Autorità di Regolazione dei Trasporti

Address by President

Andrea Camanzi

Chamber of Deputies
25 June 2019

Distinguished Guests, Ladies and Gentlemen,

on behalf of the Board and on my own, I would like to thank the President of the Republic, who received us yesterday at the Quirinale, for his ongoing attention.

I wish to thank the President of the Chamber of Deputies for hosting us today, together with the representatives of the Parliament and the Government, and those of the national, central and local authorities, the independent authorities, the judiciary and the State Attorney, the military bodies and all the guests attending today.

In the report I am honoured to present, the sixth since its establishment, the Transport Regulation Authority accounts for its activities in the period spanning from June 2018 to May 2019. The report illustrates 'how' we have exercised our responsibilities – *the ART's method* – and highlights the main developments in the transport industry.

Today's presentation provides me an opportunity to warmly thank Commissioners Barbara Marinali and Mario Valducci, with whom I share this unique experience and, together with them, the Secretary-General, Guido Improta, and all the staff on whose legs the Authority's work advances.

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The context

We operate in a context that is characterised by a slow-down of the global economy, by uncertainties and by the volatility of financial markets. Issues such as improving vehicle energy efficiency, reducing levels of pollution, ensuring price sustainability and quality of infrastructures and services, both in rural and in large urban areas, are at the heart of people's daily concerns. Mobility and logistics services, a fertile testing ground for new technologies, are essential to increase the competitiveness of the economic system.

In this framework, we trust the new EU Parliament and the new Commission will find the way to boost growth in Europe and in EU countries, while protecting the rights of individuals and the fundamental values of our society. Indeed, many levers for economic development are exogenous and, in the transport sector, too, the EU remains the first reference market for national businesses.

The new EU Parliament and EU Commission

These tasks are not easy, and there are no short-term cutting corners.

Strong institutions and balanced powers are needed. In this respect, independent authorities provide public decision-making with their specialised skills, stability for the market and third-party impartiality, as a guarantee for all parties.

Strong institutions and independent authorities

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Are we at a *critical juncture*, a turning point, where major changes in the rules and procedures are concentrated within a short time span? Were we at this point - as we are taught by scholars of historical institutionalism, starting from Lipset and Rokkan - we would stand on the threshold of significant developments.

"At a critical juncture?" Let's stick to the facts

Let us stick to the facts insofar as we are concerned.

In the period covered by this Report, the legislator entrusted the Authority with additional responsibilities, provided for a more comprehensive structure for the financing of the institution and increased the number of staff. These changes have been long advocated to ensure regulation greater coherence and consistency.

I refer to Article 10 of the recent Law No 37 of 3 May 2019, the 2018 European Law, which extended our responsibilities as *national supervisory Authority* for airport charges to include those determined on the basis of *ad hoc* programme contracts ('in derogation').

Surveillance and airports in derogation

Integration of competences for motorway concessions and resources

I also refer to Article 16 of Decree-Law No 109 of 28 September 2018, converted into Law No 130 of 16 November 2018, the so-called "Genoa decree-law", whereby the Authority's competences regarding access to motorway infrastructures were extended to existing concessions. The Decree-Law further clarified the legal framework of the Authority's financing and increased its staffing plan.

These are important facts, but there are more.

New business opportunities and social value of regulation

In the rail sector, companies have expressly acknowledged that regulation has addressed key levers to increase the competitiveness of national operators; the latter now intend, with better chances, to gain important shares of the European market, that is in the process of liberalisation. They have also recognised the positive impact of the Authority's measures on pricing policies and the pursuit of improved standards of service quality.

We acknowledge the expectation that similar effects arise from tariff regulation in the motorway sector, that is addressed to contracting authorities and concessionaires, provides for efficiency of operating costs and leads to lower tariffs to the benefit of end users, as we have already demonstrated in the cases that I will describe shortly.

The integrated framework of the Authority's competences and resources, the creation of new opportunities for businesses and the expectation that regulation delivers social value reflect a widespread perception of the benefits of independent regulation.

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The Authority, the citizens and the users

After almost six years since the Authority started its activities, the effects of regulation are more directly perceived today, even by those who are not immediate recipients thereof.

