

**GRANTING A CONCESSION ON TRAKIA
MOTORWAY**

INTERIM REPORT

OF

**THE INVESTIGATION OF TRANSPARENCY INTERNATIONAL –
BULGARIA**

**ON THE PROBLEMS RELATED TO THE CONSTRUCTION OF TRAKIA
MOTORWAY AS A PUBLIC-PRIVATE PARTNERSHIP BETWEEN THE
REPUBLIC OF BULGARIA AND AVTOMAGISTRALA TRAKIA JOINT-
STOCK COMPANY**

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I. INTRODUCTION

This Transparency International – Bulgaria investigation has an exceptional nature. In its practice of observing and investigating privatization and investment projects initiated by the Bulgarian state during the last seven years, Transparency International has always followed the rules, which our international organization applies in its cooperation with the democratic state institutions around the world. These rules include an invitation and the establishment of official relations with the Government in the specific project or contract, the concluding of a cooperation agreement, on the grounds of which our experts gain access to the official documentation, against a confidentiality clause until the final concluding of the deal. The process ends with the publishing of an official report of our organization, which contains an assessment regarding the compliance with the criteria for transparency and legality of the procedures and the final results of the deal. Transparency International's positive assessment has always been a reliable certificate for the ability of the state institutions to restrict corruption and the conflict of interest in public relations.

Under this procedure Transparency International – Bulgaria took part in the observing of a series of transactions of the Bulgarian Government after 1998 and our assessments of the manner in which they ran were varying: from positive, in the cases for the second GSM operator, to definitely negative, in the first BTC privatization procedure, which was terminated, including upon our insistence as well¹.

As the national representative of the largest global coalition for combating corruption, Transparency International – Bulgaria has a network of national and international experts, who are prominent specialists in various areas of public life. In carrying out its activities the organization follows a consistent policy for the establishment of an environment of honesty and ensuring transparency of the work of the national institutions, the media and civil society. In its four years, not once did the Government of Simeon Saxe-Coburg express willingness to establish contacts with Transparency International regarding its economic projects – privatization or investment. And this is why we have not assumed the initiative for such cooperation – our work is very difficult if we are not a desired partner. We made an exception only for the concession contract for the Trakia motorway. For months signals were sent to us on suspicions related to the preparation of a gigantic corruption scheme, as a result of which the Bulgarian citizens would be forced to pay through the public state funds a 3 to 7 times higher price for the construction of the remaining 164 kilometers of the motorway's road-bed compared to the average European prices for construction of road infrastructure. During the last two months our regular monitoring of the Bulgarian media literally flooded us with analyses and assessments of the direct violation of the Bulgarian laws by the Government in its efforts to keep the preparation for the concluding of the concession in complete secrecy. The enormous scale of the potential damage to the national interests, as well as the unprecedented measures to isolate the public from information on the contract in preparation forced us to conduct this extraordinary investigation of the case.

As we already underlined, our reports are usually based on information – public and confidential – on the course of the contractual procedure and the finalization of the particular deal, which has been provided to us officially. In this case our official letter to the Minister of Regional Development and Public Works to give our organization access to monitor the contractual process was silently rejected. The Minister attempted to contact the international secretariat of Transparency International directly, obviously unaware of the rules and

¹ The reports on the performed monitoring may be found on the Transparency International – Bulgaria web-page: www.transparency-bg.org.

procedures of our international network². Evidently we could not rely on official access to the official information. At the same time the unlawful classifying of the entire procedure on the concession contract made it impossible for us to use also reliable public information on the issues that interested us. Representatives of the Government and its Parliamentary majority periodically provided fragmentary and extremely inconsistent information on the contract, prepared and – ultimately – finalized at the end of March this year.

Separate documents, parts of documents and evidence of procedures undertaken filtered through in the public, despite of their “strictly confidential” nature. We were able to use them in our investigation, but we were not tempted to violate the Bulgarian laws by publicizing information for “official use”, despite of its unlawful classifying. We decided to leave violation of the laws as a “trademark” of the actions of the Government of Simeon Saxe-Coburg. For the purpose of the observation we conducted and the results of which we lay down in this report, we have used the following sources of information:

- public statements to the media made by officials of the Government and the Parliamentary majority, despite of their inconsistency and the obvious aim to misguide instead of inform;

- information from conducted Parliamentary discussions on the topic, which do not have a confidential nature;

- documents of the Bulgarian state institutions, adopted and published during the past 12 years – including international agreements with the EU;

- documents of the EU and of other European and international organizations;

- the Bulgarian laws regulating the behavior of the Government and its private partners in the granting of a concession as a public-private partnership;

- the *acquis communautaire*;

- documents and rules of the Bulgarian state institutions, which were “urgently” taken off the web-sites so that they do not give the public opinion arguments against the prepared deal.

This scope of our sources made it necessary to determine our report on the observation as “interim”. These are the results of our work until now. We will continue the investigation and will provide plentiful information on the development of the Trakia motorway concession contract to the Bulgarian public opinion and institutions, as well as to the international institutions and public, who monitor the behavior of the Bulgarian state in the context of its EU accession.

In March 2005 Transparency International – Bulgaria conducted an investigation and analysis on three main sets of problems related to the granting of the Trakia motorway concession through the public-private partnership scheme in its construction. First of all, these are problems related to the transparency of the procedure. The second set of analyzed problems is treats the legality of the procedures. The third set includes the issues related to the feasibility of the prepared deal. The report was elaborated on the grounds of unofficial information and information presented in the media. The expert team includes lawyers, economic experts, and infrastructure and political science specialists.

² The whole correspondence in Bulgarian and English may be found on the web-page of Transparency International - Bulgaria www.transparency-bg.org.

II. GENERAL OBSERVATIONS AND OBSERVATIONS ON THE TRANSPARENCY OF THE PROCEDURE

This report is elaborated on the grounds of preliminary, unofficial materials. The concluded contract and other materials on the case have not been officially provided to Transparency International – Bulgaria by the parties to the contract or by the competent state bodies.

Following an in-depth assessment of the scarce and inconsistent information available to Transparency International – Bulgaria a conclusion should be made that the overall procedure on the granting of the concession – from the selection of the consultant for the elaboration of the necessary analyses, to the selection of a company to fulfill the concession contract is **non-transparent** and **does not correspond to the standards** and requirements in the development of public infrastructure sites of such significant scale. The non-transparency and the lack of access to information on the parameters of the deal bring about as a logical consequence the inability to exercise public control on the effectiveness, legality and feasibility of the spent resources.

The following arguments may be brought forward in support of the stated thesis:

First of all, **there is a lack of information on why the approach of granting the Trakia motorway concession without a tender or competition was chosen**. This contains a serious threat that in the future our country will be treated in the same way as neighboring Romania in the granting of one of its largest motorways without a tender or competition to the company “Bechtel” – namely – as a country with a high level of non-transparency in the government, towards which serious corruption charges are made. The granting of the concession without a tender or competition creates a serious precedent regarding future deals of strategic significance for Bulgaria, because every subsequent candidate will have grounds to claim the same alleviated regime.

Second, **the manner and grounds for selection of the consultant company**, which carried out the analyses of the motorway, **are not clarified**. The four obligatory analyses on the deal – legal, financial, environmental and socio-economic – have been assigned to a small and unknown Bulgarian company “Infraproektconsult”, which was selected without a tender in violation of the law.

It must be noted that in such deals, in order to ensure more serious control on the reliability of the analysis, auditors of the consultant are also employed responsible for making an independent inspection of all analysis parameters and methodologies³.

Third, **the analyses are classified**, although according to the law they have no legal value, before part of them pass through public discussion – which examines the legal status of the ownership on the road right of way, Environmental Impact Assessment etc. The protocols of the high expert councils on territorial and urban structure, construction and regional development and ecology, which are public according to the law are missing – or are classified⁴.

In order to restrict the access to the documentation on the granting of the Trakia motorway concession, **the whole information has been classified** and on the grounds of the Classified Information Act the Minister of Regional Development and Public Works has placed a mark “for official use” on the documents. The government bases its arguments on the Access to Public Information Act, art.13, paragraph 3, point 2. However, this article concerns only the

³ For comparison – the consultations for comparable in scale deals are carried out by Deutsche Bank, Merrill Lynch and other reputable companies of such ranking.

⁴ The mentioned high expert councils have been established and hold sessions respectively at the Ministry of Regional Development and Public Works and the Ministry of Environment and Water.

course of the negotiations and does not refer to the analyses foreseen in art. 6, paragraph 2 of the Concessions Act: legal analysis, financial and economic analysis, social analysis and environmental analysis. These analyses must be prepared before the Council of Ministers takes a decision and are a legitimate basis for this decision. These are public documents, which are neither part of the contract, nor of the negotiations on its concluding. The Classified Information Act foresees that the Ministry of Regional Development and Public Works (MRDPW) adopt and publish a list of the classified documents, on the basis of a law that introduces the specific categories of proprietary information. There is no such law in the concessions area and the MRDPW has not published the above list. Despite of the stated circumstances **the whole documentation on the Trakia motorway concession has been unlawfully classified.**

Four, **any access whatsoever to the contract has been refused**, even after its signing. Neither Members of Parliament, nor the media, nor non-governmental organizations have access to the documentation.

The concession contract itself can not be included in the category of restricted access documents. The grounds for this statement are contained in the very Concessions Act, which is the legal basis for the concluding of the contract on the granting of the Trakia motorway concession (on the grounds of art. 4, point 6, art. 6, paragraph 1 and art. 7 of the Concessions Act in relation to art. 11, paragraph 1, art. 12, point 2, art. 13 and art. 16, paragraph 4 of the Roads Act and § 3b of the Transitional and Concluding Provisions of the Concessions Act).

Fifth, **art. 29 of Chapter Six National Concession Register of the Concessions Act explicitly states that the Council of Ministers creates and keeps a National Concession Register.** Data on all granted concessions on the territory of the Republic of Bulgaria are recorded in the said register and to it a public archive is kept, containing the dossiers on all granted concessions. It is explicitly underlined that this register is public and access to it shall be ensured, including via the Internet. The National Concession Register contains a lot on every concession with data explicitly determined by the law. Originals of the concession contracts and all annexes and enclosures to them are kept in the Register.

In accordance with art. 31 paragraph 2 of the Concessions Act and art. 54 of the Rules on its application the whole documentation on the Trakia motorway concession should be sent to the public National Concession Register within 7 days. The non-performance of this obligation is a blunt violation of the law. **The citing of the principle of protection of proprietary information is a legally ill-founded motive to conceal the truth about the Trakia motorway concession.**

The concession dossier itself, which is a compilation of all concession documents is public on the grounds of the Concessions Act. According to the mandatory interpretation of the Supreme Administrative Court „publicity” means accessibility of these documents to all citizens of the Republic of Bulgaria. This legal rule has not been observed and in reality **the principle of publicity of the activities of the administration has been violated.**

At this stage it is impossible to conduct a check at the register, as it is not yet developed. According to § 2 (2) of the Act Amending the Concessions Act, the specialized administration of the Council of Ministers carries out the necessary organization and creates the National Concession Register within 6 months of its entry into force. The Act was promulgated in State Gazette No 80 of September 14, 2004 and the deadline for its creation expired on March 17, 2005. The responsibility for the fact that as of April 2005 the register does not yet exist and does not function is totally with the government, because the non-development of the register within the foreseen period is a violation of art. 29 of the Concessions Act.

Last but not least, **the position of the EU regarding the granting of concessions unambiguously supports the need for transparency in the actions of the governments when concluding contracts in the area of construction, awarding public contracts, providing of public services, delivery of supplies and the concluding of strategic contracts of a high public interest.** In accordance with article 2 of Directive 2004/18/EC of

the EU of 31. 03. 04⁵ when awarding such a type of contract the principles of equality, non-discrimination, mutual recognition of rights, proportionality and transparency should be observed. The observing of these principles ensures the spreading out of the full effect of the contracts and guarantees full competition between the participants in the procedures.

⁵ Directive 2004/18/EC of the European Council of 31 March 2004 on coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

III. LEGALITY OF THE PROCEDURES IN THE GRANTING OF THE TRAKIA MOTORWAY CONCESSION

1. 1. Current Regulatory Framework on the Granting of the Concession

The Council of Ministers has adopted Decision No 1043 of December 30, 2004 for the granting of a concession, which provides a special right of use on a site – exclusive state property, which is a national road „Kalotina – Sofia ring-road (North section) – Orizovo – Stara Zagora – Nova Zagora – Iambol - Karnobat - Burgas”, hereinafter referred to as Trakia motorway.

According to the parties to the contract, confirmed by a Decision of the Council of Ministers issued on the grounds of art. 6 of the Concessions Act⁶, the contractual clauses are entirely in line with the Bulgarian laws. Together with the proposal for the granting of a concession a legal, financial and economic, social and environmental analyses on the concession are presented.

