Extended Commercial Concession Agreements in Education as a Perspective Form of Public Private Partnership

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Abstract: This article views the concept and essence of an extended agreement of commercial concession in Russia’s system of higher professional education. The authors identify the main prospects of the development of cooperation between state higher education establishments and private business under the forming knowledge economy and analyze the contradictions occurring in the process of such cooperation, as well as strategic profits obtained by partners and the society in general.

Key words: Commercial concession · Franchising · Knowledge economics · Intellectual property · Higher professional education · Distant training · Educational technologies

INTRODUCTION

The intellectual product, “know-how”, is becoming the most popular commodity, the main treasure and the most important source of extra income under the forming knowledge economics. In the widest sense, both the world and domestic trade of knowledge feature large prospects. In spite of the fact that many states reduce their budget expenditures on education as a result of the recent waves of crisis, the citizen willing to follow both the rushing and changing flow of technological progress will have to invest more and more money into his education. The concept of lifelong education provides for modern businesses with new market niches, being rather free and attractive in regard to the market capacity and potential profitable flows; e.g., the commercial activity, which realizes educational services on basis of a franchising agreement with a country’s state higher educational establishments.

On the other side, the specification of the structure of both the adopted federal budget for 2013 and the 2014-2015 planning period forces countries to look for additional off-budget sources of finance.

RESULTS AND DISCUSSION

In 2013, according to the Law “On the Federal Budget for 2013 and the planning period of 2014 and 2015, the budget revenue is expected to amount to 12.87 trillion RUR and the spending – to 13.39 trillion RUR. Moreover, the budget funds allocated to the Ministry of Education and Science of the RF for educational needs amount to 605.7 billion RUR with its further reduction to 573.6 billion RUR in 2015 [1].

A certain cut of expenditures on education can be reasoned with the global trend having appeared in the context of the recent economic crises. For example, in 2010 Switzerland allocated 5.2% of its GDP for educating its citizens; although in 2009 this rate equaled 5.6%. In Finland, the rates were 5.9% and 6.3% correspondingly [2]. Nevertheless, this scenario seems to be short-termed for European countries and in the future the education expenditures of the EU’s members is going to be systemically and progressively growing.

Within the current policy, the rate of consolidated budget expenditures on education in the GDP is also to be cut to 4.5% in 2013; to 4.9% in 2014; to 3.6% in 2015 [4]. In the coming three years, the federal budget will experience a significant transformation of the expenditure structure on each level of education.

This transformation will include the following changes: 2015 will see a severe reduction in the assets allocated for general education from 11.1% to 3.3%. The specific expenditures for both primary and secondary vocational education will be increased only by 0.1%. The expenditures for “Other educational issues” and for applied scientific studies will significantly fall by 50% and by 20% correspondingly [5].
Table 1: Federal budget education expenditures for 2013 and for planning period of 2014-2015 (RUR Thousand)

<table>
<thead>
<tr>
<th>Expenditures</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>605 667 539.40</td>
<td>547 728 956.50</td>
<td>572 587 621.70</td>
</tr>
<tr>
<td>Preschool education</td>
<td>7 564 839.40</td>
<td>6 025 493.40</td>
<td>5 680 811.30</td>
</tr>
<tr>
<td>General education</td>
<td>67 380 787.50</td>
<td>19 325 189.90</td>
<td>19 047 611.50</td>
</tr>
<tr>
<td>Primary vocational education</td>
<td>4 339 408.70</td>
<td>4 469 225.10</td>
<td>4 477 099.60</td>
</tr>
<tr>
<td>Secondary vocational education</td>
<td>3 603 306.10</td>
<td>3 625 696.80</td>
<td>3 792 059.10</td>
</tr>
<tr>
<td>Vocational training, re-training and advanced training</td>
<td>6 407 546.90</td>
<td>6 437 240.10</td>
<td>6 469 233.90</td>
</tr>
<tr>
<td>Higher postgraduate vocational education</td>
<td>477 238 473.70</td>
<td>484 106 114.10</td>
<td>513 536 938.00</td>
</tr>
<tr>
<td>Youth policy and child health care</td>
<td>5 293 104.70</td>
<td>5 297 267.20</td>
<td>1 035 565.20</td>
</tr>
<tr>
<td>Applied scientific studies in education</td>
<td>12 521 722.20</td>
<td>9 426 335.00</td>
<td>9 824 604.70</td>
</tr>
<tr>
<td>Other educational issues</td>
<td>21 318 350.20</td>
<td>9 016 394.90</td>
<td>8 723 698.40</td>
</tr>
</tbody>
</table>

