

Unclassified

DAF/COMP/GF/WD(2006)3



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

14-Dec-2005

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP/GF/WD(2006)3
Unclassified

Global Forum on Competition

ROUNDTABLE ON CONCESSIONS

Contribution from Romania

-- Session I --

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

JT00195988

Document complet disponible sur OLIS dans son format d'origine
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THE CONCESSIONS SERVICES FOR INFRASTRUCTURE

Chapter I: Overview and environment for concessions

- 1. Objectives and circumstances of the concessions allocation for infrastructure**
- 2. The concessions regulator's system**
 - 2.1 Authorities involved in designing and overseeing the allocation of and operation of concessions
 - 2.2 The role of the concessioning authority sector regulator
 - 2.3 The role of the Competition Council in the concessions
- 3. The experience within infrastructure concession**
- 4. Bibliography (books or research papers) regarding the experience with infrastructure concession**

Chapter II: Role for competition in the allocation of concessions

- 5. The allocation mechanism for concessions**
- 6. Case study**
- 7. Investigations regarding allegations of collusive behaviour during auctions**
- 8. Joint bidding in auctions for infrastructure concessions**

Chapter III: Role of competition during the term of concessions

- 9. Clauses related to competition**
- 10. Regulatory institutions for the concessioned infrastructures**
- 11. Rules on pricing, coverage and quality standards**
- 12. The access for non-integrated rivals to the concessioned infrastructures**
- 13. Investigations regarding complaints of abuse of dominance by infrastructure concessionaires**

Chapter I: Overview and environment for concessions

1. Objectives and circumstances of the concessions allocation for infrastructure

1. The main regulatory objectives directed towards co-operation with business environment, through concessions consist in supplementing the budget shortcomings of the regulators by the private financial resources, implementing the know-how and the working methods developed by the private sector in the public sector.

2. It results from the assessment of the primary and secondary legislation regulating the concessions that the common objectives for concessions are the following: the financing of the operations of maintenance, mending, modernisation or replacing the infrastructure elements for the concession services under the terms and on the basis of the program approved through the bid specifications which leads to the process of allocating the concessions. Depending on the sector which is the object of the concessions contract, the objectives may vary, for instance, in the sector of municipal services, the objectives may be obtaining the sequence, the enforcement of the social programs, the best ratio between costs and quality, acquiring of the minimal indicators of performance established through the regulation of organisation and functioning of the respective service in the field of public railway infrastructure, the performance of the railway or public transport in maximum security, the maintenance and the mending of the railway infrastructure as well as granting access to the respective sectors to other railway operators.

3. The circumstances under which concession is chosen rather than privatisation or continued public provision are decided on one hand, by the social policy of maintaining an acceptable and monitoring tariff for services and on the other hand, by the performance of the required investments and the cutting off of some expenditures (such as, those for staff, for maintenance and modernisation of infrastructure) that would burden the authorities' budgets and by the necessity to increase the economic activity's output in that sector.

2. The concessions' regulatory system

4. The primary legislative framework that regulates the concessions services for infrastructure covers:

1. Law no. 219/1998 on the concessions regime, amended and completed through Law no. 528/2004;
2. Law no. 213/1998, on the public property and its juridical regime, amended and completed.

5. Thus, law no. 219/1998 on the concessions regime, amended and completed through Law no. 528/2004 has as objective the regulation and organisation of allocating concessions of the activities, of the goods (constituting private or public state ownership or belonging to territorial administrative units) and of the public services of national or local interest instead of a royalty.

6. Law no. 213/1998, amended and completed, on the public property and its juridical regime stipulates that public properties may be awarded only in administration, concession or rent. It also stipulates that the renting and concession may be done only by auction, under the law provisions. Goods, activities or public services which are not regulated by specific authorities, their opinions being compulsory as concerning the prices or the tariffs used by the concessionaires, can not be the object of concessions.

7. The Government, the local or county councils may approve through ordinance, the concession of other properties, activities or services belonging to the State private property.