The concluded Contract granting a concession on the national road Trakia motorway (the Contract) is legally based on the following normative acts in force – Concessions Act (CA), Roads Act (RA), State Property Act (SPA), Commercial Act (CA), Protection of Competition Act (PCA), State Aid Act (SAA), Rules on the Application of the Concessions Act (RACA) and other laws and secondary normative acts. Not one of these normative acts gives the possibility to avoid the procedure on the conducting of a tender or competition. In this sense **the Decision of the Council of Ministers granting a concession on Trakia motorway without a tender or competition is not motivated and does not lie on fit legal grounds, which makes it unlawful.**

1.2. Main Inconsistencies between the Provisions of the Bulgarian Legislation and the Granting of the Trakia Motorway Concession

The Transparency International – Bulgaria experts observed the following inconsistencies:

1. The concessionaire – the partnership trade company Avtomagistrala Trakia Joint Stock Company has been determined as such in violation of art. 8 paragraph 1 of the Concessions Act⁷ and art. 13, paragraph 1 of the RACA⁸.

The indicated legal provision introduces the rule of conducting a tender or competition when determining the concessionaire, with whom the state concludes a separate concession contract. An exception from this rule is permitted only if this is explicitly stated in the law – for example art. 3b of the Privatization and Post-Privatization Act.

In this case the state bodies and in particular the Minister of Regional Development and Public Works base their arguments on the provision contained in §3b (1) of the Transitional and Concluding Provisions of the Concessions Act, where it is permitted for the Council of

⁴ art. 6 paragraph 1 of the Concessions Act “The decision to grant a concession shall be adopted by the Council of Ministers”.

⁵ art. 8 paragraph 1 of the Concessions Act “The concessionaire shall be determined by a tender or competition or without a tender or competition in the cases foreseen by law.” For example, according to art. 36 of the Privatization and Post-Privatization Control Act “Trade companies, in which the state possesses stock or shares, with an announced privatization procedure, using sites and/or carrying out activities subject to concession, including in the cases foreseen in § 3, paragraph 2 of the transitional and concluding provisions of the Concessions Act, shall obtain concessions for the used sites and/or activities without a tender or competition, except in the cases under art. 38”.

⁶ art. 13. (1) The concessionaire shall be determined by a tender or competition. In cases foreseen in the law the concessionaire shall be determined without a tender or competition.

Ministers to grant a concession without a tender or competition to companies, in which the state as a stakeholder has shares or stock with a nominal value of over 300 000 Leva comprising at least 25% of the company's capital.

As an additional argument Decision No 30/17.11.1998 on Constitutional case No 23/1998 of the Constitutional Court is brought forward, where the request to declare the unconstitutional nature of §3b of the Transitional and Concluding Provisions of the Concessions Act was rejected.

The careful reading of Decision No 30 and the systematic interpretation of the provisions of the law impose an entirely different legal conclusion from the government's, because the hypothesis of §3b of the Concessions Act⁹ refers to the already existing cases of state companies upon the entry of the Concessions Act into force¹⁰. As the Constitutional Court has explicitly stated "The hypothesis of § 3b of the Concessions Act does not refer to the initial granting of a concession and therefore the fears that through it the competitive manner of granting of concessions will be derogated are unjustified"¹¹.

Moreover, the Constitutional Court explicitly states that the "the purpose of the transitional §2 and §3, including §3b is to achieve relative stability in the status of sites – public state property already granted for use". With the provision of §3b of the Transitional and Concluding Provisions of the Concessions Act already acquired rights are tolerated, which contradicts the constitutional principle of art. 57, paragraph 1 of the Constitution according to which the fundamental rights of citizens are irrevocable¹².

In the specific case this is not an already existing concession legal relationship but the arising of a new one on the grounds of a procedure regulated in the Concessions Act. Art. 34 of the Decree on the Application of the Law on Normative Acts also directs towards this conclusion¹³.

Neither Motorways s.p. Ltd., not Technoexportstroi s.p. Ltd. Sofia as state companies have acquired rights on the site on the grounds of a legal provision in force, therefore not only regarding them, but also regarding the established new enterprise – joint stock company, the transitional provision of §3b of the Concessions Act have no legal effect.

The total change in the opinions of the Minister of Regional Development expressed in the course of the constitutional case and now must be noted. In the official opinion to the

⁹ § 3b (1) of the Transitional and Concluding Provisions of the Concessions Act "The Council of Ministers may grant without a tender or competition a concession to companies, in which the persons under §3, paragraph 1 have a stake in stock or shares with a nominal value of over 300 000 thousand Leva comprising at least 25 percent of the company's capital.

¹⁰ The concluding of a concession contract by a person determined by tender or competition in the hypothesis of § 3b of the Concessions Act is explained with the explanatory notes when the bill was submitted, with the need to conduct better restructuring of the companies with state capital, which currently operate with concessions -D-30-98 CC

¹¹ Decision No 30/17.11.1998 on constitutional case No 23/1998 of the Constitutional Court, page 5.

¹² "The provision of § 3b of the Transitional and Concluding Provisions of the Concessions Act (created as a new provision – State Gazette No 61 of 1997) gives the Council of Ministers to grant without a tender or competition a concession to the companies, in which the persons under § 3, paragraph 1 of the same law have a stake in stock or shares with a nominal value of over 300 000 thousand Leva, comprising at least 25 percent of the company's capital. The persons under § 3, paragraph 1 of the Transitional and Concluding Provisions of the Concessions Act are single person trade companies with state property and state companies in the sense of art. 62, paragraph 3 of the Commercial Act, who have acquired rights over the sites under art. 4 of the Concessions Act and carry out activities under art. 5 of the Concessions Act before the establishment of the concession regime. (Decision No 30/1998 of the Constitutional Court).

¹³ According to art. 34 of Decree No 883 on the application of the Normative Acts Act "with transitional and concluding provisions the force of rules repealed with the new normative act is continued or their application in pending legal relations or in legal facts that have started, but have not ended during the time when the repealed act is in force is regulated".

In accordance with art. 35, paragraph 1 "The transitional and concluding provisions contain the rules, with which retroactive effect is given to the act, its effect is postponed or is restricted only to a part of the territory of the country."

Constitutional Court the Minister of Regional Development and Public Works supports the request for the repeal of the provision of §3b, because not all single person state companies have used the sites declared a state monopoly before the entry of the concession regime into force.

Currently the official statements of responsible representatives of the Ministry of Regional Development and Public Works contain the opinion that namely this transitional provision of the Concessions Act is applicable for the receipt of a concession without a tender or competition by the newly-established partnership company.

That is why the Transparency International – Bulgaria experts believe that a serious violation of the Bulgarian legislation in force has occurred in relation to the granting of exclusive state property such as the national road network.

The concessionaire, who is not a state company, because according to the registered By-laws of the company the private shareholders have a “decisive influence” in its management, should not have used the alleviated legal regime foreseen in the concluding provision of the Concessions Act.

In order to acquire the concession site the concessionaire should have partaken in a tender or competition. At this tender or competition organized in secret or public bidding the economic parameters of every candidate may be compared.

2. The concessionaire receives as a concession site not only the newly-constructed by him road sections,¹⁴ but also the already constructed by the state road section¹⁵, as well as sections, currently under construction with financial means from the state and a European Union program¹⁶. This contradicts art. 2, paragraph 1, point 1 of the Concessions Act, according to which a concession is the granting of a special right of use over sites – public state property, which shall be built by the concessionaire with own funds.

The concession site encompasses, besides the national road and the connected to it TOLL facilities, also centers for management and maintaining of the motorway and road-side service facilities, which are already constructed and under exploitation.

Thus stated, the concession site is extremely widely-defined and goes beyond the normally accepted definition of a concession as a special proprietary right over a site – exclusive state property.

In substance the concessionaire does not obtain the fruits of the used object – the national road (the obtaining of the fruits is expressed in the possibility to use the site according to its purpose by collected tolls¹⁷), but receives exclusive rights over an activity, which in its legal nature is a commercial activity and is not subject to the restrictions under the Concessions Act.

The exclusive rights for commercial activities are not in line with the legal definition of §1, point 7 and 8 of the Roads Act, which determine the public use of roads and the special use of roads as a “a normal use of roads for transporting passengers and freights with generally-accepted road transportation vehicles or for pedestrians”.

In art. 14, paragraph 2 of the Roads Act the legislator explicitly regulates the cases, when a motorway is a concession site¹⁸.

¹⁴ Road section “Kalotina-Dragoman”, road section “Dragoman Sofia”, road section “Sofia ring-road - North” and road section “Stara Zagora - Karnobat”.

¹⁵ Road section “Sofia - Orizovo”.

¹⁶ Road section “Orizovo – Stara Zagora” and road section “Karnobat - Burgas”.

¹⁷ According to Directive 1999/62/EC: “toll” means payment of a specific amount for a vehicle travelling the distance between two points on the infrastructure referred to in Art. 7(2); the amount shall be based on the distance travelled and the type of the vehicle”.

¹⁸ In the cases when a motorway is a concession site, the concession territory also encompasses the areas necessary for the development of road-side service complexes fixed in the technical documentation for the construction of the motorway (art. 14 of the Roads Act).

In this respect the areas necessary for the construction of such road-side commercial complexes must be public state property. The Act speaks of areas and not of constructed sites. The interpretation of this provision obviously directs towards the sense that the legislator had in mind not already existing terrains on which service sites are already built but only ones that go together with the motorway and which will be constructed under the terms of a concession. This means that in the constructed sections the concession site should be narrower and the state can not grant concession rights on sites of commercial purpose, which are already constructed and function according to their purpose.

It is not clear what the status of the service commercial complexes constructed by the concessionaire will be – whether they will be public state property under the principle of art. 92 of the Ownership Act or art. 7 of the State Property Act or they will remain private property of the concessionaire.

The concession contract itself will create a dangerous precedent – part of the constructed service facilities will be private and another – will be included in the concession site as public state property.

The Transparency International – Bulgaria experts believe that the non-foreseeing of an additional concession payment by the concessionaire significantly damages the Bulgarian state and gives him an illegal bonus.

3. The concession contract contains a few clauses, which are inconsistent with the State Aid Act. They are:

- the granting of the concession without a tender or a competition;
- the compensating the deficit in the constructing and operation of the site;
- the temporary relieving of the concessionaire from the concession payment;
- the ensuring from the state of a 12% return of the own capital in favor of the latter,

including the interest for capitalization on this sum, due at the time the concession contract was concluded until the time when the concessionaire is able to provide this income himself.

3.1. The concessionaire receives from the state a specific compensation in the form of a state budget subsidy to cover an insufficient pecuniary resource from the operation of the constructed road.

This compensation shall be formed as a negative resulting quantity, comprising of the difference between the euro equivalence of all income of the concessionaire and the euro equivalence of the sum of the payments due on the credit and the other expenses foreseen in the investment program.

In reality, in its legal nature this compensation is a classical example for state aid in the sense of art. 1, paragraph 3 of the State Aid Act¹⁹.

It is strange why the state provides an economic advantage by minimizing the risk of the concessionaire on the regular servicing of the commercial credits, through which the site is constructed.

The manifestation of a state aid - subsidy from the state budget is the sharpest form of state intervention in the economy according to the Methodology of Directorate General Competition of the European Commission.

Through the concluded contract de facto the budget is assigned with an obligation for years ahead to foresee a certain sum of taxpayers' money to ensure the financial stability of a private economic operator.

¹⁹ art. 1, paragraph 3 of the State Aid Act – “State aid is any aid, conceded by the state or the municipality, or for the account of state or municipal resources, directly or by other persons in whatever form, which violates or threatens the free competition by giving more favorable position to certain enterprises, the production or trade of certain goods or the rendering of certain services.”

Of significance in the analysis of the specific clause is that the state agrees to grant state aid to Avtomagistrala Trakia Joint Stock Company instead of directing the restricted financial resources incorporated through the budget towards more important public needs.

It should be kept in mind that according to the *acquis communautaire* such aid is admissible only for regional development.

The assessment of the granted state aid must be made in the context of the regional state aid map of the Republic of Bulgaria approved by the Association Council.

The analysis conducted by experts from the Association Transparency International proves that:

- state aid can not be accepted as compatible with the principles of free competition, according to the criteria of art. 3 of the State Aid Act;
- the net equivalent of the aid calculated in accordance with Form No 1 Methodology of Calculation of the Net Equivalent of the Aid for Investments (Annex No 1 to art. 2 of the State Aid Act), significantly exceeds the accepted “ceiling” for admissible state aid.

3.2. According to the contract the concessionaire obtains an exclusive privilege to owe a concession payment only if his income exceeds the expenses for performance of the concession activities, including the right to ensure for himself a level of profit of return on the own capital in the amount of 12 %.

Moreover, the payment is due from the year following the year when there is such an exceeding of the income over the expenses.

It is inexplicable why the state has not foreseen a deadline for the receipt of this payment and has tied receiving it to a future uncertain event.

