ibid

The license upgrading system is also the other practical problematic issue in this concern. It simply relies on experience. Accordingly, achieving one and above year experience in each class of operators' licenses enables the operators to obtain the next grade.

The purpose of classifying the driving license as such is to restrict the persons with less grade operating license from operating the vehicles that need high grade driving license. The required operating skill is different from vehicle to vehicle. Even though, the contribution of experience is indisputable, it should not be taken by itself as a *lessee passé* to the next class. Thus, it is better to take it as a supplementary requirement in addition to the necessary technical skills. Moreover, it should be well acknowledged to differentiate the operating license on the basis of vehicle type and service. This means, the license given to passenger transport vehicle operators differs from the license to freight transportation. The same should also be true for taxi transport vehicle operator and inter-urban bus transportation service vehicle operator. But, we see that the law has given consideration only to the size of the vehicles. Nonetheless, there should be other contingent considerations in working with the same class of vehicles like training how to handle customers which should be given due consideration.

Passenger transport vehicle operators need to have at least essential know-how on the safety and fair treatment of passengers. The day to day activities of these transport operators are closely tied with the public because of the service delivered by them. Hence, in order to make the service safe, efficient and qualitative, the training manual for these operators should include vital principles and procedures of service delivery. In my interview with some officials of RTA, I have understood that this concept has been given emphasis lately and will be implemented in the near future.¹⁴⁸

The other critical issue that ought to be given proper insight is the quality of the training given to the trainee. In this case, it is cognizable that the technical know-how and competence of driving is acquired through training. Thus, in order to get competent operators the quality of such training should get the concern of the regulatory agency.

¹⁴⁸.Supra at note 125

According to Article 7(2) (j) of Proclamation No.468/2005, the RTA has the duty to issue and follow up the implementation of directives relating to the licensing of driving schools and instructors. From this we can infer the emphasis of the law for the quality of the training given to the trainee.

Currently, there are many private driving schools established in Addis Ababa and other towns. There are also individuals engaged in this activity. Most of the individuals have no licenses to train. They simply rent their car for the self trainee and help the self trainee only in that moment. They don't bother about the quality of the training and the skill acquired by the trainee. They only seek the car rent. Moreover, even the existing schools which we have referred to above do not offer qualitative training. In this connection, I have made an interview with 8 /eight/trainees/ out of which four of them are self trainees and the rest four are trained in driving schools. The first four interviewees have responded that the training is not qualitative and not enough as they can't be offered to have sufficient timing because of the payment they incur for the rent of the car.¹⁵⁰ The training is usually made by using a private car renting which is costly. In this regard, the remaining four interviewees concur with the earlier ones in respect of quality. According to them, even worse is that, private schools are not well equipped with necessary training equipments.¹⁵¹ They haven't enough vehicles corresponding with the number of their trainees. Hence, a brief time of 15/fiftien/ minutes practice hour in each day is allotted to them, which definitely is not enough to grasp all the techniques and skills of driving.¹⁵²

While the responsibility to make a supervisory control is under the umbrella of RTA's power, its practical task is confined only to the issuance of license. Practical supervisory control has not yet been conducted by the Authority now.¹⁵³ Thus, getting a license without grasping the necessary skills becomes an easy practice. Because of this, the quality of driving in Ethiopia is very poor and it is cited as the leading cause for creating frequently happening fatal accidents.

¹⁵⁰. Interview with the 8/eight/ trainees, 27 -28, Dec, /2007, Addis Ababa

¹⁵¹. Ibid

¹⁵². Ibid

¹⁵³. Interview with the 4/four/ Trainers, 27, Dec., /2007, Addis Ababa

The third critical point which I have intended to discuss is the practical application of competence examination for applicants to get the driving permission. In principle, this examination is used to check the quality and competence of the applicant. It distinguishes the competent from the incompetent. Those whose competence to drive is ascertained by the examiner are granted the certificate, and others who fail to have the competence as established by the examiner for the time being are temporarily refused.

Astonishingly, the practical situation in Ethiopia witnesses that those who do not acquire enough skill to drive easily pass the exam and others who acquire the skill fail. In one way or another, it is suspected that it is related to some thing like oiling the palms of the examiners; this is one of the things most talked of in most places.

Most of the interviewees had reached in consensus on the issue at discussion that, corruption is the unhidden practice by examiners.¹⁵⁴ The official recognition of your ability to drive stems from your capability to pay.¹⁵⁵

In some countries examining the capacity of the applicant to derive a vehicle is decentralized and outsourced to private examiners.¹⁵⁶ By taking the supervisory power over their activities, the regulatory agency mostly authorizes private firms to apply the examination and made a report of the result with rational recommendations. Hence, the Licensing Authority decides either to grant or refuse the license depending upon this report.

This practice may be a good lesson for Ethiopia. Decentralizing this power and authorizing private intuitions/firms/as such facilitate available situations for the participation of these firms in addition to its outcome in reducing the corrupted activities of the appointed examiners. Moreover, even in this situation there should be a strong exemplary measure to be taken on those who have committed the crime. To cut the long story short, serious supervisory control by the authority is deemed important.

This authorization is also a wise way to be extended to get the best skilful and qualitative examiners. Most of the best qualified technicians are not willing to work with the government because of meager payment. Thus, the suggested practice is helpful in order to

¹⁵⁴.Ibid

¹⁵⁵.Ibid

¹⁵⁶.Ibid

make in use the skill of these technicians. This in turn tremendously contributes in the effort to minimize accident which cost the lives of thousands and properties worth millions of Birr.

The Proclamation under discussion is silent about the behavior of the driver which is the other vital point that should be taken into account. In my view, behavior of drivers should be essentially regulated principally in public transportation service. This service sector normally needs diligent and careful persons in order to minimize the possible danger occasioning harm.

Unfortunately, Article 5 (5) of the Road Code provides few about the behavior of the driver at work. This provision prohibits the driving of vehicle while the driver is under the influence of intoxicating drugs or drinks or if he is unable to drive with reasonable safety due to his physical or mental condition. But, the Code pays no attention about the significance of regulating the conduct of drivers. By simply imposing a restriction of “not to drive” upon the drivers who are influenced in one of the above listed conditions, the Code disregarded all the decisive factors governing the conduct of drivers at duty. Nowadays, the unethical conduct of taxi drivers and their assistants turn out to be prejudicial and are exacerbating problems.

From an interview which I had with some passengers in Addis Ababa, I have understood that due to the absence of a code of conduct which rules the behavior of drivers, many passengers are exposed to harassment and assault by taxi drivers. Truly speaking, all the interviewees have consented on the necessity of having a binding code of conduct.

4.4. Safety Regulation

Safety regulation is one of the most important regulatory aspects of road transport. The basic objectives of all road transport safety regulations have been the prevention of death and injury of persons and destruction of property.