8. There are legal provisions with respect to concessions in the fields of economic activity which are subject to the present work paper, as follows:

1. In the field of municipal public services : Law no. 236/2001, amended and completed, on municipal public services and the respective secondary legislation,
2. In the field of public services of railway and port infrastructure: Government Ordinance(GO) no. 22/1999, republished (on the administration of ports and navigation roots as well as the performance of port transport activities in ports and navigation roots), Emergency Government Ordinance (EGO) no. 12/1998 (regarding transport on the Romanian railways and re-organisation of the Romanian railways), republished,
3. In the field of public services related to the transport networks through pipes and to the distribution of oil and fuel gas: Law of gas no. 351/2004 amended by Law no. 288/2005, oil Law no. 238/2004.
4. In the field of public services related to the transport networks and to the distribution of electric and thermo energy: Law no. 318/2003 of electric energy.

2.1 Authorities involved in designing and overseeing the allocation of and operation of concessions

2.1.1 Within the stage of designing the concessions

9. The proposal of concession may be done by an interested investor, the conceder (hereinafter named authority who awards the respective concession in infrastructure) being obliged to draw up the feasibility study within a term of 30 days, in case parties do not agree upon another term for taking a decision regarding the concession. In certain cases, this study is mandatory advised by the State Central Office for Special Problems and The Office of General Headquarters as concerns the including of the concession object in the infrastructure of the national defence system.

10. The bid specifications are elaborated on the basis of the feasibility study and provides for the minimal terms necessary for participating in the auction. It may be drawn up by a private company, upon the request of the conceder, its cost being reimbursed from the conceder sale at the premises or in other places settled by him and stipulated in the advertisement. The bid specifications' price is established by the conceder. The enclosed documentation required is subject to the methodological norms which are approved by the Government.

11. The guidelines on the organisation and the carrying on of the concession procedure are elaborated by the conceder and are made available upon the draft sale. The guidelines contain the procedure for public auction and for direct negotiation.

2.1.2 Within the stage of allocation of the concession

12. The participants' offers in this stage are assessed by the commission of examination, whose members are appointed through order, ordinance, or decision by the conceder, varying from case to case.

13. The commission is made up of:
- a) representatives of the conceder, among which, at least one, with juridical background;
 - b) representatives of the Finance Ministry or of the general directorate for public finance and State financial control;
 - c) a representative of the competent environment authority, if the good, activity or public service that is the object of the concession launches environment procedures.
14. The examination commission President is appointed by the conceder among his representatives of the examination commission.
15. At the meetings of the examination commission, the President may invite, for consultancy distinguished personalities notable for their experience and competence in the field subject to the concession.
16. The selection criteria of the offers and the weight of their importance are settled by the conceder, depending on the public service subject to the concession contract.

2.1.3 During the operation of concessions

17. During the operation of concession, the conceder has the right to check the observance of the obligations undertaken by the concessionaire (i.e. to inspect the goods, to verify the stage of carrying out the investments and whether the public interest is fulfilled).

18. Besides the conceder, the Ministries of resort and the Ministry of Public Finance are empowered to monitor the concessions of national interest. Also the general directorates for public finance and for financial State control are entitled to monitor the concessions of local interest, pursuing, in particular, the observance of the provisions related to:

1. the decision of concession;
2. publicity;
3. the enclosed documentation submitted for the granting of the concession;
4. the membership and the working tools of the examination commission when analysing the offers;
5. the terms provided for by law (during the process of granting the concession);
6. keeping informed the interested parties on the granting or ceasing of the concession;
7. the fulfilment of the contractual obligations by both the conceder and the concessionaire.

2.2 *The role of the concessioning authority sector regulator*

19. The authority sector regulator attests/authorises/licenses and oversees the operators of the public services subject to the concession (the operators which have concluded contracts by the date of entering into force of the legislative framework are obliged to submit the documentation required for receiving the

certification as operator. Afterwards, an additional act to the concession contract is concluded, stipulating the operators' entire obligations according to that legislative framework).