Moreover, through the contractual mechanism of the concession payment in reality the concessionaire benefits, because on one hand he has a guaranteed compensation in case of poor economic results (which could also be due to weak management) and on the other has a guaranteed extremely good profit – through the norm for return of the own capital.

The Transparency International – Bulgaria experts believe that the commercial contract contains unequal clauses, agreed upon in favor of the concessionaire Avtomagistrala Trakia Joint Stock Company and damaging the concedent – the Bulgarian state.

4. There is a concentration of commercial activities in violation of the provisions of Chapter Six of the PCA.

The concessionaire Avtomagistrala Trakia Joint Stock Company is established as a joint enterprise of two Bulgarian state and three Portuguese companies:

Motorways s.p. Joint Stock Company, which owns 25% of the capital of the joint stock company;

Technoexportstroi s.p. Joint Stock Company, Sofia, which owns 24% of the stock;

The rest – 51% of the stock are owned by 3 Portuguese companies as follows:

“MFS - MONIZ DA MAIA, SERRA AND FORTUNATO“ - Lisbon

“LENA ENGENHARIA E CONSTRUÇÕES, S. A“ - Fatimma

“SOMAGUE CONCESSIONARIAS E SERVIÇOS, SA” - Singtra.

The Transparency International – Bulgaria experts believe that thus a concentration of the commercial activities in the sense of Chapter Six of the Protection of Competition Act has occurred in the form of a joint enterprise - art. 22 of the PCA²⁰. According to art. 24,

²⁰ art. 22 of the Competition Protection Act “Concentration in the context of Art. 21 shall be considered the formation of a joint enterprise, permanently carrying out all functions of an economically independent subject.”

paragraph 1 and paragraph 4 of the PCA enterprises have an obligation to jointly notify the Commission for Protection of Competition in advance for their intention to make the concentration.

As far as we know such a notification has not been made by the enterprises partaking in the concentration, which gives grounds to state that a concentration has been made in violation of the PCA. Moreover, the permission of the Committee for Protection of Competition is in reality permission from a competent state body in the sense of art. 295 of the Commercial Act²¹. Without such permission the deal is invalid.

According to art. 27, paragraph 4 of the Protection of Competition Act, the Commission for Protection of Competition has competence to impose a property sanction on enterprises, which have not requested its permission, as well as to impose other appropriate measures to restore the situation of the enterprises in the respective market before the concentration, including by ordering that the joint capitals, shares or property be split and/or the joint control be terminated.

The anti-trust regulator must take a decision to initiate proceedings on the grounds of art. 36, paragraph 1, point 3 of the Protection of Competition Act and after it establishes that the above legal provisions have been violated to issue the respective decisions in view of protection of competition in the country.

5. The concessionaire has extremely wide rights to terminate the concession contract unilaterally due to fault of the state.

This is the introduction of the so-called “adverse influence” of the state.

Under “adverse influence”, besides the typical for such types of contracts²², it is also foreseen “inability of the concedent (the state) to ensure or maintain in good condition the roads leading to Trakia motorway, listed in a separate Annex, when this has led to a significant decrease of the traffic on it”.

Thus written, the text is extremely unclear and poses a series of questions:

- who is to determine whether the roads leading to the motorway are ensured in good condition;
- what is the criterion for good condition of a road;
- which criterion is to determine which reduction in the traffic on the motorway is due to contractual fault of the state, which has not ensured good roads to the highway or is due to the decrease of the traffic is due to economic reasons – for example high tolls etc.

Obviously the alleviated unilateral termination of the contractual relations between the parties to the contract, which differs significantly from the standard clauses for contract termination under art. 87 of the Contracts and Obligations Act is foreseen exclusively in favour of one of the parties – the concessionaire.

If the above hypothesis for unilateral termination is activated, the state is liable to transfer to the account of the concessionaire a sum fixed in advance. Moreover it is foreseen that the concessionaire be indemnified for all damages and expenses borne by the concessionaire in his contracts with sub-contractors.

There is a contractually determined aggravated liability of one of the parties to the contract, which is not typical for such types of concession legal relations.

²¹ When permission from or approval by a state body is required for the validity of the commercial deal the deal shall have effect after as of the moment it is given (art. 295, paragraph 1 of the Commercial Act).

²² For example appropriation, nationalization or impressments of the property of the concessionaire, the imposing of a blockade or embargo by the state against the concessionaire, legislative or regulatory changes, which have an unfavorable direct or indirect impact of the income and expenses of the concessionaire in case they are aimed solely against him and other.

On the basis of the above-stated arguments the Transparency International – Bulgaria experts have reached the conclusion that with the signing of the concession contract for Trakia motorway the Bulgarian legislation has been violated to a serious extent – obviously in favor of concealed private, illegitimate interests, which confirms the suspicions for political pressure and unlawful benefiting of persons from the very peak of the executive power in the country.

IV. FEASIBILITY OF THE CONTRACT ON THE GRANTING OF THE TRAKIA MOTORWAY CONCESSION

To assess the feasibility of the deal the TI – Bulgaria experts used a wide circle of studies, forecasts, plans and programs on the construction and exploitation of the motorways in the Republic of Bulgaria²³. They must be used because the Trakia motorway concession is not being granted under a tender or competition and therefore the market value of its construction can not be determined with certainty. In this sense the indicated documents serve as a reliable point of reference and substitute of the missing market assessment, on the basis of which conclusions on the feasibility of the concession contract and the existence of probable misuse could be made. Each one of these documents has sufficient argumentative strength because it has served or continues to serve as a basis for the taking of investment decisions by the Bulgarian government, as well as by the European Commission and, last but not least – by private business. Each one of these documents contains a financial section and financial tables backed by the signatures of the Minister of Finance or of various independent teams, which have elaborated the studies.

1.1. Parameters of the Contract Announced by the Ministry of Regional Development and Public Works

In the official information disseminated by the Minister of Regional Development and Public Works at a press conference upon the signing of the contract (March 29, 2005) the following data is contained:

²³ The more important documents are:

1. National Economic Development Plan 2000-2006 elaborated by the Central Coordination Unit of the Special Preparatory Program of the EU for the EU structural and cohesion funds for the Republic of Bulgaria adopted with a decision of the Council of Ministers in December 1999.
2. National Regional Development Plan 2000 – 2006 elaborated by the Ministry of Regional Development and Public Works adopted by the Infrastructure Development Council of the Regional Development Council approved by the Council of Ministers and published in the State Gazette.
3. Sector Strategy Transport 2000-2006 developed by the Ministry of Transport adopted by the Central Coordination Unit approved by General Directorate 16 of the European Commission as a basis for the planning of the ISPA Program investments.
4. Analysis and Summary of the Forecasts for the Traffic on the Priority Transport Infrastructure Projects of the Republic of Bulgaria 2003 (a study, assigned by the Ministry of Transport and Communications to the Transportation and Communications Institute in relation to the elaboration of the transport strategy of the Republic of Bulgaria and existing as an annex to this strategy published on www.mtc.government.bg).
5. Other public and private analyses of the traffic and economic feasibility including (1) a study financed by the European Investment Bank and the European Bank for Reconstruction and Development within the Project “Transit Roads” and implemented by Europistas C.E.S.A. (Spain) in cooperation with Skott Wilson Kirkpatrick Consulting Engineering (Great Britain); (2) A study financed by the PHARE Program and implemented by a Framework Agreement of a consortium of the European companies, lead by COWI with Bulgarian and foreign experts from GOPA GmbH (Germany) and WS Atkins (Great Britain); (3) “Bouigues” (France), (4) “Bechtel”, (5) Stability Pact etc.
6. Bulgarian construction portal www.stroitelstvo.bg (English version www.bulgariaconstruction.com, Developed under PHARE project 0102.02.014). This portal is developed with the financial assistance of the EU especially in view of attaining greater transparency in the public infrastructure investments. The information on the public investments is collected only from official sources, mainly from ministries and agencies.
7. The agreed arrangements between the EU and the Republic of Bulgaria on Chapter Transport.

- Concessionaire: Trakia Consortium, in which three Portuguese companies hold a stake of 51% and two Bulgarian companies with a stake of 49%;
- Term of the contract: 35 years;
- Total length of the motorway: 443 km.;
- Deadline for construction: the end of 2009;
- Sanctions in case of delay: from three to six months – from 10 000 to 83 330 euro per day;
- Investments: total **717 million euro**, of which 10% own means of the consortium and 90% - bank loans with no state guarantee;
- Price per kilometer: 2.7 million euro;
- Road fees as of 2007: shall be set by the government – probably from 2.5 euro cents per kilometer (without VAT) for automobiles up to 12.5 euro cents for trucks up to 12 tons; the large trucks over 12 tons are to buy vignettes;
- Until 2014: due to the expected low traffic the state will finance the project with 168 million euro;
- From 2014 to 2022: the concessionaire will pay back the money plus 175.8 million euro interest;
- From 2023 until the end: the concessionaire will pay the state a concession fee, which is a total of 5 billion euro for the 19 years;
- Expected profit of the concessionaire: 191.8 million euro for the whole period.

At a press conference in the National Assembly on April 7, 2005, the Chairman of the parliamentary committee Mr. Yordan Mirchev made public new data from the contract, some of which is contradictory to the parameters that had been announced prior to that. The following data has been published in the brochure:

“The parameters in the concession contract include **590 million euro** worth of:

- New construction works for the missing sections of the motorway – 437 million euro;
- Reconstruction and construction of TOLL gates – 38,9 million euro;
- Rehabilitation of the motorway sections for operation – 95,7 million euro;
- Equipment and management of the motorway – 18,3 million euro”

1.2. Comments on the contract parameters defined by MRDPW

We must note that there is a serious discrepancy between the sum of 717 million euro initially announced as planned to be invested (March 29, 2005) and the sum of 590 million euro announced a week later. This confusion in the financial parameters of the contract impedes any accurate calculation of the total volume of construction work to be done and of the price of construction work per kilometer of the motorway.

The MRDPW refused to comment on what principle was followed in defining the main parameters were defined and were especially reluctant to comment on the average price of 2.7 million euro for construction work per kilometer of motorway. The latter, however, can be inferred analytically by dividing the total cost of the project, as announced by MRDPW, by the total length of the roadalignment, as specified in the Council of Ministers Decision for granting the concession, and namely:

- The length of the road-bed from Kalotina to Bourgas - 443.3 км;
- Funding though commercial credit of 645.480 million euro + interest and bank fees worth 442.282 million euro + disposal credit, which replaces the personal funds of the concessionaire worth 72.270785 million euro + interest and bank fees for the disposal credit $59.836596 = 1\,220\,000\,000$ euro;

- 1 220 000 000 euro : 443.3 km = 2.752 million euro per km.

These calculations, however, suggest new construction works for the whole length of the roadalignment of 443.3 km. But actually, the greater part of the motorway has already been constructed or is in the process of being constructed through funds secured from the national budget, and from European programs and financial institutions.

In practice, the following parts of the motorway require construction works from scratch (new construction works):

- Kalotina – Sofia – 48.1 km;
- Stara Zagora – Karnobat – 116.6 km;
- **Total – 164.7 km.**

The final estimate reveals that the amount of 1 220 000 000 euro will be needed for the construction of a 164 km long motorway, plus the expenditures mentioned above for the construction of the TOLL gates and the rehabilitation and management of the road.

A different approach can be taken in making the calculation: if from the initially announced sum for investment of 717 million euro we subtract the cost of the construction of the TOLL system, of the cost for rehabilitation and management of the road, which amounts to 152.9 million euro (pursuant to the data announced April 7, 2005), we have 564.1 million euro left available for new construction works:

- **564 100 000 euro : 164.700 km = 3.425 million euro per 1 km of new construction works.**

Based on the above, we can highlight the fact that the officially announced data and estimates seriously differ from the market and expert estimates, and direct comparisons of prices is hard to make because the documentation is classified and the publicly announced figures and information are constantly changing. This in turn results in several key problem areas:

Firstly, serious discrepancies exist in relation to the volume of the construction works themselves. The scope of motorway from the western to the Black Sea border has a total length of 443 km, and the concessionaire, according to initial information, is responsible for constructing and funding 261 km of this length, but later these figures were changed. In reality, 48.1 km need to be constructed from the border to Sofia, 116.6 km from Stara Zagora to Karnobat, plus rehabilitation of around 22.5 km of the North section of the Sofia ring-road.

Secondly, the figures are not the same if we take the value of 1 km of motorway as the base unit. If for the concessionaires and the decision-makers in the granting of the concession it seems normal for the price to vary between 2.700 and 3.425 million euro per kilometer for a relatively flat terrain without tunnels and viaducts, the market prices reveal absolutely different figures. Normally, foreign firms win the construction contracts at a value of 1 million to 1.3 million euro per kilometer, and Bulgarian firms participate in the construction in the capacity of subcontractors at the price of 1 million leva per kilometer²⁴. In this case, however, the price envisioned is two to three times higher than the market price.

