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ROUNDTABLE ON CONCESSIONS

Contribution by Tunisia

-- Session I --

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ROUNDTABLE ON CONCESSIONS

1. Introduction

Concessions: a method of managing infrastructure and public services that has been used only recently in Tunisia

A concept introduced in connection with the reforms and liberalisation of the economy as a result of:

- The withdrawal of the State from certain sectors in order to promote competition.
- Problems with the management of State-owned enterprises.
- Pressure on public finances.
- Macro-economic imbalances (dating from the 1980s).

2. Objectives

- To improve the efficiency and competitiveness of the economy.
- To improve the quality of public services.
- To control production costs and operating costs (reduce subsidies and improve productivity).
- To attract foreign direct investment (FDI).
- To acquire modern technologies and management methods.
- To reduce the budget deficit and public debt.
- To develop less costly and easier methods of privatisation (avoid discontent).
- To create a dynamic reference model for competition.

3. The Regulatory framework for concessions

- Is being developed in the wake of privatisation.
- Is governed by the principles of ordinary law and public law.
- Does not include specific regulations for concessions, but comprises.

3.1 *Sectoral regulations*

- Telecommunications (code).
- Transport (laws, decrees);
- Electricity (laws, decrees).
- Postal services (code).
- Port services and solid waste management.
- A broad variety of regulatory texts, such as laws, decrees, orders, specifications, agreements.

3.2 *Requirements that vary depending on the purpose, sector and nature of the concession*

- Duration of concession.
- Amount of investment.
- Universal service.
- Fees, rates, prices.
- Job creation.
- Terms of financing.
- Partnership/outourcing;
- Technical requirements.

3.3 *Types of concessions*

- Public domain concession: right to occupy and operate public property: motorways, ports, car parks, spas, etc..
- Public service concession: electricity production, mobile telephony, public transport.
- Delegation of public services to public agencies and enterprises:
 - Registration and regulation of motor vehicles.
 - Parking management.
 - Environmental protection.
 - Health care institutions.

- Outsourcing of public services: waste collection, cleaning, catering in hospitals and universities.

3.4 *A comprehensive regulatory system is being prepared*

- In the light of the experience gained in the field of concessions.
- In the interest of uniformity.
- In response to problems with awarding concessions (criteria).
- Because of confusion regarding public procurement rules.
- In order to ensure transparency and protect managers.

4. Methods of awarding concessions

4.1 *Principle*

Ensure that concession holders are selected competitively, while taking into account:

- Sectoral specificities.
- The fact that it must be possible, and is sometimes necessary, to renegotiate concessions.
- The need to make individual arrangements if there are no bidders or if competition is impossible.

4.2 *Criteria for choosing concession holders*

- Technical capacity to honour commitments (references).
- Amount of bid (licensing fee).
- Compliance with tender specifications.
- Possibility of outsourcing.
- Proposed pricing (adjustment formula, level):
 - Establishment of a technical selection commission (IPP) and an oversight commission.
 - Choice submitted to the government for decision.

5 Examples of concessions granted

5.1 *Telecommunications*

- Enactment of a telecommunications code.
- Granting of a concession to a second mobile telephone operator.

- Creation of a national regulatory authority for telecommunications (INT).
- Creation of a National Frequencies Agency (ANF).
- Granting of a mobile telephone concession through competitive tendering in 2000:
 - Pre-selection procedure.
 - Negotiation with bidders (3 bids).
 - Selection of Orascom (Egypt, 2002).
- Creation of Tunisian by Orascom, 11 May 2002, with share capital of TND 330 m.
- Increase in network capacity and satisfaction of demand (number of mobile telephone subscribers in 1998: 30 598; in 2005: 4 000 000):
 - Lower rates.
 - Diversification and improvement of services.
- Introduction of a dynamic of competition within the sector.
- Important role of the regulatory authority (interconnection, numbering, pricing).
- Foreseeable role of the competition authorities (revision of the Act on Competition and Prices in July 2005 to specify methods of co-ordination with the regulatory authorities in order to resolve problems of competition in the sectors concerned).

5.2 *Electricity and gas sector*

- Monopoly by a State-owned enterprise (STEG).
- In 1996, a law was passed authorising the granting of concessions for electricity production by private entities.
- Selection of concession holders made through consultation after a pre-qualification phase.
- Tender requirements are set by a Higher Commission for Electricity Production chaired by the Prime Minister. This same commission chooses the winning bidder on the proposal of the Inter-departmental Electricity Commission.
- The Ministry of Industry and Energy is responsible for concluding the contract after negotiations with the concession holder.
- Two private foreign companies have already been granted concessions and are now producing over 24% of the country's electricity needs.
- Investment of \$290 m (\$210 m for the Rades II power plant with a 470 MW capacity and \$23 m for the Zarzis power plant with a 27 MW capacity).

- Transmission and distribution remain a monopoly of STEG.
- No regulatory authority; conflicts submitted to the Ministry and/or government.

5.3 *Other successful concessions*

- Construction and management of motorways.
- Public transport in major cities.
- Construction and management of a new airport in Enfidha (under construction).

6. The role of the competition authorities

6.1 *When concessions are awarded*

The competition authority gives its opinion on proposed sectoral legislation and regulations and advises operators regarding the rules and principles of competition, and it makes spot checks of compliance with these rules and principles.

The opinions and advice of the competition authority frequently concern the following:

- The need to ensure that transactions are transparent and fair.
- The promotion of competition and greater awareness of how it can benefit all concerned and protect their respective interests.
- Means of reducing barriers and requirements so that they do not cause prices to rise or deter bidders.
- Ways of preventing rent-seeking in the future.

6.2 *Ensuring competition during the concession*

- Concessions are subject to competition regulations (Section 5 of Act 64-91 on Competition and Prices).
- Abuse of dominant position, abuse of economic dependence and discriminatory practices are prohibited.
- Concession holders and users (consumers) can bring cases involving anticompetitive or restrictive practices before the Ministry of Commerce (DGCEE) or the Competition Council.
- The regulatory authority and the responsible ministry monitor the parties' compliance with rules and requirements so as to ensure a competitive and transparent environment, which is a prerequisite for granting a concession.
- The competition authority can intervene on its own initiative at any time (in response to information received, an investigation, etc.).

7. Conclusion

Limitations of the concession approach:

- Risk of rent-seeking after the concession has been obtained:
 - Increase in rates.
 - Ways of operating that are not always compatible with competition.
- Possible abuse by the government or historic operator when there is no independent regulator.
- Limited development because of a situation of economic dependence or the size of the market.
- Risk of influence-peddling and favouritism.
- Risk of deterioration in the quality of public service when there is no monitoring of compliance with commitments or there are no regulatory authorities.