20. The operation of the concession public service without the existence of the certification/license for operating, of the authorisation for functioning or of the delegation contract of administration and the delivery of a public service concession contract without the observance of the legal provisions or to an operator unlicensed/ unauthorised, constitute offences, being fined.

21. The offences acknowledgement and the sanctions application are done by the empowered personnel of the public administration ministry, of the ministry of resort (for instance, the sanitation, water and sewerage services are in the jurisdiction of the ministry of environment and waters management), to the President of the National Regulatory Authority for Municipal Services (in the field of municipal services), to the villages, towns mayors, to the general mayor of the Capital or their empowered staff.

2.3 *The role of the Competition Council in the concessions*

22. The competition Law observance is a general obligation, so it is applicable both for the concessionaires and for local and central public administration bodies. When receiving a complaint on the organisation or the handle of an auction, the Competition Council may interfere whether a suspicion arises, related to the breach of the provisions of art. 5 (1), f of the Competition Law no. 21/1996 republished (hereinafter named Law) providing for an agreement between undertakings or associations of undertakings aimed at participating in auctions with rigged bids, and having as an object or as an effect the restrain, the prevent, or the distortion of the competition on the Romanian market or on a part of it. Also, the Competition Council may interfere whether a suspicion regarding the infringement of art. 6 of *the law* arises (abuse of dominant position by the imposing of the tariffs or of the unequal clauses, the exploitation of the dependency situation). In all these situations, Competition Council interferes through the opening of an investigation and the sanctioning of the involved parties in the infringement of the law.

23. Competition Council may interfere also, through the opening of an investigation, by applying the provisions of art. 9 of the *law*, whether there is a suspicion on the interference of a public authority which may restraint, prevent or distort the competition on a given market.

24. The observance of the rules specific to a market economy is a general obligation addressed both to the undertakings and to the bodies of public administration. The latter, under the limits of executing their legal functions, can not interfere in the activity performed by the undertakings, confining thus the trade freedom or the undertakings autonomy or establishing discriminatory conditions.

25. The central or local public administration bodies, which performed anticompetitive practices according to those provided for in art. 9 of the law, are compelled to observe the Competition Council decision; the Competition Council can not sanction them by applying fines but it is entitled to impose any terms or measures to be observed by the central or local public administration, so that the situation prior to the breach of the law may be re-established.

26. According to the provisions of article 26 lit. l) and m) of *law*, the Competition Council may make recommendations to the authority sector regulator in order to be adopted measures or amended certain law provisions that could ensure a competitive mechanism of designing and allocation of the concessions and of pursuing its carrying on (for instance, the delimitation of the services having a competition potential from those that do not have such a potential, horizontal separation, if it is feasible, prevention from related concessions, conditions related both to the technical and operational capacities and to the reliability and financial capacity, ensuring thus not to be restraint the number of participants in the auction, or that the

execution of the bid specifications not to create incentives in favour of a certain offer– particularly in favour of the operator that already performs the service subject to the concession).

2.3.1 Governmental levels that may allocate concessions

27. The following bodies are entitled as a conceder, on behalf of the State, county, town or village:

1. the ministries or other specialised bodies of central public administration in jurisdiction for goods representing public or private State propriety or activities and public services of national interest;
2. counties or local councils, or public institutions of local interest in jurisdiction for goods representing public or private county, town or village propriety or activities and public services of local interest.

2.3.2 Regulation framework and institutions' position within Romanian Legislation

28. Obviously, the regulation framework and the institutions are regulated by law, the administrative procedures being applications of the norms included in this framework.

2.3.3 Ways of handling litigations

29. In order to handle the potential litigations arisen from the concession contract execution, the parties may provide for a special clause of reaching an agreement, granting the competence of handling the litigations to the commission of experts, on the basis of a contract (in some cases, two levels of experts may be established – the Commission of Experts made up of three foreign natural persons (technical expert, economic regulator and financial analyst) and the technical expert, all presenting view points on the analysed matters sent by the conceder, the concessionaire and the independent authority that oversees the contract execution), and the Romanian or international arbitration courts.

