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## PRIVATE OPERATORS IN THE LOCAL MARKETS OF PUBLIC SERVICES

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## PODMIOTY PRYWATNE NA LOKALNYM RYNKU USŁUG PUBLICZNYCH

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**Summary:** The article presents selected results of research carried out as a part of the research project “Local authority between the state, society and the market: cooperation and competition”, which was conducted at the commission of the Ministry of Science and Higher Education and was financed with its means. The subject of the analysis are opinions of respondents (representatives of communes’ authorities and private entrepreneurs) concerning the participation of private operators in the local market of public services. Presented material allowed to formulate significant conclusions regarding the level of involvement of private operators in providing services that would meet the needs of a commune, its entities and inhabitants, relations that are present at this market and the main barriers of the involvement of private operators in this type of activity.

**Keywords:** commune, public services, private operators, cooperation and competition.

**Streszczenie:** W artykule zostały przedstawione wybrane wyniki badań zrealizowanych w ramach projektu badawczego „Władza lokalna między państwem, społeczeństwem a rynkiem: współpraca i konkurencja”, który został zrealizowany na zlecenie i ze środków Ministerstwa Nauki i Szkolnictwa Wyższego. Przedmiotem analizy są opinie respondentów (przedstawiciele władz gminnych oraz prywatnych przedsiębiorców) na temat udziału podmiotów prywatnych w lokalnym rynku usług publicznych. Zaprezentowany materiał pozwolił na sformułowanie istotnych wniosków dotyczących poziomu zaangażowania podmiotów prywatnych w świadczenie usług zaspokajających potrzeby gminy, jej podmiotów i mieszkańców, relacji zachodzących na tym rynku oraz głównych barier w angażowaniu się podmiotów prywatnych w tego typu działalność.

**Słowa kluczowe:** gmina, usługi publiczne, podmioty prywatne, współpraca i konkurencja.

## 1. Introduction

Meeting the collective needs of inhabitants by providing widely available and good-quality public services is a basic responsibility of all local government units. Due to them, local governments have the opportunity to fulfil the tasks imposed on them by the current legal articles. Firstly, the reactivation of local government on the commune level was associated with the conviction that entities that were the properties of communes were the best guarantors of good quality public services. The model of providing services existing at that time is called self-sufficient [Wojciechowski et al. 2014, p. 73]. This belief, however, was changing gradually. Both the new trends emerging in sciences concerning local government management, in particular the concept of New Public Management (NPM) which was becoming increasingly popular and taking full advantage of solutions typical for private entities [Osborne, Geabler 2005; Zalewski (ed.) 2007; Zawicki 2013], appearing and changing legal regulations, and experiences of other local governments resulted in the change of attitude towards the issue of public services delivery. Besides that, economic calculation, and partly resulting from it shrinkage of their own resources caused that it was necessary to turn to private operators and NGOs, as those participating in the market of public services. Not insignificant was also the proceeding generation change in local government structures and change in their perception of entities that belong to other sectors as a necessary evil. (However, the occurring changes do not mean leaving the market of public services without any supervision. Quite the opposite, according to the intentions of the NPM supporters, public administration (including self-government) “should most importantly focus on the role of a regulator, purchaser, and then on a controller of the order accomplishment” [Sześciło 2014, p. 15]. Furthermore, the examples of democratic countries with a much longer tradition of local-governments and a higher level of privatisation of public services show that, regardless of the adopted organisational and legal forms of providing services, public authorities are always responsible for their organisation and guarantee of their accessibility [Sadowy, Grzymała 2007, p. 296].

## 2. Legal regulations of the market of public services in Poland

Because the results of market research on public services at the local level will be presented in the further part of the article, information concerning legal regulations will be discussed in the context of commune’s government. Cooperation between a commune and private operators has its regulations in Polish law which has been undergoing changes throughout the last twenty years since the institution of local government was restored.