Based on the data of [3]

Table 2: Structure of Federal Budget Education Expenditures for 2013-2015

<table>
<thead>
<tr>
<th>Expenditures</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Preschool education</td>
<td>1.2%</td>
<td>1.1%</td>
<td>1.0%</td>
</tr>
<tr>
<td>General education</td>
<td>11.1%</td>
<td>3.5%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Primary vocational education</td>
<td>0.7%</td>
<td>0.8%</td>
<td>0.8%</td>
</tr>
<tr>
<td>Secondary vocational education</td>
<td>0.6%</td>
<td>0.7%</td>
<td>0.7%</td>
</tr>
<tr>
<td>Vocational training, re-training and advanced training</td>
<td>1.1%</td>
<td>1.2%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Higher postgraduate vocational education</td>
<td>78.8%</td>
<td>88.4%</td>
<td>89.7%</td>
</tr>
<tr>
<td>Youth policy and child health care</td>
<td>0.9%</td>
<td>1.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Applied scientific studies in education</td>
<td>2.1%</td>
<td>1.7%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Other educational issues</td>
<td>3.5%</td>
<td>1.6%</td>
<td>1.5%</td>
</tr>
</tbody>
</table>

Based on the data of [6]

In the corrected structure of budget expenditures on education, a special privilege is extended to higher and postgraduate education, the rate of which is increased by 10.9% - from 78.8% to 89.7% [7]. On the one hand, these numbers demonstrate that the GDP keeps on being perceived by the government as a strategically important economic branch, which will be subject to a particular attention. On the other hand, the indexes of the increase in budget expenditures are dramatically lower than the level of the real inflation, which doesn’t surpass 6-7% per year, in accordance with the official forecasts, but practically appears to be two times higher. In this context, searching for ways and possibilities for off-budget finance and for the provision of education becomes a highly urgent task for any one, who values both his status and the reputation of an education establishment. The solution deals with the potential of commercializing educational services, i.e., entering into extended commercial concession agreements.

Up to the present time, the domestic practice of public-private partnership in the spheres unrelated to education has featured commercial concession as the most popular type of agreement. This type enables not only to successfully attract a private capital but also to protect public interests, preserving a social character of the created benefits. Otherwise, both the educational law and the Federal Law “On Concession Agreements” are often subject to mutual contradictions.

This is primarily associated with the concession object. Such a problem occurs when the immovable property, which is owned by a state education establishment, is granted to the concessionaire to be overhauled and reconstructed with the right of a further remuneration within a certain period of time. The object of an agreement on concession of an educational entity can be associated with any immovable property and its units, which belong to the education establishment and which are used by it in the process of educational activity
including the satisfaction of the consumer, domestic, cultural, housing and other needs of both its students and academic personnel [8].

Nevertheless, in accordance with Item 4 of Article 3 of the Federal Law “On Concession Agreements”, the assumed facility of reconstruction, as of the date of granting it by the concesor to the concessionaire, must not be subject to the rights of the third parties, including the right of operation management. Thus, the concession agreement loses its essential feature, which is the security of the facility to an education establishment and its operation in the process of educational activity [9].