30. Any person, having a legitimate interest related to a certain concession contract that might have suffered or risk to suffer from a prejudice, as a direct consequence of an unlawful act, has the right to use the appealing provided for by law. In case that person suffered from a prejudice, he/her may require through legal actions remedies, within the terms of the administrative contentious law. The legal action is introduced at the section of contentious administrative of the court in which circumscription the headquarters of the respective authority is located. Against the law court decision, one may appeal in front of the section of contentious administrative of the Court of Appeal.

2.4 Competition Rules and institutions that enforce them

31. The general law of competition is applicable in the allocation of the concessions contracts, together with the observance of the principles of free competition, transparency, equal treatment and **confidentiality and the observance of the contract-frame and the regulation framework of the respective public services, that are subject to the concession.**

32. For instance, the local public administration authorities are responsible for the organisation, the regulation, the managing, the administration, the coordination, the monitoring and the control of the functioning of the local administration services. Their strategies will mainly pursue through the creation of a competitive environment that stimulates the private capital, the promotion of the specific mechanisms of a market economy. The concessionaire has the legal obligation to enforce performing management methods that would lead to the reduction of the operating costs, inclusively through the application of

competitive procedures stipulated in the due legal norms for the acquisitions of operations, goods and services.

33. All the Governmental bodies (ministries, regulatory authorities) involved in the field of concessions besides the conceder perform their activity with a view towards promoting economic efficiency and mechanisms for a market economy, creating and ensuring a competitive environment, stimulating the access of the private capital in the scope of the public services and encouraging the forms of delegated administration (one of them being the concession).

34. The relations between the competition authority and the regulating authorities may take the form of cooperating agreements having as purpose the prevention and limitation of distortions on these markets, monitoring activities, raising economic agents' awareness regarding the measures in case of infringement of Competition Law, cooperation on competition sensitive issues.

35. Within the process of strengthening the functional market economy, the Competition Council plays an active role in favour of liberalising the markets of public interest services. Therefore it is extremely necessary and useful for all the concerned factors to know the policy and the rules on competition, the legal framework and to promote them in a coherent and consequent way.

36. Therefore, the Competition Council ensures the implementation of Competition Law through the ex-post regulations (having a sanctioning character), while the regulating authorities have as main responsibility the ex-ante implementation of specific economic and technical regulations (related to the certification/authorisation of the operators/grantors/providers of public services, elaboration of the methodology of fixing, adjusting and amending the prices and tariffs for the respective public services, the advice and the control of the tariffs approved according to the normative acts in force, the surveillance of the auction's process in case of the administration delegation for services. Its actions are focused on maintaining and stimulating competition as economic process, rather than on the individual monitoring of competitors.

3. The experience within infrastructure concession

37. Our institution does not hold a data basis at national level, reflecting an overview of the concessions in infrastructure. In this respect, the possibilities of intervention of Competition Council were explained above.

38. In most cases of concessions in infrastructure, financial consulting contracts have not been concluded as a result of both the dimensions of the respective infrastructures and the direct allocation to the companies subordinated to the conceder (reorganisation of the "regies autonomes" - french equivalent for the Romanian expression which designates a form of state owned company – and of those with state capital). Although, there are cases in which financial consultancy takes place on the basis of a contract, the contractual terms (including the price) being in line with the long term efficiency objectives and competition in the respective sector.

39. Most of the concession contracts had been concluded before 2001. However, it is stipulated in the GO no .32/2001 amended and completed, regarding the organisation and functioning of the public services of water supply and sewerage that the concession particularisation should be done through framework regulations specific to the public services of water supply and sewerage, according to the internal legislation and the European Community regulations, this representing a premise to the application of the OECD 's recommendations made by the Counsel for structural separation within the OECD regulated industries (2001). However, the legislation stipulates that either the delimitation of activities having a

competition potential from those without such a potential or horizontal separation for promoting competition is likely.