“Commune’s authorities are responsible for establishing the scope and priorities of the provided public services” [Krajewski 2013, p. 23], but until 1995 there were no legal regulations defining the rules of “selecting a business entity carrying out its own tasks or delivering goods (supplies) for the sake of a commune” [Wojciechowski

et al. 2014, p. 59]. A turning point was the Act of 10 June 1994 regarding public procurement, which regulations on public procurement financed with one's own funds came into effect not until 1 January 1996. In accordance with Article 13 of the Act, public procurement could have been provided in one of the six modes: 1) open tender, 2) limited tender, 3) two-stage tender, 4) negotiation retaining competition, 5) price inquiry, 6) sole source procurement. Wherein the basic mode was the open procurement [Act of 10 June 1994, art. 14, par.1]. In 2004 a new Act – Public Procurement Law was established [Act of 29 January 2004], which modified the list of modes within which a public procurement could be granted. The form of the two-stage tender was cancelled, and instead of negotiation retaining competition, the mode of negotiation with announcement and without announcement was distinguished. Additionally, the mode of competitive dialogue, innovation partnership and electronic auction appeared. In total, presently there are 9 modes for granting public procurement, the basic ones include: open tender and limited tender [Act of 29 January 2004, art. 10].

Another possible form of giving to private operators competences connected with the accomplishment of public activities by providing public services is public-private partnership (PPP). Until 2005 local governments, attempting to use this solution, based on the provisions of existing laws on public procurement, but they did it incidentally. The Act regarding public-private partnership (PPP), approved on 28 June 2005, met with the criticism of specialists who claimed that the records of the act instead of facilitating this form of cooperation, restricted it even more. At the end of 2008 and the beginning of 2009 it was substituted for two separate acts [Act of 19 December 2008; Act of 9 January 2009] which were to deformalize the former regulations and increase the interest in public-private partnership at the local level. From the perspective of several years it is difficult to talk about a high popularity of this type of solutions.

The last of the acts that has a significant impact on the possibility of entrusting responsibilities connected with providing public services by communes is current Act on public finances approved in 2009 [Act of 27 August 2009]. Certainly, except for the enumerated acts there are many others that regulate such issues as issuing concessions, permits or licences.

### **3. Participation of private operators in public services market – presentation of research results**

The issues of the organisation of public services market have been mentioned as a part of a larger research project entitled “Local authority between the state, society, and the market: cooperation and competition”<sup>1</sup>. Its aim was to present the degree of

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openness and activity of Polish commune self-government in undertaking widely understood intra- and intersectoral cooperation, including this concerning the area of the accomplishment of public tasks. For the sake of the project, representatives of communes' local governments from the entire Poland were questioned at the first stage of the research, and entrepreneurs from chosen communes of Lodz voivodeship were questioned as a part of the second stage – case studies of chosen communes in Lodz voivodeship. Commune's authorities were asked to fill in a paper or electronic version of the questionnaire, whereas the entrepreneurs underwent survey interviews. The research resulted in obtaining 494 responses from communes and 450 responses from entrepreneurs.

### **3.1. The market of public services in the view of representatives of the surveyed communes**

Surveyed communes were willing to hand over a part of their local market to private operators to a different extent. The most popular area where they decided to hand over the responsibilities to private entities was construction. Next, those were: public transport and health care. It has to be borne in mind that indicating a particular area by the respondents does not mean that it is the only domain of public entities, private entities or those that belong to the sector of non-governmental organisations. However, it seems that in case of construction, communes very often have to make use of the offer of private operators, since they do not have their own specialised entities.

