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## **Global Forum on Competition**

### **ROUNDTABLE ON CONCESSIONS**

#### **Contribution from the Russian Federation**

**-- Session I --**

*This contribution is submitted by the Russian Federation under Session I of the Global Forum on Competition to be held on 8 and 9 February 2006.*

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## ROUNDTABLE ON CONCESSIONS

### 1. **Regulating concession agreements by the Government.**

#### *1.1 Legislation on concession agreements*

1. Until July 2005 legislation of the Russian Federation had not regulated the process of completing of concession agreements. In accordance with provisions of the Civil Code of the Russian Federation the parties of concession agreement have a full freedom in concession relations on any objects of concession.

2. In July 2005 new Federal Law of 21.07.2005 No 115-FL “On concession agreements” came into force. The aims of the Law are – attracting investments to the Russian economy, providing effective utilisation of the property being in public or municipal ownership on conditions of concession agreements and increase of the quality of goods, works, services granted to the consumers. Law on concessions have thoroughly regulated relations, arising in connection with preparation, completing, implementation and termination of agreements, stipulated guarantees of the rights and legal interests of the parties of a concession agreement.

3. Law on concessions regulates completing of concession agreements regarding determined objects of immovable property. In Russia there is no special law regulating concession agreements in a separate industry.

### 2. **Definition of concession**

4. According to concession agreement, one party (concessionaire) takes the commitment to establish or reconstruct at its own expense the immovable property determined by this agreement (object of the concession agreement), the right of property of which will be possessed by the other party (government), to perform the activity with the use (maintenance) of the object of concession agreement, and the government takes the commitment to grant to the concessionaire for the period stipulated by this agreement, the rights of possession and use of the object of concession agreement for performing the indicated activity. Reconstruction of the object of concession agreement includes activities on its rearrangement at the basis of introduction of new technologies, mechanisation and automatisations of the manufacture, modernisation and substitution of obsolete equipment, changing of technological and functional purpose of the object of concession agreement and its separate parts, other activities on enhancing characteristics and operational qualities of the object of concession agreement.

5. Concession agreement is a treaty, which contains elements of different agreements envisaged by federal laws. The rules of civil law on agreements, which elements are contained in concession agreement, are applicable to the relations of the parties of concession agreement in relative proportions if other rules are not applicable under the Federal law or the contents of concession agreement.

### 3. **Parties to concession agreement**

6. **Government** – Russian Federation, on behalf of which the Government of the Russian Federation is acting, or the authorised federal executive power body, or the subject of the Russian Federation, on behalf of which the federal executive body of the subject of the Russian Federation is acting, or municipal authority, on behalf of which local government is acting;

7. **Concessionaire** - individual entrepreneur, Russian or foreign legal person or two and more stipulated legal persons acting without establishing of legal person according to the agreement of a simple association.

8. Objects of concession agreement:

- Motorcar roads and engineer constructions of the transport infrastructure as well as bridges, overpasses, tunnels, vehicle parking places, vehicle check-points, points of charging fees from the owners of freight vehicles;
- Objects of railroad transport;
- Objects of pipeline transport;
- Sea and river ports, as well as hydrotechnic port installations, objects of their production and engineer infrastructures;
- Sea and river vessels, ships of mixed navigation (river-sea), as well as ships of ice-breaker building, hydrografic and science-research activity, ferry docks, floating and graving docks;
- Aerodromes or buildings and (or) constructions designed for take-off, landing, taxing operating and parking of aircrafts;
- Objects of production and engineer infrastructures of airports;
- Objects of unified system of organization of air traffic;
- Hydrotechnic constructions;
- Objects on production, transmission and dissemination of electric and heat energy;
- Systems of public utilities infrastructure and other objects of public utility, as well as objects of hydro-, heat-, gas- and electric supply, drainage system, water treatment, processing and utilization of domestic waste, objects designed for lighting of city and countryside territories, objects designed for the accomplishment of territories;
- Underground and other public transport;
- Objects used for executing preventive medical measures, recreation and tourism for citizens;
- Objects of health protection, education, culture and sport and other objects of social-culture and social-domestic purpose.

9. Mandatory conditions of concession agreement:

- Object of concession agreement subject to reconstruction, at the moment of signing the concession agreement should be in the ownership of the government and be free from the rights of third persons;

- Changing of the purpose of reconstructed object of the concession agreement is not allowed;
- Pawning or amortisation of the object of concession agreement from the party of concessionaire is not allowed;
- Output and revenue, received by the concessionaire as the result of the activity envisaged by the concession agreement, are the ownership of the concessionaire, if the concession agreement does not stipulate otherwise;
- Concessionaire carry the risk of the accident destruction or accident of the object of concession agreement if another is not stipulated by the concession agreement. Concession agreement charge the concessionaire to insure the object of concession agreement at its own expense;
- The property created or obtained by the concessionaire when performing the concession agreement and being not the object of concession agreement is the ownership of concessionaire, if another is not stipulated by the concession agreement;
- Exclusive rights for the results of intellectual activity, obtained by the concessionaire for its own expense when performing the concession agreement belong to the government, if another is not stipulated by the concession agreement;
- Concessionaire carry out all expenses for the fulfilment of obligations under concession agreement, if another is not stipulated by the concession agreement;
- The government has a right to take a part of expenses for the establishment and (or) reconstruction of the object of concession agreement and present the guarantees to the concessionaire;
- Others.

