

Best practices for awarding public road passenger transport service contracts

Executive Summary

1. **The process of awarding public service contracts for public road passenger transport is currently underway. The present moment thus provides a privileged opportunity to implement a set of best practices** that aim at contributing to the decision-making process and contract design.
2. **Therefore, the Autoridade da Concorrência (Portuguese Competition Authority or “AdC”) has developed a set of best practices for the award and design of public road passenger transport service contracts** addressed to transport authorities, who are the entities in charge of planning, organizing and contracting the services.
3. **The AdC advocates that the process should follow, with the necessary adaptations, the set of principles and measures to promote competition that the AdC has been defending for public procurement and concession award, across several sectors in the economy.** Furthermore, given that some matters take on added relevance in the case of public road passenger transport services, a set of specific best practices for this sector is put forward.
4. Under the principle of institutional cooperation, the AdC requested an opinion to the sector regulator (“Autoridade da Mobilidade e dos Transportes” or “AMT”) on the draft “Best Practices” document.
5. The AMT considered that the “Best Practices” document was in line with the guidelines, recommendations and decisions it has been adopting. It also noted that it has been closely monitoring the process of opening up the public road passenger transport services market to competition.
6. **The implementation of these best practices will allow promoting competition for the market, to the benefit of consumers, via better service quality and/or greater innovation, and the State, in terms of the efficient allocation of public resources.**

Best practices for the award and design of road passenger transport public service contracts

A. Method for awarding the public service contract

- **Given the benefits of competition *for* the market, preference should be given to the award of public service contracts through a public tender procedure.** The use of direct awards, namely to the internal operator, should be exceptional and have a subsidiary nature.
- **In line with the legally established principles, the public tender documents and the contract should define, in a precise and transparent way:**
 - **The nature and scope of the public service obligations**, which should not exceed those that are essential for the service provision;
 - **The compensation for public service obligations**, which should avoid overcompensation, whilst ensuring the service provision's financial sustainability;
 - **The nature and scope of potential exclusive rights, which should not exceed those essential for the protection of the economic balance of the contract** and should not prevent the competitive provision of commercially viable services;
 - **An incentive/penalty mechanism linked to the operator's performance;** and
 - **A scheme for monitoring the effective compliance with the public service obligations.**

B. Incentives and monitoring mechanism

- **In order to capture the benefits of competition *for* the market, an incentives and performance monitoring mechanism should be introduced in the design of the contracts, with performance indicators and incentives**, in terms of quality of service, that should be clear and objective.
- **The incentives mechanism linked to quality of service can be based on several indicators, by reference to performance in quality dimensions** (e.g., punctuality of services, cancellation of frequencies).
- **The quality of service can also be assessed through passenger satisfaction surveys** or “mystery-client” assessments.
- **Monitoring the incentives mechanism linked to the quality of service is key** to allow capturing the benefits of competition *for* the market.

C. Award of public service contract through lots

- **When the size of the contract limits the participation of operators in the current or future tenders, the division of the contract into lots should be considered**, so as to promote competition *for* the market, to the benefit of consumers and the efficient allocation of public resources.
- The division of the contract into lots should be done in a way that mitigates the risks for competition. In particular, **consideration should be given to:**
 - **Allowing for the possibility of combining several lots** in order to mitigate potential efficiency losses (if there are relevant synergies associated with the aggregation of complementary lots);
 - **Defining a number of lots that is lower than the expected number of participants in the procedure**, to reduce the risk of market sharing between operators; and
 - **Limiting the number of lots that can be awarded to each participant in the procedure**, to avoid concentration of the lots in a single operator.
- **Lots should be sufficiently large to encourage a multitude of operators to participate and sufficiently disaggregated** so as not to dissuade smaller operators from participating.
- **The procedure should be designed on the basis of elements such as the number of potential participants, unit costs and estimates of synergies between lots.**

D. Access to strategic information for participation in the tender

- **The incumbent operator benefits from competitive advantages over competitors due to access to information** that allows assessing, with greater rigour, the economic and financial value of the activity being awarded.
- **The asymmetry of information vis-à-vis the transport authorities is also significant** and can affect the quality of the design of the procedure.
- In order to mitigate the information asymmetry and the resulting barriers to entry, it is crucial to:
 - **Ensure that the relevant elements of information for adequate bid preparation are made available to tender participants;**
 - **Ensure that operators fully comply with their obligations to provide accurate and up-to-date information;** and
- **Foresee, in the terms of reference of the tender, an obligation for operators to report essential information to the transport authorities**, to be included in the contract, subject to a penalty mechanism in the event of non-compliance.
- In that context, within their competences, the transport authorities should:
 - **Ensure a rigorous and permanent updating of the SIGGESC database by the transport operators**, with a view to its public disclosure, in particular for the purposes of the tender preparation;
 - **Timely publish the information related to the public service obligations** and ensure the dissemination of the reports; and
 - **Provide potential participants with the necessary information to accurately assess** the economic and financial value of the activity being awarded.

E. Duration of the contract

- The duration of a public service contract for public road passenger transport should, as a rule, be limited to a maximum of 10 years.
- **The contract duration should be limited to the period strictly necessary for the provider to recover the investment and obtain a return on the capital invested under normal operating conditions**, taking into account the contract objectives. This principle should apply regardless of whether the service is awarded through a competitive tender or by direct award (to the internal operator).
- **The extension of a public service contract (up to half of its initial duration, i.e. up to 15 years) should be preceded by an assessment of its necessity, favouring, as a matter of principle, the launch of a new tender** rather than the extension of the existing contract.
- **Public service contracts should, as a matter of principle, be awarded through competitive procedures as regularly as possible**, in order to reduce the risk of a substantial discrepancy between the terms of the contract and the reality of the market.
- **These considerations gain added relevance in public road passenger transport service contracts awarded through direct awards** (to the internal operator) and, consequently, without competition for the market.

F. Access to infrastructures and support facilities for the provision of the public service

- **The public road passenger transport service cannot be provided in adequate conditions without access to relevant infrastructures** (interfaces and bus terminals) **and support facilities** (e.g., car parks, repair facilities, vehicle washing and sanitation facilities, dedicated fuel stations and offices).
- **Operators that own these infrastructures and support facilities in a given region tend to have an advantage over competitors**, which will be both greater and more difficult to replicate the larger the region, the more lines are operated and the more support infrastructures and facilities are required to be provided by the operators.

- This can lead to less competitive bids or even discourage the participation of (new and/or smaller) operators in the tender.
- The AdC has been arguing for the relevance of ensuring a non-discriminatory access to interfaces and terminals for the provision of public road passenger transport services.
- In that context, and notwithstanding the access obligations imposed on the operator of an interface or service terminal, the role of the transport authorities in ensuring the existence of bus stops that guarantee the safety of passengers should be highlighted, in particular when there is no spare capacity in the infrastructure and there are no viable alternatives.
- In what concerns access to support facilities, transport authorities should assess the possibility of making any support facilities they may have available to the operators selected for providing the service in a given region. If such a possibility exists, it should be clearly set out in the terms of reference of the tender.