40. For instance:

1. In the field of local administration, the local public administration authorities may ask for the carrying out of the service to one or more operators to whom they transfer by means of a delegate administration contract (particularly, the concession contract), totally or partially the own tasks and responsibilities related to the service administration and the exploitation, functioning and infrastructure's modernisation of the respective public service.
2. In order to ensure the local public transport, the local councils may use one or more transport operators, authorised under law provisions, to which they transfer by means of an auction the respective concession contract. In case the local public administration authority appointed two or more transport operators, a concession contract would be concluded with each of them for different routes or for the same route, if that route can not be operated by a single operator.
3. In the field of railway transport, the railway infrastructure is state property (public or private) and it was granted in concession to the National Railway Company "CFR" SA, ensuring the administration of the railway infrastructure. In order to carry out new elements of the public railway infrastructure or to develop, up-date and rehabilitate those existing, which financing could not be ensured by CFR, the Ministry of Transports may conclude concession contracts with other legal entities, Romanian or foreign under law observance. Since the approval date of the concession, the contract concluded by the Ministry of Transport with the company CFR is amended accordingly. The railway transport social public service may be chartered by the Ministry of transports, constructions and tourism, on the basis of an auction and under the observance of law provided for the railway operators.
4. In the field of naval transport, the normative acts stipulate that the ministry is the one who establishes the activities that may be operated only by the authorised undertakings as well as the authorisation criteria and the activities that may be performed by the management, directly or through the undertakings and under the control of the respective management.

41. In case of non-observance of the contractual obligations by the concessionaire, the concession contract ceases through one-sided cancellation of the conceder provided that compensation by the concessionaire is granted. For instance, in the field of local administration, it is stipulated that that local public administration authority, signatory of a contract, would organise a new public auction for the delegation of administration (a form of it is the concession) whereas the service operator did not fulfil its contractual obligations related to the service quality and the financial-economic performance during two running years. Also, another explanation for the contract cancellation may be the non-observance of the commitments related to the accomplishment of the investments in the respective infrastructure. The practice proves that the two reasons presented above represent the main grounds leading to the contract cancellation by the conceder.

42. As concerning second and subsequent concessions, we do not have a practice, due to the fact that most concession contracts are in course of execution. However, the law institutes in the field of local transport, a pre-emptive right in the benefit of the transport operator, titular of the concession contract in two cases:

- a) if the transport operator, titular of an ended concession contract participates in a new auction regarding the concession of local public transport,
- b) in case of the enlargement of the local public transport on new routes after the concluding of the concession contract, the existing transport operator benefits from a pre-emptive right on the occasion of the auction for the concession of new routes.

43. Regarding this right, we would like to underline the following:

- The pre-emption right is lost when more operators are benefiting from the concession contracts having as object the local public transportation.
- In case of extension of the transportation network through augmentation of the traffic on one route, the supplementary traffic will be granted to the owner of the concession contract on the specific route. In case of refusal from the owner, the respective supplementary traffic shall be granted by means of public auction.
- In case of expansion of the local public transportation on new routes, part of a group of routes, those shall be granted to the owner of the concession contract on that specific group. In case the owner refuses or the new routes do not form part of a group of routes, the former shall be subject to concession through public auction.
- The operator or the operators' association fully or majority taking over the local public transportation system, benefit from the preemption right at the concession or renting of the transportation means park and of the corresponding infrastructure, if these support him in the carrying out of the respective service.

44. The concession duration is mainly established depending on the amortisation period of the investments which are to be made by the concessionaire, and cannot extend beyond 49 years. The concession contract can be extended by a period at most equal with half of its initial duration, on the basis of mutual consent. In some sectors, the concession duration is established by the law.