²⁴ Refers to the motorway sections of Orizovo –Stara Zagora and Karnobat - Bourgas.

In third place, the funding of the deal raises a series of questions. Two loans are envisioned for funding the concession. The main loan is at a value of 645 million euro. Interests and servicing the credit amount to 442 million euro. Initially, a short-term loan of 72 million euro will be taken out, with interest and servicing amounting to 60 million. The two loans together amount to 717 million euro. This is the amount of investment announced by government. This means that the concessionaires come without own capital, and they get their investment in the form of loans, accompanied by liabilities, 3-4 times higher than the liabilities for state-guaranteed loans from the EIB and EBRD for development of infrastructural projects. On condition that the Bulgarian government provides guarantees to the concessionaires for their profit of 12 per cent, it is inevitable to ask the question what makes the Bulgarian government take on the responsibility to provide guarantees for this concession deal, which comes with such expensive servicing of the loans for its funding, when alternative solutions exist that offer 3-4 times cheaper loans and 3 times lower average prices for construction per kilometer of motorway than those negotiated with the concessionaire.

A question that remains unanswered is why the option of using financial instruments from European financial institutions and European programs, which grant priority in funding to sites which fall within the Trans-European Networks. Infrastructural projects part of the European transport corridors are of priority to financing programs in the area of transport infrastructure. In the case of the Trakia motorway, different parts of the road- route – the object of concession, fall within transport corridors № 8, and № 10. Despite the public announcements that the allocation of the ISPA funds has already been planned out right up until the end of 2006 and that there are thus no substantial resources left, the question as to why resources are not sought from those that will become available after 2006 still remains unanswered.

EC funds (the remaining resources from ISPA, before accession, the funds from the EIB and EBRD and those **from the Cohesion fund after accession to the EU**) can be used to fund the Trakia motorway project. This approach was envisioned in the Nation Plan for Economic Development 2000-2006 and in the National Plan for Regional Development 2000-2006, in the respective chapters related to transport development. The same approach is also outlined in all government documents, documents of the MRDPW and MTC up until the year 2003 and in the respective publications and promotional brochures of the government intended for attracting foreign investors. Similar information can be found on the specialized Internet site of the Bulgarian portal on construction www.stroitelstvo.bg (where 250 million euro have been stated as planned for the construction of the remaining unbuilt motorway section from Sofia to Bourgas i.e. over two times less than that stated in the concession contract analyzed above). **This commitment is also present in the draft Accession Treaty between Bulgaria and the EU, according to which the Trakia motorway (the section from Sofia to Bourgas) will be completed with public funds amounting to 160 million euro.**

In fourth place, the specific financial parameters of the project – the price of the loan and the expected gains of the trade company, also play a role in the overstatement of the price. Here too, the discrepancy with market prices and standard practices is cause for concern. The motorway sections from Orizovo to Stara Zagora and from Karnobat to Bourgas, which are currently under construction, are being built through loans from the EIB with a granted grace period of 7 years and a 25-year pay-back term at the London Interbank Offered Rate (LIBOR). The new trade company has calculated in its financial accounts interest costs on a 12% base, i.e. about 8% higher interest rate, which further proves that the concession scheme for the Trakia motorway makes the project unfavorable for Bulgaria. The profit guaranteed to Avtomagistrala Trakia JSCo according to contract has the same implications – instead of the 6-8% which are standard on the international market for such a large infrastructural project, the company has already secured for itself a 12% clear profit, which amounts to around 191 million euro.

The value of the declared investment, as well as the declared (and guaranteed by the state) profit of 12% allow us to calculate the amount of everyday traffic that would guarantee this sort of profit without the need for additional compensatory payment by the state i.e. the guarantor at a tolls of 0.025 euro per kilometre. The amount is 25 650 ECU²⁵ per day.

In fifth place, the sum of the clear profit for the trade company does not include their other gains, which are also guaranteed by the contract, and namely:

- The right of easement for possible installation of optical cables;
- Access to gas stations, hotels and motels;
- Rights on billboards and other advertising installations;
- All kinds of services provided in the vicinity of the motorway (various markets and others).

In sixth place, the overstated length of the roadalignment, the unrealistic unit price per kilometer and the extra large amount of traffic required amount to such a total value of the project, that it becomes deprived of investment/ trade incentive whatsoever. For executing this extremely costly project as planned, an unrealistic traffic of 25 650 unit automobiles per day is needed, each vehicle paying at least 2.5 eurocents per kilometer. All authoritative international and Bulgarian assessments show that such a traffic rate is not attainable, and the need to pay tolls will divert part of the traffic and will bring down the traffic level. This leads to the state having to guarantee an unrealistic traffic rate and having to pay out of the state budget those impossible to be paid fees i.e. from the taxpayers' money, whether they use the motorway or not.

Previous experience in motorway construction in the Balkan region and Central Europe has shown that the introduction of tolls leads to a decrease in traffic by 30-50% in the first few years. A summary of all calculations leads up to the definite conclusion that with the completion of the Trakia motorway, the everyday traffic rate will for years to come hardly ever reach 25 650 ECU/day (even vehicles bellow 12 tons, that pay a toll and do not revert to another charging rate). The difference between the actual traffic and the 25 650 unit automobiles per day will be covered by the Bulgarian state for at least the next 23 years, according to the government forecast, or until the end of the term of concession, according to experts. Any unbiased assessment of the abovementioned figures would confirm the heavy and unjustifiable liabilities taken on by the Bulgarian state, all to the advantage and profit of the concessionaires. These are liabilities which are unknown to European concessions practices.

1.3.Comparison between the planned tax rates and the taxes paid in neighboring Balkan countries

If the fees in neighboring countries are compared, it becomes evident just how high the envisioned Trakia motorway toll is. For example, the motorway from Athens to Thessaloniki can be covered with less than 10 euro for a length of more than 470 km, while in Bulgaria, for the length of 370 km, from Sofia to Bourgas, automobiles need to pay around 13 euro. According to the planned scheme for Trakia motorway operation, Bulgarian drivers will pay 14 leva or 7 euro for using the already built motorway section from Sofia to Plovdiv (around 130 km) compared to 6 leva or 3 euro for operation of the motorway from Svilengrad to Istanbul (around 260 km).

Bulgaria	Greece	Turkey
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²⁵ Equivalent car units

Sofia - Bourgas Length – 370 km Toll – 13 euro	Athens – Thessaloniki Length – 470 km Toll – under 10 euro	Svilengrad – Istanbul Length – around 260 km Toll – 3 euro
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1.4. International and national assessment studies on traffic rates

In estimating the expected traffic levels we must pay special attention to the **measurement units used to make the respective calculations**, with large trucks counted as 1 motor vehicle (MV) in some studies and as ECU with coefficient, multiplied by at least 2.5. After the adoption of the Council of Ministers decision, pursuant to EC Directive 1999/62 for exemption from tolls of vehicles with gross weight above 12 tons, the latter will use the motorway without paying tolls²⁶. The state will be paying for this traffic from the revenues from the vignette system. This in practice, however, is not possible due to legislative restrictions according to which any revenues from the vignette road charging system are strictly for repair works and maintenance of the national road network. Furthermore, according to experts, even if there were to be legislative changes allowing reallocation of such funds to the concessionaires, this would lead to the quick death of the vignette system. In practice, a motorway will be built on which large motor vehicles will be able to pass without paying tolls, and the funds from the vignette system will not be used according to purpose for the maintenance of the whole national road network.

According to the investment plan and the envisioned fee of 2.5 eurocents/ km, the concession deal can only be economically advantageous if the average traffic rate per day exceeds 25 650 ECUs. Whether such traffic can be achieved is a question that can only be answered after a comparison with assessments and analyses of the traffic levels conducted within the framework of other assessment and research studies. **Annex № 7 provides a visual perception of the difference between the average daily traffic on the Trakia motorway (measured in ECUs/day) for the year 2000 and a traffic rate of 25 650 unit automobiles per day needed in order for the concession deal to be economically advantageous.**

Further on in the analysis there is data from national and international studies on local traffic rates. Further comparisons with data from research conducted by other state agencies can also be made. For example, in February 2005, the Traffic Safety Unit to the Ministry of Interior ascertained a traffic rate of 3 800 – 4 000 vehicles per day on the most intensively used sections of the Trakia motorway – between Pazardjik and Plovdiv. Although we are talking about traffic in a relatively quiet month, an evaluation needs to be made of whether at all an average traffic rate of 20 000 – 25 000 ECUs per day can be expected at any time (keeping in mind that, pursuant to EC Directive 1999/62, large trucks over 12 tons, which are equivalent to at least 2.5 unit automobiles, should be excluded).

The issues outlined above cause doubt not only as to the feasibility of the signed contract between the Republic of Bulgaria and Avtomagistrala Trakia JSCo, but also as to the whole idea in general of constructing motorways through concession in Bulgaria. As a matter of fact, studies on the feasibility of concessions in the area of road infrastructure development were initiated as early as the mid 90s.

One of the most authoritative studies of the state of the road infrastructure and the possibilities for its development was funded by the European Commission after an international tender was won by the Spanish consulting company “**Europistas**” C.E.S.A. (Spain) in collaboration with “**Skott Wilson Kirkpatrick Consulting Engineering**” (Great Britain)²⁷. The research of the state of the road infrastructure started during the time of Zhan

²⁶ The Decision of Council of Ministers in fact is in contradiction to the Directive 1999/62/EC on the charging of heavy good vehicles for the use of certain infrastructure according to which: “vehicle” means a motor vehicle or articulated vehicle combination intended exclusively for the carriage of goods by road and having a maximum permissible gross laden weight of not less than 12 tons.

²⁷ Data from the research conducted by “Europistas” can be found in Annex № 8.

Videnov's government and was completed in mid-1998. The results were officially presented to the Bulgarian government and used as the basis for planning of infrastructural development and the basis for negotiating Bulgaria's participation in the common transport policy of the EC. The main conclusion from the study was that neither the current nor the most favorable traffic through the country could lead to the realization of the Trakia motorway project using the public-private partnership model (BOT – build-operate-transfer, concession, etc.). It is this conclusion that serves as the premise for including the whole motorway ring of the country, including the Trakia motorway, in the set of priorities of the EU projects to be funded out of public investment funds, including the EU pre-accession fund – ISPA, and the post accession Cohesion fund.

In the process of research, “**Europistas**” conducted a series of counts and surveys, including such related to the impact from the introduction of toll fees on traffic rates. For example, it became evident from the results that the vehicle flow would decrease differently for the different categories of motor vehicles:

Types of motor vehicles	Diverted traffic at a fee of 1.15 eurocents/ km	Diverted traffic at a fee of 2.3 eurocents/ km
passenger cars	around 18%	around 95%
trucks	0%	around 30%

Although the fact that the study was conducted before 2004 raises scepticism as to its relevance, it nevertheless remains a valuable reference tool as to traffic rates. There are several reasons for this. Firstly, as becomes evident from the graph prepared by the **Central Laboratory for Roads and Bridges**²⁸, there are no abrupt changes in the curves reflecting the rates of traffic between 1990 and 2001. Secondly, the company used a reliable system for modeling traffic - QVIEW, achieving great accuracy in validating the model with traffic rates up until 1995. According to experts from the construction sector, such a study was not conducted before the Trakia motorway was granted for concession, simply relying on an arbitrary assumption that in the first year there will be a decrease in traffic of around 20% for all categories of motor vehicles.

“**Bouigues**” (France) and “**Bechtel**” conducted their own private research in the mid and late 90s, in order to determine their investment policy for Bulgaria.

The most recent international study was conducted within the framework of **the Stability Pact** with the Bulgarian government in the beginning of 2001. It was financed by the US government through the United States Agency for International Development (USAID) and was completed in 2003 when the results were officially handed over to Prime Minister Sax-Coburg Gotha. This study reaffirmed the main results from the Europistas, Bouigues and Bechtel studies, which are all radically contradictory to the forecasts made in relation to the current concession contract. For example, the forecast cost for construction of the Kalotina – Sofia and North sections is only 61 million euro, and the maximum traffic expected to be reached in 2027 is 15 – 16 000.

A 2004 study of the **Central Laboratory for Roads and Bridges** concludes that the state will incur a clear loss and will have to subsidize the concession project with anything from 61 million euro up to 298 million euro. Apart from these studies, another research study was conducted by FaberMaunsell, which was never made public but is the only one according to which the state could make a profit ranging from 31 million euro to 381 million euro with this deal.