G. Fleet to be used in the provision of the public service

- The terms of reference of the tender for awarding the service should, as a matter of principle, define the requirements related to the vehicles and/or the fleet to be used in the service provision.
- Regarding requirements related to the age of the vehicles and/or the fleet, and without prejudice to other objectives of public interest (e.g., environmental), the transport authority should consider alternative requirements that reflect the use and depreciation of the vehicles (e.g., based on the result of the mandatory periodic technical inspection of vehicles for circulation on public roads).

H. Compensation for public service obligations

- Compensation for public service obligations should be determined so as to avoid overcompensation, to avoid consumer harm and also to ensure the financial sustainability of the provision of the service.
- The compensation and the underlying public service obligations should be governed by the principles of non-discrimination, transparency and proportionality, in order to mitigate the risk of foreclosing access to the market and the creation of disproportionate barriers to entry.

1. Background

7. **The process of awarding public road passenger transport service contracts is currently underway**, due to the implementation of Regulation (EC) No. 1370/2007¹ and Law No. 52/2015², which approves the Legal Regime of the Public Passenger Transport Service (RJSPTP).
8. **This process involves the award of a significant number of contracts**. As a result of the decentralization process³, the service is disaggregated by a large number of entities that are responsible for its operation (the transport authorities⁴). The majority of the municipalities (around 85%) have chosen to delegate or share their competence with the 21 inter-municipal communities (CIM) and the metropolitan areas (AM) of Lisbon (AML) and Oporto (AMP)⁵.
9. With regard to procedures whose contracting entity is a supramunicipal entity (CIM or AM), the publicly available information allows for the following state of play⁶:
 - Four contracts were signed (AML and three CIM⁷);
 - Notices for tender procedures in 12 CIM⁸ are yet to be published;
 - The tender procedures did not have participants in two CIM⁹ and, as such, two new tender procedures will be launched; and
 - In the AMP and in five CIM the winning entities of the tender procedures are not yet publicly known¹⁰.
10. Until 19 June 2020, with regards to the procedures for which the contracting authority is a municipality, the AMT issued 61 positive opinions on the procedure documents and was analysing 47 procedures¹¹. Meanwhile, between June 20 and December 22, 2020, the AMT announced that it had issued another 24 positive opinions, including opinions related to procedures of limited duration, whose services will be integrated into future contracts resulting from ongoing municipal and/or inter-municipal public tenders.

¹ See Regulation (EC) No. 1370/2007, of 23.10.2007, on public passenger transport services by rail and road.

² See Law No. 52/2015, of 09.06.2015, which approves the RJSPTP, and repeals the Automobile Transport Regulation (RTA – “Regulamento de Transportes Automóveis”), approved by Decree No. 37272, of 31.12.1948.

³ See Law No. 75/2013, of 12.09.2013.

⁴ See paragraph 16 and, in particular, footnote 19.

⁵ See the press release of AMT entitled “Implementation of the contracting process for public passenger transport services – Updated state of play”, of June 2020.

⁶ Updated state of play, on 03.02.2020. See AMT’s report entitled “Monitoring the implementation of the legal regime for the public passenger transport service. State of play 2016-2020”, of February 2021.

⁷ The CIM of Algarve, the CIM of the Leiria Region (only with respect to the Pombal/Leiria line) and the CIM of Baixo Alentejo.

⁸ Six CIM with positive prior binding opinion with conditions, from AMT: the CIM of Beira Baixa, the CIM of Médio Tejo, the CIM of Alto Alentejo, the CIM of Alto Tâmega, the CIM of Alto Minho and the CIM of Terras de Trás-os-Montes. To these are added six CIM, to which AMT has not yet given its prior binding opinion: the CIM of the Leiria Region (insofar as only the Pombal/Leiria line was contracted), the CIM of the Douro, the CIM of Beiras and Serra da Estrela, the CIM of Alentejo Litoral, the CIM of Oeste and the CIM of the Coimbra Region.

⁹ The CIM of Aveiro Region and the CIM of Viseu-Dão-Lafões.

¹⁰ The CIM of Lezíria do Tejo, the CIM of Alentejo Central, the CIM of Ave, the CIM of Cávado, the CIM of Tâmega e Sousa.

¹¹ See the press release of AMT entitled “Implementation of the contracting process for public passenger transport services – Updated state of play”, of June 2020.

11. **The AdC, under its supervision and market monitoring powers, has been raising awareness for a set of best practices for promoting competition and efficiency, in the award of public service contracts**, in particular those that involve the allocation of exclusive rights, in different sectors¹².
12. It is also worth noting that, recently, in October 2020, the AdC adopted a prohibition decision in the merger control procedure in Case Ccent. No. 51/2019 - RBI/Grupo Fundação¹³, in which it addressed several matters related to the process of awarding public road passenger transport service contracts. In particular, the AdC identified a set of barriers to entry and expansion in the market.
13. **As such, the ongoing process of awarding public road passenger transport service contracts constitutes an opportunity to promote competition for the market**, to the benefit of consumers, namely through lower prices, better quality of service and/or greater innovation and the efficient allocation of public resources.
14. **To that extent, and in order to support contracting entities in their options, the best practices advocated by AdC** for the award of public service contracts are herein systematized. The best practices focus on: (i) the method for awarding the public service contract; (ii) the inclusion of an incentive and monitoring mechanism in the design of the contract to promote its efficient and effective implementation; (iii) the division of the contract in lots; (iv) the access to strategic information for the purposes of participation in the tender; (v) the duration of the public services contract; (vi) the access to infrastructures and support facilities for the provision of the public service; (vii) the fleet for the provision of the public service; and (viii) the compensation for public service obligations.