The major variables which potentially endanger the safety of passengers and other persons and property are mostly related to the vehicle, driver, nature of the load carried by the vehicle and the road conditions. Hence, in order to reduce the possible damages upon life and property of the person in particular and the economy of the country in general, regulatory oversight by the government is a well recognized solution.

Though there is no safety regulation unique to commercial road transport in Ethiopian, most of the road transport legislations deal with safety. The legislations on inspection of vehicles, drivers licenses, traffic control, road codes, speed limit and size and weight etc., are some of the fundamental regulations which relate to the safety and comfort of passengers.

These laws are designed to apply commonly for all forms of road transport. However, as they are found scattered in many laws and hence not consolidated, it is not an easy task to find out and use these regulatory provisions. This in turn creates a basic challenge on the practical implementation of regulations on safety.

It is essential that discussions on safety regulatory rules be had at least on vital safety ones. So, the writer discusses below on the regulatory rules at least paying special regard to the fundamental regulations in relation to safety to have brief understandings on the actual situation.

4.4.1. Vehicle Quality Regulations

The preamble of Road Transport Proclamation No. 468/2005 underlines that, competitive, safe and efficient transport service is the most important factor in economic and social development of a country. Accordingly, in order to achieve these objectives, there is a need to have regulatory control on the safety and efficiency of road transport. Consequently, the RTA is authorized under Article 7(3) (f) to follow up and suspend the operation of vehicles that could adversely affect the safety of the general public.¹⁵⁷

With regard to the quality of Road Transport Vehicles, Article 2/20-22/ of the same law classifies the passengers' transportation vehicles into commercial motor car and motor omnibus. The Proclamation defines commercial motor car as a public service commercial vehicle having accommodation for not more than twelve (12) passengers and motor omnibus public service commercial vehicle having the capacity to carry more than twelve passengers.¹⁵⁸ In this regard, the law makes a distinction on the basis of the maximum number of passengers that can be carried by the vehicle in a single trip. Therefore, the only

¹⁵⁷ .Article 7/3//f/ of the proclamation, cited above at note 104

¹⁵⁸ .Ibid Article 2/20-22/

vehicles admitted to commercial passenger transport services are the high capacity buses, minibuses and modified taxis/pickups converted to carry passengers/.

Minibuses and modified taxis are usually destined to urban transportation services. Furthermore, high capacity private buses and Anbassa city buses are among the highest capacity buses engaged in city bus transportation service. But, the city bus service by private owned high capacity buses is limited to serve persons to office and release hours. Anbessa city bus transportation perstatal has dominated and monopolized the urban bus transportation service.

Both Anbessa city bus and taxi transportation services do not meet the demand of users. Particularly, Anbessa city bus renders inefficient service and even is unable to resolve its problems of service.

Some of the problems identified in passengers' interviews are: low frequency of the bus service and hence, long waiting times. Crowding and over loading was the worst-rated quality of service indicators.¹⁵⁹ These problems demonstrate an acute shortage of supply for city low-cost bus service related to demand.¹⁶⁰ Users also complain about lack of facilities both at terminals and at stops along the route. Only a very small proportion of the bus stops have shelters.¹⁶¹ Moreover, the many number of passengers using the bus in a single trip is also the other challenge on the quality of its service. Eventhough the bus is designed to carry 50—70 passengers in a single trip, the actual practice testifies that the passengers using the bus in a single trip are estimated to 150 and even sometimes more.

The issue of quality service seems to be a forgotten reality by the company. It is categorical that safe and quality service is usually the result of competitive market. When the market is competitive, the service becomes qualitative and efficient. But in the case of city bus service, the only dominant firm is Anbessa with other transport operators excluded from engaging in the city bus transport service and compete with Anbessa. Hence, the market has failed for the reasons just mentioned but the government is not willing to take corrective measures.

¹⁵⁹.Interview with the 25 passengers, 18, Nove.-29, Dece. Addis Ababa.

¹⁶⁰.Ibid

¹⁶¹.Ibid

The same is also true to the taxi service. Though the number of passengers carried in one trip is limited to twelve/ 12/, watching minibus taxis carrying 16 persons or even some times 20 passengers in one trip is usual. The respect they give to the transport regulations fluctuates based on the strength or weakness of supervision and control by the traffic police.

Generally speaking, the market for taxi transport service is not efficient and qualitative. There is no special quality offered by the taxi service operators. They all render a more or less similar service in terms of quality and efficiency.

Quality transport service usually necessitates the payment of additional charge beyond what is paid in other regular services. This charge is usually determined by the market it self. If the service provider has invested more to make his/her service more qualitative and efficient the law shall allow him/her to charge more to meet the special service costs. This in turn encourages these and other transport service operators to provide qualitative and efficient services.

In a country where the transportation service tariff is determined by only the government, quality of service is usually below standard. That is why the quality and efficiency of road transport services in Ethiopia is very much compromised.

The reason for the absence of different taxi transport services in terms of quality and price is the reliance of determining transportation tariff rate with the price of fuel. When the price of fuel increases, the service tariff also increases. This situation forces the taxi service to continue unaltered.

When we assess the inter-urban transportation service, it seems somehow qualitative compared to the above two. The quality of vehicles becomes improved through time, the competition among the operators is also some how healthy. Nowadays, passengers in some routs have access to use the vehicles in their choices. The responses of the interview with some inter-urban transport users well ascertained that this transportation system is increasingly becoming competitive and even started to deliver qualitative and efficient service.¹⁶¹ Even though there are two (One public owned and another party owned)

¹⁶¹. Supra, at note 159

enterprises engaged in inter -urban passenger transportation service, both are forced to compete with others.¹⁶³ Some transport service providers are now on the verge of losing the market. For example, Walia inter-urban transport service public enterprise is being pushed away from the market because of poor quality of its transport vehicles.¹⁶⁴

This is really a good start on the competitiveness of the transportation market and it may be a lesson for all other transportation services. By way of reiterating what qualitative and fairly priced transportation service is some of the important achievements of competitive market. And in turn competitive transportation market is the result of corrective intervention by the government.

