ROMA CAPITALE

The Mayor
Reg. RA/ 14929

From: the Capitol, 10 March 2014

To: the Board of Directors of
ACEA S.p.A.

Subject: Report concerning the items on the agenda requested 3 March 2014

With reference to note dated 3 March 2014 signed by the undersigned as legal representative of Roma Capitale, holder of a block of shares equal to 51%.

In the form of a report concerning the items on the agenda requested, enclosed is the resolution of the town council approved yesterday.

Therefore the following reports relate to each item on the agenda.

ROMA CAPITALE

The Mayor

Report on the:

1) *Reduction of the Board of Directors*

We should consider that the interest, particularly if a majority and controlling interest, of a public authority in a joint stock company, gives the public authority a distinctive role combining the rights and obligations of the shareholder (in the case of a majority interest) in accordance with ordinary law, with the rights and obligations associated with the effects on public finance and the common good that the interest of a public authority intrinsically implies. Therefore, the public authority majority shareholder must exercise supervisory, policy-making and decision-making powers under the responsibility of a majority shareholder, allowing for the particular public nature of the same shareholder which, in other simpler terms means that, while wishing to emphasize the type of private-enterprise the company must naturally aspire to, the representatives of the majority public shareholder must perform their supervisory and policy-making duties not only with the rigour that usually and in a *natural* way characterises the actions of the "private" majority shareholder, but in a way which has the greatest respect for the public nature of the body they are representing and as a consequence of the interests they are obliged to protect.

The above therefore, is of specific importance in the decisions taken concerning the conformation of *governance*, the evaluations on concrete corporate activities, and the supervision of directors' actions.

Therefore, it is within the scope of this consolidated and responsible supervisory obligation that in a note dated 3 March 2014 I in accordance with the law, requested the Chairman of Acea call the meeting to resolve, amongst other things, the following item on the agenda: Reduction of the Board of Directors.

Note that the Acea SpA By-laws specify that the Meeting determines the number of members in the Board of Directors, from 5 to 9 members.

It also requires a specific resolution.

The by-laws therefore gives the Meeting more options than what would have been the case if a fixed number of board members had been specified.

In this other case in fact, to change the number of the members of the BoD (increasing or decreasing the number) a prior change to the by-laws would be required.

So, as things stand, if changes to the by-laws were required to change the number of board members, this could also be done by the BoD in office with immediate effect causing, unless otherwise specified, the forfeiture of the directors in office, it goes without saying that a similar principle holds true if the By-laws, as in this case, leave the Meeting ample powers without the need to change the By-laws.

In the Meeting on 15 April 2013 a minority shareholder made a proposal to guarantee a more streamlined and efficient administration to save costs, that the meeting should in a virtuous way exercise its rights and set the number of members of the BoD to five.

Said proposal was not approved.

Today, this Authority holds that the grounds on which the above-mentioned proposal was made are further consolidated by the general circumstances, the considerations on the question of costs in the following point and concrete events, as well as by the consideration that a BoD consisting of the maximum number of members allowed by the By-laws has not in fact guaranteed the absence of criticalities nor prevented considerable dysfunctions which have a major effect considering the particular characteristics of Acea SpA and its majority shareholder as described in depth in the introduction.

As for the decision as to whether to reduce the number of board members to 5 or 7, this shareholder believes that the first choice is preferable for the above reasons, while remaining open to hear other opinions at the meeting.

ROMA CAPITALE

The Mayor

Report on the:

2) *Appointment of the BoD*

The choices of this shareholder are clearly shown in the presentation of the lists and in the times established by law for the same.

However, henceforth it is evident that these choices are coherent with the overall assessment of the annexed Roman council's resolution.

ROMA CAPITALE

The Mayor

Report on the:

3) Appointment of the Chairman

The choices of this shareholder are evident in relation to those of the previous point and the result of the vote on the composition of the BoD.

ROMA CAPITALE

The Mayor

Report on the:

4) Determination of the board of directors' fees

Art. 2389 of the Italian Civil Code specifies:

- in paragraph one that, the remuneration of the members of the board of directors is determined on appointment of the same or by the meeting;
- in paragraph three, last clause, that the By-laws can give the Meeting the powers to determine an overall amount for the remuneration of all directors, including those with special powers in accordance with the same paragraph three.

In compliance with said provision of the law, art. 21 of the Acea By-laws specifies that the Meeting defines the overall remuneration of the board of directors; and the Meeting has the right to divide said overall remuneration between the directors; if the second option is not fulfilled, the same BoD will perform said duties.