Entering into a concession agreement is primarily aimed at attracting investments and at increasing the efficiency of a property operation regime (Article 1 of the Federal Law “On Concession Agreements”). In return, the concessionaire receives the right to use this property for performing a specific educational activity. In relation to this, the facilities being of a social, domestic and cultural importance can’t be subject to a concession separately from the immovable property directly aimed for the realization of the educational process, even in case these facilities will be further used in the process of educational activity. This would break the ultimate purpose of attracting the capital and complicate the concessionaire’s performance of educational activity [10].

The legal solution for the problem may deal with the implementation of the Russian Federal Law “On Education” and with the further adoption of the Federal Law “On Education in the Russian Federation”. It stipulates that the education establishment is to be liable to the owner for adhering to the efficient operation conditions for the property granted to this establishment. One of the aims for entering into the concession agreement is to increase the operation efficiency for both the state and municipal property. Hence, in case of inefficiently using the property by the education establishment, the agreed concession default may become reasoned and justified in the context of the current legislation [11].

One more serious obstacle, which appears in the way of the wide expansion of commercial concession agreements in education, is associated with the liability, obligatory for the concessionaire, to carry out the activity, using the object of the concession agreement. This liability is stipulated by the Law “On Concession Agreements” - i.e., in Article 3, which defines the essence of a concession agreement; in Item 2 of Article 8, which specifies the liabilities for the concessionaire; in Sub-item 2 of Item 1 of Article 10, which stipulates that the concessionaire’s liability to perform the activity specified in the concession agreement is the condition of high importance for this agreement. In other words, the concession-based granting of immovable property without the concessionaire’s appropriate use of a facility as the object of the concession agreement is ineligible.

Regarding the fact that changing the purpose orientation for an operated facility is forbidden, it is possible to conclude that the concessionaire’s entering into agreement on the facility owned by an education establishment, he will have to render educational services. But the observance of these legal requirements faces a set of the awkward obstacles [12].

The conducting of educational activity is subject to obligatory licensing, moreover specifying that educational training is forbidden before license receipt. Thus, the concessionaire, who isn’t licensed for educational activity, fails to fulfill his liabilities due to the concession agreement. This significantly decreases a range of potential concessionaires under the agreement, as far as educational facilities are concerned.

The “RF”s Federal Law “On Education in the Russian Federation” [13] stipulated that conducting educational activity is assigned only to educational establishments. The aforementioned license can be received by a legal entity, which is created in the form of an institution and which proclaims the conduction of educational activity as its main objective.

It is essential to remember that institutions are associated with non-profit organizations; hence, they mustn’t orient their activity to both profit deriving and entrepreneurship. This reasons that to associate them with potential investors is rather irrational.

The possible scheme for the aforementioned disambiguation could deal with implementing the provisions of Item 1 of Article 8 of the Federal Law “On Concession Agreements” [14]. This section of the law declares the possibility for the concessionaire to grant the concession facility to the third party for the concession period and that the third party should fulfill the liabilities of the concessionaire in a full scope. The responsibility for the actions of the third party is to be taken by the concessionaire.

Besides the described construction being complex and demanding considerable time spending, it confronts the legal nature of concession itself.

Items 1, 5 and 3 of the Law ““On Concession Agreements” shows that a grant to the concessionaire of specific rights to operate the agreement facility, relating to the liability to conduct
its operation and to provide consumers with definite services, provokes the occurrence of a special peculiar feature for the concession agreement, which is a direct receipt of financial benefits by the concessionaire, generated by the final users of the concession facilities rather than the counteragent under the agreement [15].

The final users of the facilities are those, who have entered into agreement on receiving educational services, i.e., those, who directly use the facility for satisfying their educational needs. If the concessionaire translates the right to operate the concession facility to the education establishment and charges it only for operating this facility without any charges for its students, he nullifies the aforementioned concession feature individuating it from a range of other contracts.

Nevertheless, there exists another solution for the tangled situation, which is by entering into extended commercial concession agreements that include either a section or a separate additional agreement on educational franchising.

The subject of the extended commercial concession agreement features a complex structure and implicates two parts - a grant of special rights to educational facilities (property) and that of the rights to a definite complex array of intellectual capital of a higher education establishment (educational franchise).