4.4.2. Vehicle Inspection Regulation

Many countries have requirements for vehicles to be maintained in safe road worthy conditions before use on roads. A smaller number of countries have organizations that inspect some or all vehicles at regular intervals¹⁶⁵ and an even smaller number of countries ensure that the inspection are carried out in a fair, honest and effective manner.¹⁶⁶

In Ethiopia, vehicle inspection is governed by the Motor Vehicle and Trailer (Identification, Registration and Inspection) Regulation, Legal Notice 360/1969. Accordingly, the regulation provides:

“No motor vehicle or trailer shall be driven or operated on any road of the Empire unless a valid annual registration sticker has been issued with respect thereto and is properly displayed therein and unless said vehicle is driven, operated or used only for the purpose authorized on the face of the said sticker.”¹⁶⁷

This provision underlined the necessity of annual registration sticker, a certificate that ascertained the inspection of the vehicle. Simultaneous with the annual registration every motor vehicle or trailer shall be subject to inspection. According to Article 33 (2), the criteria

¹⁶³ .Ibid

¹⁶⁴ .Ibid

¹⁶⁵ .Study on Road Transport Regulations, Final Report, Road Transport Authority Archive in, P302.

¹⁶⁶ Ibid

¹⁶⁷ .Article 27 of Legal Notice 360/1969, Motor Vehicle and trailer/Identification, Registration and Inspection /Regulation, Nega.Gaze.28th year No.9

of inspection include; the vehicles road worthiness, its capability of performing in a safe manner when engaged for the purpose indicated in the application for annual registration.

The inspection process involves among other things the checking of the proper placement of lighting devices and reflectors on every bus, truck, tractor, and semi-trailer and full-trailer, the requirements as to the adequacy of break and break performance. ¹⁶⁸

The fitness of any vehicle is attested by an inspection certificate valid for a period of one year. Except for special inspection under Article 36 road worthiness by a motor vehicle is assumed for a period of one year between one inspection period and another. ¹⁶⁹

A clear and unambiguous legal framework is essential before attempting to improve or introduce vehicle road worthiness testing. In this respect, the following suggestions should be duly considered. Accordingly, the law should be framed as:

1. To control the proper constitution and use
2. Having an enabling legislation which permits the regular in service inspection of the vehicle.

Furthermore, this enabling legislation will be modified by specific regulations, which will define standards required for testing, procedures for testing and reasons for rejection of different categories of vehicles and sub systems. In all these regards, the law in Ethiopia is compatible except the testing limitations. The criteria for approval and rejection of vehicles from the realm of service providing, which should however be honored are utterly missing. The law only embodies test procedures and requirements for the full sphere of management and administration of the vehicle inspection scheme. These written procedures are obviously essential, but if supplemented with their open access and availability to the public it will assure full acceptance of the vehicle inspection scheme. Since, the object of the whole exercise is to improve vehicle safety; there can be no reason for making any aspect of these procedures confidential. Therefore, the law lists out all recognized procedures under Article 33 of the Proclamation.

¹⁶⁸.Ibid Article 33

¹⁶⁹.Ibid Article 36

ny shall not exceed 14 meters¹⁷⁵ and the total height including the load thereon shall not exceed 3.8 meters.¹⁷⁶ Furthermore, the overall length shall not exceed 11 meters and no motor omnibus shall be used in combination with any other vehicles, trailers or semi-trailers.¹⁷⁷

The foregoing provisions clearly illustrate as to what extent the law takes preventive measures to reduce high way accidents. However, in practice, it appears that this regulation is often ignored by the enforcement officers. Above all, the law is not clear to road users and enforcement officers.¹⁷⁸ Hence, this calls for advertising the rules clearly, especially for the enforcement officers and operators.

4.4.4 Traffic Management Regulation

Traffic management is one of the vital elements of an integrated transport strategy. Its basic purpose is making the most productive use of the existing transport system by adjusting, optimizing, managing and improving the system.

Traffic management embodies wider concepts and is concerned with the comprehensive management of the road-based transport system and deals with policies and measures for the entire urban transport system including at least: traffic circulation, public transport on street operation management and control of parking, servicing and access demand management, enforcement of traffic regulations, road safety, pedestrians, bicycles and other non-motorized vehicles, commercial vehicles management and environmental management.¹⁷⁹

Traffic management usually necessitates clear and unambiguous regulation which facilitates the effective implementation of the designed policy. Moreover, the establishment of a strong professional traffic management agency with well defined powers and responsibilities is the second essential factor in the traffic management activity.

bid Article 5/d/.

bid Article 5/b/

bid Article 5/c/

Interview with the 6/six/ Traffic police men,29/Dece/2007,Addis Ababa

The present Ethiopian Road Code is based on the old English Road Code with the difference of introducing the right side driving methods instead of the English left.¹⁸⁰The regulations are based on the Transport Amendment Regulation No. 279/1963, which revised the 1943 legislation.

This Amendment Proclamation covers the administrative responsibilities; the general rules of behavior, standards of signs and signals, rules for proper movement of traffic on roads, speed limits responsibility of motor vehicle operators, rights and duties of pedestrians, special rules for cyclists and motor cyclist, proper use of motor vehicle equipment, road signs signals and markings, authority to investigate traffic accidents, traffic accident reporting and information system and penal provisions.¹⁸¹

The existing road code is silent about speed and distance between vehicles, general requirements governing maneuvers, rules applicable to pedestrians ,behavior of drivers towards pedestrian, opening of doors, motor way and similar roads, behavior incase of accident, lighting, general requirements and lighting rules for the use of lights. Moreover, most of the provisions do not contain updated and detailed instructions. To elaborate this concept further, the road signs and signals given by the traffic policemen (Part I. Art. 5, Paragraph /3/ of the Proclamation), “The driver” Part I, Article 5, Paragraph /5/; “meeting” Part IV, Article 22; “Position on the carriage way/ part I. Article 6 Paragraph. (1)- (5), “Transport of Passengers” /Part VII Art, 43-46/ and other provisions of the code are not combined with and meet the factual development in the field. In addition to this, the implementation of the law itself is disputable. First, there is no clear demarcation about the responsibility to enforce this regulation which actually is confused. Second, the absence of coordination among several officials empowered for the proper implementation of the Code blocked the practical implementation of traffic management.

To add some more, the non compliance of the traffic police training at Police College with the modern safety requirements/signs and signals/ and the corrupted practices of some police members contributes for today’s infringement of the road Code.¹⁸²

¹⁸⁰ Study on Road Transport Regulation, Cited above at note 165.

¹⁸¹Transport Amendment Regulation No. 279/ 1963, Nega.Gaze.,23rd year No.5

¹⁸².Supra at note 178

4.4.5. Environmental Regulation

It is clear that rapid urbanization, motorization and economic growth contribute to a growing air pollution problem in most large developing urban cities. Studies on this issue indicate that the greatest damage to human health comes from exposure to fine suspended particulates-particulate matter with an aerodynamic diameter at less than 10 microns and to end.¹⁸³ Other pollutants of concern are sulphurdioxide (SO₂), to the extent it contributes to fine particulates and long-range environmental damage; ozone (O₃), mainly in sunny, warmer locations with unfavorable topographic conditions, volatile organic compounds, some of which are known carcinogens; nitrogen oxides (NO_x), contributors to ozone formation, and carbon monoxide (CO), which is associated with global warming.¹⁸⁴

Anthropogenic air pollution originates from large stationary resources/industries, power plants etc.), small stationary resources (small households and small commercial boilers), and mobile sources/traffic).