This is the reason why the first chapter of this Report, that, in the last two years, had been dedicated to ART's method – the application of *yardstick competition* – and to multimodality in

transport, respectively, this year deals with "*The Authority, the citizens and the users*".

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ART's path

Turning to the activities carried out in the period of reference, and therefore to the following sections of the Report, let me expand on three main sets of topics.

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Conditions for access to infrastructures

Access to motorway infrastructures

The first one relates to access conditions to infrastructures and related services, starting with the motorway sector. This is certainly an area where the application of the Authority's technical expertise displays all its relevance and salience.

New concessions: in-house contracts

With regard to new concessions, in the period under review the Authority completed the activities within its remit concerning the award of A22 Brenner and A4 Trieste-Venice and other concessions. With regard to both, the Authority first defined the toll charging system. Later, as these are in-house contracts covered by interinstitutional agreements between the Ministry of Infrastructure and Transport and the regional authorities and autonomous provinces concerned, the Authority delivered its opinions pursuant to Article 13a of Decree-Law No 148 of 16 October 2017, converted into Law No 172 of 4 December 2017. It further assessed the compliance of business plans with the regulatory measures already adopted. Both procedures require CIPE's[1] approval which, concerning A22, was delivered on 15 May.

The model based on stochastic frontier analysis

In defining the charging system, the productivity targets of the infrastructure manager were determined based on a model entirely developed by the Authority following the method of stochastic frontier analysis. Allow me to refer to our past reports as for the development of this method, starting with a dedicated econometric model which is based on yardstick competition, as provided for by

[1] Interministerial Economic Planning Committee (TN)

our statutory provisions. Let me just highlight that the charging system provides for the separation of the operating components of the concessionaire's costs from those related to the investments included in the business plan, with clear benefits in terms of transparency and control.

Other new concessions

Again with regard to new motorway concessions, the Authority was requested to develop the toll charging systems for certain motorway sections in Tuscany and Liguria, that are currently operated by several concession holders and are due to expire on different dates. In this respect, the Authority noted that it would be appropriate to assign a single contract to satisfy the length*km requirements provided for in the *optimal management area* identified in 2016 by ART Decision No 70/2016 of 23 June 2016. The proposal was agreed upon by the contracting authority and the relevant procedure is ongoing.

The case is similar to another we examined last year concerning motorway sections in Piedmont and Valle d'Aosta, for which the launch of the relevant tendering procedures is still awaited.

Enforcement of Genoa Decree-Law

As mentioned above, by overcoming the distinction between *new* and *existing* concessions, the Genoa Decree-Law provided that the Authority defines the toll charging systems for both, and that these are based on the price cap method, with determination of an “x” productivity factor every five years.

Existing concessions. Decision No 16/2019

To implement the new provisions, with reference to the existing concession contracts requiring an update or a revision of the business plan, the Authority has, first, defined the toll charging system that applies to all relevant cases. As usual, the regulatory measures benefited from the comments of the stakeholders involved in the consultation procedure. The application of the system to each of these cases, taking into account their specific features, is now due.

The implementation of the reform will allow to overcome the six

different charging systems that are currently applied, providing regulatory clarity and stability to the economic structure of motorway concessions and bypassing the existing mechanism of annual charge updating. It will also allow to identify the cost-toll relation through the monitoring (on a yearly basis) of actually realised investments and to bring the profitability of the operations back to market levels, without jeopardising the so-called 'bankability' of investment plans.

To conclude on this issue, I would like to emphasize that all the information on concession contracts is – finally – publicly available. Further, the Authority today relies on improved access to concessionaires' data that are relevant for regulatory purposes.

In the light of the above, it is clear that there is no regulatory uncertainty, neither are there – nor could there be – any unilateral contractual changes. On the other hand, there lies the need – hence the appropriateness – of rebalancing the positions of contracting authority and concessionaires with a view to safeguarding the public interest and benefiting car drivers and hauliers, while ensuring the transparency and equity of the tolling system: these are very topical issues in other EU countries as well.

Access to rail infrastructures

Regulating access to service facilities

Turning to rail infrastructures, in one of the most significant proceedings launched in the period at issue we have sought to consolidate and develop the regulatory measures already adopted concerning access to service facilities and to services provided therein.