The evident substantial logic of the by-laws, in the same way as in the legislative provisions on which it is based, is to guarantee the timely and formal determination by the Meeting of the overall cost a public joint-stock company with a majority interest must bear for the remuneration of its directors. This is also due to the considerable sensitivity of the subject concerning appointments which partly or entirely, directly or indirectly emanate from the public authority and therefore from subjects with a political mandate.

On the basis of the above, it derives that the effective and substantial observance of the statutory decisions must have been and continue to be that the Meeting must precisely define the overall cost of the company board of directors.

This is also confirmed by the fact that the same statutory rule, as well as the above, specifies that the Meeting can also determine the criteria and method of internal distribution of remuneration as a whole and univocally defined. These criteria and methods must obviously allow for the different positions held in accordance with art. 2389 of the Italian Civil Code.

In fact, the BoD can only perform the internal division of the overall cost determined in the above way, if the Meeting has failed to do so. Once again, the overall logic of the statutory provision is evident because, as the Meeting determined the overall cost, even if the BoD divides the same, implicit internal control is guaranteed by the fact that the overall amount cannot be exceeded.

As this is the evident logic of the statutory provision, if the Meeting fails to clearly indicate the overall cost in accordance with art. 2389 of the Italian Civil Code, but leaves the board of directors to determine all or most of its remuneration, the Prudent man rule requires the same directors to inform the Meeting of said contrast between the purpose of the By-laws and the resolutions of the meeting, asking the meeting to determine the cost of the BoD in a timely and complete manner.
This is even more important when managing a company listed on the stock exchange (with the substantial related interests which must be protected), and even more so when 51% of the capital is held by a public authority and therefore, even though as an intermediary, also this part has substantial interests which must be protected.

However, in the Meeting held on 15/4/13, in relation to the determination of the Board of Directors' remuneration, the Meeting resolved, in accordance with Roman Council Resolution No. 134 of 20 April 2011, that the members of the board of directors would be paid 36,000 euros as board members, leaving the Board of Directors to determine their remuneration in line with the best market practices in terms of executive powers.

It is clear that the above resolution passed by the meeting cannot be said to be salient in guaranteeing the disposition and logic of the evident illustrated statutory provision, because, as concretely occurred, in this way only a marginal part of the BoD costs were determined by the

Meeting, while the remaining much larger part remained at the substantial discretion of the same board of directors.

As can be seen from the above, this situation must urgently be returned to full legitimacy through the timely resolution of the meeting which is effectively conform to the evident volition of the By-laws (as rightly requested by the Mayor), opening with a further and significant profile, a new chapter in corporate governance.

Therefore, this shareholder proposes first and foremost that the meeting guarantee full and effective observance of the By-laws by resolving to define the overall and all-inclusive cost of the remuneration to be paid to the members of the BoD, and to determine said cost guaranteeing considerable savings compared to the cost of recent years in compliance with the resolutions of the annexed town council and in full observance of the code of ethics and corporate governance code.

Prof. Ignazio R. Marino (handwritten signature)

ROMA CAPITALE

Roma Capitale Group Investments Department

Draft resolution submitted to the Roman Council for approval

Subject: Policy for the *governance* of ACEA S.p.A.

To: General Secretary - General Management

of Accounting General XVIII U.O.

To: Department Head
Adriana Del Pozzo
(signature)

Consulted the Head of Cabinet
Councillor Luigi Fucito
(signature)

The Mayor
Prof. Ignazio R. Marino
(signature)

Consulted the Offices	
Opinions given in accordance with and by effect of art. 49, paragraph 1 of the Italian Local Government Act, approved by Italian Legislative Decree No. 267 - 18 August 2000	**Request for legal-administrative consultation in accordance with art. 97 paragraph 2 of the Local Government Act, approved by Italian Legislative Decree No. 267/2000**

Opinion of the Proposing Office	**Opinion of the Chief Accountant**	**Opinion of the General Secretary**
In accordance with and by effect of art. 49, paragraph 1 of Legislative Decree No. 267 of 18 August 2000, a favourable opinion is given pursuant to technical regularity	In accordance with and by effect of art. 49 of Legislative Decree No. 267 of 18 August 2000, a favourable opinion is given pursuant to financial reporting regularity of the proposal for resolution indicated in the subject (*crossed out and written by hand: Irrelevant for book-keeping purposes-initials*)	Certification of legal- administrative consultation given in accordance with art. 97, paragraph 2 of Legislative Decree No. 267 - 18 August 2000
The Director Roma Capitale Group Investments Department Adriana Del Pozzo	THE CHIEF ACCOUNTANT	The General Secretary Liborio Iudicello