Traffic is a large contributor to both particulate and sulphur emissions in cities with frequent congestion and with large, poorly maintained fleet of vehicles that use high sulphur diesel fuel. In cities, where lidded gasoline is still used, traffic may contribute 80-90% of atmospheric lid concentrations. In most cities gasoline vehicles are the main source of lid aerosol and carbon monoxide, while diesel vehicles are major sources or reparable particulate matter.¹⁸⁵

In Asia, parts of Latin America and Africa, two stock motor vehicles and three wheelers are also major contributors to emission of irrespirable particulate matter. Gasoline vehicles and their fuel supply system are the main sources of volatile organic compound emissions in nearly every city.¹⁸⁶

Both types of vehicles contribute significantly to emission of oxides and nitrogen. Vehicles are the most important source of public exposure to such contaminates. Stopping the growth

¹⁸³.Ibid

¹⁸⁴.Ibid

¹⁸⁵.Ibid

¹⁸⁶.Ibid

in motor vehicle use is neither feasible nor desirable, given the economic and other benefits of increased mobility and transport in Ethiopia. The challenge is to manage growth of motorized transport so as to maximize its benefits while minimizing its adverse impact on the environment and on society. For this purpose the law empowered RTA to prepare standards relating to the smoke, gas, vapor and the like emitted from the exhaust pipes of vehicles and trains with a view to preventing pollution taking into account international criteria and the capacity of the country and submit and upon approval implement the standards.¹⁸⁵ In doing so, the authority has expected to cooperate with other environmental institutions.

As regards to the laws designed for the protection of environment, the concerned authority (RTA) has done nothing. The only law which deals with environmental issue is the 1963 Road Code. Accordingly, the code under Article 5(6) provides a restriction to drive a vehicle with which construction, equipment and condition are not complied with the provisions of the proclamation. Moreover, the Proclamation under Article 14 and 15 stipulates two conditions as a condition of restriction. Article 14 prohibits the driver parking on a road of any vehicle which is exuding or emitting gases, smoke, vapor, oil or fule at an amount higher than that usually for vehicles of the same type in good state of repair and which is likely to cause annoyance or damage to other road users. And, Article 15 also restricts the driving of vehicles on a road which is causing, whether because of the vehicle's state of disrepair, the poor condition of any of its parts or faulty loading, more noise than is necessary for its normal operation.

Here, one can easily dig out the ambiguity faced with the two provisions. In the first provision the measurement is "*usual practice*" which is very vague for persons out of the operating practice. Even in the second provision, the conditions are more technical and known only by skilled persons.

Generally speaking, the law fails to elaborate both conditions otherwise providing in a more general manner. On the other hand, the law seems focused only on the vehicles in operation because the term "repair" in the first provision and "state of disrepair" in the second

¹⁸⁵ Article 7/1/ /j/ of the proclamation cited above at note 104.

provision indicates to us that the code is silent about the newly imported vehicles. In my interview with 6/six/ traffic police men, I understood that, none of the traffic police men control this condition. It is difficult to them to make out which one is usual and which one is not because of the uncertainty of the law.¹⁸⁸ Moreover, they have no know-how about the mechanical and technical parts of a vehicle.



¹⁸⁸.supra at note.,178

CHAPTER FIVE

5. Types of private commercial Road transport services and Their Regulations in Ethiopia: the law and practice

The market for public commercial road transport service in Ethiopia today holds about seven /7/ types of transport services including the newly started midi-bus city transport service. These are urban taxi transport service, City bus transport service, airport taxi transport service, short and medium range transport service and Inter-Urban cross country bus transport service.

Except the City bus transport service, all the rest are de-regulated and left to the private sector. However, with the exception of the newly started private midi-bus transport service, the city bus transportation has still remained in the domination of the government where Anbessa City Bus Transport Enterprise had held almost an exclusive franchise for urban bus service within the country. In this regard, this paper will turn to deal with the regulatory aspects of each type of Commercial Road passenger transport service regulations and the practice in Ethiopia.

5.1. Urban Taxi Transport Service.

The market for urban taxi transport service was effectively deregulated in 1992. Today, only individual persons and associations are allowed to operate this business. There is no government owned enterprise engaged in urban taxi transport service. Moreover, this service sector is almost free from any barriers set by governmental intervention. Particularly, the entry and exit processes in this service sector are totally free from any governmental control except the regulations designed as checks on the satisfaction of prerequisites calculated by the government agency in order to protect public interests. Hence, any person can freely engage in this business sector simply by fulfilling the licensing requirement from the Ministry of Trade and Industry and the requirement of certification for the quality of vehicle from the Road Transport Authority.

There is no separate regulation particularly applicable to the taxi transport service sector in Ethiopia.¹⁸⁹ All the regulations on the transportation industry are also commonly applicable to the taxi transport.¹⁹⁰

The service sector is free from route assignment by the government. All the service operators are authorized to render the service in all routes of their own choice.¹⁹¹ However, according to informants, the absence of route assignment either by the government agency or by the associations of taxi transport service providers creates a serious trouble on the users.¹⁹² Taxi transport operators choose routes which have short distance but relatively costly charged.¹⁹³ Moreover, most operators unculturally break their routes especially at peak times to force passengers to pay higher rated fares.¹⁹⁴

Minibus taxis do not operate to scheduled timetables but follow the practice of full load dispatching. This can provide a good level of service through out the day on busy routes, but often results in excessive waiting time in the off-peak period for quieter routes.¹⁹⁵ Self – appointed marshals control minibus departures from the terminals. Drivers effect payments to the marshals for their use of the terminal.¹⁹⁶

However, the pricing of this transport system is not free from the control by the government. The average prices for shorter and longer trips are determined by the government. This may be justified in Ethiopia for two reasons. First, the inability of private contracting parties to effectively establish average pricing invites the regulatory authority to determine reasonable tariff. Second, the dependency of the transport price with the price of fuel *de facto recognizes* interventions of government in the determination of the tariff. When the price of fuel is raised or when the government reduces the amount of subsidy on fuel and petroleum, the amount of tariff charged from the users also increases.

