Key messages of the Audit Report

This is a real case of a contract awarded without public tender or any procedure competitive which involved a losses for the taxpayers

- The lack of competitive procedure highlights the question of the value for money and transparency of award process.

- The changes that occurred during negotiations have reduced the value for money of the contract to the public grantor (alters the initial risk matrix of concession).The demand risks were allocated to the port company, against the terms of initial contract. Part of the financial risk was transferred to the Port, as a consequence of financial crises, once there was an increase of the intern rate return of the private company ("term").

- The results achieved during negotiation caused a substantial change of economic value of contract. An amendment may be considered substantial if it changes the economic balance of the contract in favour of the contractor. If so, the result may be a new contract, which would imply a competition procedure in compliance with the principles of competition and transparency.

- In general, market risk and demand should be allocated to the private sector. However, as a result of negotiations with financing banks, the "Port" has to bear the demand risk. If the estimated traffic is not achieved, this can trigger a rebalance financial process. The transfer of risk to the "Port" also means or implies a loss in the contract value. This new contract includes financial and legal clauses which may be considered unbalanced or unreasonable.

- The reasonableness of the terms of compensation may be questioned, regarding the real risk allocated to the "Port", namely the extension period of concession and the profitability of business allowed by the grantor. The shareholders investment was made through loans instead of equity, this way reducing the business risk incurred by the private firm (term), which will benefit from investments made by the two public enterprises involved.

- The option of PPP/PFI can deliver benefits but is not suitable at any price or in every circumstance. Most PPP/PFI projects are built close to the agreed time, price and specification, but bring costs and risks over the use of conventional funding. The PPP/PFI solution should demonstrate value for money comparing to traditional procurement. Their benefits such as cost efficiencies, quality improvements, innovation or better management of risk, have to compensate its higher financial costs. However, the cost and opportunity of business cannot jeopardize the respect for elementary principles of public procurement.

- According to the legal framework of PPP, the environment approvals must be obtained prior to the launch of public tender in order not to influence the proper development of the project, in particular the stability of tenders. Besides this, the initiative of business should belong to the grantor and not to the private partner as it happened.

- The decision to extent for another 27 years the term of concession contract is questionable, because of the lack of public tender which does not guarantee competition and transparency of the procurement process. The lack of reassessment of the risks of the new contract, namely all those risks related to the financial rebalance clauses draws the attention to the demonstration of value for money compared to other options.