

Innovations in Highway Concessions Promote Sustainability

12.12.2023 3 min read

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Following the federal government's announcement of a new policy on highway concessions, Brazil's National Land Transport Agency (ANTT – Agência Nacional de Transportes Terrestres) conducted two auctions for the concession of the first¹ and second² lots of highways in the state of Paraná³ that had been delegated to the federal government⁴, revealing significant innovations for the sector.

The new policy aims to take advantage of lessons learned from previous concessions, by updating bidding rules and contractual provisions, and adapting new concessions to sustainability goals.

Among the changes, one of the most significant is the reinstatement of the lowest toll as one of the criteria for awarding highway concessions, supported by a financial contribution when the discount offered on the Basic Toll Rate exceeds 18%. In such cases, where the discount exceeds 18%, the proposal submitted by the bidder must contemplate payment of an amount proportionate to the discount into a "Contribution Account" prior to signing the concession contract. The purpose of the Contribution Account is to minimize potential negative impacts that the lower toll rate may have on the financial health of the concession contract.

The accounts system introduced in the fourth phase of highway concessions was maintained in this latest round of concessions. The system contemplates a Master Account (Conta Centralizadora) and various "Concession Accounts" that serve to segregate project revenues for specific purposes. The mechanism ensures that revisions of the financial and economic balance under concession contracts are effective and, in these specific highway concessions, make it possible to provide for "Frequent User Discounts" on highway tolls – yet another innovation in this round of highway concessions.

The Revenue Risk Mitigation Mechanism is another new feature. Although concessionaires bear the risk of changes in traffic volume, if the variation in revenues (Cumulative Revenue) falls above or below the revenue band defined in the contract, the excess or shortfall will be shared between the ANTT (as the grantor of the concession) and the concessionaire. The mechanism also absorbs impacts on revenue from new or competing routes.

The Price Input Risk Sharing Mechanism is another new system, introduced to create to to compensate for fluctuations in the price of inputs, which historically has diverged from inflation indexes stipulated in concession contracts. The same rationale is behind the new Foreign Exchange Protection Mechanism was included. Unlike the Revenue Risk Mitigation Mechanism, however, these two systems are triggered only at the concessionaire's express request.

The new concessions also provide for the "free flow" toll collection⁵. The free

flow system provides more comfort and safety for users, in addition to its significant environmental benefits, since reducing travel and braking time also decreases the emission of polluting gases.

With these new features and systems, the new concession model seeks to enhance the distribution of risks considered critical by the sector, which have been the subject of much litigation before the courts and at administrative instances. The end result reflects an evolution in the regulatory environment, based on lessons learned from earlier concessions, and the need to take sustainability into account in highway concessions.

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NOTES

¹ The first lot covers 473 km of highways, with stretches of the BR-277, BR-373, BR-376, BR-476, PR-418, PR-423 and PR-427, between the Metropolitan Region of Curitiba, the Central South Region and Campos Gerais.

² The second lot covers 605 km, composed of stretches of the BR-153, BR-277, and BR-369 and of state highways PR-092, PR-151, PR-239, PR-407, PR-408, PR-411, PR-508, PR-804 and PR-855, taking in the regions of Curitiba, Litoral, Campos Gerais and Norte Pioneiro.

³ Published on May 12 and June 12, 2023, respectively.

⁴ Delegation Agreement (Convênio de Delegação) no. 2/2023.

⁵ The “free flow” system eliminates toll booths by using a technology-based solution to collect tolls automatically.

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