¹⁸⁹ .Interview with Ato Fiseha G/Wahid, Head of the Legal division of ERA,27 december/2007,Addis Ababa

¹⁹⁰ .Ibid

¹⁹¹ . Interview with Ato Abebe Ayalew, Director of Public Transport division at RTA, 27 December /2007,Addis Ababa

¹⁹² .Interview with 18 users of Urban Taxi Transport service,16-17 January/2008,Addis Ababa

¹⁹³ .Ibid

¹⁹⁴ .Ibid

¹⁹⁵ .Ibid

¹⁹⁶ .Ibid

For these reasons, the government is still involved in determining the price for taxi transport service. This in turn forces the transportation service to remain one and the same every where in the country. Accordingly, there is no special service offered by the operators. Moreover, there is no special tariff for special service. Hence, this influences the service sector to remain inefficient and problematic.

Currently, the government has planned to assign routes for taxi transport.¹⁹⁷ This is intended to reduce the problems the public faces at large. Moreover, the importance of adopting different taxi transport services is getting admission by the government.¹⁹⁸ Hence, depending upon the quality and efficiency of the services offered by each service provider, taxi transport services will be categorized as more special, special and ordinary in the near future.¹⁹⁹ Besides, taxi transport operators will be organized in the form of companies.²⁰⁰ This move increases the negotiating power of the operators and allows them to offer quality and efficient services.

5.2. Midi-Bus City Transport Service

It is a very recent city bus transport system availed by the newly arrived buses. Moreover, it is a new beginning by private city bus transport operators. Before the arrival of these buses, the city bus transport service remained under government monopoly. Currently the government in some situations admitted the engagement of individual operators in the business and imported midi-buses and distributed it to individual operators with 30% payment and 70% loan. The fare for this service is determined by the government. It is almost the same with the fare charged by taxi transport service operators. Moreover, the route is assigned by the government. Though, there are different complains from the users, it is a step forward by the government to allow individuals participate in the market. Furthermore, this advancement indicates the steps forward to the complete withdrawal of the government from this market.

¹⁹⁷ Ato Junedin Saado, Minister of transport and Communication, Reporter gazette ,Volume 13, No.12/799, Wednesday 16, December 2000EC

¹⁹⁸ Ibid

¹⁹⁹ Ibid.

²⁰⁰ Ibid

Furthermore, this advancement indicates the steps forward to the complete withdrawal of the government from this market.

5.3. City- Bus Transport Service

This service sector is the most important and relatively inexpensive and readily available transport service sector particularly to people living in towns. City bus transport service in most countries is highly subsidized by the government.

City bus transport service sector in Ethiopia is the only road transportation sector that is skipped from the 1992 over all business deregulation. The service generally is restricted to the government. Hence, the publicly owned Anbessa City Bus Service Enterprises has held an exclusive license for urban bus service within the country. In practice, it still holds almost a monopoly of conventional bus transport services.

Anbessa was originally a privately owned enterprise holding an exclusive permit for the provision of passenger transport services in the city. But, it was later nationalized in 1974. The federal government now owns the company, and operates the service in Addis Ababa and Jimma towns. Moreover, its operations are financially supported by the administration of the towns.

This Enterprise maintains detailed records of its passenger carryings. The total carryings are estimated at between 650,000 and 700,000 trips per day, equating to over 1500 passengers per bus per day.²⁰¹

Its' services are operated to scheduled running times. And, the times for all routes are the same for each trip, irrespective of time of day or the direction of travel. As a result, trips are often lost at peak times when buses cannot keep their scheduled times. Approximately 15% of scheduled trips are lost each day.²⁰² Terminal controllers adjust services as required to minimize the effects of late arrivals and lost trips, and re allocate vehicles accordingly in order to meet the most pressing levels of demand.

²⁰¹ .Road Transport Regulation Study Cited above at note 114.

²⁰² .Ibid

Anbessa operated in 98 routes in the capital.²⁰³ Most are radial routes to the central business and commercial areas of the city. The current bus routing and scheduling plan for Anbessa is prepared by the company. The introduction of any limited competition regime of economic regulation would require that this capability be transferred to the transport authority.

The fare charged for any journey is the fare applicable to the route, and is not related to the distance traveled by the passenger. Authorized fares can be raised only when a new route is created or an existing route is altered or extended. This has provided an incentive for Anbessa to develop a complex network with a high degree of overlap between individual routes.

Currently, Anbessa is required to act in a commercial manner, but doesn't have the freedom to set its own tariffs. These have effectively been frozen since 1992. The city administration has provided financial and capital support to ensure both the continuing operation and its expansion to meet the growing demands. Subsidy is paid for each passenger carried. However, this subsidy is being progressively reduced and the city is committed to its eventual elimination.

The service by Anbessa city bus Transport Company is not meeting the growing demand of urban transport by the public. According to the interviewee which I had on the same issue, users are blaming the quality and efficiency of the service currently delivered by Anbessa.²⁰⁴ Furthermore, they suggest that, the absence of competitors in the sector aggravates this inefficiency and incompetence of the company.²⁰⁵

There cannot be any competition for the provision of highly subsidized bus services unless the conditions of such subsidy are made available equitably to all potential bidders. Competition could still be brought in to the operation of the service through making them available on operating leases to potential route contractors. In this regard, the Ministry of Transport and Communications has planned to offer the lease of 1000 bus routes with in the

²⁰³ .Ibid,

²⁰⁴ .Interview with users, 21, January 2008, Addis Ababa

²⁰⁵ .Ibid

next months to potential route contractors.²⁰⁶ By now, there are about 600 persons registered in the ministry for this purpose and waiting the implementation of the plan.²⁰⁷

Total deregulation of this sector according to some informants will highly injure the interest of users because; private operators are not expected to continue subsidizing the sector.²⁰⁸ Hence, according to them it is better that the government stays there at least to balance the interests of the public and the providers.

5.4. Short and Medium Range Inter-Urban Transportation Service

Such transport service sector is most of the time carried out by middle size buses (in common parlance referred as “chiquantas” and “lonchinas”) and mini buses which are colored differently from the normal taxi.

There are also some large size buses that join the short and medium range bus Transportation service sector. These buses are normally used to operate on the cross country transport service sector. However, as they become not any more accommodated in the Cross Country transport sector they resort to the short and medium ranges. Among the reasons attributed are first, they are unfit for cross country transport (because of technicalities) and second, their model is not up to date to meet the demands of customers under stiff competition.

The distance covered by this service sector is confined to the surrounding towns. This in turn enables the operators to make at least a couple of round trips daily. Moreover this service is mostly rendered by transport associations. According to informants from RTA, individual operators are weakened in their strength to withstand the stiff competition they are subjected to. For this reason, they are indirectly forced to join associations to enhance their competitive capabilities.

Short and medium range bus transport service sector is the only transport sector relatively free from governmental intervention.²⁰⁹ There is no route assignment by the government and

²⁰⁶ .Ato Junedin saado, Cited above at note 200.

²⁰⁷ .Ibid

²⁰⁸ .Ato Fiseha, Cited above at note 190.