These issues, that are covered by EU legislation (the so-called Recast Directive and its implementing regulations) are today in the spotlight of the regulators within IRG-*Rail*: I was honoured to chair this network in 2018, handing on the torch, this year, to the President of the Portuguese regulatory body (AMT), João Fernando do Amaral Carvalho, who is attending today and whom I am pleased to warmly welcome.

At the European level, operators are further involved in a major exercise of sharing and disclosure of the information related to service facilities, to be implemented through a single portal: we are all specially committed to the success of this endeavour.

Regulating the 'first' and 'last' mile and key role of logistics

The scope of application of the measures that the Authority is about to adopt is wide-ranging and covers both freight transport and passenger mobility: it encompasses the services provided in railway stations, including border stations, shunting services, rail sidings, facilities connected to European rail corridors, maintenance centres, freight terminals, and, last but not least, rail networks and port facilities.

In other words, the proceeding arises in the railway sector, but is relevant for combined transport and integration with other infrastructures, including not only ports, but also road and bus terminals. By addressing a range of operators, that are different and yet linked together in the logistics cycle, these measures are intended to ensure certainty to the parties' relationship as well as a transparent and proper allocation of their respective responsibilities, in particular in case of disruptions: we would say, a multimodal *performance regime* of the *first* and *last* mile.

Based on the stakeholders' consultation, that was recently concluded, we have drawn evidence of the implications of these measures on the competitiveness of the Italian production system, that I referred to at the beginning. *First* and *last mile* account for more than 50% of the total costs of logistics, which, in its turn, feeds all the processes of economic development and whose efficiency must therefore be necessarily ensured.

Indications and requirements concerning the NS

Still covering the railway context, let me recall two cases stemming from the Authority's measures concerning the network statement drawn up by the infrastructure manager.

Capacity allocation and delays

The first relates to capacity allocation, rail traffic management and timetabling. In this respect, the Authority has imposed requirements

to avoid deterioration in the service quality and punctuality under conditions of imminent network congestion against growing demand. These measures are aimed at ensuring that the network capacity is used in compliance with the passengers' legitimate expectation to travel on time. The first data on punctuality following our measures would appear to be encouraging; we will continue monitoring the enforcement of the requirements approved by the Authority.

Integration and updating of HS framework agreement

We also welcome the agreement – reached as a result of a proceeding initiated by the Authority – between the infrastructure manager and the railway undertakings operating in the high-speed segment, concerning the new framework agreements for the use of network capacity. On this issue, too, we will continue our monitoring activities.

In conclusion, the exercise of the Authority's safeguard role functions produces its effects, while allowing to rely on its sanctioning powers only where necessary.

Speed tests above 300 km/h

To quote an example, the Authority has applied these powers by imposing a penalty on the infrastructure manager for having long enabled only the incumbent operator to test the use of the railway infrastructure above the maximum permitted speed of 300 km/h. Since it did not provide the competitor with prior and symmetrical information, the infrastructure manager has altered the conditions of equal and non-discriminatory access to the infrastructure.

Handling capacity allocation requests

Another case is the penalty imposed for having handled the requests for network use by the incumbent railway undertaking according to different procedures than those required in the Network Statement both in general and for all operators.

Adjustment of charges in compliance with judgements no. 1097 e no. 1098 of 2017 of the Regional Administrative Court of Piedmont

Finally, in complying with judgments No 1097 and No 1098 of 2017 of the Piedmont Regional Administrative Court, the Authority re-assessed the cost basis used by the operator for the determination of charges. Part of these costs were found not to be eligible and

were made subject to requests for adjustment. As a result, the average unit charge is reduced, for the remaining current regulatory period (2019-2021), by about four percent per year.

The three cases mentioned above raise issues I will later expand on.

Access to port infrastructures

Turning to the port sector, the area of interest for the Authority here is twofold: on the one hand, as mentioned above, it concerns the use of the railway network and its facilities located in ports; on the other, it is specifically related to the access to port infrastructures and services.

Implementation of Regulation (EU) 2017/352

The two sets of activities are respectively covered by the Fourth Railway Package and by Regulation (EU) 2017/352, which entered into force on 24 March 2019. As for the latter, for the same purpose of consistency and coherence already mentioned, we trust the Authority be identified as the body in charge of the handling of complaints concerning port charging policies.