The Central Laboratory for Roads and Bridges (to the Roads Executive Agency and thus,

²⁸ See Annex № 6 for data from the Central Laboratory for Roads and Bridges study

to the Ministry of Regional Development and Public Works) conducts representative traffic counts every five years. The latest official study dates back from the year 2000 and the next is expected to be conducted this year²⁹. Annex № 6 presents a **graph of the data from the representative studies conducted in 1990, 1995 and 2000, as well as from the study from 2001**. The data from the latter two counts show with certainty that the existing traffic rate is at least two times lower than the traffic level, which would make the concession economically advantageous. A higher level of traffic has been measured mainly on and around the Sofia ring-road (which greatly results from the economic activity in the capital) and in the section between Kalougerovo and Tsalapitsa.

According to an official forecast from the Central Laboratory for Roads and Bridges for 2010, which is to a great extent based on the extrapolation of the perceived trends (economic, social and traffic-related) from past periods, traffic rates vary as follows:

- 6.4 thousand motor vehicles/day in the Kalotina – Sofia section;
- 11 and 21 thousand motor vehicles/ day in the sections already available for exploitation from the Trakia motorway;
- 13 thousand motor vehicles/ day in the Orizovo – Stara Zagora section;
- 7.5 thousand/ day in the Sliven – Karnobat section.

This forecast traffic remains light years away from the minimum traffic rate needed for a self-funding and economically advantageous concession.

According to a research conducted by the **Institute for Transport and Communication (ITC)** from the end of 2002, conducted by order of the Ministry of Transport, the following traffic rates (in one direction) are expected to be reached in 2012 in the below-mentioned road sections:

- Sofia – Pazardjik – around 16_831 motor vehicles/ day;
- Pazardjik – Plovdiv – around 12_744 motor vehicles/ day;
- Yambol – Bourgas – around 9_463 motor vehicles/ day.

In 1998 another study was completed, funded by the **National PHARE Program** and carried out under the Framework Agreement by a consortium of European companies lead by COWI and with the ITC as subcontractor, with experts from GOPA GmbH (Germany) and WS Atkins (Great Britain) participating as well. The research study encompasses data about the planned traffic by year, as well as an assessment of the impact from the introduction of tolls. **The results from the study reaffirm an average 30% fall in traffic flow after the introduction of tolls**³⁰.

The specific figures from the study can be found in Annex № 8 of this report, but in order to make a comparison, the following data reflecting forecast traffic (in the case of high increase of GDP) if tolls are not introduced can be used:

- By Novi Han – for 2000 - **actual traffic – 9 911 vehicles/ day**;
– For 2015 - 14 772 vehicles/ day;
- By Kalougerovo – for 2000 - **actual traffic – 16 928 vehicles/ day**;
– For 2015 – 16 356 vehicles/ day;
- By Tsalapitsa – for 2000 – **actual traffic – 9 616 vehicles/ day**;
– For 2015 – 16 642 vehicles/ day;
- between Plovdiv and Orizovo – for 2000 – **actual traffic – 7 991 vehicles/ day**;
– for 2015 – 14 427 vehicles/ day;
- between Orizovo and Stara Zagora – for 2000 - **actual traffic– 8 975 vehicles/ day**;
– for 2015 – 10 814 vehicles/ day;
- between Stara Zagora and Vetren – for 2000 - **actual traffic – 5 312 vehicles/ day**;

²⁹ See Annex № 6 for data from the study.

³⁰ See Annex № 8 for results from the study.

– for 2015 – 9 209 vehicles/ day.

It becomes evident from the many studies conducted by Bulgarian and foreign entities that the data show that the levels of traffic forecast are drastically different from the levels needed in order for the concession to become economically advantageous and not require additional funds from the state budget or from other funds accumulated from taxpayers' money.

In evaluating the feasibility of the concession deal for the Trakia motorway, the following circumstances also cause concern:

- The bringing into use of the already built motorway sections after the concessionaire sends a letter to inform the concedent thereof. This action allows circumvention of the provisions of the Spatial Planning Act, which sets out clear procedures for preparing for exploitation.
- The conditions on which the concessionaire can raise crossing fees:
 - If the traffic rate goes up with more than 10 %. However, it is absolutely sure that with the introduction of toll fees the traffic rates will drop drastically. The average drop will be around 25% in the first year. For example, with the introduction of such fees for the motorways in Greece, traffic fell by 50%;
 - If there is a change in prices or an increase in the GDP with 7%, which is an additional provisional source of revenue for the concessionaire.
- The compensation that the state needs to pay in case of insufficient traffic flow:
 - After the introduction of the toll system, the concedent pays in advance the expected deficit for every six months, i.e the difference between the forecast traffic for the whole period and the forecast traffic for the 6-month period. This is an absurd situation because that would mean that the forecast and the actual traffic at the end of a given period have to be compared and only then should the deficit be compensated;
 - The currently envisioned scheme allows for unjustified credit-lending from the concedent to the concessionaire.
- The concession profit:
 - The profit is defined as the 50% of the excess on the difference between revenue and expenses;
 - The other 50% of this excess will be used by the concessionaire at his discretion, including as dividend, and is not included in calculating the future concession takings.
- Roadside sites:
 - as part of the object of concession, operation of these sites does not require any permits or licenses;
 - no additional payments are required for optical cables, billboards, gas stations, hotels, motels, etc. that fall within the object of concession .
- The independent construction supervision:
 - The independent construction supervision, as envisioned, should be ensured and paid by the concessionaire, which means that, in practice, what is constructed will not undergo any kind of control.

The summary of the data from the analysis on the feasibility are as follows:

1. The concession funding scheme is detrimental to the state budget and to state interests, because it envisions that the Concessionaire will be funding the concession with, apart from own resources, also from the revenue from the roadside service complexes, built on the concession territory, from tolls, from special-use fees, and also from the revenue from the compensatory payments made out by the state. Right from the starting date of the toll system, introduced in the existing sections and those built with budget and EU funds, the state

becomes liable to cover the concessionaire's shortages in servicing the loaned capital needed for construction, operation and maintenance of the object of concession. The shortage is the negative resultative quantity which makes up the difference between the euro equivalent of all revenue for the Concessionaire, as mentioned above, and the euro equivalent of the total sum owed in relation to the loans and other costs envisioned in the investment program. On the one hand, the state is clear of all responsibilities related to the construction, maintenance and management of the Trakia motorway by granting it for concession, and on the other hand, the state continues to support the Concessionaire providing him with a 'financial crutch' if financial loss is incurred by him. The Concessionaire's expenses can be high or low – it is up to him whether there will be a positive or negative financial result. It is obvious that the concession contract for the Trakia motorway gives incentive to the Concessionaire to achieve high negative results, which, in turn, opens for him the doors to the state budget. This is not a favorable agreement and goes against the interests of the state.

2. The introduction of toll fees for vehicles weighing over 12 tons is unfavorable. The impact resulting from the weight of such vehicles is insignificant and in practice does not result in erosion of the road. A negative impact is caused only by heavy traffic of vehicles over 12 tons. The vignette system was introduced in Bulgaria for right of use of the road network and for its maintenance. That is why in many countries, like Germany for example, tolls are paid only by vehicles above 12 tons, and vehicles below 12 tons use only the vignette system. Evidently, the Bulgarian taxpayer must be richer (or more generous) than the German taxpayer.

3. The scheme of the payment of liabilities by the state to the Concessionaire is also flawed. The Concessionaire will present audited financial reports for the previous financial year based on which the state must, within the following month, transfer to the Concessionaire's account the financial shortage incurred in the previous year. Bulgarian and international experience has shown that very often 'audited reports' are not necessarily thorough (the most drastic such case was the bankruptcy of the US giant, Enron), which in the case of the Trakia motorway concession will lead to considerable financial loss to the national budget. Such a payment scheme is also conducive to corrupt practices to be perpetrated by the state bodies responsible for control and for determining the size of the installments to be paid out by the state as compensation to the Concessionaire for the financial shortage incurred.

4. The system for settling the financial commitments agreed between the state and the Concessionaire in relation to the motorway sections where tolls were introduced is also against state interests. The state will be paying to the concessionaire the difference in euro for every 6-month period if the minimal required sum is greater than the actual revenue. Furthermore, the state will be paying the Concessionaire the above amounts for two 6-month periods in advance, as proposed by the Concessionaire. This scenario is an unacceptable form of state aid, because the state is thus funding a single trade company, which grants the latter unlawful advantage among all other legal subjects. Similar agreements infringe the Association Agreement of Bulgaria with the European Communities and go against the commitments made by Bulgaria when closing the chapter on "Competition Policy", and more specifically in relation to the most sensitive for United Europe aspect of the chapter – state subsidies.

5. The announced price of 2.7 million euro per kilometer for the construction of the Trakia motorway is abnormal. Expert opinion, as well as the financial reports from the European program ISPA and the provisions in the agreement with the EIB all make reference to the amount of 1.2 million euro per kilometer. The ration between these two forecast prices is 225% in detriment to the Republic of Bulgaria, which presupposes that the users of the motorway will have to pay 2,5 times higher tolls (the price per kilometer overstated by 225% + 12% for 35 years for servicing the financial commitments of the Concessionaire towards his creditors),

6. It would be detrimental to accept the demand of the Concessionaire to have recognized expenses of 12% for servicing liabilities in relation to the construction of the new sections of the Trakia motorway, if all loans from the European Investment Bank (EIB) have up until now not exceeded 3%. EIB supports projects of social importance – the bank already provided financial assistance for the construction of two lots and would hardly refuse to give a loan for the other three lots on the same conditions. Cause for concern is the difference in interest rates in view of the investment forecast of 717 million euro. With a difference of 9% (12% on the scheme of the Portuguese concessionaire and 3% on the EIB loans) what we get is a difference of 65 million euro. This once again reaffirms suspicions of the existence of a corruption scheme in this deal.

7. There is a danger that the concession of the Trakia motorway could be the object of sanctions from the EU for granting concession of something that has been constructed with EU money – and more specifically, with money from low-interest loans. In the chapter on ‘Funding’ in the Law for the Roads it is explicitly stated that funding for such projects would be secured from non-recourse finances from the European funds, from credit funds from the European financial institutions and from the state budget.

8. Unrealistic and detrimental to the state budget is the traffic rate forecast of 25 650 ECUs per day, based on which all calculations will be made regarding the annual concession earnings, compensatory payments and other compensation which the state will be liable for to the Concessionaire. According to experts from the Institute of Transport and Communications, average traffic on the Trakia motorway in 2000 was 14 160 ECUs per day. Hence, the state will have to pay the Concessionaire the difference between the above traffic rate and 25 650 ECUs per day. According to the forecast of the Central Laboratory for Roads’ and Bridges’ for future trends in the traffic, Bulgaria will have a traffic level of 25 650 in 50 years or more. Even if the government forecasts for an 8 % annual increase in traffic come true, to reach the above rate would take another 23 years. In this sense, the state is confessing that for the next 23 years it will be paying the Concessionaire out of the taxpayers’ pockets.

9. Detrimental to the interest of Bulgaria is also the agreement of the state to any kind of export and import of foreign currency needed by the Concessionaire. And not only that, but the state is guaranteeing the possibility for export of foreign currency not only to the Concessionaire, but also to the shareholders, which are foreign persons. In this way the state is providing a state guarantee which permits free import and export of foreign currency for the next 35 years – a period which far exceeds the mandate of this government and parliament. Furthermore, the right described above gives the Concessionaire a competitive advantage that no other economic operator in Bulgaria has. This is in evident breach of the principle of free and fair competition.

10. The mechanism for payment of the annual concession remuneration by the Concessionaire after the introduction of the toll system is a great risk for the country. The Concessionaire will pay the state only if the annual financial reports for the respective year show that the Concessionaire’s revenues are more than the expenses, which include the 12% for servicing the Concessionaire’s loans to his own creditors (for previous years as well). The concession earnings are equal to 50% of the excess. It is unacceptable and unfavorable for the state to be responsible for making up for the inefficiency of the Concessionaire. The gains or losses of the Concessionaire and the question whether he is using ‘cheap’ or ‘expensive’ money cannot be conditions determining whether or not the annual concession remuneration will be added to the state budget. The state does not take into consideration whether mineral water concessionaires, mine concessionaires, etc. are at a profit or loss, but collects the annual concession earnings from them no matter what. Then why in the case of the Trakia motorway is the state not holding up its right? The most likely reason is the existence of corruption at the highest political and management level.

11. The scheme of ‘compensatory payment’ to the Concessionaire by the state for vehicles of above 12 tons is detrimental to the state budget. Implementing this model would mean that the Concessionaire will be dealing with budget funds for the execution of the

investment program, which automatically means that he would have to conduct competitions or tenders in compliance with the Public Procurement Law for all its construction work. From what government officials have announced, it became clear that the Concessionaire will be able to freely select subcontractors without needing to follow the above-mentioned rules of procedure, and this is a serious infringement of the Public Procurement Law.