²⁰⁹ .Ato Abebe Ayalew cited at note 191.

even the tariffs charged by the operators for the service rendered is freely negotiated among users and providers.²¹⁰ Moreover, the routes are assigned by associations.

From these perspectives, the sector relatively seems to be competitive. Nonetheless, when measured in light of the expected result of competitiveness (efficiency and quality), the practical situation demonstrates that there is no observable step forward.

Most users complained that the competition in this sector is not that much healthy.²¹¹ Many driver assistants (locally known as “woyalas”) and brokers are not usually courteous; they mislead customers and quite often abuse and harass them.²¹² I have myself come across situations when these assistants pull and push customers; once I saw a woyala kicking with a fist a customer for the mere reason that the customer refused to use the bus in preference to another one. Generally, it seems therefore that nobody is serious with what the woyalas are doing and saying.

Furthermore, the transport operators delegate middlemen (brokers) to negotiate the tariff with the customers. Hence, there is an incessant increase in bus fares which create problems on the part of the passengers. Such problems are rampant especially in times of transportation shortage.

The service they render is not differentiated based on efficiency or quality. Hence, like the taxi transport service, the service in this sector is the same mundane replica of what exists any where. Therefore, this and other practical situations dictate absence of governmental intervention unworthy and not meeting its purpose. Though the free enterprise principle forces the government to abstain from interfering into the sector, it should still maintain its supervisory role so as to secure public interests. These roles can be carried out through setting of competition laws so that the playing field is leveled for all parties and the interest of the public should not be jeopardized.

In conclusion, I hold the view that the existing distortion in public interests and the service in general is because of the unwise withdrawal of the government.

²¹⁰.Ibid

²¹¹ .Interview with the users of short and medium range transport service,20,january,2008

²¹².Ibid .

commendable for the government to intervene for the sake of public interest. One reminder is that government regulation of the business is not considered as sheer intervention. But such recommendation does not in any way mean the government should overtake the service but it should regulate the sector to be competitive for public interest.

5.6 Feeder Transport Service

This service refers to the one which is rendered by small range taxis/commonly called “Ladas”. The word “feeder” is used after the tributary nature of the work the taxis are engaged in. Hence, their service starts from main roads and extend to the different branches that connect specific areas of the town and of course back to the town.

These taxis are not actually prohibited from operating along side the roads the other taxis are doing. Nevertheless, for reasons of competition they do not operate altogether. The specific reasons are that passengers do not take them up in the presence of the normal taxis for they are expensive. These taxis are expensive because the number of seats is much lower than the normal ones and do not accommodate many passengers. Besides the type of oil they consume is relatively more expensive than what the normal taxis use. The intricacies of all these things narrow their options to operate as only feeders even in the absence of limiting rules/regulations. Hence, their operations in the main roads are restricted to situations where the normal taxis are not operating; when insufficient and during night times. In these cases, they freely negotiate their fares with the passengers.

As well, these taxis are not providing differentiated services based on efficiency or quality. Hence there is no profound competition in this area. The taxis are mostly operating in turns. There are self appointed marshals to facilitate the situation who receive certain fixed amount of money for that.

5.7. Inter-Urban/Cross Country/ Transport Service

This transport service is the most important and usual transport service in the country. The service creates links between the rural population and urban dwellers. According to the road transport regulation survey report, inter urban cross country bus transport can be estimated to cover around 30-35% of the national bus fleet which operates outside urban areas or serving

as inter urban cross country bus transport. The inter urban cross country bus fleet is composed of 25% of minibuses, 35% of medium buses owned by associations and 40% of large buses mostly owned by associations and companies.²¹⁴

Interurban cross country transportation service mostly connects two or more regional states. That is the reason why the service is under the direct regulatory power of the federal government. Accordingly, the RTA is empowered to control and supervise all the activities of the operators.²¹⁵

In practice, the service of inter urban cross country bus transport is rendered by a range of individuals, associations, companies and even by publicly owned enterprises. Consequently we come to see again this service sector is not totally deregulated as the government has reserved a room for participation.

In this service sector there are no entry and exit barriers. However individual operators face problems of withstanding the competition to remain in the market. Therefore they are forced to join associations or companies.²¹⁶ The transportation fares are also determined by the government. The determination of fares is analyzed in terms of the number of kilometers covered in the trips. Besides the nature of the road as asphalted or gravel is another determinant for the calculation of the fares. Hence a lower amount of fares is expected when the road is asphalted and more so when it is gravel. As to the routes, they are assigned by the respective companies or associations.

By and large, in this service sector there is no differentiated service provided based on efficiency or quality. Associations or companies are rendering almost the same type of service. According to the interview I had with officials of RTA, the government is on the verge of finalizing its study from the grassroots level to implement mechanisms for differentiated services. Of course there are some companies and associations which have required coming up with differentiated services.

Despite the above facts, this sector is relatively competitive when seen in comparison with other transportation services. Normally the present associations exhibit some form of

²¹⁴.Study on Road Transport Regulatory Study, Cited above at note 202.

²¹⁵.Ibid

²¹⁶.Ato Abebe Cited above at note,210

differentiations based on the differences in their vehicles quality.²¹⁷ But the differentiations on quality or efficiency remain to be incidental to their organizing of similar vehicle models.

In this service area users have the opportunity to use buses of their own choice. This means as passengers march and arrive to bus stations they can freely opt to the bus they consider is more qualitative and efficient with out the obligation to wait for turns. The supervisory role of the government in this service sector is relatively higher; controllers check the number of passengers if extra is on board and the amount of fares paid is also scrutinized.

By way of reiterating, as the service quite often joins two or more regions, the federal government steps in the regulatory process. However in practice conflict of jurisdictions is usually observed as the regions aspire to indulge when the area of fleet is under their general jurisdiction. The response of some interviewees gave hint that government should take its hands off from this service as it seems purposeless to remain therein. According to them, the regulatory aspect however should be maintained.

Another problem associated with this sector is the presence of out of station staged transport services that pick passengers as they come at irregular places. These services are operating individually and out of sight and their fares are usually higher than the normal ones. According to some, these distort the competition spirit of the cross country bus transportation system.

²¹⁷ Ato Fiseha, Cited above at note, 208

CONCLUSION AND RECOMMENDATION

I. Conclusion

Although the normal business of a government is restricted to protecting the country from foreign invasion and securing peaceful interaction among the society, intervening in the business activities of the country is recognized as a circumlocutory business of a government. Because of its duty of protecting the interest of the public, government is empowered to play supplementary decisive role in the business activity of a country.

It is a well recognized fact that, government is allowed to intervene in any market when the private actors fail to provide the required service in the most efficient manner because of imperfect information, externalities and imperfect competition. For this reason governments have justified their interventions with specific regulations to correct market failures.

