18 September 2014: Motorways: following a request from the French National Assembly's Finance Committee, the Autorité de la concurrence publishes its opinion

Published on September 19, 2014

> Version française

The *Autorité* is the opinion that the exceptional profitability of the "historic" toll road concession-holders is comparable to a guaranteed income which needs
to be better regulated in favour of the State and the users.

It issues 13 innovative recommendations. For example the introduction of a new formula for calculating tolls taking into account traffic growth : this may limit any increases and even allow them to be reduced.

While the French motorway plan (*Plan de relance autoroutier*) may be a factor favourable to job creation and investment, the extension of the concessions duration – up to six years in one case – should present an opportunity for renegotiation with the motorway concession-holders in which the State should regain control.

Bruno Lasserre, President of the *Autorité de la Concurrence*, was heard on 17 September at 5.00 p.m. before the Finance Committee of the French National Assembly to submit the opinion's recommendations.

THE MOTORWAY SECTOR

France counts 11,882 km of motorways; 9,048 are operated thanks to a

concession system by 19 operators owning concessions (SCAs : *Sociétés concessionnaires d'autoroutes* i.e. the concession-holders).

Out of these, seven "historical" SCAs represent 92% of turnover for the sector (8.9 billion euros in 2013).

With the exception of COFIROUTE, a subsidiary of Vinci, which has always been a private company, the other six were privatised in 2006 to the benefit of the Vinci, Eiffage and Abertis groups for a total amount of 14.8 billion euros.

Concession-holders	**Shareholding Groups (majority shareholder shown in boldface)**
APPR (Autoroutes Paris-Rhin-Rhône) AREA (Société des autoroutes Rhône-Alpes)	**EIFFAGE**, Macquarie
ASF (Autoroutes du Sud de la France) ESCOTA (Esterel - Cote d'Azur-Alpes) COFIROUTE (Compagnie Financière et Industrielle des autoroutes)	**VINCI**
SANEF (Société des autoroutes du Nord et de l'Est de la France) SAPN (Société des autoroutes Paris-Normandie)	**ABERTIS**, Caisse des dépôts and consignations, Crédit Agricole Assurance, FFP, AXA, CNP

THE EXCEPTIONAL PROFITABILITY OF THE "HISTORIC" CONCESSION-HOLDERS, WHICH IS LARGELY UNRELATED TO THEIR COSTS AND DISPROPORTIONATE TO THE BUSINESS RISK INVOLVED, IS COMPARABLE TO

A GUARANTEEFD INCOME

After an analysis of the consolidated accounts of the "historic" concession-holders, the Autorité has established that the concession-holders' increase in turnover since 2006, fuelled by constant traffic growth and increasing toll charges, appears to be largely disconnected from their costs. Consequently, the concession-holders' net profitability is very high : it reached in 2013 – with diffrences between companies - between 20% and 24% of their turnover. In other words, for every €100 tolls paid by users, between €20 and €24 represented net benefit for the operators.

This exceptional profitability does however not appear to be justified by the business risks:

- Concerning toll tariffs, the legal framework of motorways concession regime guarantees the operators an annual regulatory increase equivalent to 70% of inflation until the concessions expire, which is often replaced by the law governing the rates payable for government planning contracts (*loi tarifaire des contrats de plan*) (80-85% of inflation + a percentage representing compensation for planned investment);

- Concerning motorway traffic, while the SCAs systematically stress the risk of a possible reduction in traffic, this risk should be put into context. Travel by any other mode of transport (aeroplane or train) or by using other roads can only be substituted for motorway travel to a very minor extent and analysis of the demand shows that it not very price-sensitive. Finally, in the last ten years, it has been noticed that even if traffic decreases in one year, it always makes up for it by an increase in subsequent years, at least in the case of light vehicles which account for the great majority of revenue. The most recent forecast estimates the increase at 0.7% per year until 2030.

Furthermore, even when motorway traffic reduces significantly, for example, during the economic crisis of 2008-2009, the "historic" operators' turnover, as well as their net profitability, generally continued to increase, thanks to the sole effect of the increase of toll tariffs. In other words, only an even more severe crisis than the 2008-2009 one may correspondingly result in an equally severe

drop in traffic which might – possibly – result in a reduction in their turnover.

The other risk claimed by the operators is the debt burden they carry. The net debt of the seven "historic" SCAs currently amounts to more than 23.8 billion euros. Although this is high in absolute values, the *Autorité* has nevertheless calculated that the cash flow generated by the operators is such that, by the end of the concession - unless a major economic crisis resulting in a collapse in traffic - the debt will have been paid off. Furthermore, since privatisation, the operators' debt has increased by 17% (excluding COFIROUTE) without encountering any particular financing difficulty. Not only is this debt devoid of risk, but it even enables the concession-holders to take advantage of the tax benefits resulting from the total deductibility of interest on borrowings (a benefit assessed at 3.4 billion euros since 2006).

Finally, the *Autorité* noted that, including exceptional dividends, the dividends paid by the six "historic" operators privatised between 2006 and 2013 represented 14.9 billion euros. Of course, these dividends were partly used to repay the debt contracted by the operators' shareholders for acquiring the toll concessions, but they were also used to remunerate the shareholders. The proportion of dividends used to remunerate shareholders will furthermore increase as the acquisition debt is paid off.