The level of the use of private operators in the processes of providing public services is influenced by the type and size of the researched commune. Decidedly more frequently, such decisions were made in urban communes than in urban-rural or rural communes. Such a phenomenon should be particularly distinct in areas, where the size of a commune and its market potential have a great significance for the entities that, in principle, are focused on gaining profits. In reality, however, to a larger extent than in case of areas of services concerning public transport or construction, it can be observed in case of schools and kindergartens (area of education and upbringing), sports and culture organisations. Also in case of social assistance, the differences between large communes (urban) and units with a smaller number of inhabitants (urban-rural and rural communes) are visible. However, in this case, it is difficult to talk about the universality of the use of private sector operators (Table 1). However, taking into consideration the difficult measurability of service quality and emerging media information due to which one learns about the following cases of abuse and negligence against the residents of private nursing homes or shelters, it seems not to be a great loss for the potential recipients of the service. On the other hand, the only area within which the reverse relation was observed is water supply. However, it seems that we are dealing here with a kind of over-interpretation and classifying, by the respondents, households which have their

**Table 1.** The percentage of communes indicating participation of private operators in the local market of public services (%)

Area of services provided	Total indication percentage (484 = 100%)	Indication percentage in different types of communes		
		urban	urban-rural	rural
Electric energy supply	35.8	45.6	41.6	31.5
Thermal energy supply	32.6	35.3	35.4	31.0
Gas supply	34.9	36.8	44.2	31.0
Water supply	8.9	5.9	7.1	10.3
Sewage disposal and wastewater treatment	14.3	11.6	15.0	14.6
Waste management	44.0	55.1	42.5	42.1
Environmental protection	15.7	23.2	17.7	13.3
Construction	66.3	76.8	69.0	62.9
Public transport	53.5	55.1	65.5	48.7
Education and upbringing	15.7	55.1	22.1	4.3
Health care	58.3	71.0	54.0	57.0
Social assistance	2.9	8.6	3.5	1.3
Culture	12.4	43.5	14.2	4.6
Sport	13.4	39.1	16.8	6.3
Tourism and leisure	40.2	62.3	45.1	33.2
Other	0.2	1.4	0.0	0.0

Source: [Wojciechowski et al. 2014, p. 125].

own wells or are self-sourcing watered to the group of private operators providing services (a form of self-service [Savas 1992, p. 100]).

As mentioned before, in practice, it is an extremely rare situation when the particular area of public services is handled by entities belonging exclusively to one sector. In areas where communes usually permit private operators to participate in the market, there are both examples of different levels of competition and cooperation, or lack of any relations (Table 2). According to the representatives of communes, the areas within which public and private entities compete most fiercely are public transport and construction. Competition was also relatively often indicated by the respondents with reference to the area of public economy, however, the change of regulations of the Act of 13 September 1996 on maintaining cleanliness and order in communes [consolidated text. Journal of Laws 2016 item 250], which occurred already after the completion of the research, caused that the situation in this area should change significantly. On the other hand, health care is an area of public services where, according to the surveyed communes, the manifestation of competition is rare. Definitely more often, the entities that belong to a commune and operate on its territory do not get in each other's way, not keeping any mutual relations. Whereas the area of services where cooperation is relatively often visible

is tourism and leisure. This results most probably from the specificity of this part of service market, within which the functioning of private hotels or agritourism farms complements the activity of public museums, open-air ethnographic museums, or tourist information points, and it allows to fully exploit the potential held by a commune.

**Table 2.** The dominant nature of relations in the selected areas of the market of public services between public and private entities

Functioning area → Type of relation ↓	Waste management (231 = 100%)	Construction (321 = 100%)	Public transport (259 = 100%)	Health care (282 = 100%)	Tourism and leisure (195 = 100%)
Fierce competition	9.4	12.3	12.6	6.3	1.6
Fair play competition	16.4	12.4	14.3	8.7	5.8
Competition and cooperation in case of goals coincidence	11.0	9.2	9.0	9.6	7.6
Cooperation	26.1	13.5	18.8	25.6	35.1
Lack of any relations	29.4	31.6	28.7	36.3	29.1
Other	0.7	0.7	0.2	0.2	0.5
No response	7.0	20.3	16.4	13.3	20.3

Source: own work based on the research results.

Representatives of surveyed communes were asked to indicate barriers that restrict or completely block the participation of private entities in the local market of public services (Table 3). The most frequently indicated problem is the lack of means that could be used for financing services provided by private operators. It does not seem to be highly convincing, since regardless of who would directly deal with providing services, communes or their inhabitants would have to pay for them.