Transportation in any country is basic need of citizens and is recognized as essential for economic and social development. It is because of lack of basic infrastructures and well structured transportation system that, the overall development of a country is usually blocked.

Transportation influences the overall activities of a country. Movements of people and goods are usually depending on the performance of transport organizations and individuals who engage in this business. Hence, governmental supervisory control is deserved at least for the purpose of protecting the interest of the public and making the power of actors in the market parallel.

To achieve effective ways of monitoring the transport situation at central government level, interpreting the transport information and translating it in to policy actions, laws, regulations and standards and finally advising road users and giving instructions to law enforcement officers are some of the original roles of the government in the transportation sector.

Transport regulations issued by regulatory agencies are therefore common and very important controlling mechanisms used to ensure appropriate, efficient and sustainable transport service in the interest of citizens, users, and operators.

This regulatory control includes the claims for restriction of certain activities to a limited number of entrenched operators, fixing of passengers' fares and freight rates, requirements of certain services to be provided even though they are not financially viable and the establishments of standards for safety, noise levels and exhaust emission.

Except in particular cases where special measures need to be taken to face cases of emergency, the government should retire from management and operations in the transport sector and revise regulations. As well, the government should become the real facilitator and regulator for transport services to be appropriate, efficient and suitable to the benefit of citizens, users and operators.

Road transport in Ethiopia can be said to have passed three distinct historical policy approaches. Before 1974, Government was not involved in transport operations but was engaged in issuing rules and regulations for the free enterprise economy. During the Derg regime, the road transport industry was centralized and the operations were assumed by government owned parastatal companies.

The transitional government since 1991 has applied a gradual de-regulation procedure and finally tends to liberalize and de-regulate. It is clearly expressed in the recent broad government policy objectives, strategies and priorities that the government is committed in giving the private sector a substantial role in the economic development of the country. To this end the government outlines a program focusing on economic stabilization and structural reform measures particularly in the financial sector, public enterprise, and civil service areas aiming at removing cost and price distortion and improving market related incentives so that progressively liberalizing the economy and reducing the role of the public sector.

The policy and strategy document recognizes that direct supply of transport infrastructure and services by the public enterprise or regulated monopoly has resulted in high costs and poor quality of services. Consequently, for the purpose of overcoming these inefficiencies, the strategy document underlines the need to institutional and regulatory reform in order to introduce commercial processes and competitive pressures in the industry.

Since the liberalization process started in 1991, the government has made considerable economic changes by adopting policies of de-regulation, privatization and market liberalization. In recognizing the legal right for all market players to freely interact with each other, the government reserves the power to regulate several business sectors and delegate each ministerial office to play a regulatory role in its own affairs. In this regard regulating the transport sector is the jurisdiction of the Ministry of Transport and Communication and the Road Transport Authority. Moreover, in addition to the policy document that advanced liberalizing the service sector there are regulations designed by the government in order to oversee the activities in each services sector and a competition law that facilitate the playing field in the market free from destructive and unit-competitive practices.

However, even after the taking of all these reforms, the transportation sector still remains inefficient and ineffective to meet the demand and to satisfy the interest of the public. What's more, the legal and practical aspects of the free enterprise transformation system designed by the government are not yet put in to practice. Because of these, it becomes a challenge for the regulatory body to safeguard the interest of the public in general and to give a reasonable return on the investment made by the operators in particular.

In Ethiopia, there is no declared transport policy. Besides, the road transport administration framework is complex and disarticulated horizontally among the different administrative sectors (transport, infrastructure, trade, traffic polices and finance) and vertically among the federal state and each regional state. There is no cooperation in an operative road transport policy in which regulations, taxation, enforcement and information are conceived as means for appropriate, efficient and sustainable road transport services.

There is a conflict between RTA and RTCBs role and responsibilities (over lapping or lack of responsibilities) between the two institutions. In fact both organizations are entitled to register, inspect vehicles, license of drivers and operators. The difference in covering different territories (the region it self for the RTCBs and two or more regions for RTA) creates more confusion than indication. There is confusion on who should actually control the road-worthiness of inter-regional transport vehicles licensed by RTA but not controlled by RTA and there is still confusion on inter-regional business licensing between RTA and the Ministry of Trade and Industry. Regional operators, which are registered only at the respective RTCBs, cannot move outside their region and are obliged to operate only in the region where they are registered.

Competence of driving in Ethiopia is very poor; it often causes fatal accidents. Moreover, annual vehicle testing is very superficial and almost useless. The traffic police capability to enforce the Road Safety Regulations is influenced by lack of competence, resource and limited only on administrative and parking violations, rather than safety and "moving offences". Driving and vehicle road worthiness offences receive little attention and repression.

Totally speaking, inefficiency and incompetence are some of the unique characteristics of the Ethiopian Commercial Road Transport Service Sector. There is no efficient service either in terms of price or service quality. The dependence of the fare charged by service providers on the price of fuel negatively influenced both the efficiency and quality of the service.

Even though, the system of free enterprise economic orientation essentially promotes the market determination of the amount of fare should be charged from users, the factual situation forces the actors to accept and respect the fare indirectly determined by the government.

There is no different fare for different service and there is no different service for different fare. For this reason, qualitative and efficient service is unknown and even impossible in the country. Moreover, because of the destructive competition practiced every where in the country, the sector remain detrimental on the interest of the public.

Most of the time, users are not this much strong to survive the transportation market. Because of the absence of alternative services in the market they are forced to rely on the market structure formulated by operators.

Honestly speaking the self-styled free enterprise oriented market structure in the country exposes the users for unprotected exploitation of the providers. The performance of governmental institutions established for the purpose of supervising the actual market practice is very week and even armed with very superficial regulatory power. RTA and RTCBs are entitled only to conduct a study and suggest solutions. The establishment of the Unfair Trade Practice Commission is symbolic and even nonfunctional as desired. There are no practical measures taken by the Commission except a few cases via the case between Saint Marry University College and Rift Valley University College.

Consequently, it may not be mistaken to conclude that the Commercial Road Transport Market in Ethiopia currently is in confusion. Though, a liberal and competitive



transportation market is the wish by the government, the practical situation acknowledges the existence of distorted and destructive market situations. The fundamental principles of liberal market forced the government to stay restricted from intervening in the market except in some situations for example:-guarantying provisions, balancing market powers, protecting externalities and information deficiencies and supervising excessive competitions intending to protect the natural existence of the market. However, this principle seems sound only in a developed market and undeserving in a least developed and transitional market.