12. It is incorrect to also include in the concession territory for the purposes of motorway operation and maintenance the **roadside service complexes**, the road equipment and the **road requisites**, main elements of the Trakia motorway, **together with their adjoining terrains that are outside its scope**³¹. With this text the state is granting exclusive rights on the exploitation of the trade sites and on the recreation sites along Trakia motorway. In other words, **the state is creating a new monopoly** in favor of the concessionaire, which is prohibited under art. 16 from the Protection of Competition Act. Thus, only the concessionaire will be able to build or negotiate with other companies the building and/or exploitation of commercial sites or rest and recreation sites, even if their adjoining terrains are outside the scope of the Trakia motorway.

13. “The System for Measuring and Classification of the Traffic on the Trakia Motorway” is completely wrong and favoring the concessionaire. Besides being used for statistical purposes, this system will serve as a tool for settling the financial relations between the state and the concessionaire in two ways:

- a) It will specify the total number and type of the motor vehicles passing over the motorway;
- b) It will specify the total number of motor vehicles above 12 tons for which the state shall pay the due toll tax to the concessionaire;

It is envisioned that the system will be built and maintained by the concessionaire, which contradicts the principle of independent control on the imbursement of the concessionaire by the Bulgarian state. Even if reaching the forecast traffic of 26 500 ECUs per day, the state is facing the risk that civil servants or the concessionaire could falsify system data and ask for compensatory payments, provided for in the contract. The same is also true for the number of motor vehicles above 12 tons, for which the state owes compensatory payments to the concessionaire. This agreement creates great **corruption potential in the concession system of the Trakia motorway project, as well as possibilities for illegal „draining” out from the state budget.**

14. It is also incorrect to permit the concessionaire to gratuitously use the land mass acquired during construction of the motorway sections, as by law it is property of Bulgarian state and such activities represent illegal favoring of the concessionaire.

15. The possibility provided for the concessionaire to have two types of book-keeping is cause for concern. The first one will serve for legitimizing its operations before the tax authority and the second one - for making its operations legitimate before the state in settling its concession obligations. For this purpose the concessionaire is even keeping separate accounts in its internal book-keeping on which base reports on the traffic, the income, the expenses and the costs incurred by the concessionaire will be drafted monthly, every six months and once a year. These accounts will be checked by employees from the Ministry of Regional Development and Public Works but not by representatives from the Ministry of Finance, which runs the risk of having discrepancies between the tax declarations of “Avtomagistrala Trakia” JSCo and the financial reports on the concession of the same

³¹ **"Roadside service complexes"** are roadside trade sites, including all buildings and equipment for servicing passengers and motor vehicles, together with their adjoining terrain – camping-sites, motels, petrol stations, gas stations, catering establishments, shops, garages and parking lots, etc.;

„Road equipment" are the bases for management and/or maintenance, signs, marking, traffic lights, telephone posts, **roadside fountains and short rest platforms**, etc.

company. This fiscal dualism creates prerequisites for misuse and corruption activities.

16. The concession of Trakia motorway jeopardizes to a great extent the archeological finds and cultural monuments (real estate property) that can be found during its construction. The state could not effectively safeguard them without drafting a **reasonable** proposal, as is the opinion of the concessionaire, for their examination. These sites are part of Bulgarian national heritage and should not only be examined at all costs but preserved for future generations without owing any compensation for making this.

17. One more dimension should be kept in mind besides the direct and long-term losses from the implementation of the concession contract for construction and exploitation of Trakia motorway. As this is the first deal of that type, it creates a precedent to all the remaining projects based on public-private partnership, where the other players will also insist on similar conditions. It is already expected and promised that Trakia motorway model will be applied in the construction of other two motorways – Hemus and Strouma.

The made analysis leads to the following conclusions:

1. There is a consensus among the professional circles in the country and abroad on the unfeasibility for constructing Trakia motorway on a concession principle.
2. The expected traffic via Trakia motorway is considerably marked up.
3. The construction value per motorway kilometer is considerably marked down.
4. The funding scheme is unfavorable.

V. CONCLUSION

The above-described parameters of the deal enable us to determine that it is absolutely unfavorable with respect to the interests of the Bulgarian state and we can look for the feasibility of this concession in the advantages from this deal for specific private interests controlling the executive branch in the country that are hidden behind the concessionaire companies.

The main conclusions resulting from the above investigation are, as follows:

- The requirements of the Concessions Act for transparency and publicity of the basic procedures in preparing the deal for granting concession of Trakia motorway have not been kept on the part of Bulgarian government;
- Bulgarian laws and other legislation such as the Concessions Act and its Implementing Regulation, the Access to Public Information Act, Protection of the Classified Information Act, State Subsidies Act, Protection of the Competition Act, Decision №30/1998 of the Court of Cassation, etc. have been violated in a series of main parameters regarding concession preparation and conclusion;
- In negotiating the specific parameters of the deal, there are serious indications for a purposeful retreat from national interests;
- Serious doubts exist that large-scale misuse of public funds is being planned in favor of private interests, concealed from the Bulgarian public in the form of a concession contract with a duration of 35 years;
- The lack of transparency of the procedure (from its start to the contract signing), the unjustified refusal of the MRDPW³² to give us information on the case as well as the unlawfulness and mal-intent of the concession uncovered by the experts raises serious concern pointing to the presence of corrupt practices at the highest executive level in the Republic of Bulgaria.

Transparency International – Bulgaria shall acquaint the Chief Prosecutor’s Office with the results from its investigation. The present report shall also be submitted to the international network of Transparency International, the EU institutions for protection of competition, the EIB, EBRD and to all parties interested in the topic of this investigation.

³² Moreover, no information has been provided even to the temporary parliamentary committee investigating concession’s legitimacy.

Annex № 1

DECISION № 1043 OF DECEMBER 30, 2004 FOR GRANTING A CONCESSION ON “KALOTINA – SOFIA RING-ROAD (“SEVERNA DUGA” – North section) – ORIZOVO – STARA ZAGOARA – NOVA ZGAORA – YAMBOL – KARNOBAT – BOURGAS” NATIONAL MOTORWAY – EXCLUSIVE STATE PROPERTY

Promulgated in State Gazette of January 14, 2005.

On the grounds of art. 4, p. 6, art. 6, para 1 and art. 7 from the Concessions Act and in respect to art. 11, para 1, art. 12, p. 2, art. 13 and art. 16, para 4 from the Roads Act and § 3b from the Transitional and Concluding Regulations of the Concessions Act, THE COUNCIL OF MINISTERS HAS TAKEN THE FOLLOWING DECISION:

1. Shall grant a concession with subject the special right of use of the object – exclusive state property, representing the national motorway "Kalotina – Sofia ring-road (“Severna Duga”) – Orizovo – Stara Zagora – Nova Zagora – Yambol – Karnobat – Bourgas, hereinafter referred to as Trakia motorway, including:

1.1. Construction in the form of reconstruction, exploitation and maintenance with the funds of the concessionaire of the following road sections, constructed by the concedent:
1.1.1. Sofia ring-road (SRR) – “Severna Duga” from km 24+381 to km 35+050, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 1 – inseparable part of the concession contract.

1.1.2. Sofia – Orizovo from km 0+000 (identical with km 35+ 050 of Sofia ring-road) to km 171+ 360, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 2 – inseparable part of the concession contract.

1.2. Exploitation and maintenance with funds of the concessionaire of the following road sections, which will be constructed by the concedent with its own funds:

1.2.1. Orizovo – Stara Zagora from km 171+ 360 to km 210+ 100, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 3 – inseparable part of the concession contract.

1.2.2. Karnobat – Bourgas from km 325+ 250 to km 360+ 568, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 4 – inseparable part of the concession contract.

1.3. Construction, exploitation and maintenance with funds of the concessionaire of the following new road sections:

1.3.1. Sofia road-ring – “Severna Duga” from km 1+ 889 to km 24+ 381, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 5 – inseparable part of the concession contract.

1.3.2. Stara Zagora – Nova Zagora from km 210+ 100 to km 241+ 900, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 6 – inseparable part of the concession contract.

1.3.3. Nova Zagora – Yambol from km 241+ 900 to km 277+ 597, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 7 – inseparable part of the concession contract.

1.3.4. Yambol - Karnobat from km 277+ 597 to km 325+ 280, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 8 – inseparable part of the concession contract.

1.3.5. Kalotina – Sofia from km 0+ 000 to km 48+ 100, individualized by the point coordinates at its border turns in the "1970" co-ordinates, in accordance with plot plan - Annex № 9 – inseparable part of the concession contract.

2. The concession for the object under point 1 shall also include:

- 2.1. Bases for management and maintenance of Trakia motorway and the road junctions to them – public state property - the existing ones and the ones that will be constructed with funds of the concessionaire – road requisites within the meaning of art. 5, para 1, p. 3 и § 1, p. 4 from the Additional Regulations of the Roads Act.
- 2.2. Roadside service complexes and the road junctions to them – public state property that will be constructed with funds of the concessionaire – requisites of the concession object within the meaning of art. 4, para 2 from the Concessions Act.
3. The concession territory of Trakia motorway shall include:
 - 3.1. The surface of the road sections under p. 1.1 and 1.2 with their main elements: scope, road requisites and road equipment.
 - 3.2. The surfaces intended for construction in the new road sections under p. 1.3 with their main elements: scope, road requisites and road equipment.
 - 3.3. The road equipment and road requisites outside of the scope of Trakia motorway, including the concession object.
 - 3.4. The surfaces designated with the technical documentation of the concession object – inseparable part of the concession contract (detailed lay out plans and investment projects) for construction of roadside service complexes under p. 2.2.
4. Specifies the concession term to 35 years from the date of enforcing the concession contract.
 - 4.1. The concession contract shall be enforced from the date of its signing.
 - 4.2. Within 90 calendar days from the enforcement of the concession contract, the concessionaire shall be obliged to put into execution the following conditions:
 - 4.2.1. To present the bank guarantee under p. 8.1, and
 - 4.2.2. To present evidence of secured funding for constructing and reconstructing the section from Sofia to Bourgas.
 - 4.3. In case the conditions under p. 4.2 are not fulfilled, the concession contract shall be cancelled by right on the date of expiration of the 90-day term and the parties shall not be obliged to advise each other or be liable in any other way to one another.
5. On the grounds of § 3b from the Transitional and Concluding Regulations of the Concessions Act designates for concessionaire “Magistrala Trakia” JSCo.
6. Specifies the following conditions for executing the concession:
 - 6.1. Initial term for exercising the concession:
 - 6.1.1. For the sections under p. 1.1 – after the execution of the conditions under p. 4.2.
 - 6.1.2. For the sections under p. 1.2 – after their construction by the concedent in accordance with the concession contract.
 - 6.1.3. For the sections under p. 1.3 – the date of turning over the surfaces intended for construction, from the concedent to the concessionaire in accordance with the concession contract.
 - 6.1.4. For the requisites under p. 2 - the date of turning over the surfaces intended for construction, from the concedent to the concessionaire in accordance with the concession contract.
 - 6.2. The construction, maintenance and exploitation of the concession object under p. 1 shall be performed with funds of the concessionaire under conditions and within rules and procedures specified in the concession contract. The funds of the concessionaire include own funds and funds granted by financial institutions.
 - 6.3. The expropriation or acquisition of property in any other way – private property, covered by the provisions of enforced (present and future) detailed lay out plans, including plot plans, specifying the concession territory under p. 2 shall be performed by the concedent on its expense.
 - 6.4. The concession object is intended for usual use within the meaning of § 1, p. 7 from the Additional Regulations of the Roads Act under the restrictions of art. 55 from the Road Traffic Act.

6.5. The concessionaire as per art. 16, para 5 from the Roads Act shall collect taxes for covered distance under art. 10, para 3 from the same Act, hereinafter referred to as toll taxes, for passing over Trakia motorway by the motor vehicles under the Roads Traffic Act by keeping the following conditions:

6.5.1. The amount of the toll taxes shall be defined under the tariff as per Art. 10, para 7 from the Roads Act.

6.5.2. In accordance with the concession contract the concessionaire shall construct, exploit and maintain:

6.5.2.1. a system for collection of toll taxes, hereinafter referred to as toll system;

6.5.2.2. a system for traffic management and control, and

6.5.2.3. other systems connected to the exploitation of Trakia motorway.

6.6. For performing activities related to the special roads use within the meaning of the Roads Act, excluding the activities for construction and exploitation of the roadside service complexes under p. 2.2, the concessionaire shall collect taxes for special use in the amounts specified in the tariff under Art. 10, para 7 from the Roads Act.

6.7. The taxes under p. 6.5 and 6.6 shall be collected by the concessionaire within the terms and conditions specified in the ordinance under Art. 10, para 7 from the Roads Act.

6.7.1. The initial term for collecting the taxes by the concessionaire shall be:

6.7.1.1. for toll taxes – the date specified in the concession contract;

6.7.1.2. for taxes for special use – January 1 of the year following the year of signing the concession contract.

