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Examples of Policies that Incorporate Existing Operators into New PPPs

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This section is dedicated to situations where PPP projects introduce new operators to the market and potentially, the displace of the existing ones, creating a policy challenge.

This situation is quite common in the transportation sector, especially in where a new transportation system such as bus rapid transit is created. Examples of countries that have had to face this situation are Colombia and Peru (see below). The governments of these countries recognized the policy need to allow existing operators to be included in the new system, and structured the PPP to allow for such considerations.

However, the inclusion of the existing operators does not come without critics. The PPP project has to be carefully designed and implemented from its inception, because including provisions or policies favorable for the existing operators could leave out other potential actors from the PPP project and create anti-competitive tendencies. An example of this is the implementation of the Public Transportation Integrated System in Lima, Peru, below.

Colombia

Reference: [Decreto 309 de 2009 - by which the Integrated System of Public Transportation \(Sistema integrado de Transporte Público, SITP by its acronym in Spanish\) is adopted for Bogota](#) (in Spanish)

Through this decree, Bogota city adopts the Integrated System of Public Transportation, and establishes the actions needed for the integrated articulation, link-up, and operation of the different modes of public transportation.

This decree sets out the process for the incorporation of SMEs and previous operators in new PPP projects. For example, the Decree imposes "democratization" as a fundamental principle of the new transportation system roll-out. Specifically, it indicates that all the actions of the SITP implementation should aim to encourage the participation of the highest possible number of current owners of public transportation vehicles and drivers, such as through new operation contracts.

The next three legal instruments establish the procedure of the transfer of economic rights from the owners of collective transportation vehicles to Transmilenio S.A, as part of the implementation of the Public Transportation Integrated System in Bogota.

Reference: [Decree 580 of 2014 - by which measures are directed towards the consolidation public transport through the Integrated Public Transport System of Bogota D.C, i by integrating informal collective public transport to mass transportation.](#) (in Spanish)

This decree adopts measures that aim to improve the conditions of the transportation service provision and to decrease the implementation cost of the SITP. One of those measures is the creation of a special destination account whose funds will be used to accelerate the process of disintegration of vehicles previously used for public collective transportation. The owners of such vehicles are to transfer the economic rights of such vehicles to Bogota, in exchange for monetary consideration.

Reference: [Resolution 006 of 2015- Regulation of the Decree 580 of 2014](#) (In Spanish)

The purpose of this resolution is to regulate the procedure that leads to the voluntary cession of economic rights of the owners referred to in District Decree 580 of 2014 in favor of Bogota.

Reference: [Decree 526 de 2015 - By means of which functions are assigned to comply with the provisions of District Decree 580 of 2014](#) (In Spanish)

This decree aims to make efficient the subscription of the documents related to the economic right transfers to Bogota. Therefore, it rules that the following phases of this process, such as due notifications and compliance follow-up are now in charge of other agencies of the city.

Reference: [Definitive Terms of Reference of Public Tender NO. TMSA-LP-004 DE 2009 – Bidding process for the concession of the integrated System of Public Transportation of Bogota](#)

The procurement stage of this PPP included the principle of "democratization" as it is explained above on the [Decreto 309 de 2009](#) which adopts this new transportation system for Bogota.

This document asks the bidders, when presenting their bids, to indicate the number of collective public transportation vehicle owners that are actual members of the consortium (or other type of association) that is bidding. According to the TOR, it is not necessary that the vehicle owner be an actual member of the consortium, the TOR allows the bidder to indicate the existing operators who will to be part of the consortium in the future if they are awarded with the project. The bidder will receive higher score for a higher number of existing operators participating in the bid.

In addition to this, bidders get a higher score when they offer better conditions for the vehicle owner such as a higher sale price of the vehicles.

Peru

Reference: [Ordenanza que Establece los Lineamiento de Política Municipal de Transporte Público Urbano pata el área de Lima Metropolitana](#)(in Spanish)

This ordinance establishes guidelines for the implementation of the Transportation Metropolitan System. Among its Policy Guidelines (Article 2), the document indicates that the system must be implemented in a way which mitigates the impact to affected operators. Likewise, the same provision sets out that the incorporation of the existing local operators is a priority.

Reference: [Bases integradas de la Licitación Pública No. 001-2012-MML/IMPL para la Concesión del Servicio Público de transporte de Pasajeros en los Corredores Complementarios 1, 4, y 5 del Sistema Integrado de Transporte de Lima.](#)(in Spanish)

These are the Terms of Reference of the public bidding process for the concession of the service provision of the Public Transportation Integrated System (SIT, by its acronym in Spanish) of Lima on 5 complementary corridors.

According to the TOR, the SIT is ruled by certain guidelines among which is the priority inclusion of current operators. The list of current operators includes: authorized enterprises; vehicle owners, drivers and collectors.

This principle manifests itself in two ways: 1) by imposing the ownership of a minimum number of vehicles for the prequalification phase of the process (Clause 5.9.2); and 2) by offering a higher score to those bidders that were already operating on the routes which are part of the concession (Clause 5.9.3).

This second measure for existing operators already operating on the concession routes was criticized by the Defense Commission of Free Competition (Comision de Defensa de la Libre Competencia) through the National Institute for the Defense of Competition and Intellectual Property Protection (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual – INDECOPI). The critics and recommendations were issued by a document called [Abogacía de la competencia de la Licitación Pública 001-2012-MML-IMPL](#) in July 2015.

INDECOPI indicated that such requirements could only be complied with by specific actors in the market: the previous operators. This situation cause that the number of competitors –potential bidders - were dramatically reduced from a vast array of companies to a limited amount of enterprises already known for the procuring entity. After positioning its arguments against the evident favorability to previous operators and explaining how that practice was contrary to the free competence of the market, INDECOPI gives a series of recommendations exclusively directed to avoid including restrictions to new possible bidders by favoring previous operators already established in the market.

South Africa

Reference: [City Policy on Compensation of Minibus- Taxi and Other Operators \(Policy Number 13776\) Approved by Council: 31 October 2012](#)

The new MyCiTi Integrated Rapid Transit System will largely displace the current road-based minibus-taxi and scheduled bus operators. Incorporating them in the new system is important in order to maintain livelihoods, but is also required because under current legislation existing operators cannot be forced to give up their operating licenses. A key issue here is the compensation of existing operators as the new system is introduced. This policy sets out the principles involved in determining the level of compensation of existing operators. Considerations include the requirement to surrender the existing license or to remove certain routes from their license.

The desire to incorporate existing service providers as operators of the new system was set out in the initial business plan.

Reference: [My CiTi Business Plan \(2010\)](#)

Chapter 10 describes the mechanism for the transition from existing to new vehicle operators. An important component of the business plan involves incorporating existing service providers as operators of the new system.

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