2. Main legal framework applicable to public road passenger transport services

15. **The Regulation (EC) No. 1370/2007 and the RJSPTP have profoundly changed the regime for the provision of public road passenger transport services.** The European legislator determined that from 3 December 2019¹⁴ onwards, and without prejudice to transitional periods, all operators subject to public service obligations, with associated financial compensation and/or the attribution of exclusive rights, must sign a public services contract¹⁵ with the competent transport authorities¹⁶.
16. **As a result of the decentralization process of competences in the area of planning, organizing and contracting of public road passenger transport services¹⁷, it is the responsibility of the transport authorities to provide the public road passenger transport service^{18,19}.** The service can be provided

¹² See, for illustrative purposes: (i) [AdC's recommendation regarding the concession of the provision of touristic and sports activities in Serra da Estrela](#), of July 2020; (ii) [AdC's recommendation regarding the access regime for private use titles for quays on waterways](#), of January 2019; (iii) [AdC's study on competition in the port sector](#), of December 2018; (iv) [AdC's recommendation regarding the liberalization of rail passenger transport services](#), of December 2018; (v) the "[AdC's Action Plan](#)" for the legislative and regulatory reform of 13 self-regulated professions and for the road, rail, maritime and port transport sectors, of November 2018, prepared within the scope of the "[AdC Impact 2020 Project](#)", comprising the [joint Project](#) of AdC and Organization for Economic Co-operation and Development (OECD); (vi) [AdC's comments to the proposals for the allocation of municipal concessions for the distribution of low voltage electricity](#), of September 2018; and (vii) [AdC's analysis of the liquid road fuels sector in mainland Portugal](#), of May 2018.

¹³ See [\(non-confidential version of\) AdC's decision in the Case Ccent 51/2019 – RBI/Grupo Fundação](#), of 06.10.2020.

¹⁴ See article 8 (2) (i) (about the application of article 5 (3)) of Regulation (EC) No. 1370/2007.

¹⁵ See, in the broad sense of the term, article 2 (i) of Regulation (EC) No. 1370/2007; and article 3 (f) of RJSPTP.

¹⁶ See article 3 (1) of Regulation (EC) No. 1370/2007.

¹⁷ See Law No. 75/2013, of 12.09.2013.

¹⁸ See article 4 (2) (b) of RJSPTP.

¹⁹ In particular, this competence belongs to the State (in the case of the national services, the "express" services and the international services); to the (308) municipalities (in the case of municipal services); the (21) CIM (in the case of fully developed inter-municipal services or mostly in the respective geographic area); and the two AMs of Lisbon and Oporto (in the case of inter-municipal services developed wholly or mostly in the respective geographic area) (see article 5 (1) (a) (e), article 6 (1), article 7 (1) and article 8 (1) of RJSPTP, respectively). In the case of inter-regional services, the competence in question is shared between the transport authorities of the competent geographic areas covered at intercity level or, in the absence of an agreement between them, and temporarily, it is the State's competence (see article 9 (2) (3) of RJSPTP, respectively).

- in the following ways²⁰: (i) directly by the transport authorities, namely using their own means; or (ii) by internal operators of the transport authorities or other public service operators, through public service contracts.
17. Public service contracts can: (i) take the form of a concession agreement or a public service provision agreement²¹; (ii) cover a line, a set of lines or a network covering the geographical area of one or more contiguous transport authorities²²; and (iii) involve the award of exclusive right to the operator during the contract duration, as a compensation for public service obligations²³.
 18. It is up to the transport authority to decide whether the selection of the public service operator follows the general rule regime²⁴ of a tender or is made by direct award, within the legal limits applicable²⁵.
 19. Within the scope of the general rule regime, public service contracts should be awarded through an open, impartial, transparent and non-discriminatory tender, open to all operators. The transport authority is in charge of preparing and approving the procedure and, in particular, designing the tender procedure program and the terms of reference²⁶. The sectoral regulator, AMT, issues an ex-ante binding opinion on the design of the concession or public service provision agreement^{27,28}.
 20. **Under the exception regime, public service contracts can be awarded through direct awards:** (i) when the service is provided by an internal operator^{29,30}; (ii) when the estimated average annual value of the contract is below a certain limit³¹; and (iii) in the event of a breakdown or an imminent risk of a breakdown of the service or emergency situations³².
 21. **The concession titles awarded through non-competitive procedures, under the Regulamento de Transportes Automóveis (RTA, the Automobile Transport Regulation)³³, were subject to a provisional authorisation³⁴, issued by the competent transports authorities. As a rule, the term for those authorizations could end no later than the 3rd of December 2019³⁵. However, under the new legislative mechanism adopted by the Government, on November 29, 2019, whenever the procedures for awarding public service contracts were initiated before that date, namely through the**

The transport authorities may delegate to other transport authorities, or to other public entities, or to share amongst each other, wholly or partially, their attributions (see article 10 (1) (2) of RJSPTP).

²⁰ See article 16 (1) of RJSPTP.

²¹ See article 20 (1) of RJSPTP.

²² See article 16 (2) of RJSPTP.

²³ See article 27 (1) of RJSPTP.

²⁴ See article 18 of RJSPTP, in conjunction with article 5 of Regulation (EC) No. 1370/2007, as well as the Portuguese Code of Public Procurement (CCP), approved by Decree-Law No. 18/2008, of 29.01. 2008.

²⁵ See article 19 of RJSPTP.

²⁶ See article 18 (3) of RJSPTP.

²⁷ See article 34 (2) (b) of the articles of association of AMT, approved by Decree-Law No. 78/2014, of 14 May.

²⁸ See opinions of AMT.

²⁹ Corresponds to any public service operator that constitutes an entity legally distinct from the competent transport authority (ies) and over which (at least one of those entity (ies) has a control similar to that that it exercises over its services (see article 3 (3) (k) of RJSPTP and article 2 (j) of Regulation (EC) No. 1370/2007).

³⁰ See article 19 (1) of RJSPTP and article 5 (2) of Regulation (EC) No. 1370/2007.

³¹ The national legislator limited, by option, this value, if compared to the value established by the European legislator (see article 5 (4) of Regulation No. 1370/2007 and article 19 (1) of RJSPTP). In this regard, AMT referred to the European Commission's understanding that this can only take place within the limits established in the Portuguese Code of Public Procurement (CCP) (see AMT, "Information to Stakeholders. Regulation (EC) No. 1370/2007 - Compulsory Submission to Competition", of 23.07.2018).

³² In the event of a breakdown or an imminent risk of a breakdown of the service or emergency situations, the contracting period may not exceed the period necessary for the conclusion of a tender procedure, and may not, under any circumstances, exceed two years (see article 5 (5) of Regulation No. 1370/2007, and article 19 (2) (3) of RJSPTP).

³³ Approved by Decree No. 37272, dated 31.12.1948 and, meanwhile, revoked by Law No. 52/2015, which approves the RJSPTP.

³⁴ See article 10 (1) of Law No. 52/2015.

³⁵ See article 10 (1) of Law No. 52/2015.

submission of the tender documents for analysis by the AMT, such authorisations were renewed by the transport authority, until the conclusion of the tender and for a maximum period of two years,³⁶.

22. Furthermore, public service contracts³⁷, insofar as they generate spending or financial commitments for the transport authorities, require a prior approval by the Court of Auditors. The approval ascertains the legality of the contract regarding, amongst others, the procedure and the requirements for contracting³⁸. The Court of Auditors issued some judgments and decisions regarding public road passenger transport service contracts³⁹, namely on the authorizations for the temporary provision of the service pending the respective tender award.

