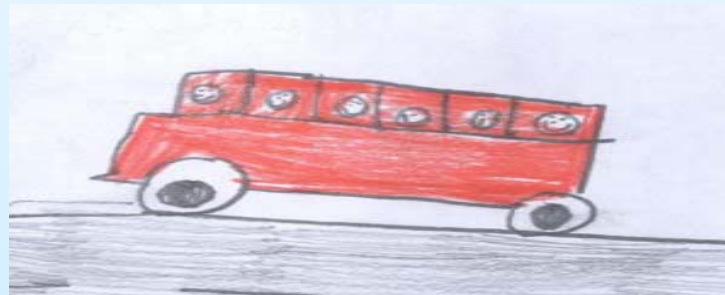




**The amended EU legislation
of the public transport services tendering process
*history and procedures regards the new proposal***



Mr. Peter FAROSS
Directorate General for Energy and Transport
Sinai (Romania) – 1 July 2005





EU legislation in force

Regulation 1191/1969:

- **obligation to terminate** (most) public service obligations
- **obligation to compensate** remaining obligations (detailed **rules**)
- local operators **are excluded** from the scope

Regulation 1893/1991:

- public services shall be agreed in form of **contracts** - **certain imposed obligations may continue** (derogations for tariff obligations in passenger transport and local operators)
- local operators fall within the scope but benefit from **derogation**





Gradual market opening

Competition introduced by national law:

- **deregulation** of bus transport in the UK (1986)
- **controlled competition** in other countries
 - bus routes line by line (S, FIN, early 90s)
 - whole urban transport networks (F, mid 90s)
 - rail networks (S, D, UK, late 90s)
 - subcontracting of bus routes (D, A, B, late 90s)
 - NL will open all urban transport networks to competition by 1.1.2009





Consequences of controlled competition

- **Successful:** more passengers, lower costs
- Increasing number of “**international**” operators
- Remaining **legal uncertainty:**
 - does EU law fully apply to local transport ?
 - what is the scope of Reg. 1191/69 ?
 - nature of compensation for PSOs, state aides ?
 - how can exclusive rights be justified ?





History 2000 to 2004

- 26.07.2000 the Commission's initial proposal
- 14.11.2001 first Reading in E.P.
- 21.02.2002 the Commission's (first) modified proposal
- 24.07.2003 the ECJ's "Altmark" judgement
- 12.05.2004 Commission's White paper on services of general interest
- 16.01.2005 First Commission decision on a package of measures concerning State aides in the form of compensations granted in relation to the operation of services of general economic interest





The “*Altmark*” judgement

“*Altmark*” replies to 3 of 4 legal uncertainties :

- EU law applies to local transport unrestrictedly,
- Reg. 1191/69 is generally applicable, provided that MSs do not choose to derogate local operators,
- Compensation for PSOs is not state aid, provided that it is fair (see third and fourth conditions).

“*Altmark*” offers no answers regarding exclusive rights !





Situation in 2005

- Growing legal uncertainty, also in reaction to the “*Altmark*” judgement.
- No progress in the Council.
- Commission services work on a second revised proposal.

time to decide





The second revision – objectives

The Commission is guided by **three objectives** for the new revision of its proposal :

- simplicity,
- flexibility, and
- more room for subsidiarity.





The second revision – main principles I

These objectives have been translated into the following **main principles** :

- Public service obligations have to be **compensated**,
- public service obligations requesting compensation or the awarding of an exclusive right have to be agreed in form of a bilateral legal act, a **contract**,
- contracts have to be of **limited duration**,





The second revision – main principles II

- contracts shall be awarded under transparent, objective and non discriminatory procedures - «**regulated competition**»
- a contract may be **directly awarded** in certain cases (small value, emergency...), and
- competent authorities may provide transport service themselves or may, under certain conditions, directly award the contract to an operator - «**in-house operation**»





Where are we now ?

Internal consultation within the Commission's services is over.

The new revision will be adopted by the College of Commissioners before the summer break.

The revised proposal will thereafter be transmitted to the E.P. and the Council to achieve final adoption.

