

Regulatory Challenges Ahead

Brazilian authorities will face important challenges in 2012 regarding the regulation of several sectors of Brazil's economy. The granting of concessions, review of tariffs, and the issuance of new regulations are all on the agenda.

Concessions for three of the country's main airports – Guarulhos serving São Paulo, Viracopos serving Campinas, and Brasilia's airport – will be granted by the federal government in February in an effort to prepare for the World Cup in 2014 and to address the rising demand for air transportation. Notice of the pending grant of these concessions was released in December, and both Brazilian and foreign private-sector companies may participate.

For the first time, airports heretofore managed by the country's airport operator, Infraero, will be transferred to the private sector. After concessions are granted, the national aviation authority, ANAC, will be in charge of monitoring the concessions and regulating private airport operators, a new task for this governmental body. Although the grant of these concessions may be viewed as a step towards the privatization of Brazil's airports, the federal government has not yet signaled that any additional concessions will be granted. Furthermore, it has decided that Infraero will have an important role to play vis-a-vis the privatized airports, as the state-owned company will hold a 49% equity stake in the private airport operators.

Concessions are also expected to be granted in the highway and rail transportation sectors. In addition, Brazil's national transportation authority, ANTT, is currently undertaking a broad review of the tariffs charged in the rail industry. After approving regulations in 2011 to promote quality and efficiency in the rail transportation sector (e.g., Rule Nos. 3,694/2011, No. 3,695/2011 and No. 3,696/2011), the agency undertook in the beginning of this year a public consultation in connection with its review of current tariffs, which is expected to reduce existing maximum caps. Although use of this procedure is foreseen by the concession rules governing the sector, the procedure has not been used subsequent to privatization of the country's main rail lines in the 1990s.

The national telecommunications regulator, ANATEL, is also soliciting public comments regarding new rules for pay TV services. Last year, Law No. 12,485/2011 substantially changed the regulatory landscape for these services, revoking outdated rules that limited foreign investment and cross-ownership between pay TV and other telecommunications services. ANATEL is now preparing regulations that will govern how services will be rendered under the new framework and how new licenses will be issued. Additional regulations are expected from the national audiovisual authority, ANCINE, with respect to mandatory minimum percentages of national content and national independent content to be exhibited in pay TV services.

There are also regulatory challenges facing Brazil's energy sector. In addition to concessions for new transmission lines that the national energy agency, ANEEL, is expected to grant in the first semester of 2012, this year may finally be the moment when a major pending issue is resolved, specifically, in 2015, concessions for a number of generation, transmission and distributions of energy will terminate. Under current rules, these concessions may not be renewed and new concessions must be granted. The federal government has not yet decided if it will actually grant concessions or will change applicable laws to extend the terms of existing concessions. Last November, the Brazilian Court of Audit, TCU, ordered the Ministry of Mines and Energy to prepare within sixty days an action plan to specify which approach will be adopted.

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