**Table 3.** The percentage of indications in particular types of communes on the barriers of the participation of private operators in the market of public services (%)

Commune type → Type of barriers ↓	Urban (67 = 100%)	Urban-Rural (110 = 100%)	Rural (298 = 100%)	Total (476 = 100%)
Legal regulations	79.1	63.6	49.7	56.9
Lack of entrepreneurs interest	40.3	54.1	65.3	59.0
Lack of administration interest	13.2	9.1	7.4	8.6
Lack of financial means	55.9	60.0	68.5	64.7
Other*	7.4	0.0	1.7	2.1
Lack of barriers	4.4	2.7	4.4	4.0

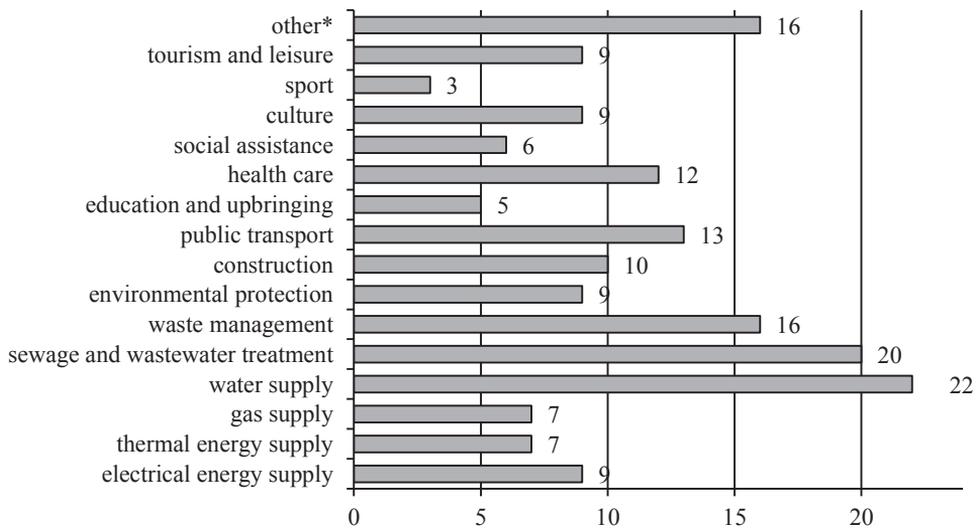
\* Fear of slander concerning corruption, lack of good practices, lack of entities with sufficient potential and necessary competencies.

Source: own work based on [Wojciechowski et al. 2014, p. 131].

Certainly, in case of delegating these services to non-governmental organisations, which to a different extent can use the free work of volunteers, the costs can be lower than in case of private or public operators, however, to all intents and purposes there are no areas in which the entities of the third sector could take the full responsibility for meeting the needs of inhabitants. Next, the respondents indicated the lack of interest of private entrepreneurs. This problem is particularly significant for rural communes, which market is small and thus indeed can be unattractive for the entrepreneurs (in particular those bigger). Interesting is the fact that representatives of communes hardly ever indicated the lack of interest in the use of private operators on their part. It has to be highlighted here that more self-critical are representatives of urban communes, and this self-criticism decreases in urban-rural communes and in particular in the rural ones.

### 3.2. The market of public services in the view of the surveyed entrepreneurs

As a part of the accomplishment of the research in selected communes of Lodz voivodeship, entrepreneurs operating on this territory, were asked to give answers to questions concerning the participation in the market of public services. Among the 450 respondents of private operators 85, that is 19%, participated in the procedures



\* As a part of the option "other", activity connected with the supply of office supplies, catering and fuel dominated.