45. The situation within the sanitation field is as follow:

- a) for a period of maximum five years - activities of arranging, maintenance and cleaning of the grass plot, as well as public disinfection;
- b) for a period of maximum eight years- pre-collection, collection and transport of household waste, as well as the cleaning and watering of the public road routes, clearing of snow and their maintenance on frosty winter time;
- c) for a period of maximum 20 years- waste incineration activities and thermo energy production through this procedure, as well as the establishment and management of ecological landfills of waste, selection and waste recycling inclusively.

46. In the field of local transportation, the duration of the concession contract of the public local transport cannot be less than five years.

4. Bibliography (books or research papers) regarding the experience with infrastructure concession

47. We do not have books or papers regarding experience within infrastructure concession.

Chapter II: Role for competition in the allocation of concessions

5. The allocation mechanism for concessions

48. According to the provisions of the law, the allocation of the concession of a good, activity or public service is carried out by means of opened public auction or public auction preceded by pre-selection, through direct negotiations, competitive dialogue or direct allocation.

49. The opened public auction is that when any natural or legal person of private law, Romanian or foreign, may present an offer.

50. The public auction preceded by pre-selection implies that natural or legal persons of public law, Romanian or foreign, which the conceder selects on the basis of previously established criteria, have the right to present offers. Pre-selection requests are assessed and the persons selected by the evaluation commission participate with offers in the auction.

51. In case no winner is named following the second public auction, the conceder shall decide upon initiating a direct negotiation procedure. Following this procedure, the conceder allots the concession to the natural or legal person of private law, Romanian or foreign, at his choice.

52. The conceder has the obligation of publishing in the Romanian Official Journal, Part VI, in a national and a local newspaper, in the Official Journal of the European Communities or/and in a largely spread international journal, the intention of following the direct negotiation or competitive dialogue procedure. The conditions of the direct negotiations concession cannot be inferior to those of the best rejected offer in the public auction.

53. The competitive dialogue is a recently introduced procedure, through the last completion of the concession law, which grants the contracting authority the possibility of initiating candidates consultations, with a view to develop one or more alternatives capable of meeting the contracting authority's requirements and on the basis of which the candidates are invited to bid. At the end of the competitive dialogue, the candidates are invited to submit the final offer on the basis of the solution identified during the dialogue. The transparency and equal treatment principles shall be observed. Prior to the privatisation of national or commercial undertakings, established through the restructuring of the "regies autonomes", these can be subject to concession through direct allocation of goods from the state public or private propriety, corresponding to the field of activity, for the setting up of new public infrastructure. At the privatisation of national or commercial undertakings established through the restructuring of the "regies autonomes", private investors are selected on the basis of a competitive procedure, as defined by the law. Public services operators with state capital can be privatised, this decision being taken by the local or regional council under the authority of which the respective operator carries out his activity. The privatisation, meaning the partial or total sale of private goods from the administrative territorial unity, is carried out through public auction exclusively, simultaneously with its concession.

6. Case study

54. As a practical example, we can present specific case of allocation of a concession in this field. In 2000, an international auction preceded by pre-selection was organised by the local council, according to the law. Prior to the auction, a reorganising, restructuring and privatisation plan of the respective "regie autonome" was elaborated, according to the provisions of EGO no. 30/1997, stipulating that the "regie autonome" was transformed in commercial undertaking (the local council being assisted by a specialised firm), the specifications and the concession contract between the municipality and the newly created commercial undertaking were elaborated, privatisation of the firm through share sale, implementation of the restructuring programme and the transfer to the private investor. A condition for the consultant was the

ensurace of the same consultants' core, led by a director in charge of the whole activity. The selection criterion was established as the minimum tariff of the services and the medium tariff for the offer, as stipulated in the Levels of general services and, as well as of a gradual and limited evolution of the tariff (at that precise moment) in the first years, up to the performance of some of the Levels of services.

55. After the winning of the action and the signing of the concession contract, the local council became shareholder for this firm, the concentration being previously notified. Since pre-selected firms participated in the auction, the process was competitive.

56. By now, the contract has not been re-negotiated. No clues or claims from other participants with regard to the carrying out of the auction, nor to a possible agreement between them (or part of them) to bring advantage to the winner were identified.

