

COMPETITION LAW POLICY

*Transport—public road
passenger service contracts*

☞ Guidelines; National competition authorities; Portugal; Public procurement; Public transport

A closer look into public transportation: Portuguese Competition Authority (“PCA”) issues best practices for public road passenger transport service contracts

In the context of the impending conclusion of several public road passenger transport service contracts in Portugal, following the implementation of Regulation (EC) 1370/2007, of 23 October and the new Legal Regime for Public Passenger Transport Services (Law No. 52/2015, of 9 June), the PCA took the opportunity to take a close look at public transport service contracts, with a view to fostering competition and efficiency in the public transport sector, to the benefit of consumers, notably as regards a better quality of service and greater innovation.

Accordingly, under its general supervision and market monitoring powers, the PCA communicated a set of guidelines for best practices to transport entities in Portugal, notably municipalities, Inter-Municipal Communities and Metropolitan Areas, having highlighted the need to:

- prioritise competitive bidding in public service allocation, instead of using the direct award of contracts;
- promote access to strategic information relating to the services in order to allow further participation in bidding procedures;
- set forth a system of incentives and penalties associated with the operator’s performance and a scheme for monitoring the effective fulfilment of public service obligations;
- establish in the contract reporting obligations for operators to the transport authorities, associated with penalty schemes in case of non-compliance;
- limit the duration of public service contracts to what is strictly necessary for the provider to recoup the investment made and obtain a return on capital under standard operating conditions;
- privilege the opening of new tenders or a new tender over the extension of the concession period and open competitive tenders on a regular basis so as to ensure that contractual conditions are aligned with the reality of the market.

The issuing of these guidelines by the PCA should prove to be one step further towards the adoption of best practices by transport entities, with expected benefits in terms of better allocation of public resources and improved consumer well-being.

Ricardo Filipe Costa
Vieira de Almeida

Leonor Bettencourt Nunes
Vieira de Almeida