Considering:

- that as is known, Roma Capitale holds a 51% share in Acea S.p.A.;
- as is also known, the interest, particularly if a majority and controlling interest, of a public authority in a joint stock company, gives the public authority a distinctive role combining the rights and obligations of the shareholder (in the case of a majority interest) in accordance with ordinary law, with the rights and obligations associated with the effects on public finance and the common good that the interest of a public authority intrinsically implies.
- that this is further consolidated due to the public importance of the services Acea supplies, in the interests of the citizens of Rome;
- that, notwithstanding a joint-stock company must be considered under ordinary law, the particular characteristics of the (majority) interest held by a public authority must also refer to both the provisions of the law for some particular types of companies and the responsibility of the directors;
- that especially in terms of the last point, the particular characteristics of the (majority) interest held by a public authority and the therefore substantial public nature (due to the majority share held) of the resources managed and the effects in terms of equity that the management entails, led to recent changes to the law on the possibility of directors being subject to the control of the Court of Auditors;
- that on the other hand also the rulings that said control by the Court of Auditors excluded due to the private nature of the company, were confirmed for all forms of conduct which could cause direct damage to a public authority shareholder;
- that in coherence with the above, the public authority majority shareholder must exercise supervisory, policy-making and decision-making powers under the responsibility of a majority shareholder, allowing for the particular public nature of the same shareholder;
- that, in other simpler terms means that while wishing to emphasize the type of private-enterprise the company must naturally aspire to, the representatives of the majority public shareholder must perform their supervisory and policy-making duties not only with the rigour that usually and in a *natural* way characterises the actions of the “private” majority shareholder, but in a way which has the greatest respect for the public nature of the body they are representing and as a consequence of the interests they are obliged to protect;
- that this is of specific importance in the decisions taken concerning the conformation of *governance*, the evaluations on concrete corporate activities, and the supervision of directors' actions;
- that in practical terms this involves for example focusing also on costs, and studying every single cost, both in company operations with reference to investments in the network of services for users to optimize profit above all in the short-term;
- that within the scope of this consolidated and responsible supervisory obligation that the Mayor in a note dated 3 March 2014, in accordance with the law, requested the Chairman of Acea call the meeting to resolve the following items on the agenda:
- Reduction of the Board of Directors;
- Appointment of the Board of Directors;

- Appointment of the Chairman;
- Determination of the Board of Directors' fees;

- That in the note, the Mayor also made specific reference to the next usual deadlines for examining the 2013 financial statements, and suggesting (also in order to cut costs) holding one single meeting;

- That the Town Council fully agrees with the Mayor's initiative, which took every development into consideration with reference to every point the Town Council illustrates and considers below.

Number of members on the Board of Directors

The Acea SpA By-laws specify that the Meeting determines the number of members in the Board of Directors, from 5 to 9 members.
Therefore, a specific resolution is required for this purpose.

The by-laws therefore give the Meeting more options than what would have been the case if a fixed number of board members had been specified.

In this other case in fact, to change the number of the members of the BoD (increasing or decreasing the number) a prior change to the by-laws would be required.
So, as things stand, if changes to the by-laws were required to change the number of board members, this could also be done by the BoD in office with immediate effect causing, unless otherwise specified, the forfeiture of the directors in office, it goes without saying that a similar principle holds true if the By-laws, as in this case, leave the Meeting ample powers without the need to change the By-laws.

In the Meeting on 15 April 2013 a minority shareholder made a proposal to guarantee a more streamlined and efficient administration to save costs, that the meeting should in a virtuous way exercise its rights and set the number of members of the BoD to five.

Said proposal was not approved.

Today, this Authority holds that the grounds on which the above-mentioned proposal was made are further consolidated by the general circumstances, the considerations on the question of costs in the following point and concrete events, as well as by the consideration that a BoD consisting of the maximum number of members allowed by the By-laws has not in fact guaranteed the absence of criticalities nor prevented considerable dysfunctions which have a major effect considering the particular characteristics of Acea SpA and its majority shareholder as described in depth in the introduction.