Consistency in the application of the aforesaid EU provisions, which correspond to specific structures of economic regulation, is essential to ensure the smooth operation of port activities. Responding to this need is the possible extension of the competences of railway regulators to ports, as is being discussed in several EU countries, such as Spain and France, in addition to those already providing for it, such as Italy, Portugal and the Netherlands.

In this context we are closely following the ongoing initiatives of port authorities, both in Europe and in Italy, to qualify as managers of the railway infrastructures located in ports.

The Authority's regulation and data access

About one year after the adoption of the first regulatory measures concerning access to port infrastructures aimed at promoting transparency and access to ports by new efficient undertakings, the operators' alerts and initial feedback provided by port system

authorities, highlight the need that the Authority's safeguard role be fully implemented in this area, too. It is now essential to access the necessary data for developing charging systems to be made available to port system authorities: with them we trust to develop the broadest possible cooperation.

Access to airport infrastructures

With regard to access to airport infrastructures, the Authority is about to launch the planned consultation on the revision of the regulatory airport charges Models adopted in 2014.

Taking into account market and technology developments, we believe charges should continue to be determined on the basis of proportionate regulation for all airports, albeit simplified for those with annual traffic below one million passengers. The Authority upholds this position as a safeguard for all operators – infrastructure managers, carriers and passengers – also in the relevant international and EU fora, such as, in particular, the Thessaloniki Forum of Airport Charges Regulators.

The new models

The main topics of the Model revision are the allocation and better use of existing airport capacity, the procedures to calculate operational efficiency in line with the experience gained in other areas, cost elasticity and, last but not least, the consequences of the incentives to flight activities in terms of charges. Attention will be paid in particular to the treatment of airport networks.

Airports with programme contracts 'in derogation'

Pursuant to the above-mentioned Law No 37/2019, we are also laying down detailed rules for the application of the new models to airports subject to the so-called programme contracts 'in derogation'. For this purpose, too, we are developing cooperation with the Italian Civil Aviation Authority), ENAC, that remains in charge of technical regulation, airport management and investment planning, all having a bearing on economic regulation.

Application of 2014 models in the period under review

In the period covered by the Report, the Authority has delivered its opinion on the second update of the airport charges proposed by the managing body of Pisa airport and is currently assessing the

proposal presented by Florence airport for the period 2019-2022. It is likewise examining the proposed revision of Treviso airport charges, while monitoring the charge updating of the airports that are required to provide for it; in this respect the Authority has already issued requirements for Parma airport.

I would conclude on this point by underlining that the consultation procedure and the relevant outcome are at the heart of the charging process pursuant to EU Directive 2009/12/EC. We therefore continue to consider that carriers and users, that determine by their vote whether consultations are successful or not and may refer to the Authority in case of disputes, are both the players and recipients of our regulation.

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Regulation of local public transport markets

I would now like to turn briefly to the second set of topics, i.e. the transport service markets, in particular local and regional public transport, that has an impact on the daily experience of commuters.

Efficiency of service contracts for regional rail passenger transport

With respect to regional rail passenger transport, we set out the management efficiency targets and the corresponding indicators to measure them pursuant to Decree-Law No 50 of 24 April 2017, converted into Law No 96 of 21 June 2017. In the same regulatory measures, we introduced accounting separation and regulatory accounting requirements aimed at ensuring the transparency of the activities carried out under public service obligations as compared to those performed under market conditions and those concerning different service contracts. Regarding this proceeding, the Authority has thus far identified targets and indicators to be included in the service contracts of seven Regions that have already started to award new contracts.

Indeed, the possibility of applying in-house and direct award procedures does not affect the obligation to pursue efficiency targets. As announced, in this area, too, we applied the yardstick competition method that was developed for toll motorway

management and is based on the estimation of efficiency frontiers.

May I take this opportunity to welcome today Professor Carlo Cambini and Councillor Giulio Veltri, Chief Economist and Legal Adviser of the Authority, respectively. I would also like to address a greeting to all the Advisory Board members, that are today represented by the co-Chairs Chris Nash and Ginevra Bruzzone, who enhanced the Authority's knowledge on *yardstick competition*.

Implementation of Decision No 48/2017 on the scope of public service

The criteria to be applied by regional authorities to define the scope of public service and their financing arrangements were addressed by regulatory measures in 2017. In this respect, in the period under review, the Authority assessed the compliance with the regulatory principles and criteria of the initial proposals made by some Regions.