7. Investigations regarding allegations of collusive behaviour during auctions

57. By now, no investigations on the existence of supposed agreements between participants at auctions organised in the field of infrastructure concessions have been reported.

8. Joint bidding in auctions for infrastructure concessions

58. Undertakings may temporarily associate in order to participate in the auction. This joint bidding in auction for infrastructure concession has pro-competitive effects for small firms and anti-competitive effects whereas bigger firms are involved. Therefore, if a single firm meets all the requirements of the conceder, the temporary undertakings joint must be forbidden.

9. Clauses related to competition

59. Public administration authorities have the following obligations, with a view to ensure free competition, versus public services operators:

- a) to apply an equal treatment to all operators and to ensure, through norms adopted in the execution of the prerogatives established through normative acts, a transparent business environment.
- b) to ensure the advertising and free access to public information, mainly to information ensuring the preparation of the offers and participation at the action.
- c) Public services operators have, among others, the following obligations:
- d) Service management based on competitiveness and economic efficiency criteria (reducing operating costs, by means of implementation of the competition procedures stipulated by the legal acts in force inclusively, for the acquisition of works, goods and services).
- e) Submission to the central or local public administration authorities, as well as to the regulating authorities, the requested information and to ensure the access to all necessary information for the assessment and evaluation of services performance, according to the concession contract provisions and the legal provisions in force.
- f) Ensuring free access to that service for all consumers, in the same conditions.

10. Regulatory institutions for the concessioned infrastructures

60. All regulating authorities are organised, have functions and operate under the same principles. As an example, the regulatory authority in the field of municipal services, National Regulatory Authority for Municipal Services (hereinafter named NRAMS) is a public institution of national interest with legal

personality and is organised and operates under the coordination of the prime minister, having as main objective the regulating, monitoring and control at central level of the activities in the field of municipal services in its area of regulation, according to the law, and the authorisation of agents providing those services.

61. NRAMS performs its activity in order to ensure the promotion of the economic efficiency and of the market economy's mechanisms, the creation and the maintenance of a competitive environment, incentives for the access of private capital within the scope of public municipal services and the promotion of the delegated management forms and of the public-private partnership.

62. NRAMS is exercising its competences and attributions with all operators providing municipal services, as well as with the operators not subordinated to the local public administration authorities, according to the law, regardless of the propriety type, of their organisation and management of the municipal services.

63. NRAMS supervises the legality of the process delegation (mainly the carrying on of the auction) of the management of municipal services.

64. NRAMS elaborates and controls the implementation and the observance of the system of regulations, at national level, regarding the organising, coordination and functioning of the municipal services, as well as of these services' market in efficiency, free competition and transparency conditions, in view of meeting the consumers' needs, according to the European standards. Thus, NRAMS elaborates and sets for approval, through Government Decision, the Regulation on awarding licenses and authorisations in the municipal services sector and the Methodological norms on the calculation of tariffs applicable to public municipal products and services, approves and adjusts the price level and the tariffs of the municipal services, depending on the inflation, exchange rate, modification of production and distribution costs structure, as well as following the reorganisation of operators, supervises the observance by the public municipal services operators, as well as by the local administration authorities, of the legislation in this field and of the observance of prices and tariffs approved according to the normative acts in force, applies sanctions in case of non-observance of these rules, approves drafts of normative acts initiated by other central administration authorities, with effects on the activities in this field.

Ministry of Transport, Constructions and Tourism is the state authority in railway and naval transport area.

65. As a regulatory authority, it elaborates and promotes governmental decrees and specific provisions regarding the administration, utilisation and concession the railway and naval transport infrastructure and assures the state obligation fulfilment of international agreements to which Romania is a part.

66. The ministry is fulfilling its attributes directly, through special directions or by competence delegation, depending on the case, through public institutions, autonomous state owned company, national companies or firm placed under its authority or subordinated to it.