3. Principles for promoting competition on public road passenger transport service contracts

23. **The AdC has been raising awareness to competition issues regarding the award of public service contracts, in particular those involving the award of exclusive rights**, in several sectors⁴⁰.
24. The AdC has been advocating for the adoption, across all sectors of the economy, of a set of principles to promote competition within the award of concessions, including the following:
- **The exclusive concession regime should only be considered in cases where competition in the market is not viable.** In the remaining cases, alternative solutions that are less restrictive of competition such be considered, such as the implementation of a licensing regime;
 - **The award of concession contracts through competitive procedures, without unnecessary obstacles to bidder participation, should be favoured;**
 - **The participation criteria (e.g., financial capacity) should observe principles of adequacy, necessity and proportionality** and should ensure access by participants to the relevant information to prepare their bids;
 - **A possible division of the contract into lots should be considered if deemed necessary to promote the participation of more operators in the tender** (e.g., as a result of the size of the contract). The way in which the contract is divided into lots should seek to reduce the risk of collusion, namely by determining fewer lots than the expected number of participants;
 - **The duration of concession contracts with exclusive rights should not exceed the minimum number of years necessary for the concessionaire to reasonably expect to recover the investment made** and obtain a return on the capital invested under normal operating conditions, taking into account the investments necessary to achieve the contract objectives, based on clear, objective and transparent criteria;
 - **In view of the possibility of renewing a concession, priority should be given to opening a new public tender**, thus increasing the frequency with which the concession is subject to competition;
 - **In face of substantial modifications to the concession, consideration should be given to the possibility of an early termination of the concession** and launching a new tender procedure; and

³⁶ See article 10 (3) of Law No. 52/2015, as modified by Decree-Law No. 169-A/2019, 29.11.2019.

³⁷ Depending on the value of the contract, it may be exempt from the prior supervision or the visa may be waived (see, respectively, article 47 (1) (a) and article 48 of Law No. 98/97 (Law of the Organization and Procedure of the Court of Auditors - LOPTC), of 26.08.1997). Further, note that a tacit visa may occur (article 85 of the LOPTC).

³⁸ See articles 44 and 46 of the LOPTC.

³⁹ See the [case law of the Court of Auditors](#).

⁴⁰ See paragraph 11.

- **The promotion of competition *for* the market should be ensured when exclusive sub-concessions are awarded.** It is key to define clear, transparent and widely publicised procedures and to foresee mechanisms to monitor contract implementation.
25. **In the context of public procurement, AdC has developed initiatives to raise awareness for the impact of bid-rigging and the benefits of competition in tender procedures,** the main indicia of collusion in public tenders and on how to prevent, detect and sanction this type of practice. In that context, the AdC has advocated for a set of principles and measures to promote competition in public procurement⁴¹, by reducing the risk of bid-rigging, with emphasis on the following:
- **Giving priority to competitive procedures;**
 - **Avoiding the predictability** (in terms of frequency, value and quantity of contracts) of procedures;
 - **Establishing objective and clear requirements and rules of procedure;**
 - **Setting appropriate deadlines for the submission of bids** (namely, depending on the complexity of the matters in question and the volume of information to be considered);
 - **Avoiding qualification requirements (in particular, minimum requirements for technical and financial capacity) that are restrictive and unnecessary;**
 - **Widening the participation in the procedure to as many potential participants as possible** and, in particular, not excluding potential participants because they have not participated in other procedure(s) in the past;
 - **Considering the division of the contract into lots if necessary to promote bidder participation** (e.g., as a result of the size of the contract). In addition, the form of dividing the contract into lots should mitigate the risk of collusion;
 - **Reducing the costs incurred by participants in bid preparation**⁴²;
 - **Establishing clear and objective performance and functional requirements;**
 - **Considering the impact of the award criteria on participation in the current and future procedures;**
 - **Establishing clear and objective non-price award criteria**⁴³ and attribute the weight in the awarding rule that reflects its relevance for the contracting authority; and
 - **Mitigating opportunities for communication amongst competitors**⁴⁴.
26. The above-mentioned principles and measures should be adopted, with the necessary adaptations, in the case of public road passenger transport contracts. Some aspects take on added relevance in this context and are thus discussed in detail below.

3.1. Method for awarding the public service contract

27. In view of the benefits of competition *for* the market, for consumers and for the efficient allocation of public resources, the award of the service through a public tender should be privileged. In that

⁴¹ See “[Guide of best practices in fighting bid-rigging in public procurement](#)”, published by AdC in December 2015.

⁴² For illustrative purposes, through the simplification of procedures, the aggregation of procedures (considering the impact on the participation of small potential candidates) and the use, whenever possible, of electronic means.

⁴³ E.g., related to the quality of service and after-sales service provided and previous performance in providing the service.

⁴⁴ For illustrative purposes, through the communication between the contracting authority and individually with each participant; the weighting of the information related to the proposals to be made available to the participants; and the requirement that in the case of use of external consultants be added a declaration of confidentiality and absence of conflicts of interest.

sense, the use of direct awards, namely to the internal operator, should have an exceptional and, therefore, subsidiary nature.

28. **For public tenders, the legal and regulatory framework should define a set of principles applicable to the terms of reference of the tender and the contract so as to promote transparency, non-discrimination of (potential and effective) participants and proportionality.** In line with the legally established principles, the AdC highlights the relevance of ensuring a precise and transparent definition, in the terms of reference and the contract, of the following:
- **The nature and scope of the public service obligations, that should not exceed those that are essential for the provision of the service⁴⁵;**
 - **The compensation for public service obligations, that should avoid overcompensation, while ensuring the financial sustainability of the provision of the service⁴⁶;**
 - **The nature and scope of any exclusive rights, that should not exceed those essential for the protection of the economic balance of the contract and should not prevent the competitive provision of commercially viable services⁴⁷;**
 - **A system of incentives and penalties linked to the operator's performance⁴⁸; and**
 - **A scheme for monitoring compliance regarding public service obligations;**
29. In cases of direct award to the internal operator, the procedure should be undertaken in a transparent and rigorous way.⁴⁹
30. **The attribution of exclusive rights in public service contracts, in a given geographic area, does not prevent or limit other operators or the transport authorities, directly, from providing other services and, in particular, “express services”⁵⁰.** The recommendation by the AdC aimed at promoting the effective liberalization of “express services”⁵¹ is thus hereby reiterated.

3.1.1. Incentives and monitoring mechanism

31. **In order to capture the benefits of competition for the market, it is also important to foresee, in the contract, incentives and monitoring mechanisms,** so as to promote an efficient and effective implementation of the contract.
32. **As advocated by the AdC in its Study on Competition in the Port Sector⁵² (2018), the effective implementation of a concession contract depends on the existence of a credible mechanism of incentives and penalties,** linked to the performance of the concessionaire. This is key to achieve the goals and objectives established in the contract (as a result of a competitive process).