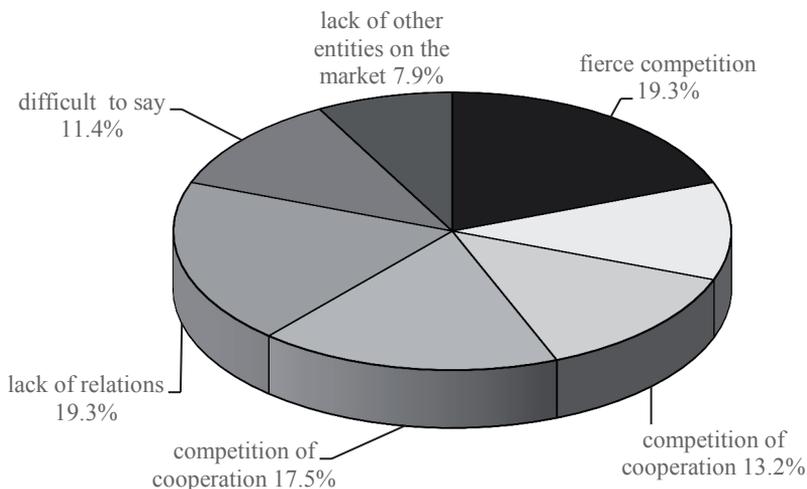
**Fig. 1.** The number of entrepreneurs that participated in procedures connected with selecting contractors in particular areas of public services

Source: own work based on the research results.

connected with selecting entities providing public services for inhabitants, 77 (17.1%) declared participation in procedures concerning providing services and goods for the sake of the commune and its entities (office, budget units etc.). However, as many as 316 (70.2%) never decided to use any of the previously mentioned forms enabling to enter the local market of public services. Whereas, attempts to enter the market were successful for 71 of them (15.8%)

As for the areas of public services that were of the greatest interest among private operators these were definitely technical services, led by water supply and sewage disposal and wastewater treatment (Figure 1). It is not surprising though that entrepreneurs were not involved in sports activity.

According to the surveyed entrepreneurs, local markets of public services, are first and foremost areas of competition. Certainly, its intensity varies, and in some cases a very positive phenomenon of cooperation between entities, which usually compete, can be observed (Figure 2). Taking into account over 17% of entrepreneurs who claimed that service market, where they tried to operate, was the area of cooperation between entities from different sectors, it seems that the emerging image should be perceived as positive. What is surprising, in the view of the representatives of the surveyed communes the image looks worse, and generally these are the authorities who try to idealise or at least smarten up the reality.



**Fig. 2.** Types of relations between private enterprises and public entities operating on the market of public services (114 = 100%)

Source: own work based on the research results.

The surveyed entrepreneurs were also asked to estimate the procedures of selecting contractors paying special attention to the transparency and fairness. Among the entities which participated in the procedures, about 30% did not have

reservations about their course, at the same time, not much fewer though had some reservations, claiming that the process of selecting contractors was not fair and favoured some entities (Table 4). Certainly, it can be put down to the disappointment of people who did not manage to sign a contract and enter the market with the services, but only slightly weaker doubts regarding the correctness of carrying out the procedures by officials in order to select the contractors, have those respondents who managed to sign the appropriate agreement. This means that in this field local authorities and officials have a lot to improve, since the process of selecting entities that will be able to be involved in providing services for a commune, its entities and inhabitants should not raise so many doubts. That goes without saying that all doubts and reservations of the interested party cannot be eliminated, however, the percentage of indications should be significantly lower.

**Table 4.** Assessment of the procedure of selecting contractors and suppliers and/or services by commune as for their transparency and fairness

Criterion for participation in tender procedures				
	yes	no	I don't know	total
Participation in procedures regarding public services	28 (32.9%)	24 (28.2%)	33 (38.8%)	85 (100.0%)
Participation in procedures regarding commercial services and goods for the sake of a commune	23 (29.2%)	21 (27.3%)	33 (42.9%)	77 (100.0%)
Lack of participation in the above-mentioned procedures	92 (20.4%)	127 (28.2%)	231 (51.3%)	316 (100.0%)
Criterion for signing a contract to provide services and/or supply goods				
	yes	no	I don't know	total
Contract	35 (49.3%)	18 (25.4%)	18 (25.4%)	71 (100.0%)
No contract	9 (11.4%)	23 (29.1%)	47 (59.5%)	79 (100.0%)
Total	44 (29.3%)	41 (27.3%)	65 (43.3%)	150 (100.0%)

Source: own work based on the research results.

