

# **Concessions and Competition Law & Policy**

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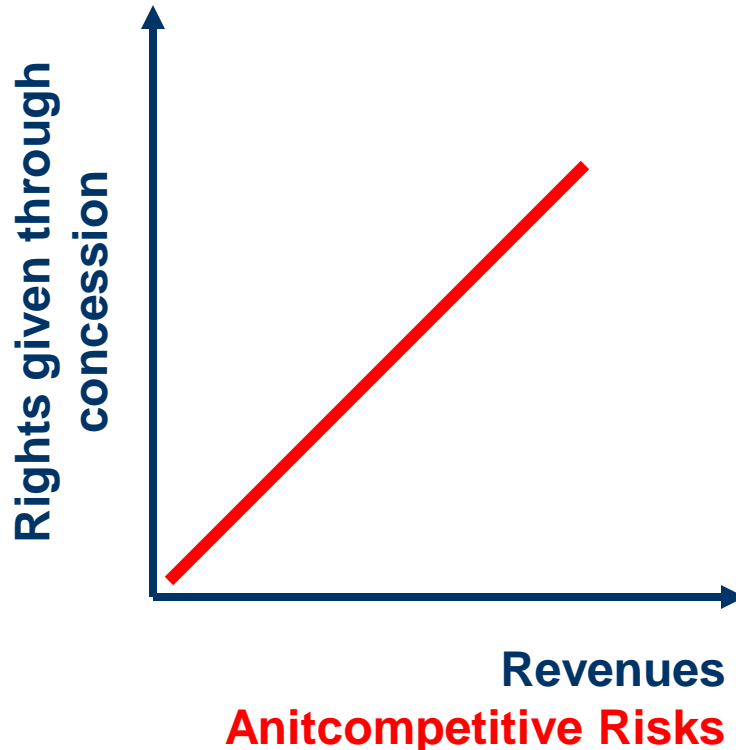
# Goals and Methods

- Methods:
  - Competition
  - Liberalisation
  - Privatization
  - Regulation
  - Deregulation
  - Concessions
- One common goal:
  - Efficiency & consumer welfare...
  - May or may not be alternatives to each other.
  - Should be used as complementary in some cases.

# Need for Concessions

- Market failure – natural monopolies.
- Inefficient public management
- Lack of funds for infrastructure and substantial investments\*.
- Efficiency, consumer welfare, investment.  
(those needs may contradict)

# Why Should CAs Intervene?



- **Gains in short run**
  - High revenues...
  - Treasury
  - Politicians
  - Authorities
- **Gains in long run**
  - Competitive market
  - Competition Authorities
  - Public (citizens)
- **Who pays the difference?**

\*Please note that this graph is just for illustrative purposes, not based on an mathematical equation or computation. So, the ratios may differ.

# How & When Should CAs Intervene?

Timing	Method
Drafting regulations for markets	ex-ante, advocacy.
Drafting contracts to open up the markets	ex-ante, advocacy.
Authorizing the bidders	ex-ante, advoc./enforc.
Monitoring bidding process	instant/ex-post, enforcement
Authorizing the outcome	ex-post, enforcement
Enforcing the contracts	ex-post, advoc./ enforcement
Renegotiation process	ex-post, advoc./enforcement
In the playground left for the free will of the concessionaire through regulation.	ex-post, enforcement
Introducing new regulations	ex-ante, advocacy

# Example 1: Mersin Port

- **Phase I** – TCA's opinion  
Provide at least intra-port competition.
- **Developments** – Privatisation Authority  
Rules introduced
- **Phase II** – TCA's decision  
No need for dividing the port,  
Inter-port competition provided.

# Example 2: GSM Licences

- **Intervention of CA before the bidding:**
  - Elimination of anticompetitive provisions
  - Concerns about the lack of regulatory authority
- **Outcome of the Bidding Process**
  - One shot, three games: Highest bidder bought a licence, blocked the second licence and put high sunk costs on the third. (Record revenue)
- **Afterwards:**
  - Roaming wars, market is locked due to poor regulation and inefficiency of regulatory authority.
  - TCA used antitrust rules – imposed fines on incumbents
  - TCA approved the merger of two newcomers, preferring one strong competitor rather than two against the incumbents.

# Example 3: Electricity Distribution

- **Intervention of CA before giving the concessions**
  - 17 regions, no regulatory authority.
  - fixed price must be removed.
  - room for competition for certain customers.
- **CEAS Case**
  - Transmission and distribution company preventing the access of an electricity generator.



# Example 4: Hidden Concessions

- **Domestic Passenger Flights**
  - Decision of the Directorate General for Civil Aviation
  - Blocking market access for newcomers
- **BELKO Case**
  - Government of Ankara setting standards for public health

# Conclusion (1)

- Authorities Giving Concessions:
  - May not see the overall picture
  - May only focus on short-run benefits
  - May fail in choosing the best method
  - May pursue other public benefits (Investment & Universal Service v. Competition )
  - May fail in making necessary regulations beforehand.

# Conclusion (2)

- Competition Authorities:
  - Can use competition advocacy powers
  - Can use antitrust enforcement powers
  - Must intervene timely and with caution.
- Regulation and intervention have their own costs...
- Competition and other goals (investment, universal service etc.) should be carefully balanced.

**Thanks For Your Attention**

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