⁴⁵ See article 23 (1) of RJSPTP.

⁴⁶ See article 24 (3) of RJSPTP.

⁴⁷ See recital 8 of Regulation (EC) No. 1370/2007; and article 27 (3) of RJSPTP.

⁴⁸ See article 20 (5) of RJSPTP.

⁴⁹ See recital 30 of Regulation (EC) No. 1370/2007.

⁵⁰ See article 27 (3) of RJSPTP.

⁵¹ See AdC's recommendation regarding the legal diploma that regulates the access to and the provision of the public passenger long distance bus routes (“express services”) and that regulates the access to interfaces and bus terminals, of October 2019. In that context, AdC defended that: (i) be considered the elimination of the need for the provision of the service to require (prior) authorisation from the IMT (see article 4 (1) of Decree-Law No. 140/2019); (ii) be authorized, as a rule, the entry of operators with “express services” into regions covered by public service contracts; and (iii) be assessed the need for AMT to issue a prior binding opinion on the possibility that the (new potential) service could compromise the economic balance of an existing or adjudicated public service contract (see article 4 (7) and article 7 (1) (a) of Decree-Law No. 140/2019), which may lead to the granting (with or without restrictions) or to the rejection of the “express service” provision request.

⁵² Available here, paragraphs 203 and 221.

33. **In order to promote the benefits that accrue to consumers from competition for the market, the granting entity should consider foreseeing, in the tender's terms of reference, performance indicators and incentives**, namely in terms of service quality.
34. **The incentives related to the quality of service may be measured through various indicators, namely those related to operational performance on relevant quality dimensions**, such as the service's timeliness or cancellations of services/frequencies. The quality of service may also be assessed through passenger satisfaction surveys that focus on parameters relevant to consumers, or through "mystery-client" type of assessments.
35. **Performance monitoring and the incentives mechanism related to the quality of service are key to allow capturing the benefits of competition for the market.**
36. **An effective monitoring of the contractual commitments after the contract award is crucial for the incentives mechanism to be credible and to create the necessary discipline.**
37. **In short, in order to capture the benefits of competition for the market, a mechanism with clear and objective performance indicators and associated incentives, based on quality of service, should be foreseen in the tender's terms of reference. Furthermore, the tender documents should envisage a performance monitoring mechanism.**

3.2. Award of the public service contract divided into lots

38. The provision of a public road passenger transport service requires significant financial resources from the operator⁵³. The greater the number of service routes and the geographical area covered by the service, the greater the financial resources required.
39. **Small operators tend to have a disadvantage vis-à-vis larger competitors in tenders to award the provision of the service.** In fact, small operators tend to have access to less financial resources or to have access to the same financial resources under less favourable conditions and, therefore, may lack the financial capacity to participate in the tender.
40. As such, when the size of the contract limits bidder participation in the current or future tenders, the division of the contract into lots should be considered⁵⁴. Greater participation will promote competition for the market and thus the benefits for consumers and the efficient allocation of public resources. The competitive advantage for larger operators will be greater the higher the barriers to entry and expansion in the market that stem from the size of the contract.
41. **Nevertheless, the way in which the contract is divided into lots may facilitate market sharing and entail efficiency losses in the service provision** (namely, if there are relevant synergies associated with the aggregation of complementary lots⁵⁵).
42. **As such, the design of the procedure should mitigate these risks.** For that purpose, consideration should be given to options such as (i) **adopting the possibility of combining several lots** in order to mitigate potential efficiency losses; (ii) **defining a number of lots that is lower than the expected number of participants** in the procedure to reduce the risk of market sharing; and (iii) **limiting the number of lots that can be awarded to each tender participant in order** to avoid the concentration of lots in a single operator.
43. **Additionally, the procedure rules should not jeopardize the attractiveness of the activity being awarded.** In that sense, the lots should be sufficiently large to encourage participation and sufficiently disaggregated so as not to dissuade smaller operators from participating.

⁵³ E.g., costs with the acquisition, operation and maintenance of used vehicles, costs with infrastructures (in particular, shelters, terminals, parking lots and repair facilities) and costs with contracted employees (including drivers).

⁵⁴ Under the terms of article 46-A of the Portuguese Code of Public Procurement, approved by Decree-Law No. 18/2008.

⁵⁵ In particular, due to the existence of economies of scale and/or overlapping of routes.

44. Thus, the tender rules should take the specificities of the market into account and the need to balance the objectives mentioned above. As such, the procedure should be designed based on elements such as the number of potential participants, unit costs and estimates of synergies between lots.

3.3. Access to strategic information for participation in the tender

45. The provision of a public road passenger transport service enables the operator to acquire knowledge and know-how which constitute key strategic information for carrying out the activity⁵⁶. This information is generally related to the revenue and demand for the service⁵⁷ and the underlying costs⁵⁸. The quantity and quality of the information shall increase the longer the service provision and the wider the geographic area covered.

46. **As such, the incumbent operator tends to have an advantage over its competitors** in a tender for the award of the (future) provision of that service or another service in the same region⁵⁹.

47. **This advantage can have a decisive influence on the tender outcome.** The information advantage allows the incumbent operator to more accurately assess the economic and financial value of the activity being awarded. The incumbent operator thus faces less uncertainty and holds information to assist the bid preparation⁶⁰. Competitors, on the other hand, face greater commercial risk, which can lead to less competitive bids or even deter their participation altogether.

48. In this regard, the European Commission (EC) considers that “[t]o make the competitive tendering procedure more transparent, competent authorities should provide all the relevant technical and financial data, including information about the allocation of costs and revenues, to potential bidders to assist in the preparation of their offers. However, this shared information cannot undermine the legitimate protection of the commercial interests of third parties.”⁶¹.

49. **Additionally, it should be noted that the information is also relevant for transport authorities.** The more information is available to the transport authorities, the lower the asymmetry of information between the granting entity and the incumbent operator and the higher the quality of the tender design.

50. **This understanding is shared by the AMT, by several transport authorities and by several operators**⁶². In particular, the AMT has already mentioned that the choice made by the transport authorities to award exclusive rights in the provision of the service, through the conclusion of concession contracts, resulted, in some cases, from the lack of full knowledge of all relevant factors of the organization and operation of the public service⁶³.

51. **The mitigation of the information asymmetry between the incumbent operator, on the one hand, and competitors and transport authorities, on the other hand, will promote bidder participation** in tenders for awarding public road passenger transport service contracts, to the benefit of consumers and the efficiency of the allocation of public resources.

⁵⁶ See AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundão, in particular, section 6.1.2.2.2.