Tender notices, territorial continuity and connections with the islands

The Authority is further updating the measures for drawing up tender notices and related contracts for the award of local public passenger transport services by rail and road on an exclusive basis. Similar measures were adopted for maritime transport (Decision No 22/2019 of 13 March 2019).

Thereby the Authority supports the awarding bodies in promoting competition for the market, starting from more mature segments, such as road transport. However, the performance of the task assigned to the Authority is curbed by the provisions that postpone until 2021 the application of the incentives and disincentives laid down for this purpose. I refer to the recent amendments to Article 27 of Decree-Law No 50 of 24 April 2017, converted into Law No 96 of 21 June 2017, which were introduced by Article 21-bis (1) of Decree-Law No 119 of 23 October 2018, converted into Law No 136 of 17 December 2018.

Taxi service

As regards the regulation of taxi services, the Authority delivered several opinions, including negative ones, on the way licenses are issued by municipalities of different sizes. Focus was placed, *inter alia*, on promoting greater freedom of organisation of the service by

license holders in respect of any constraint or obligation as to the membership and contribution to special on-call services.

Taking into account the planned reform of the sector, in its recommendation of 2015, just as today, the Authority underlines the need that both non-scheduled public transport, reserved for taxis, and commercial transport should be provided under economic efficiency conditions. Law No 12 of 11 February 2019, converting Decree-Law No 135 of 14 December 2018, spins the clock forward, but the issue remains.

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Service quality and enforcement of passengers' and users' rights

The third range of topics concerns the quality of transport services and the enforcement of rights, that characterise the experience of travellers: once again, even where the regulatory measures are addressed to service operators, their effects have an impact on the welfare of users.

But not only. High standards of service quality and effective enforcement of rights turn into strength and competitiveness for those businesses that are able to complement and enhance their strategies accordingly: it is important to measure this development, as the Authority has already started to do.

Minimum service quality standards

As to the quality of services, having determined the minimum standards for rail passenger transport subject to public service obligations, the Authority adopted similar measures for maritime transport.

The conditions to be covered by service contracts include regularity and punctuality, passenger information, appropriate access conditions to services for all travellers and data disclosure obligations. Their compliance is measured by appropriate indicators, is subject to periodic checks and further supported by a penalty system, as provided for by our regulatory measures.

Passenger associations are already reporting to the Authority

inefficiencies and requests for action.

In the railway sector, the four Regions that concluded a new service contract have applied the minimum quality standards and made the contracts publicly available, thus encouraging greater transparency and public awareness of the quality of transport services. A similar effect is expected in maritime transport, as from the forthcoming conclusion of the national service contract.

Minimum user rights

I now come to the measures concerning the minimum rights and entitlements that may be claimed by users of transport services against carriers. In this respect, the Authority adopted *ad hoc* regulatory measures for rail passenger transport in the services subject to public service obligations, and for the submission of complaints in respect of maritime transport. In this area, too, the key themes are punctuality and refunds in the event of delays, guarantees and safeguards for disabled persons and persons with reduced mobility, provision of information to all passenger, in particular with reference to the procedures for filing complaints, including the information concerning the so-called second-tier complaints, to be lodged with the Authority.

Implementation of EU Passenger Rights Regulations

These regulatory initiatives are developed alongside the Authority's role as national body responsible for the enforcement of EU Passenger Rights Regulations in the transport by rail, bus, sea and inland waterways. The results of the Authority's engagement in this area are illustrated in detail in the Report. Drawing on evidence from these activities, the Authority issued a recommendation calling for the adoption of legislation to strengthen the effectiveness of safeguards by reviewing, in particular, the penalty system.

Recommendation on the penalty system for infringement of passenger rights

At the request of the Ministry of Infrastructure and Transport, we are also involved in the ongoing work at European level to update the Regulation on rail passenger rights.

ITS systems

In addition to the above-mentioned tasks, the Authority was lately entrusted with the verification of compliance of ITS systems

requirements for road traffic and parking areas with the provisions of relevant EU legislation (Directive EU/2010/40 of 7 July 2010, transposed in Italy by Decree-Law No 179 of 18 October 2012, converted into Law No 221 of 17 December 2012 and its implementing regulations).