The exceptional profitability of the SCAs, largely unrelated to their costs and disproportionate to the risk involved in their business, is comparable to a guaranteed income.

A significant proportion of works contracts of motorway concession-holders are awarded to companies belonging to their various groups

In its opinion 05-A-22 of 2 December 2005, the *Conseil de la concurrence* had identified competition risks for the awarding of motorway works contracts (maintenance and construction). It pointed out that concession-holders would mostly award those contracts to their associated companies. It therefore recommended that, even if privatised, these companies should continue to be subjected to the same obligations as when they were public.

Disclosure requirement and tendering obligations

The government followed the *Conseil*'s opinion and imposed to the six newly privatised toll road concession-holders to comply with the disclosure requirements and tendering obligations inspired from the Public Contracts Code when awarding roadworks contracts valued at more than two million euros. The *Autorité*, with the support of the DGCCRF (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* – French Directorate for competition, consumption affairs and fraud control of the French Economy Ministry), noted that these obligations were complied with in general, even though it deplored the fact that some of concession-holders refused to provide their respective consultative committees for public contracts (*commission consultative des marchés*) with the necessary information for checking compliance of their contracts.

Nevertheless, an important share of the privatised SCAs works contracts, totalling 4.5 billion euros since 2006, was awarded to associated companies (or to a joint venture of which they were part):

- Concerning the concessions owned by Vinci and Eiffage, around 35% of public works contracts were awarded to an associated company (or to a joint venture of which they were part), which is a much higher proportion than that observed for contracts awarded by concession-holders unconnected to them
- in terms of value, this share increased to more than 50% for ASF and ESCOTA, showing that it is largely high-value contracts that are awarded to Vinci.

Questionable award procedures

The Autorité observed that certain concession-holders, in particular ESCOTA, made questionable choices by under-weighting the price criterion in the overall marks awarded and opting for marking formulas that neutralised the price differentials between bids. Not only do such choices prevent them from benefiting from more favourable bids, but they are also liable to favour associated companies due to the subjectivity in marks awarded for technical

criteria.

The risk is even greater since the fact that concession-holders belong to the Vinci and Eiffage groups could potentially favour exchanges of information with associated road works companies, thus putting them in a more favourable position than their competitors in bidding for tenders.

RECOMMENDATIONS FOR REGULATING A MOTORWAY SECTOR REBALANCED IN FAVOUR OF THE AUTHORITY GRANTING THE CONCESSION AND THE USERS

The Autorité's 13 recommendations are included in the appendix to the opinion (see p.137).

Reinforce the regulation of the motorways sector

The existence of a guaranteed income benefiting to concession-holders shows the need for better regulation of the motorway sector and the concession system).

In particular, the Autorité recommends:

- introducing a new indexation formula for toll tariffs. While these prices are currently index-linked to inflation, an indexation formula based on other variables such as costs or traffic, as proposed by the *Autorité*, would be of such a nature as to limit price increases and even to make it possible for prices to fall;

- limiting government planning contracts to strict compensation for investment without extending beyond a regulatory increase;

- assigning valuation, inspection and penalties to a competent independent regulatory authority for all land-based transport. This authority could, in particular, issue opinions concerning government planning contracts;

- finally, if the profitability of concession-holders continues to increase, introducingre-investment and profit-sharing clauses to the benefit of the State. This would provide the State with the necessary resources for financing other transport infrastructure projects.

Improve competition conditions for concession-holders tenders

Concerning SCAs works contracts, it would appear necessary to maintain the conditions for fair competition in the tenders that they organize. The Autorité recommends:

- reducing the threshold for putting a contract out to tender, currently set at two million euros, to 500,000 euros, as well as to systematically disclose a pre-information notice six months prior to the issue of the call to tender;

- informing public contract consultative committees of amendments to contracts which excess of 5% the contract initial amount;

- applying the same diclosure and competition requirements to COFIROUTE as those to which the other concession-holders are current subjected;

- recourse to the tendering procedure for technically simple works;

- the possibility for SCAs National Commitee for contracts (Commission nationale des marchés) to file a suit with the administrative judge, if it considers a tender to be of doubtful.

Renegotiate the Motorway Plan

Finally, above and beyond these two structural issues, the Autorité analysed the Motorway Plan. Under this Plan - which still needs to be approved by the European Commission - the concession-holders sould carry out work totalling 3.6 billion euros in exchange for a six-year extension to the term of their concession.

The *Autorité* understands the benefit of the plan for stimulating job creation and

investment in the public works sector, without recourse to budgetary resources.

However, the price to pay for the State and the user is high : then extension of the concessions will delay the date on which the State will regain control of motorway operation and the date on which it could potentially start new negotiations for new concessions.

Consequently, the *Autorité* recommends rebalancing the Plan in favour of users and the State. The concession-holders' concession contracts need to be renegotiated in exchange for their extension: a new index-linkage formula for the toll tariffs as well as reinvestment and profit-sharing clauses could be introduced to favour the riders required to implement the recovery plan.

> See opinion 14-A-13 of 17 September 2014 concerning the motorway sector after privatisation of concession-holders

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