Franchising in education, in its classic nature, is associated with a joint activity of educational institutions on making proposals, on both rendering and promoting educational services to the market. In this context, both parties of this agreement have always been educational establishments, as a rule, of different levels (a college-a university) and of public one in particular. Private business as a full investor-partner didn’t have the possibility to participate in this process. The services stipulated in the franchising agreement must be undoubtedly correlated with the licenses of educational institutions. A perspective organization can become the one related to public private partnership between higher educational establishments and business structures by analogy with a traditional franchising.

The subject of educational franchising should be: the right to use the corporate logo of an educational establishment-franchiser next to a franchisee’s logo; the principles and order for forming students’ contingent; the procedure for organizing the acceptance of students; both the order and norms of educational process organization (i.e., those of translation, of adoption and monitoring, of knowledge standard); learning and teaching aids; video and multimedia tutorials, students’ books and supplementary materials, projects on CDs; a system and criteria for knowledge evaluation; a form and rules for intermediate and final attestation.

The holder of the intellectual property rights is an educational establishment, which exercises administrative, learning and teaching, information, technical and legal control of the user, i.e., a private company [16].

In accordance with the essence of the educational franchising, training those enrolled in the right holder’s education establishment is conducted in compliance with the educational plans and programs of the right holder; and a course of study is to be read by the tutor approved by the right holder. Each training program implies learning and practical tutorials specially developed by the franchiser. It is to be mandatorily granted to the trainee, i.e., a customer of educational services [17].

Fig. 1: Structure and essence of extended agreement on commercial concession.
Educational franchising can be interesting for private business due to several reasons:

- Possessing the initial capital and being a legal entity, the user obtains the access to ready educational technologies through entering into the agreement on commercial concession, thanks to which he is engaged in the ready system of the right holder.
- Acquiring exclusive rights under contract, franchisee buys both the goodwill and the name of the right holder, who has already gained a positive reputation in the market.
- Under contract, a business partner acquires a complex array of the corporate support related to learning and teaching, consulting, scientific and technical spheres, which comprises of a franchising data base, of methodological materials as simple instructions on rendering educational services and of the technology to organize the educational process. The franchisee gets the right to analyze the experience of the right holder and to use both his knowledge and certain intellectual property, through special training programs and those for improving the system of educational establishment management.

The agreement also stipulated certain territorial borders or conducting educational activity. Getting almost the whole system of educational process organization, a private partner has the opportunity of a maximum concentration at both marketing and promoting educational services, which provide the business with a significant privilege because of being initially market-oriented and having accumulated the experience of selling commodities, works and services in a severely competitive environment. It is also necessary to point out that the activity in the market for educational services demands much fewer initial investments than, e.g., an organization related to the standard types of production.

The system of extended agreements on commercial concession meets the demands and interests of not only the parties of the agreement. It occurs to be extremely useful for the society in general. This system makes it possible:

- To promote the development of new educational technologies and services;
- In some cases, to grant both the experience and knowledge, by a final user, on the quality of the offered educational services, which are rendered in all institutions engaged in the concession system, stimulating the increase in the quality standards of educational services;
- To remove a part of the academic load from higher educational establishments and to stimulate a scientific and experimental activity as it is commonly experienced all over the world, e.g., in the United States of America;
- To promote the entrepreneurial activity and more dynamic economic development of a territory.

CONCLUSION

The most prospective sphere for implementing extended commercial concession agreements is associated with both distant education and programs of additional professional education.

To conclude, it is necessary to point out that implementing the proposed scheme of public private partnership will become possible only in the case of some transformations in the current legislation system, i.e., capturing in legislation the possibility to render educational services without a license in case the course is realized under the extended commercial concession agreement and the franchiser is the educational establishment possessing a valid license for rendered educational services. Meeting the high quality standards for an educational service will be stimulated by the franchiser himself, who risks his own reputation and market position in case of the franchisee’s unfair behavior.

REFERENCES