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The Authority's resources and development

Let me now briefly report on the Authority's organisational development and human and material resources. As I mentioned at the beginning, the Genoa Decree-Law has expanded our staffing plan to 120 permanent employees, as in the case of other regulatory authorities for public utilities. We are now completing recruitment in this respect. In compliance with the provisions of law, the staff includes a number of experts and fixed-term employees.

The transport database

In accordance with the existing security and integrity protocols, we have developed digital systems for the retrieval and use of regulated companies' data that will provide input to the *transport database* under construction.

From the operational point of view, since last year, the Authority has implemented the so-called work-life balance schemes that are currently being applied.

The activities concerning the implementation of the General Data Protection Regulation are also ongoing and disciplinary rules and procedures have been preliminarily adopted.

Turning to the Authority's subsidiary bodies, I would like to thank the members of the Audit Committee and of the Evaluation and Strategic Control Committee, together with Professor Pippo Ranci, who accepted the invitation to take up the role of the Authority's Guarantor of Ethics. Our activities would not have been possible without the support of the *Politecnico di Torino* and the Customs and Monopolies Agency, that host our offices.

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Final considerations and outlook

Allow me to conclude with a few final considerations, including on the outlook.

Six years on since the Authority's establishment, the effects of our activities are clear to see. We have worked on the productivity, efficiency and behaviour of the industry. We believe we also contributed to increasing the welfare of citizens and users. Not only by exercising our responsibilities concerning the enforcement of passenger rights, but also by ensuring recoveries of efficiency which have positive impacts on prices and tariffs, just to the benefit of citizens and users.

New user empowerment and behavioural economics

They are the ones who, through their behaviour identified by digital systems, express their preferences thereby enabling public policies to become increasingly aware of mobility needs. In their turn, surveys of users' behaviour make it possible to analyse demand, including potential demand, for services, design their adequate supply and test new modes of service provision and tariff integration. The availability of this information allows public decision-makers to gently encourage — the nudging — citizens and users towards virtuous behaviour.

This is the potential of behavioural economics.

Let me take a cue from this point to thank my Head of Cabinet, Luisa Perrotti: we have been working on this topic, too, for some time, within relevant fora, in particular the OECD Network of Economic Regulators.

On our part, we have taken the first steps in this direction, by identifying indicators to measure both effects of regulation and progress in terms of welfare, such as in respect of efficiency and quality of public services. The Authority has therefore taken up the challenge of applying behavioural insights; for all the administrations concerned the exercise is underway.

Monitoring the adequacy of separation levels

As to the structure of transport markets, the issues we addressed with respect to access to infrastructure have provided ample evidence that the independence of the infrastructure manager is crucial for the proper functioning of these markets.

The argument applies, in particular, in the case of essential infrastructures, which are not economically replicable or are covered by concession on an exclusive basis.

I refer especially to the railway infrastructure manager and to the dynamics of the liberalisation process in the sector. The cases I recalled show that the existing *degrees of separation* between the infrastructure manager and the incumbent railway undertaking, which belong to the same group, has not prevented discriminatory behaviour. Hence, the need to search for remedies to be applied to the present situation.

To this end, comparing the experiences in other areas of public utilities, where a range of tools has been applied, is a must: from the *equivalence of inputs* and the establishment of a supervisory body over the service provider's conduct, in the telecom sector, to the structural separation in the energy sector.

Liberalisation and economic equilibrium test

The evolution of transport markets calls for a final consideration. Not only does the above-mentioned uptake of digital technologies strengthen demand; it also induces changes in the supply of transport services, makes market segmentation less significant and modifies traditional competition models. With liberalisation, public transport services and market services will increasingly exist side-by-side.

It is necessary to ensure that maintaining the economic equilibrium of public service contracts does not limit the users' final choices, by preventing market access to new operators insofar as they are more efficient and able to ensure safe and quality services. For this purpose, we are working, together with the regulators of other EU countries, to develop methodologies that may be applied to

economic equilibrium tests and are consistent with the smooth functioning of the internal market.

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As you see, many tasks lie still ahead of the Board of the Authority before its mandate comes to an end. To quote a popular song, what we are doing speaks *louder than the words* we have used to describe it.