6.7.2. The taxes shall become property of the concessionaire from the date of their collection.

6.8. The revenues from the toll taxes, the taxes for special use and the income from the activity of the roadside service complexes under p. 2.2, built by the concessionaire with its funds shall be spent by the concessionaire under conditions and within the rules and procedures specified in the concession contract for performing concession activities – in accordance with priorities as well as for servicing the loan, paying dividends and making other payments, specified with this decision of the concession contract.

6.9. When effecting the rights and obligations under the concession, the concessionaire shall have the following additional alleviations with respect to the rules and procedures and the way of concession funding and management, specified in accordance with Art. 16 from the Roads Act:

6.9.1. From the date the concession contract is enforced to putting into operation of the toll system for the complete concession object or for a given section from it, the concessionaire shall pay no concession remuneration.

Annex № 2

Trakia motorway is part of Trans-European Transport Corridor No 8

(Source: www.stroitelstvo.bg Bulgarian construction gateway. Version in English language: www.bulgariaconstruction.com Developed under PHARE project 0102.02.014)

The execution of the project is divided into two phases.

Phase I

Lot 1 Orizovo – Stara Zagora **length:** 37.94 km

Lot 5 Karnobat – Bourgas Zapad **length:** 33.20 km

Total length of phase I: 71.14 km

Amount of concluded contracts for project execution:

Lot 1 – Association “Runway BG” 46 000 000 euro

Lot 5 – Association “Dogus – EKO” 54 000 000 euro

Total amount: 100 000 000 euro

The construction of Lot 1 and Lot 5 from Trakia motorway shall begin in March 2003. Those parts are expected to be completed in 2006.

Phase II

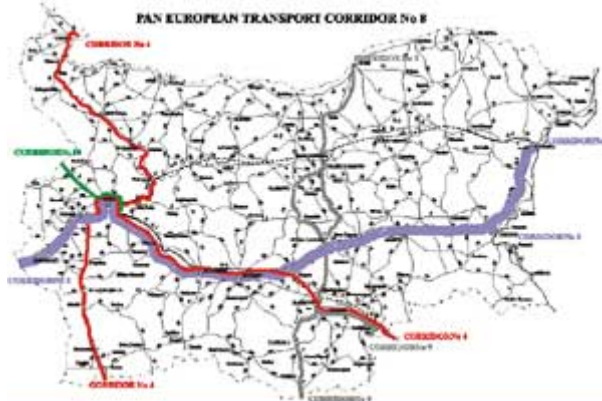
Lot 2 Stara Zagora – Nova Zagora **length:** 32.35 km – **Expected value:** 64 000 000 euro

Lot 3 Nova Zagora – Sliven/Yambol **length:** 26.05 km – **Expected value:** 77 000 000 euro

Lot 4 Sliven/Yambol – Karnobat **length:** 59.60 km – **Expected value:** 109 000 000 euro

Total length: 118 km **Total expected value:** 250 000 000 euro

Sources for funding the construction of Phase 2 are being sought as well as schemes for granting concession type public-private partnership.



Annex № 3

(Source: “Roads” Executive Agency, 2003)

The strategic objectives of the transport sector policy are, as follows:

- Achieving economic effectiveness;
- Developing sustainable transport section;
- Supporting regional and social development and commitment.

Roads network

The length of the motorways and national roads 1-st, 2-nd and 3-rd class is 19 008 km total divided into classes, as follows:

1. Motorways	-	328 km
2. 1-st class roads	-	2991 km
3. 2-nd class roads	-	3800 km
4. 3-rd class roads	-	11671 km
5. Intersections at road junctions and crossroads	-	218 km

The length of the national roads without pavement (roads with specified alignment) is 272,1 km or 1,41% from the total length.

State of the road pavement of national roads

State	Length, km	%
Good	6 211.5	32.8%
Fair	5 728.8	30.2%
Poor, including:	7 004.0	37.0%
motorways	12.8	3.9%
first class roads	908.9	30.7%
second class roads	1 319.9	32.9%
third class roads	4 762.3	40.9%
Total	18 944.3	

Motorways

- Trakia motorway – total length 360 km. In operation - 171 km, for further construction - 189 km
Needed funds for implementation – completion ~ 600 million euro, out of which: state budget - 90 million euro, European Investment Bank – 100 million euro/negotiated/, foreign investment – concession ~ 390 million euro.
- Maritsa motorway – total length 112 km. In operation - 20 km left carriageway – Lyubimets - Svilengrad. Under construction - 17 km – Harmanli – Lyubimets.
Needed funds for implementation – completion ~ 300 million euro, out of which: state budget – 20 million euro and foreign investment – concession – 280 million euro.

- Strouma motorway – total length – 156 km. The construction of the first 19 km has begun – from Daskalovo to Dolna Dikania in the direction of Doupnitsa.

Needed funds for implementation, putting into operation of 80 km to Doupnitsa and from Kresna to the border ~ 200 million euro, out of which: state budget – 40 million euro, European Investment Bank - 40 million Euro /provided/, ISPA – 120 million Euro, and for complete long term construction – additionally more ~ 500 million euro.

- Kalotina – Sofia Trans-European motorway – Sevena Duga - Sofia ring-road – Hemus motorway (Sofia ring-road – Yana road junction) – total length 82 km; in operation 12 km

Needed funds for implementation, construction of 24 km from Sofia ring-road – foreign investment – concession – 90 million euro.

- South section of the Sofia ring-road – total length 28 km – in operation 4 km

Needed investment for implementation of a mid-term program – 4 km new construction and 4 km reconstruction – 40 million euro, out of which: state budget – 15 million euro, European Investment Bank – 25 million euro.

- Lyulin motorway – total length 19 km

Needed funds for implementation – putting into operation of 19 km ~ 148 million euro, out of which: state budget – 37 million euro, ISPA – 111 million euro /approved by the European Commission/.

- Hemus motorway - total length of the motorway 433 km

In operation - 129 km and in construction 23 km.

Needed funds for implementation, further construction and putting into operation of 23 km - 30 million euro, state budget - 30 million euro and completion in a long-term – additional investment amounting to 840 million euro.

- Chernomore motorway – total length 103 km; in operation 11km

Needed funds for implementation of the complete motorway in a long-term - 500 million euro.

The first priority for completion of the sites to 2005, including for “Further Construction of the Motorways in Bulgaria” are needed 1 408 million euro in total, out of which: state budget – 232 million euro, European Investment Bank – 185 million euro, ISPA – 231 million euro and foreign investment – concessions – 760 million euro.

For execution of the program for the period 2003 – 2005 – it is needed to provide average annual funding from the state budget amounting to 77,33 million.

For the long-term program after 2006 that will serve as a base for further construction of all motorways in the Republic of Bulgaria additionally will be needed 1 840 million euro in total.

Annex № 4

"Avtomagistrala Trakia" JSCo is registered by Sofia City Court on July 30, 2004. Its shareholders are three Portuguese companies – "LENA ENGENHARIA E CONSTRUÇOES, SA" (15%), "MFS - MONIZ DA MAIA, SERRA AND FORTUNATO" (21%) and "SOMAGUE CONCESSOERIRS E SERVICOS, SA" (15%). 49 per cent from the capital belongs to the state companies subordinate to the Ministry of Regional Development and Public Works – "Avtomagistrali" JSCo (25%) and "Technostroy" (24%). The main capital of the company – future concessionaire of Trakia motorway is 1.21 million BGN. "MFS - MONIZ DA MAIA, SERRA AND FORTUNATO" has been found in 1969. It is specialized in construction of dams, tunnels, canals, bridges and hydro-energy powers, roads and motorways. From 1997 it has been working on foreign projects and its official website shows that at present its priorities are the ex- Portuguese colonies in Africa as well as Poland and Bulgaria. The share capital of the company is 40 million euro. "LENA ENGENHARIA E CONSTRUÇOES, SA" (Lena Construcoes) is another Portuguese company dealing mainly with construction of motorways, dams and public buildings. The company is constructing a motorway in Portugal for 164 million euro.

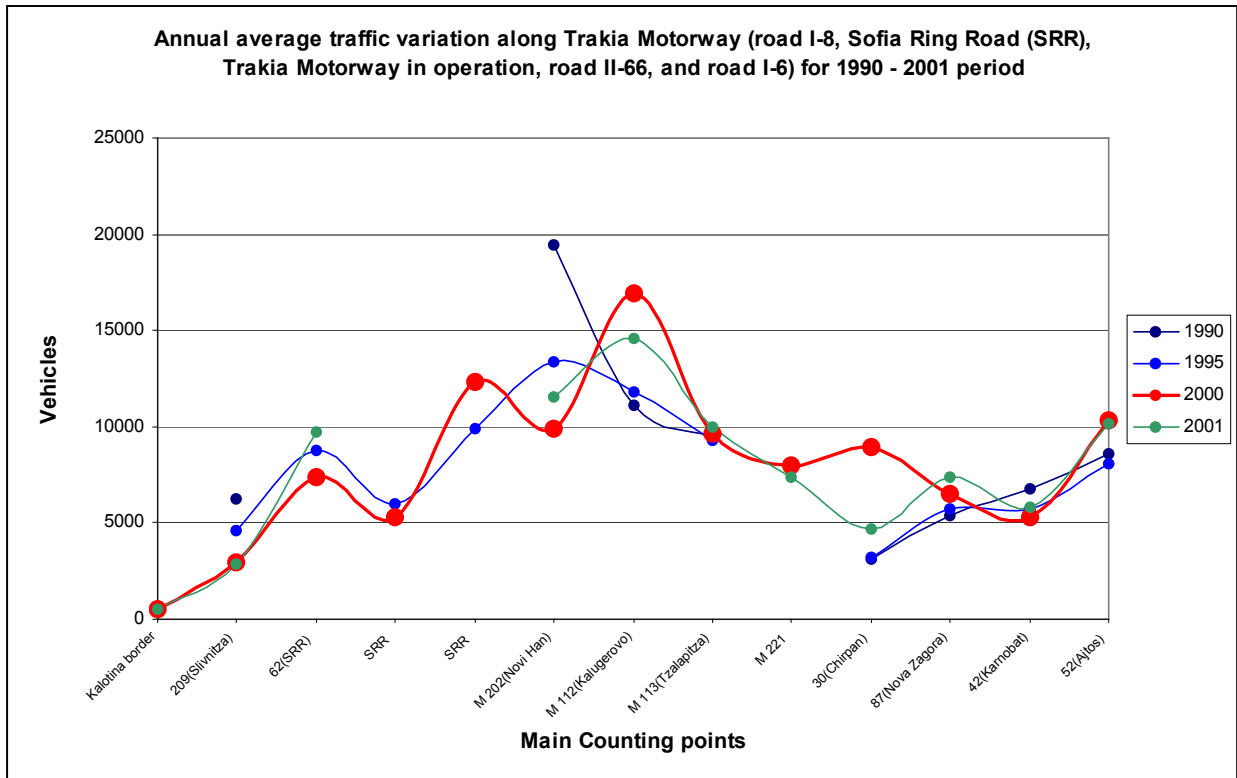
"Magistrala Hemus" JSCo is registered by Sofia City Court on August 16. The majority control of 51% belongs to the Italian "Sallini", and the remaining 49% are distributed among the state owned companies "Avtomagistrali" and "Technostroy". The company capital is 1.3 million BGN. The activity subject of the company is design, funding and construction. "Sallini" has more than 60 years of experience in roads construction. At present "Sallini" is working on projects for 800 million euro, out of which the own funding share is 44 million euro as is stipulated in the official website of the company. "Sallini" is constructing several motorways in Italy and big sites in Africa. The Boards of Directors consist of 6 persons each – three from the Italian company and three from the Bulgarian companies. The appointed Bulgarian Directors are: Kalin Rogachev – Chief of Cabinet of Minister Tserovsky, Veliko Zhelev – Deputy Director of "Roads" Executive Agency, Minko Angelov – ex MP candidate from the Movement for Freedoms from Haskovo, Emil Kotsev – Director of "Technoexportstroy" and Krassimir Georgiev.