⁵⁷ E.g., number of passengers transported, number of kilometers traveled and value of tickets sold.

⁵⁸ For illustrative purposes, number of vehicles used and respective capacity, value of fuel consumed and number of employees (including drivers) hired and respective remuneration.

⁵⁹ See AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundão; section 6.1.2.2.2..

⁶⁰ See, for illustrative purposes, in this regard, the following decisions of competition authorities, regarding changes in control over assets resulting from tender procedures for contracting public road passenger transport services: (i) AdC’s decision in Case Ccent Process 51/2019 - RBI/Fundão Group; (ii) EC’s decision in Case COMP/M.5855 - DB/ARRIVA, of August 2010; and (iii) decision by the *Autorité de la Concurrence* under Case Process 10-DCC-198, of December 2010.

⁶¹ See section 2.3.2. of the Communication from the EC, entitled “Interpretative guidelines concerning Regulation (EC) No. 1370/2007 on public passenger transport services by rail and by road” (2014/C 92/01), of March 2014.

⁶² See AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundão, in particular, section 6.1.2.2.2. and section 8.

⁶³ See AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundão, paragraph 245.

52. **As such, it is crucial to make available, to tender participants, the necessary elements of information to allow for an adequate bid preparation**, thereby reducing the information asymmetry and the associated barriers to entry.
53. The current regulatory system foresees an obligation for operators to register and, whenever necessary, update in the Geographic Information System for Career Management (SIGGESC)^{64,65} the services and respective alphanumeric and geographic data and a set of annual information on the service provision⁶⁶. The transport authorities are responsible for ensuring that operators register the data in the SIGGESC, as well as for validating the information⁶⁷. These items of information may be publicly disclosed, in particular, for the purpose of preparing tender procedures.
54. **However, in August 2019, the AMT reported receiving information on situations of (full or partial) non-compliance by operators⁶⁸** and recommended that operators fully comply with the obligation and that transport authorities report any non-compliance to the AMT⁶⁹.
55. **Following those recommendations, the AMT carried out a monitoring action to assess operators' compliance with their obligations for 2018⁷⁰**. The AMT concluded that there was evidence of a low level of compliance and insufficient systematic procedures for the validation by transport authorities of the data introduced in SIGGESC by the operators. The AMT indicated that, as a result, it would initiate the competent administrative procedures.
56. The implications of information asymmetry on bidder participation in tenders for awarding the provision of the public road passenger transport services contracts could be mitigated by the timely publication by transport authorities of the annual report on the public service obligations within their competence⁷¹. The reports should include a minimum set of information on the contracts⁷². The AMT has determined that the first report should cover the time period between January 1, 2016 and December 31, 2019⁷³ and should be published by October 1, 2020^{74,75}.
57. In light of the above, it is key to:
- **Ensure that tender participants are provided with the relevant information necessary for bid preparation**, reducing information asymmetry and the associated barriers to entry;
 - **Ensure that operators fully comply with their obligations to provide accurate and up-to-date information**; and

⁶⁴ See point No. 1 (1) of the Deliberation No. 2200/2015 and article 22 (2) (3) (4) of RJSPTP.

⁶⁵ See article 22 (8) of RJSPTP.

⁶⁶ In particular, for each service: (i) routes; (ii) stops; (iii) schedules; (iv) tariffs; and (v) any connections with other public services and public facilities.

⁶⁷ See point No. 1 (1) of the Deliberation No. 2200/2015 and article 22 (2) (3) (4) of RJSPTP.

⁶⁸ Failure by operators to comply with their obligation to include the elements of information in the SIGGESC constitutes an administrative offense punishable with a fine (see article 46 (1) (e) of RJSPTP). AMT is responsible for opening and investigating administrative offenses and applying the respective fines (see article 48 (1) of RJSPTP). The transport authorities are required to transmit to AMT the facts that are subject to the administrative offenses in question, immediately after taking knowledge of its verification, and to collaborate with AMT in the investigation of such procedures (see article 48 (3) of RJSPTP).

⁶⁹ See AMT's recommendation on legal obligations for the transmission of information by transport operators, of August 2019.

⁷⁰ See AMT's press release entitled "Supervisory action – Compliance with legal obligations for the transmission of information by transport operators", of February 2020.

⁷¹ See article 7 (1) of the Regulation (EC) No. 1370/2007.

⁷² See AMT's guidelines regarding the reporting and the publicity obligations contained in Regulation (AMT) No. 430/2019 and in Regulation (EC) No. 1370/2007, of September 2019.

⁷³ See AMT's guidelines regarding the reporting and the publicity obligations contained in Regulation (AMT) No. 430/2019 and in Regulation (EC) No. 1370/2007, of September 2019.

⁷⁴ See AMT's press release entitled "Guidelines – Reporting and Publication Obligations for Public Service Obligations – Deadline Extension", of April 2020.

⁷⁵ These "Reports about Public Service Obligations" are published in AMT's webpage.

- **Foresee, in tenders' terms of reference, an obligation for operators to report essential information to the transport authorities**, to be included in the contract, subject to a penalty mechanism in the event of non-compliance.

58. In that context, it is the responsibility of the transport authorities to:

- a) **Ensure the permanent updating of the SIGGESC by the operators and the accuracy of the data**, with a view to its public disclosure, in particular for the purposes of preparing the tender procedures;
- b) **Timely publish the information related to the public service obligations** of the respective competence and ensure the disclosure of the reports in due time; and
- c) **Make available to tender participants the necessary information for evaluating, with the greatest possible rigour, the economic and financial value of the activity** under award and include that information in the tender documents.

3.4. Duration of the contract

59. **The duration of contracts for public road passenger transport should, as a rule, not exceed 10 years for bus services**⁷⁶. This maximum duration should be without prejudice to transitional rules⁷⁷ and norms applicable in the case of direct award on account of a breakdown or imminent risk of breakdown of the service or emergency situations⁷⁸.

60. Additionally, the duration of contracts can be extended in the following cases⁷⁹:

- Where operators provide assets that are relevant in relation to the assets needed to carry out the contract and predominantly linked to the transport services covered by the contract⁸⁰, the duration of contracts may be extended by a maximum of half of their original duration (i.e. up to 15 years);
- Where justified by costs deriving from a particular geographical area, the duration of contracts in the outermost regions can be extended by up to a half of its original duration (that is, up to 15 years); and
- Where justified by the capital depreciation in relation to exceptional investment in infrastructure or vehicles and where contracts are awarded following a competitive tendering procedure, contracts may have a longer duration.

61. **In this respect, the AdC has advocated, for all economic sectors, that the duration of a concession should not exceed the period during which the concessionaire may reasonably expect to recoup the investments** made for the provision of the services, in addition to the remuneration of the invested capital, taking into account the investments necessary to achieve the contractual objectives^{81,82}. This principle should apply regardless of whether the service operation is awarded through a competitive procedure or a direct award (internal operator).