Remuneration of members on the Board of Directors

Art. 2389 of the Italian Civil Code specifies:

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The evident substantial logic of the by-laws, in the same way as in the legislative provisions on which it is based, is to guarantee the timely and formal determination by the Meeting of the overall cost a public joint-stock company with a majority interest must bear for the remuneration of its directors. This is also due to the considerable sensitivity of the subject concerning appointments which partly or entirely, directly or indirectly emanate from the public authority and therefore from subjects with a political mandate.

On the basis of the above, it derives that the effective and substantial observance of the statutory decisions must have been and continue to be that the Meeting must precisely define the overall cost of the company board of directors.

This is also confirmed by the fact that the same statutory rule, as well as the above, specifies that the Meeting can also determine the criteria and method of internal distribution of remuneration as a whole and univocally defined. These criteria and methods must obviously allow for the different positions held in accordance with art. 2389 of the Italian Civil Code.

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As this is the evident logic of the statutory provision, if the Meeting fails to clearly indicate the overall cost in accordance with art. 2389 of the Italian Civil Code, but leaves the board of directors to determine all or most of its remuneration, the Prudent man rule requires the same directors to inform the Meeting of said contrast between the purpose of the By-laws and the resolutions of the meeting, asking the meeting to determine the cost of the BoD in a timely and complete manner.
This is even more important when managing a company listed on the stock exchange (with the substantial related interests which must be protected), and even more so when 51% of the capital is held by a public authority and therefore, even though as an intermediary, also this part has substantial interests which must be protected.

However, in the Meeting held on 15/4/13, in relation to the determination of the Board of Directors' remuneration, the Meeting resolved, in accordance with Roman Council Resolution No. 134 of 20 April 2011, that the members of the board of directors would be paid 36,000 euros as board members, leaving the Board of Directors to determine their remuneration in line with the best market practices in terms of executive powers.

It is clear that the above resolution passed by the meeting cannot be said to be salient in guaranteeing the disposition and logic of the evident illustrated statutory provision, because, as concretely occurred, in this way only a marginal part of the BoD costs were determined by the Meeting, while the remaining much larger part remained at the substantial discretion of the same board of directors.

As can be seen from the above, this situation must urgently be returned to full legitimacy through the timely resolution of the meeting which is effectively conform to the evident volition of the By-laws (as rightly requested by the Mayor), opening with a further and significant profile, a new chapter in corporate *governance*.

The reduction in investments

As is shown in the introductory remarks, the particular characteristics of the Municipal Authority of Rome as the majority shareholder must also be considered on the basis of the fact that corporate interest is certainly not limited to the financial productivity of the company (which might be the case for a minority private shareholder) but first and foremost in the investments made to modernize and maintain the network of services Acea is responsible for running.

On this point note that however, in 2013 there was a considerable reduction in investments, the result of a continuous trend of reduction also after Acea sold its PV assets in December 2012, declaring that the resources obtained from said operation would be used for new investments especially in energy efficiency, which was not in fact the case.

The investments made by Acea have for years been lower than the depreciation on the networks managed under concession (water, electricity, public lighting), networks owned by the community and not by Acea, but which Acea - cutting back on investments and failing to do maintenance — degrades and depletes. This means that at the end of the concession in 2030, there is the risk that the infrastructures and networks managed may be returned to the community degraded and depleted, which will suffer the consequent dysfunction or have to apply new taxation policies to recover the value and full functions of the same.

With reference to the above and reserving the right to make in-depth studies into each of the single above profiles and take any consequent advisable action;
considering the above;

Considering that on 9 March 2014 the head of the Roma Capitale Group Investments Department expressed the opinion hereby quoted in full: "In accordance with and by effect of art. No. 49 of the Italian Local Government Act, a favourable opinion is given

pursuant to financial reporting regularity of the proposal for resolution indicated in the subject"

The Department Head A. Del Pozzo

On 9 March 2014 the Deputy Chief Accountant declared the proposal for resolution in question irrelevant for book-keeping purposes;

That legal-administrative consultation was given by the General Secretary on this proposal in accordance with art. 97 of the Italian Local Government Act

the Roman Council

resolves

to approve in full, on the basis of the grounds in the introductory remarks herein quoted in full, the action taken by the Mayor in note dated 3 March 2014, sent to the Chairman of Acea. The Mayor will take any further action necessary to protect public interests, also in relation to the above-mentioned introductory remarks.

ROMA CAPITALE

(Documentation sent via fax on 10 March 2014 from the Mayor of Roma Capitale Prof. Ignazio R. Marino to the President of Acea SpA Giancarlo Cremonesi)