



STRICLY PRIVATE AND CONFIDENTIAL

Ms. Margrethe Vestager
EU Commissioner
Competition
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January 7th, 2020

Dear Ms. Vestager,

We make reference to the collapse of the “Morandi Bridge” that occurred on August 14th, 2018 and to the subsequent declarations and actions of the Italian Government after this terrible event.

The “Morandi Bridge” is part of the A10 “Genoa – Savona” motorway that is managed under a concession agreement by *Autostrade per l’Italia (“ASPI”)*. In past years, financial institutions and private investors have made significant investments in both ASPI, the main Italian motorway concessionaire, as well as in its controlling listed company, Atlantia, who controls 88% of ASPI.

Today, the largest shareholders of ASPI are international institutional investors coming from Europe, Asia and the Middle East:

- Appia Investments (a consortium between Allianz and EDF Invest) and Silk Road Fund directly hold together a 12% of ASPI; and
- The Government of Singapore Investment Corporation (GIC), The Children’s Investment Fund (TCI) and Fondazione CRT hold (independently of each other) 25% of Atlantia and therefore indirectly 22% of ASPI.

These investments in Atlantia and ASPI were predicated upon a clear, transparent and stable regulatory regime set by the law and defined by a concession contract signed between Atlantia and the Italian government. **Such agreements are protected by European laws and principles, including the principles of “legitimate expectation”, non-retroactivity”, “proportionality” and “impartiality”. All of which are being violated in this case.**

Indeed, the attitude and recent actions of the Italian Government since the collapse of the Genoa’s bridge are matters of serious concerns for the investing community:

- Immediately after the event (and before any formal act taken by the public prosecutor *vis-à-vis* the concessionaire) senior representatives of the Italian government have publicly stated that:
 - ASPI concession will be revoked in any case (i.e irrespective of the outcome of the on-going investigations);



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- The revocation of the concession, or even a nationalisation of the company, would not encompass paying the residual value net of penalties as defined by the concession contract;
- On December 30th, 2019 the Italian Cabinet adopted the so-called “*Milleproroghe*” law decree. In a nutshell, the law decree introduces the following:
 - The law decree also includes various other provisions aiming at making the revocation easier for the Italian government, infringing on various provisions signed between the two parties in 2008.
 - The starting point for compensation should be the book value of investments **as opposed** to the Net Present Value (NPV) of the future cash flow as defined by the existing concession agreements signed in 2008 by the Italian government and ASPI. For investors in ASPI, the introduction of such a provision will result in a lower compensation of 50%.

In these circumstances, the position taken by the Italian Government lacking reliable, factual and technical basis, is in breach of the concession agreement and is a violation of the partnership between the Italian government, the EU and private investors.

It should be remembered that the entire Italian motorway sector was reformed by the Italian authorities in 2008, to address concerns raised by the European Commission in certain infringement proceedings it had taken against Italy. Such proceedings were brought by the European Commission (formal notice (IP/06/1561)) after the Italian government in 2006, unilaterally and retroactively, modified the legal regime of existing concession contracts by way of various Law Decrees. Such unilateral action raised serious concerns among investors and was challenged by the Commission as a restriction on the free movement of capital and the freedom of establishment, undermining regulatory predictability and discouraging investment. Following the Commission's intervention, the Italian Government modified the newly passed 2006 Law Decree as requested by the Commission and undertook not to unilaterally change the concession regime in the future.

The current conduct of the Italian authorities is similar to that of 2006. It is actually worse if one considers that the Government is now envisaging the immediate termination of the concession. Based on their public declaration, the Italian government is using such event for intervening unilaterally and retroactively in an unjustified manner in violation of the rule of law that prevails in Italy and across the entire EU.

If the Italian authorities move in this direction, their conduct will compromise not only the companies affected but also investments made over the years. Such actions will irreversibly undermine the confidence of the financial community in the predictability of Italian regulatory frameworks, and across the entire European Union. Investments need stable regulatory frameworks, countries where the rule of law is applied and respected. This is what the EU stands for. Italy can't be an exception to this core principle.



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We believe that any revocation procedure cannot be executed before the assessment of causes and responsibilities that will emerge from the judiciary process. Any unilateral decision and Ministry-driven assessment of causes and responsibilities cannot be used as a tool to unlawfully revoke the concession at favourable economic terms for the Government and heavily detrimental to investors.

The ordinary and legitimate procedure to adopt a resolution to revoke the Concession is an administrative proceeding (as ruled under art. 8 and 9 of the concession contract), in which ASPI can actively participate, submitting its defensive arguments and which would allow ASPI to challenge any final decision taken by the authority, before a Court.

The Commission's intervention is urgently needed (as it occurred in 2006-2008) in order to prevent the Italian authorities from taking retroactive and unilateral measures in prejudice of several EU principles.

Yours sincerely,

Christopher Hohn

Chief Executive and Chief Investment Officer