In a transitional market the role of the government is not only formulating provisions, protecting externalities and information deficiencies and supervising anticompetitive practices, there are also other tasks such as building the bargaining capacity of both users and providers, shaping the market to be competitive, subsidizing the potential operators to stay in the market compete with the stronger one and facilitating all the necessary conditions including loans for persons and associations having the capacity of rendering differentiate services in terms of quality and efficiency. Hence, the government shall revisit its program and strategy in this line and assist the market grow naturally. The government is expected to construct the basement before it leaves the market. It has a duty to make balance the bargaining power between the operators and the users. Moreover, the need to establish definite institutions with apparent and special regulatory power is paramount.

The Government in Ethiopia is still remains operating commercial road passenger transportation business. The Government owned Anbessa City Bus Transport Company and Walya Inter-Urban Cross Country bus transport interprise are still engaged in city bus transport and inter-urban cross country transport services respectively. In addition to these. Selam Bus public Transport Company owned by TPLF is also rendering the same service to the public.

The operation by the government is admitted only when there is market failure for the purpose of correction. But, when the government continues in operation seeking more profit, the intervention becomes destructive as it is in Ethiopia. The operation by the government particularly in the cross country transportation market is not for the purpose of correcting the market otherwise generating profits. Even the city bus transportation service operated by the government is in question. Because, the almost monopoly control of the government in the market is the most unworthy practical situation that affects the interest of the public than the fear that supposed to be face if private operators are admitted.

The laws enacted to regulate the market are not clear and dispersed here and there. It is difficult to identify which one is obliterated and which one is revived. Moreover, the existence of aged and outdated regulations magnifies

All these factual and practical situations forced the sector to reside in the middle of the desert finding the foot prints of different countries roofed by the sink and flat surface sand far from the verbally desired free enterprise oriented transportation market structure of the country.

II. Recommendations

1. Having a clear and specific transport policy is the principal needs of any country in all types of market system. The existence of defined transport policy is a pinpoint of final achievement designed in the country. There is no recognized transport policy in Ethiopia. This makes the service sector confused and distorted. Therefore, the need to formulate exact transport policy of the country is urgent.
2. Ethiopia stayed under the Dergue socialist economy about seventeen years. The society is unfamiliar with the new free market economic system and even the situation at this time is not acknowledging this sudden withdrawal of the government from the market. Hence, there is a need to re-thinking by the government to play additional roles even beyond the principles of liberal market maintained in highly developed markets. Some prudent supervisory and supplementary roles including the change in attitude of the citizens' towards the new market orientation are required before the government left the market free.
3. In order to reach a clear functional relationship between RTA and RTCBs, there should be a clear demarcation of the function of the central and regional road transport authorities. It will be the RTA's responsibility to give overall guidelines and control to harmonize and standardize the nation's road transport activity. The RTCBs as executive offices of these respective regional governments are responsible for road transport matters related to their respective region, including commercial road transport that is limited in operation to their respective region only.
4. To ensure co-operation between RTA and RTCBs and zonal departments and in order to assure direct flow of information vice-versa, a collaboration office should be established by the Ministry of Transport and Communication.
5. In order to improve road transport performances in terms of operating costs, level of service, reliability, safety and being respondent to passenger demand and needs, a series of actions regarding the sector general frame work must be undertaken.
 - 5.1. In order to secure qualitative and efficient transportation service, it is advisable that the Government should differentiate each transport service in respect to the quality offered by the potential operators and the fare charged.
 - 5.2. The driving training and the driver test procedures should be revised and improved. A guideline for the training manual and procedure should be prepared by the Ministry of Transport and Communication and the respective

regional states. Moreover, supervisory controls on the implementation of the guidelines, compliance and competence of the trainer are essential.

- 5.3 :The existing law lays down a series of minimum conditions for the theory and practical driving test. The examinee must have the necessary theoretical and practical knowledge of driving. Moreover, he/she also should make a full declaration regarding his/her physical and mental fitness to drive. Nevertheless, these conditions are uniform for all levels of driving test and applied repetitively. Therefore, it is better to develop different conditions for each level of driving test.
- 5.4 .In order to improve the process of annual vehicle test, it would be better to conduct much more effective test either on a sample of vehicles each year or involve authorized private garages in the activity.
- 5.5 Testing of vehicles operating in inter- regional transport service should be delegated to the Regional Transport and Communication Bureaus to simplify testing procedure in practice.
- 5.6 The Procedure for inspecting vehicles must be published clearly and unambiguously. It should be available for members of the public who wish to prepare their vehicles for the test, for garages involved in the repair and maintenance of such vehicles and for the examiners themselves to ensure that they carryout the test correctly.
- 5.7 A clear, legal frame work is essential before attempting to improve or introduce vehicle road worthiness testing. The law should be framed firstly to control how vehicles should be constructed and used, secondly as enabling legislation which permits the regular, in-service inspection of vehicle. Therefore; the existing legislations should be replaced by specific regulations which define standards and procedures required for testing, and reasons for rejection of different categories of vehicles and systems. Test procedures and requirements shall also include the full sphere of management and administration of the vehicle inspection scheme.
6. The function of the police force in a country should be to enforce the law. It is important that the police are not directly involved in a testing or inspection of vehicles for two reasons. The first is that, in most cases police have very little technical knowledge and secondly, that there may be a conflict of interest between the police who have just carried out an inspection and the police who ordered the vehicle to stop. The police certainly have a part to play in the enforcement of laws and regulations via the medium of random roadside checks. However, the organization of these should be that the police stop the vehicles, inspect the documents and charge the driver if necessary while authorized vehicle inspectors to carry out the technical inspection of the vehicle. Vehicle weight checking can also be incorporated in such inspections and such a combined task force can form a very useful enforcement tool for long and short periods.

7. A city based traffic management agency with well defined responsibilities and accompanying powers to fulfill the tasks required for effective traffic management should be established.

8. The aim of traffic police forces tends to be kept traffic moving rather than achieving a balanced traffic management strategy, which places priority on the improvement of mobility of people not vehicles. Policy directions for traffic police are likely to be;
 - 8.1.1 The traffic police role (aside from vehicle and driver licensing, road worthiness inspection etc) should be confined to traffic regulation enforcement and to accident reporting.

 - 8.1.2 While traffic management agency should be responsible for planning, designing and operating all traffic schemes, it is an essential part of that process in which the traffic police should be consulted and informed at all stages of scheme development.

 - 8.1.3 Traffic police training and familiarization with the objectives of traffic management should be improved

9. The privatization of Anbessa City Bus Company is already decided by the government together with other parastatal freight transport companies. The privatization of the company will bring more effective use of resource and probably a rise in fares. To guarantee the right to access transportation to the population, specific targeted subsidies should be studied. The city bus transportation system needs nevertheless to be restructured, opening to different potential operators in the large city bus transportation service sector.

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Declaration

Declaration

I hereby ascertain that this is an original work not done by other researchers

Temesgen Tessema

March, 2008