


Infraestrutura rodoviária no Brasil e incentivos econômicos regulatórios

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DOI: <https://doi.org/10.48143/rdai/05.ccam>

Palavras-chave: Concessões, Rodovias, Equilíbrio econômico e financeiro, Renegociação, Oportunismo

Resumo

Este artigo faz uma avaliação dos incentivos econômicos regulatórios estabelecidos para o setor de concessão de rodovias no Brasil. A questão dos incentivos está associada ao espaço para “renegociação” das tarifas e das obrigações a que a empresa regulada se comprometeu, especialmente o cronograma de investimentos. No Brasil, todas as renegociações são baseadas na manutenção do equilíbrio econômico-financeiro do contrato de concessão (EEFCC). A lei brasileira contém alguns dos princípios básicos do EEFCC, mas a maior parte das diretrizes é correntemente descrita nos contratos de concessão. No caso das concessões de rodovias, há significativos avanços no desenho do EEFCC nos contratos de 2009/2013, tornando a renegociação mais transparente do que antes. Os contratos de rodovias estão se tornando mais “completos” do que antes, à medida que há uma busca maior de descrever toda a alocação de riscos da concessão. Isso reduz o espaço para comportamento oportunista e renegociações ruins por ambos, o concessionário e o setor público/regulador.

Downloads

Não há dados estatísticos.

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Agência Nacional de Transportes Terrestres.

See Mattos, C.: “Incentivos Econômicos na Concessão de Aeroportos no Brasil.” XVIII Annual Conference of ALACDE, Universidade Francisco Marroquin. Guatemala. Maio de 2014.

Not formally a concession. Although there is not tariff regulation, EEFCC has being discussed for the forthcoming authorizations.

In Brazil, the law differentiates the “common concession contract” from the “PPPs”. Only in the latter, the public sector can transfer resources to the concessionary as described in Law 11.079/04.

Programa de Exploração de Rodovias.

According to Tácito (Caio: “Direito Administrativo”, 1971, ed. Saraiva. 1971) this is a concept imported from the French jurisprudence. The author quotes Waline, M. (Droit Administratif, 8^a edition – 1959) and Péquignot (Théorie Générale du Contrat Administratif – 1945).

Ribeiro, M.P.: “Concessões e PPPs: Melhores Práticas em Licitações e Contratos”. Editora Atlas. São Paulo, 2011.

Sampaio, P., Menezes, F. e Dutra, J.: “Regulação e Concorrência em concessões rodoviárias no Brasil” Cp. 10 : in “Gargalos e Soluções na Infraestrutura de Transportes”. Orgs: Pinheiro, A.; Fritschak, C. (2014) also state that the internal rate of return has been usually considered as the expression of the EFECC.

We could also think in view of the Knightian distinction between risk and uncertainty. Unexpected events are related to uncertainty since there is not even an estimate of the probability that it will occur. On the other hand, the probability of predictable events can be better addressed and, mainly, be insured.

The regulator is in some sense the representative of the public sector in most matters of concern for the regulation. However, they can have very different objective functions as long as there is a potential agency problem between the principal “public sector” and the agent “regulator” and ii) the regulator is usually supposed to be independent from politicians, which is a source of commitment in itself not to expropriate concessionary investments (see Mueller, Bernardo; and Pereira, Carlos: “Credibility and the Design of Regulatory Agencies in Brazil”. Brazilian Journal of Political Economy, vol. 22, n^o 3 (87), July-September/2002).

Sidak and Spulber (1997) (Deregulatory Takings and the Regulatory Contract, Cambridge University Press, 1997) characterize expropriation as a large set of actions of the regulator and not only simply nationalizing the sector.

Brazilian law commentators argue that the art. 37 XXI of the Federal Constitution already refers, although not explicitly, to the EFECC.

See at [www.planalto.gov.br/ccivil_03/Leis/L8666cons.htm].

Demsetz, Harold: “Why Regulate Utilities?”. Journal of Law and Economics, Vol. 11, No. 1, (Apr., 1968).

Williamson, Oliver E. : “Franchise Bidding for Natural Monopolies-in General and with Respect to CATV”, The Bell Journal of Economics, Vol. 7, No. 1 (Spring). 1976.