The duration of a public service contract should ensure the service provision is subject to competition on a regular basis and, at the same time, ensure that there are incentives for

⁷⁶ See article 4 (3) of Regulation (EC) No. 1370/2007.

⁷⁷ See article 8 of Regulation (EC) No. 1370/2007.

⁷⁸ In such cases, the duration of the contract may not exceed the period necessary to conclude a tender procedure and may in no case exceed two years (see article 5 (5) of Regulation (EC) No. 1370/2007 and article 19 (4) of RJSPTP).

⁷⁹ See article 4 (4) of Regulation (EC) No. 1370/2007.

⁸⁰ For illustrative purposes, repair facilities and infrastructures (see section 2.2.7. of the EC Communication (2014/C 92/01).

⁸¹ See paragraph 23.

⁸² This principle is in line with article 18 (2) of Directive No. 2014/23/EU, on the award of concession contracts, and with article 410 (1) of the Portuguese Code of Public Procurement.

operators to enter the market and make investments. In particular, “[C]ontracts of long duration can lead to market foreclosure for a longer period than is necessary, thus diminishing the benefits of competitive pressure”⁸³.

62. **It should also be noted that the longer the duration of the contract, the greater the risk of a significant discrepancy between the terms of the contract and the reality of the market.**
63. Additionally, the AdC has advocated, for all economic sectors, that concession contracts should, as a matter of principle, be subject to competitive procedures as often as possible.
64. **The AdC has also advocated, for all economic sectors, that concession contracts should, as a matter of principle, be the subject of a (new) tender when they reach their term** (as opposed to the extending the existing contract)⁸⁴.
65. **The extension of a contract duration reduces the opportunities of competition for the market** and delays the fine-tuning of service operating parameters to market developments.
66. **These considerations gain added relevance in public road passenger transport service that were directly awarded** and, consequently, without being subject to competition for the market.

3.5. Access to infrastructures and support facilities for provision of the public service

67. The public road passenger transport service cannot be provided, at least under appropriate conditions, without a set of infrastructures (interfaces and bus terminals) and support facilities⁸⁵. The support facilities include car parks, repair facilities, vehicle washing and sanitation facilities, dedicated fuel stations and offices.
68. **Operators that own infrastructure and support facilities in a given region tend to have an advantage over competitors** in tenders for awarding public road passenger transport service contracts in that region. This advantage will be greater and more difficult to replicate, the larger the region, the more lines are explored and the more infrastructure and support facilities have to be provided by operators.
69. **As a rule, operators and in particular the largest operators in a given region already have such infrastructure and support facilities in place**⁸⁶. The remaining operators tend to face a higher investment cost in infrastructure and facilities, which may lead to less competitive bids or even discourage their participation in the procedure.
70. **It is thus important to assess potential measures that mitigate the advantages and reduce obstacles and barriers to entry and expansion** in the market, to the benefit of consumers and of an efficient allocation of public resources.

3.5.1. Interfaces and terminals

71. **In November 2020, there were 121 interfaces and terminals of public road passenger transport service listed in mainland Portugal.** For many of these interfaces and terminals, the operators of these infrastructures are also service providers and, as such, also users of the infrastructures⁸⁷.
72. **Access to these interfaces and terminals of public road passenger transport service is regulated**⁸⁸.

⁸³ See recital 15 of Regulation (EC) No. 1370/2007.

⁸⁴ See paragraph 23.

⁸⁵ See AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundação, in particular, section 6.1.2.2.4.

⁸⁶ See AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundação, in particular, section 6.1.2.2.4.

⁸⁷ See the [IMT’s mapping of the public road passenger transport service interfaces and terminals](#), consulted in 27 November, 2019; see, also, AdC’s decision in Case Ccent 51/2019 – RBI/Grupo Fundação, paragraph 317.

⁸⁸ See Decree-Law No. 140/2019, of 18.09.2019.

73. **In particular, a number of access obligations are imposed on the operator of a public road passenger transport service interface or terminal.** The operator should grant access (to third parties) to the infrastructure under fair, non-discriminatory and transparent conditions⁸⁹. The operator can only refuse an access request for reasons related with lack of capacity and, if it does refuse, it must provide the applicant with viable alternatives to the infrastructure in question^{90,91}. The municipality or transport authority should, where no such alternatives exist, ensure that bus stops are available to guarantee passenger safety⁹².
74. **The applicable legislation also states that the operator must take a decision on a request for access no later than 30 days** after the request was submitted⁹³.
75. **These rules are of particular importance in cases where the interface or terminal is managed by an entity that also operates transport services in that region.** In such cases, the management entity may have incentives to foreclose access to the infrastructure by competitors for transport services, in particular by refusing and/or delaying access. This may discourage or prevent competitors from participating in tenders for that region.
76. **In this regard, the AdC advocated, in 2018, in its Action Plan⁹⁴,** that entities (potential or effective) competing for transport services should not be allowed to manage a central bus station.
77. **In October 2019, the AdC also issued recommendations highlighting the relevance of ensuring an effective access regime to public road passenger transport interfaces and terminals⁹⁵.** The recommendations aimed at promoting the implementation of an effective, proportionate and dissuasive sanctioning regime, through the following measures:
- Sanction the failure of operators of interfaces and terminals of road passenger transport service to comply with the deadline for deciding on a request to access such infrastructures;
 - Assess the adequacy of the maximum period for operators of interfaces and terminals for road passenger transport services to decide on an infrastructures access request; and
 - Assess the appropriateness and proportionality of the minimum and maximum values set for the fines⁹⁶.
78. In addition, in accordance with the applicable legislation⁹⁷, with regard to the cost to be incurred by public road passenger transport service operators, interface and terminal operators must publish the list of services provided and the respective prices on their website.
79. **In this regard, and similar to other regulatory provisions on fair and non-discriminatory access by third parties to infrastructures, the AdC advocated that the legislation should provide the principles**

⁸⁹ See article 12 (8) of the Decree-Law No. 140/2019.

⁹⁰ These correspond to alternative interfaces or terminals that are economically acceptable to the applicant, provide an infrastructure comparable to the requested infrastructure, provide connection to the requested infrastructure, enable the passenger access to other means of public transports and allow the applicant to carry out the transport service that he/she explores in a similar way compared to the requested infrastructure (see article 12 (1) (c) of Decree-Law No. 140/2019).

⁹¹ See article 12 (4) of the Decree-Law No. 140/2019.

⁹² *Idem*.

⁹³ See article 12 (5) of the Decree-Law No. 140/2019.