Among the barriers that hinder, and sometimes even prevent private operators from entering the local market of public services dominate those connected with the current legal regulations that regulate the issues of selecting entities that can provide services. The surveyed entrepreneurs complain that they are too complex. Surprising is the fact that this barrier is indicated most frequently by those who managed to go through those procedures successfully (almost half of the respondents from this group). On the other hand, among the entrepreneurs who took part in the tender procedures or applied for granting an appropriate concession or permit (with different effects), this barrier is more frequently indicated by the participants of procedures connected with providing public services for the sake of inhabitants of a commune, than those who applied for a contract on providing services and goods for the sake of

the commune's office and other entities that belong to the commune (Tab. 5). An incredibly important barrier, mentioned by the respondents is low accessibility of information concerning the possibility of participation in tender procedures, where communes are purchasers. What is important, the entities that have not participated in these procedures yet, complain about this barrier the most. Unfortunately, for them this is the main barrier. The lack of financial means, indicated by the authorities of the surveyed communes as the main barrier, is only third of the indications. Not much fewer people pay attention to the lack of interest in cooperation on the side of authorities and commune's officials.

**Table 5.** Barriers that hinder entering the commune market of public services

Type of a barrier	Contract signed for services or goods supply (71=100%)	Participant of procedures – public services (85=100%)	Participant of procedures – services and goods for the sake of a commune (77=100%)	Lack of participation (316=100%)	Total (450=100%)
Complex tender procedures	47.9%	42.4%	36.4%	29.7%	32.9%
Low accessibility of information about tenders	23.9%	21.2%	28.6%	36.7%	33.3%
Lack of interest in cooperation on the commune's authority side	7.0%	14.1%	23.4%	25.3%	22.9%
Unfulfilled condition of fair competition in the process of selecting a provider	11.3%	5.9%	14.3%	21.6%	18.4%
Lack of financial means	22.5%	31.8%	19.5%	25.3%	24.9%

Source: own work based on the research results.

However, it has to be highlighted that this barrier is significantly less frequently indicated by the entrepreneurs whose attempts to enter the market of public services finished with signing a contract or issuing appropriate permits to provide them. Besides that, the surveyed entrepreneurs are much more understanding and positive in their assessments for commune's authorities than surveyed representatives of commune's authorities towards private entrepreneurs.

#### 4. Conclusions

The accomplishment of public services in communes is still mainly based on individual entities. However, there have already been areas within which private operators play a significant and sometimes the leading role. This includes: construction, electrical energy supply, public transport or health care. Trying to summarise information presented in the article, several important conclusions can be indicated.

Firstly, there are still areas, where the potential of private operators is not sufficiently used by the surveyed communes, whereas the type and size of a commune, and also its market and number of specialised entities that can provide services, have influence on the level of use of private operators in the processes of providing public services.

Secondly, in most cases the relations between entities in the market of public services are those of competition, on a different intensity level. Unfortunately, the inner- and intersectoral cooperation is too rare.

Thirdly, it is difficult to understand local authorities, according to which the greatest barrier of involving private operators into providing public services is the lack of financial means, which may suggest that the accomplishment of these services by individual entities does not cost the communes anything, or at least less than in case of the use of private operators.

Then, it seems that formal-legal procedures, regulating the processes of selecting entities that are supposed to provide public services, are still too complex for potential providers of services – most frequently, this problem is indicated by entrepreneurs who dealt with those procedures successfully.

Next, worrying should be the conviction of over one fourth of entrepreneurs about the non-compliance, by the representatives of authorities and local government officials, of the condition concerning transparency and fairness in procedures of selecting entities that are to become providers of goods and services. Unfortunately, the participation of those indicating this problem is similar both among the entities who participated and those who did not participate in the tender procedures.

Eventually, reassuring is the little percentage of indications concerning the lack of interest in undertaking cooperation on the local authorities side. This allows to look to the future optimistically.

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