See [http: \[www.antt.gov.br/index.php/content/view/9281/Nova_Dutra.html\]](http://www.antt.gov.br/index.php/content/view/9281/Nova_Dutra.html).

Related to a man action like a strike.

Related to an event produced by nature like earthquakes, lights, thunders, tornados, etc.

Related to an action or lack of action of the public sector with direct impacts in the contract.

Theoretically, only indirect taxes induce increases on prices. This may explain why the concession contract exempts the direct income tax. REIS, M. Regulação contratual: uma revisita contemporânea à teoria do ato-condição. Revista de Direito Administrativo e Infraestrutura, v. 1, n. 3, p. 87-133, 30 set. 2017.

See, for instance, the concession contract for the road Regis Bittencourt between São Paulo and Curitiba. [www.antt.gov.br/index.php/content/view/12887/EDITAL_001_LOTE_06___AUTOPISTA_REGIS_BITTENCOURT.html]. All contracts are basically the same.

See annex 3 of the “Edital” in [www.antt.gov.br/index.php/content/view/12887/EDITAL_001_LOTE_06___AUTOPISTA_REGIS_BITTENCOURT.html].

This body is linked to the legislative branch and is responsible to assess all government accounts in Brazil. It often challenges Brazilian regulators, mainly on tariff issues.

In this sense, the courts and the main controlling body supply at least part of the commitment required to regulators.

Or who perceives himself as the most well-connected, which not always is real.

This resembles the “fact of administration”. The difference is that the “fact of prince” is a general action that incidentally affects the contract. In other words, it is not made for that specific contract as the “fact of administration”.

Indice de Preços ao Consumidor Amplo.

Engel, E. ; Fischer, R. And Galetovic, A.:SOFT BUDGETS AND RENEGOTIATIONS IN PUBLIC-PRIVATE PARTNERSHIPS. NBER Working Paper 15300. August, 2009.

Engel, E. ; Fischer, R. And Galetovic, Least Present Value of Revenues Auction and Highway Franchising". NBER Working Paper 6689. August, 2009.

Dutra, Menezes e Sampaio (2014) also raise the critique on the "asymmetric treatment between the negative and the positive sides of the net present value of the projects".

The TJLP is the long run interest rates that serve as a basis for the funding cost of the loans made by the Brazilian state-owned development bank, BNDES. By September, 2014, it is 5%. The Brazilian inflation target is defined by the government (Conselho Monetário Nacional-CMN). By September, 2014, it is 4,5%. The new finance minister started to raise it by 2015.

It can occur if a sufficiently great number of concession contracts in the infrastructure sectors also include this equation for the discount rate.

It is not included in the unavailable extension of the road in view of force majeure or fortuitous cases.

Dutra, Menezes and Sampaio (2014) argue, based on Lewis and Bajari (2011), that multidimensional auctions with scores could also incorporate investment indicators. This has been already used in the US.

Engel, E. ; Fischer, R. And Galetovic, Least Present Value of Revenues Auction and Highway Franchising". NBER Working Paper 6689. August, 2009.

Iossa,E. e Martimort,D.: "The theory of incentives applied to the transport sector". In A Handbook of Transport Economics, Edward Elgar, Cheltenham, UK. 2013.

Engel, E.; Fischer, R. e Galetovic, A.: Public-Private Partnerships: when and How" July, Mimeo 2008.
<http://www.econ.uchile.cl/uploads/publicacion/c9b9ea69d84d4c93714c2d3b2d5982a5ca0a67d7.pdf>

As put by the authors "A PVR contract reduces risk: when demand is less than expected, the franchise period is longer, while the period is shorter if demand is unexpectedly high". The main problem with their proposal, recognized by themselves, is that "the concessionarie has no incentive to increase demand for the infrastructure project because any action that increases demand will shorten the term of the franchise. Projects earn their income regardless of efforts of the concessionarie". Chile was the first country to implement this mechanism in the highway between Santiago and Valparaiso and Vina del Mar.

Bajari, P.; Tadelis, S.: "Incentives versus Transaction Costs: a theory of procurement contracts". Rand Journal of Economics. Vol. 32, n° 3. Autumn 2001.

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