⁹⁴ See chapter III.4.1.2. of the Report “AdC’s Action Plan for the legislative and regulatory reform of 13 self-regulated liberal professions and for the road, rail, maritime and port transport sectors”, of November 2018, prepared within the scope of the “AdC Impact 2020 Project”, comprising the joint Project of AdC and the Organization for Economic Co-operation and Development (OECD).

⁹⁵ See AdC’s recommendation regarding the legal diploma that regulates the access to and the provision of the public passenger long distance bus routes (“express services”) and that regulates the access to interfaces and bus terminals, of October 2019.

⁹⁶ See article 17 (1) (h) (i) (2) (e) of the Decree-Law No. 140/2019.

⁹⁷ See article 12 (6) (a) of the Decree-Law No. 140/2019.

to govern access prices - in terms of adequacy, proportionality and non-discrimination -, as well as foresee their assessment and monitoring by an independent entity.

80. **This scrutiny is crucial to ensure the effectiveness of the access regime**, especially in cases where the infrastructure is managed by an entity that may also operate transport services in the region concerned.

3.5.2. Support facilities

81. Regarding support facilities (car parks, repair facilities, vehicle washing and sanitation facilities, dedicated fuel stations and offices), in its decision in Case Ccent 51/2019 - RBI/Grupo Fundão, the AdC concluded that access to this type of facility tends to provide incumbent operators with an advantage vis-à-vis their competitors. This can strengthen barriers to entry and expansion of new operators and small-scale operators⁹⁸.
82. **As such, the AdC highlighted the relevance of transport authorities being aware of these potential barriers and their impact on bidder participation in tenders**, and that this aspect should be taken into account in tender design.
83. As such, transport authorities should assess the possibility of making any support facilities they may have, available for operators selected to provide the service in a given region⁹⁹, so as promote participation in the tender. If such a possibility exists, it should be clearly set out in the terms of reference of the tender.

3.6. Fleet to be used in the provision of the public service

84. **Tenders for awarding the provision of public road passenger transport service may define requirements related to the fleet** for operating the service, which should be clearly stated in the tender's terms of reference. These requirements include the following:
- The entity responsible for the investment (namely, the operator or the transport authority, which will make the fleet available to the operator) and the entity to which the fleet reverts to at the end of the contract term (particularly relevant in cases where the investment is the responsibility of the operator); and
 - Fleet characteristics such as condition¹⁰⁰, age¹⁰¹, fuel, image¹⁰², capacity¹⁰³, accessibility for persons with reduced mobility, brand and components of the vehicles.
85. **Regarding requirements related to the age of the vehicles/fleet, the transport authority should assess the proportionality of alternatively including tender requirements reflecting the vehicles and/or fleet use and depreciation¹⁰⁴**, especially if the operator is responsible for the investment. The

⁹⁸ See AdC's decision in Case Ccent 51/2019 – RBI/Grupo Fundão, *e.g.*, paragraphs 327, 328, 332 and 333.

⁹⁹ In that sense, Steer Davies Gleave Report held that transport authorities may consider owning or leasing vehicle maintenance depots and make them available to participants in competitive procedures, for the award of public passenger road transport service, that they choose to carry out this provision (see Report "*Study on economic and financial effects of the implementation of Regulation 1370/2007 on public passenger transport services – February 2016*", 7.40, elaborated by Steer Davies Gleave for the EC).

¹⁰⁰ For illustrative purposes, fleet-related requirements namely the fact that it could be made up, in whole or in part, of used vehicles.

¹⁰¹ For illustrative purposes, requirements related to the maximum age of the vehicles and/or the average age of the fleet.

¹⁰² For illustrative purposes, requirements related with the colour of the vehicles.

¹⁰³ For illustrative purposes, requirements related with the minimum number of passengers that can be carried in the vehicles.

¹⁰⁴ For illustrative purposes, the maximum and/or average number of kilometers traveled by vehicles.

AdC has advocated for a similar approach in the case of transportation services of goods in vehicles with a gross weight of 2,500 kilograms or more and in the rent-a-car and rent-a-truck activities¹⁰⁵.

86. Hence, without prejudice to other objectives of public interest (e.g., environmental), rather than age related requirements, the assessment of fleet use and depreciation (the variables that are actually relevant to the operation of the service) should be considered, taking into account the result of the (mandatory) technical roadside inspection of the vehicles ¹⁰⁶.
87. **These alternative ways of measuring fleet depreciation mitigate the impact that requirements related to the age of vehicles** may have on the participation of operators with an older fleet, due to the greater investment that they have to undertake so as to comply with a requirement of this nature.

3.7. *Compensation for public service obligations*

88. **Compliance with public service obligations in connection with the provision of public road passenger transport service may confer the operator's right to financial compensation by the transport authority**¹⁰⁷. The compensation cannot exceed the net financial effect resulting from compliance with the public service obligations on the operator's costs and revenues¹⁰⁸. This matter shall be assessed by AMT in its ex-ante binding opinion on the terms of reference of the contract.
89. **Such compensation should be determined so as to avoid overcompensation**, which is detrimental to consumers, and also so as to ensure the financial sustainability of the service provision.
90. **In this regard, it is crucial that the compensation in question and the underlying public service obligations are governed by the principles of non-discrimination, transparency and proportionality**¹⁰⁹, so as to mitigate the risk of artificial market foreclosure and the creation of disproportionate barriers to entry in the market.

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¹⁰⁵ See Chapters III.4.2.1., III.4.3.1. and III.4.3.2. of the Report "AdC's Action Plan for the legislative and regulatory reform of 13 self-regulated liberal professions and for the road, rail, maritime and port transport sectors".

¹⁰⁶ The road technical inspection regime for commercial vehicles in circulation is established in Decree-Law No. 144/2017.

¹⁰⁷ See article 24 (1) of RJSPTP.

¹⁰⁸ See article 24 (3) of RJSPTP.

¹⁰⁹ The jurisprudence of the Court of Auditors with regard to prior visa for public road passenger transport service contracts is based on a similar understanding. In fact, that institution specifies that the award of financial compensation requires: «*a. The express and detailed enunciation of specific, objective and quantifiable elements for the calculation of the compensation for public service obligations; B. Comparative calculations of the total costs and revenues of the private company in a scenario of the existence of a public service obligation, with those resulting from a scenario without the existence of a public service obligation and in which the services covered were operated under market conditions; c. The valuation of the net financial effect resulting from the sum of the incidences, positive or negative, of the execution of the public service obligation on the costs and revenues of the public service operator*» (free translation) (see judgments of the 1st Section in Subsection of the Court of Auditors No. 5/2018, of 23.01.2018, and No. 4/2019, of 12.02.2019, and judgments of the 1st Section in Plenary of the Court of Auditors No. 19/2019, of 25.06.2019, and No. 12/2018, of 20.06.2018).