10. Sanctions applied to the infringers of concession agreements:

- The parties of concession agreement carry property responsibility for non-performance or undue performance of its obligations under concession agreement, envisaged under the Law on Concessions, other federal acts and the concession agreement itself.
- The Concessionaire carry responsibility for the infringement of requirements, stipulated by the concession agreement, and (or) requirements of technical regulation, project documentation, other obligatory requirements to the quality of established and (or) reconstructed object of concession agreement. In case the named requirements are violated, the Government has a right to apply for free of charge elimination of the violation during the period stipulated by the Government.
- If the violation was not eliminated during reasonable period or the violation is substantial, the government has a right to demand the payment of damages (compensation paid).
- The concessionaire carry responsibility for the quality of the object of concession agreement during 5 years from the date of transferring the object to the government, if any other term is not stipulated by the agreement.

11. Guarantees of the equality of rights of concessionnaires when setting conditions of placing the concessions:

- Equal rights, envisaged by the law of the Russian Federation, legal conditions of work, excluding applying of discriminative and other measures, preventing concessionnaires to freely dispose investments and products and revenues, obtained in the result of the activity under concession agreement are guaranteed to the concessionnaires, as well as concessionnaires – foreign legal persons.

12. The role of antimonopoly body when choosing conditions of placing the concessions:

- In case the government or tender commission stipulate discriminative conditions to the concessionnaires or give advantageous conditions of participation in the tender for separate participants of the tender, antimonopoly body apply sanctions to violators and binds to eliminate infringements.
- In case the concessionaire stipulates discriminative conditions of access to infrastructure objects of the concession agreement for the consumers, antimonopoly body apply sanctions to the concessionaire, binds it to eliminate violations and provide non-discriminative access to the objects.

13. Tender for the right to conclude the concession agreement:

- Tender for the right to conclude concession agreement may be public or indoor (private). Indoor tender is held in case if the concession agreement is concluded relating to the object of the concession agreement, information about which is of state secret.
- When holding the public tender, information about holding the tender is placed at the web-page of the government as well as published in official printed mass media. The Government of the Russian Federation determines the web-page, where the information on holding the public tenders is placed.
- Preliminary selection of participants of the tender is held by tender commission, which considers:
  - conformity of the application for participation in the tender with requirements containing in the tender documentation;
  - conformity of the applicant with the requirements containing in the documentation.
- Tender documentation should not contain requirements to the participants of the tender, which baselessly restricts access of any of participants of the tender to participation in the tender and (or) creating advantageous conditions of participation in the tender to any of the participants of the tender.
- Criteria of the tender may be the following:
  - time constraints for establishing and (or) reconstruction of the object of a concession agreement;

- period from the day of signing of concession agreement till the day when created and (or) reconstructed object of concession agreement will conform the stipulated technical-economic indicators of the concession agreement;
- technical-economic figures of the object of concession agreement;
- volume of manufacturing the goods, doing works, rendering services when performing the activities, envisaged by a concession agreement;
- period from the day of signing of concession agreement to the day when manufacturing the goods, doing works, rendering services when performing the activities, envisaged by a concession agreement will be executed in the scope, stipulated by the concession agreement;
- amount of concession payment;
- marginal prices (tariffs) for manufactured goods, works done, services rendered, additions to such prices (tariffs) when performing the activities, envisaged by a concession agreement;
- Consideration and evaluation of tender offers are performed by the tender commission, which determines the conformity of a tender offer to the tender criteria and makes a comparison of conditions containing in tender offers with the view to define the winner of the tender.
- Participant of the tender, which have presented the best conditions of concession agreement performance in accordance with the criteria of the tender becomes the winner of the tender.
- Tender commission is obliged to publish a message on results of holding the tender indicating the name of the winner in an official edition and place this message at official web-page in Internet during 15 working days from the day of signing of the protocol on results of holding the tender.
- Concession agreement should be signed not later than in 90 working days since signing of the protocol on results of holding the tender. Concession agreement is concluded in writing form and comes into force since the day of its signing.

14. Requirements to the prices and quality of the services, rendered by infrastructure:

- Concession agreement stipulates:
  - Volume of goods manufacture, doing works, rendering services when performing the activities, envisaged by a concession agreement;
  - Period from the day of signing of concession agreement to the day when manufacturing of the goods, doing works, rendering services when performing the activities, envisaged by a concession agreement will be executed in the scope, stipulated by the concession agreement;

- Marginal prices (tariffs) for manufactured goods, works done, services rendered, additions to such prices (tariffs) when performing the activities, envisaged by a concession agreement;
  - Marginal prices (tariffs) for electric and heat energy, gas supplied by the infrastructure, are fixed by authorised state executive power bodies.
  - Marginal prices (tariffs) for water supplied by the infrastructure are fixed by authorised state executive power bodies.
  - Requirements for the quality of electric and heat energy, gas, water is fixed by authorised state executive power bodies.
15. Infringement of pricing and non-pricing conditions of access to the concession infrastructure
- When infringing the rules of pricing for goods, works, and services for which marginal prices (tariffs) are fixed by authorised executive power bodies and authorised institutions of local governing, the named state power bodies and local governing, as well as antimonopoly body apply sanctions and obliges to remove infringements.
  - Free access with non-discriminative conditions should be provided to the objects of infrastructure.
16. Cases of investigation of claims regarding abuse of dominant position by concessionaires
- None.