67. In the case of the railway and naval transport infrastructure, belonging to the public or private state domain, the ministry is awarding concession to the administrations organised as undertakings or national companies.

68. The local authorities (which awarded concessions) can establish non-profit autonomous non-governmental local public institutions, under its authorities, to monitor the fulfilment of the concession contract provisions during the operation of concessions (especially the accomplishment of the services levels to whom the concessionaire was obliged by him self), to perform the technical expertise to resolve the disputes between clients and concessionaire and decide in the matter of penalties.

11. Rules on pricing, coverage and quality standards

69. The basic principles regarding tariff, coverage and quality standards for the services are common to all economic activities sectors. Besides the authorities who award the concession, the law also empowers the sector regulatory authorities. Continuing the example from above, according to the regulations in this sector, the tariffs are established and adjusted only with the approval of NRAMS, based on the rules or formula established by the governmental decision at the initiative of the public authority that award the concession. The tariffs, including amounts designated to social protection granted by public authority who award the concession, must cover at list the expenses linked to the performed service, taxes, including a minimum agreed profit share, with the respect of financial autonomy of the operator. Tariffs adjustments are approved by the local council. In the case of the water and sewerage services, to maintain the concession contractual equilibrium, any subvention of the services will be approved by the local council, only if the operator reduces the tariffs and/or increase the quality of services.

70. The concession's contractual equilibrium is accomplished on the basis of the following principles:

- a) periodic actualisation of the tariff correspondent to the public services performed according to inflation ratio;
- b) the modification of the tariff in the situations of major contractual equilibrium changing.

71. Only the authorised/licensed operators can participate in the auction, in order to ensure a quality standard of the performed service. If the license or the authorisation expires or is lost, the concession contract will be repealed. If the quality standard of the performed service isn't achieved by the concessionaire, this can lead to penalties or to the redraw of the license/authorisation by the NRAMS, by the authority's request. Service levels are established progressive by the authority which award the concession, and refers to water quality delivered (it must reach the EU standards), improving the distribution, expand the coverage and assuring of a certain level of the water pressure, improving and expanding the sewerage system. The supervision of these service levels is assured continuous by the local council (directly or through an institution created by municipality with this purpose) and by the NRAMS, at the same time.

12. The access for non-integrated rivals to the concessioned infrastructures

72. According to the concession contract, the concessionaire has the right to directly exploit, on his own risk and responsibility, the goods, the activities and public services that are object of the concessions without being able to sub-concession to another person, in whole or in part, the concessioned object and he has the right to conclude contracts with third persons in order to ensure and valorise the exploitation of goods, activities and public services that are object of the concession according to the law, without being able to transfer them the rights acquired through the concession contract. Therefore, the law confers the concessionary an exclusive right to exploit on the whole duration of the contract.

73. Anyhow, in the field of rail infrastructure, the authority which grants the concession (The Romanian National Company CFR SA) offers the railway transport operators the public infrastructure, on non-discriminatory bases, according to the access contract, in exchange for the tariff of using the infrastructure. The establishing of the general framework for tariff and the use of the public railway infrastructure is based on the contract concluded by the national company that manages the infrastructure with the Ministry of Transportation, Constructions and Tourism (MTCT). In case of an un-interoperable railway infrastructure (low profitability railway sectors) the exploitation is also done by CFR by offering for lease, with the approval of the MTCT, of one or more circulation sections to one or more licensed juridical persons, in order to accomplish the services of managing the infrastructure, as well as the services

of public railway transportation of freight and/or passengers, according to the law. The non-price conditions refer to the combined or passenger railway transport development, in high safety conditions, to the maintenance and the repair of railway infrastructure and used rolling stocks as well as to the according of access of other railway operators to the mentioned sectors. Against the decisions of the CFR or if necessary against those of the railway transport operator, one can appeal at the Monitoring Council, within the MTCT.

13. Investigations regarding complaints of abuse of dominance by infrastructure concessionaires

74. We don't open investigations concerning the abuse of a dominant position by the infrastructure concessionaires.