Annex № 5

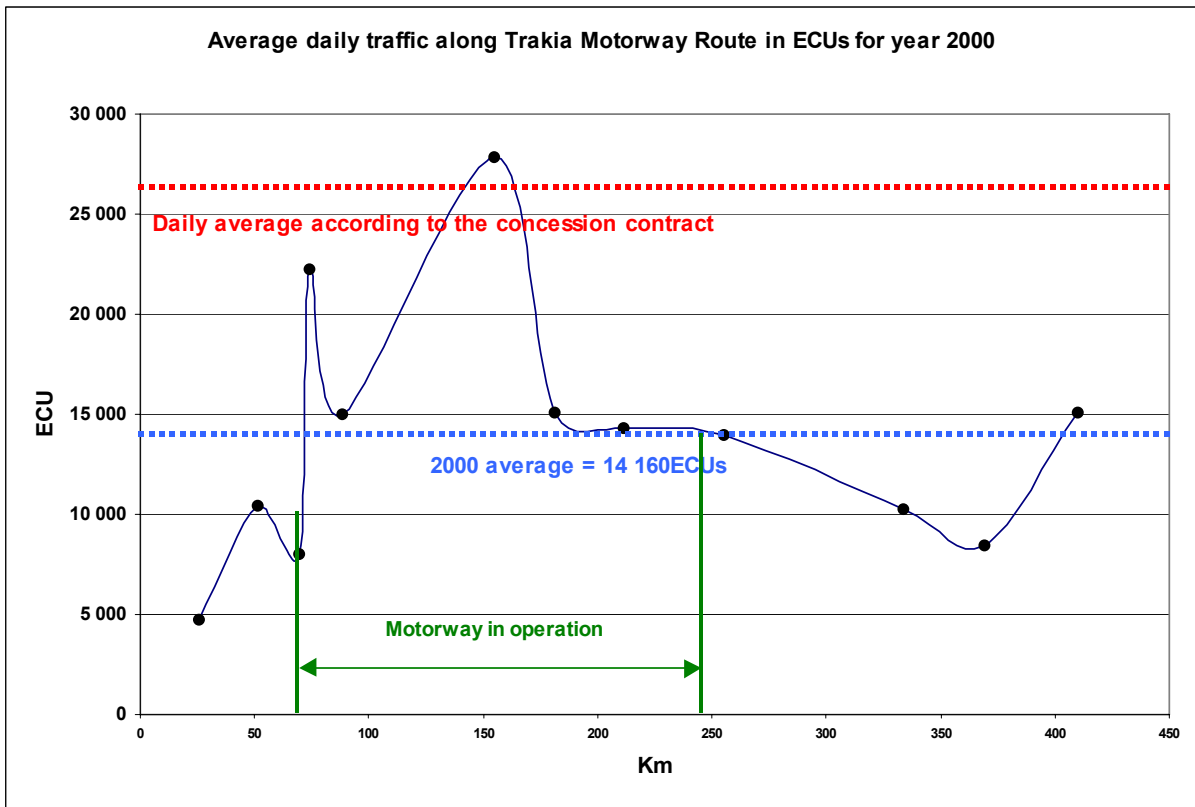
Source: The Press Release of the Ministry of Regional Development and Public Works and Minister Tserovski after the conclusion of the deal, quoted by BTA, Focus-News Agency, Dnevnik newspaper, etc:

- Concessionaire: “Trakia” consortium consisting of three Portuguese companies owning 51% and two Bulgarian state companies owning 49%;
- Contract term: 35 years;
- Total motorway length: 443 km;
- Construction term: by the end of 2009;
- Sanctions for delay: from three to six months - from 10 to 83 thousand euro per day;
- Investment: total 717 million euro, out of which 10% own funds of the consortium and 90% - bank loans without state guarantee;
- Price per kilometer: 2.7 million euro;
- Road taxes from 2007 on: specified by the government – probably from 2.5 eurocent per kilometer for passenger cars and to 12.5 eurocent for trucks up to 12 t. The big trucks shall buy vignettes;
- By 2014: because of the expected low traffic, the state will fund the project with 170 million euro;
- From 2014 to 2022: the concessionaire will pay back the sum plus 175.8 million euro in interest;
- From 2003 to the end of the concession: the concessionaire will pay to the state concession remuneration in total amount of 5 billion euro for 19 years;
- Expected profit of the concessionaire: 191.8 million euro for the whole period.

Annex № 6



Annex № 7



Annex № 8

STUDIES AND PROGNOSSES ON THE TRAFFIC VIA TRAKIA MOTORWAY

1. STUDY ON THE TOLL SYSTEM on SOFIA – PLOVDIV – ORIZOVO MOTORWAY (Final Report 1996)

The study is funded by the EIB and the EBRD within the framework of “Transit Roads” project and is performed by Europistas C.E.S.A. (Spain) in cooperation with Skott Wilson Kirkpatrick Consulting Engineering (Great Britain).

A series of counting and surveys have been made in carrying out the study, including such that reflect the influence of the toll level on the traffic flows. The study shows that at different traffic levels the stream that will divert from the motorway is different for the different vehicles’ categories:

Types of Vehicles	Diverted Traffic at toll of 1.15 eurocent/km	Diverted Traffic at toll of 2.3 eurocent/km
Passenger cars	About 18%	About 95%
Trucks	0%	About 30%

The road traffic has been modeled with QVIEW and a very good accuracy has been achieved in validating the 1995 traffic model. The traffic forecast has been developed under two scenarios: for low growth and for high growth based on the elasticity of the road traffic increase against the GDP scale.

The final forecast in number of vehicles per sections is summarized in the following table:

Year	Average Annual Daily Traffic (vehicles/24-hours)	
	Low Scenario	High Scenario
Novi Han cross section		
1997	13 071	13 864
2000 – actual traffic	9 911	
2003	14 737	18 818
2010	16 389	24 380
2017	19 004	29 860
Mirovo cross section		
1997	8 338	8 849
2000 – actual traffic	16 928	
2003	9 339	12 005
2010	10 737	15 549
2017	12 116	19 040
Malo Konare cross section		
1997	7 627	8 113
2000 – actual traffic	9 616	
2003	8 589	10 984

2010	9 802	14 207
2017	11 051	17 302
Belozem* cross section		
1997	675	721
2000 – actual traffic	7 991	
2003	760	973
2010	866	1 256
2017	975	1 535

Note: The section Plovdiv – Orizovo has still been under construction at the moment of drafting the study and this is the reason for the very low values of the traffic at Belozem.

The main conclusions from the EUROPISTAS study are, as follows:

- The implementation of a toll system along Sofia – Plovdiv – Orizovo motorway is financially feasible at evaluated costs of the system implementation of 11.4 million USD (1995prices);
- The revenues would have been enough for serving the loans taken for implementing the system;
- In the low traffic growth scenario, including VAT taxation on the implementation revenues and costs, the loans could be paid off for 14 years. This is the most conservative scenario of loans pay off, without the support on the part of the government and applying a commercial interest rate;
- The recommended toll level of 0.9 BGL/km (1995 prices) with the above toll coefficients results in revenues close to the amount of the maximally achievable ones. The higher toll level does not result in a higher revenue.

**2. STUDY AND ASSESMENT OF THE ECONOMIC AND FINANCIAL EFFICIENCY FOR CONSTRUCTION OF TRAKIA CONSTRUCTION (ORIZOVO – ZHITAROVO) AND CHERNO MORE MOTORWAYS (VETREN – PRISELTSI) AS PART OF TRANS-EUROPEAN CORRIDOR № 8
(Final Report – August 1998)**

The study is funded under the National PHARE Program and performed within a Framework Agreement by a consortium of European companies led by COWI and with subcontractor the Institute of Transport and Communications. The experts who have been working on the study are from GOPA GmbH (Germany) and WS Atkins (Great Britain). The road traffic for the base year - 1995 is modeled with SATURN, including origin/destination data, and the model has achieved a very high degree of calibration.

As in the previous study the forecast has been based on the GDP growth and elasticity coefficients in 3 alternatives: high, medium and low. The study also reflects the sharp GDP drop in 1996/1997. The used GDP growth forecast and respective for the passenger and freight traffic growth along the motorway are, as follows:

Year	Low	Medium	High
GDP against base 1995 = 100			
2000	90.8	94.5	98.7
2005	98.5	108.3	121.3
2010	110.4	124.4	141.9
2015	130.8	144.2	160.2
Transport operation in pkm ³³ against base 1995 = 100			
2000	93.3	96.0	99.0

³³ pkm – passenger-seat-kilometers

2005	98.9	106.4	117.3
2010	108.1	120.1	136.9
2015	126.0	139.3	157.1
Transport operation in tkm ³⁴ against base 1995 = 100			
2000	89.7	93.9	98.6
2005	98.3	109.3	123.8
2010	111.6	127.2	146.8
2015	134.4	149.3	167.2

A traffic forecast with 3 alternatives has been developed:

- Without construction of motorway in Orizovo – Vetren section;
- Free of charge motorway;
- Construction of Trakia and Cherno more motorways and introduction of tolls.

The last alternative has been modeled in 2 sub-variants depending on the level of the base toll for the passenger cars and the toll coefficient of 2.5 for the trucks:

- 30 BGN/km⁹⁷ (1.6 eurocent/km)
- 100 BGN/km⁹⁷ (5.3 eurocent/km)

The following table shows the traffic forecast on Trakia motorway without tolls:

Year	Average Annual Daily Traffic (Vehicles/24-hours)	
	Medium Scenario	High Scenario
Novi Han cross section		
2000	8 801	9 753
2000 – actual traffic	9 911	
2005	9 938	10 335
2010	11 353	12 900
2015	13 222	14 772
Kalugerovo cross section		
2000	9 753	10 103
2000 – actual traffic	16 928	
2005	11 004	11 450
2010	12 562	14 283
2015	14 628	16 356
Tsalapitsa cross section		
2000	9 894	10 255
2000 – actual traffic	9 616	
2005	11 181	11 626
2010	12 279	14 537
2015	14 886	16 642
Cross section between Plovdiv and Orizovo		
2000	8 613	8 918
2000 – actual traffic	7 991	
2005	9 716	10 108
2010	11 090	12 597
2015	12 912	14 427
Cross section between Orizovo and Stara Zagora		
2000	6 442	6 671
2000 – actual traffic	8 975	
2005	7 285	7 576
2010	8 331	9 443
2015	9 704	10 814

³⁴ tkm – ton-kilometres

Cross section between Stara Zagora and Vetren		
2000	5 505	5 695
2000 – actual traffic	5 312	
2005	6 219	6 459
2010	7 107	8 038
2015	8 275	9 209

As seen from the table, the levels of the forecast traffic for 2000 are very close to the actually reported levels (varying within the range from –8.8% to +6.8%), excluding the point at Kalugerovo, where big discrepancies exist in this study, as in the previous one, that give good reasons for doubting the correctness of used data for this point for the base 1995.

The data for the forecast traffic decrease at the two examined levels are shown in the following table:

Base year 1995	1.6 eurocent/km		5.3 eurocent/km	
	AADT ³⁵	Drop in %	AADT	Drop in %
Section at Novi Han				
Passenger cars	3 606	31.2%	139	97.3%
Trucks	825	15.3%	525	46.1
<i>Total</i>	<i>4 431</i>	<i>28.7%</i>	<i>664</i>	<i>89.3%</i>
Section at Kalugerovo				
Passenger cars	2 753	54.1%	0	100%
Trucks	942	11%	449	57.6%
<i>Total</i>	<i>3 695</i>	<i>47.6%</i>	<i>449</i>	<i>93.6%</i>
Section at Tsalapitsa				
Passenger cars	3 405	41.8%	0	100%
Trucks	898	12.1%	710	30.5%
<i>Total</i>	<i>4 303</i>	<i>37.4%</i>	<i>710</i>	<i>89.7%</i>
Section between Plovdiv and Orizovo				
Automobiles	3 623	33.0%	0	100%
Trucks	690	15.4%	547	33.0%
<i>Total</i>	<i>4 313</i>	<i>30.7%</i>	<i>547</i>	<i>91.2%</i>
Section between Orizovo and Stara Zagora				
Passenger cars	2 468	33.5%	0	100%
Trucks	689	9.6%	578	24.1%
<i>Total</i>	<i>3 157</i>	<i>29.5%</i>	<i>578</i>	<i>87.1%</i>
Section between Stara Zagora and Vetren				
Passenger cars	2 149	35.3%	0	100%
Trucks	528	8.8%	467	19.3%
<i>Total</i>	<i>2 677</i>	<i>31.4%</i>	<i>467</i>	<i>88.0%</i>

The final conclusions from the study are:

- Trakia motorway (the section Orizovo - Vetren) could be self-financed only in the cases where the level of the toll is too high and unacceptable;
- The construction costs in Bulgaria can be compared with those in Western Europe (at about 60% from the value for construction is for asphalt-concrete and fuels, which are imported in Bulgaria and therefore there is no grounds their cost to be lower than in the other European countries). In the West European countries the minimum daily traffic for self-financed tolled motorway is assumed to be some 20 000 vehicles;
- Due to the obvious reasons of society non-acceptance, the indefinite increase of the tolls is impossible. The introduction of road tolls is more easily accepted by the commercial freight traffic than by the private car users. For this reason it is recommended to increase the toll coefficients and thus increase the revenues from the commercial traffic, without increasing the base toll paid by the passenger cars;
- The granting concession on the constructed part together with the section from Orizovo to Bourgas would relieve the financial mechanism but in all cases would require a state subsidy amounting to at least 30% from the initial costs.

For providing financial stability of the project, the study also recommends to:

- phased approach for construction of the missing section (initially one carriageway and when reaching certain traffic levels – construction of the second carriageway to motorway standard;
- define special tax regime for the concessionaire (exemption from specified taxes);

³⁵ Average annual daily traffic – number of vehicles/24 hours

- develop a program for subsidizing the project.