

LATIN AMERICA

Colombia's Infrastructure Program a Model for LatAm



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Colombia has attracted diverse sources of private capital for its 4G toll road program and is now forging ahead with its new 5G transportation infrastructure program. Milbank has served as international counsel to either the borrower or the financing sources in nearly half of the 4G concessions that have closed so far. Colombia's program is a model of success for the region.

THE 4G PROGRAM

The 4G (Fourth Generation) program, one of the latest infrastructure development initiatives in Colombia, was unveiled by the Colombian government in 2012 to reduce the infrastructure investment gap and modernize the country's aging road infrastructure. Under the auspices of the *Agencia Nacional de Infraestructura* (ANI) and using a public-private partnership structure, the 4G program sought to inject approximately USD\$24 billion into the construction or rehabilitation of over 7,000 kilometers of roads. Road development is significantly important in Colombia given that its roads handle around 80 percent of the country's internal transport. Upon completion of all the planned 4G projects, transportation costs are expected to be reduced by 28 percent. The 4G program is expected to increase the country's GDP by close to 3 percent per year during construction and around 1.5 percent per year afterward. As of February 2020, construction work was ongoing in 22 out of the 29 concessions awarded in the 4G program and there were 1,450 active construction fronts.

The 4G concessions include noteworthy risk mitigation features that have made them attractive to both local and international sponsors and to diverse sources of financing. Unlike other concessions that might require cash advances by the government to mitigate the sponsor's risk during construction, the 4G concessions mitigate construction risk by means of cost-sharing with respect to land acquisition, environmental permitting, utility relocation and force majeure cost overruns. Moreover, the 4G concession agreement template includes a termination payment feature pursuant to which, in the event of an early termination of the concession, ANI would be required to compensate the concessionaire for capital expenditures and operation and maintenance expenses already incurred net of project revenues already received and penalties (up to specified caps) that may have been imposed on the concessionaire. Furthermore, during the operational period, the concession agreement mitigates the sponsor's risk with availability payments from ANI and guaranteed minimum toll revenues (adjusted for inflation) at certain predetermined intervals during the term of the concession.

DIVERSE SOURCES OF FINANCING

Financing sources for the 4G concessions evolved over time and demonstrated these concessions were not only bankable, but quite attractive to a wide variety of finance providers. The initial concessions, such as the Pacifico 3 toll road and the Costera toll road, were financed principally through bond issuances in the capital markets. Soon thereafter, projects such as Conexión Norte grew to include financings consisting principally of a tranche of U.S. dollar-denominated debt provided by international commercial banks. A subsequent wave of 4G concessions, including the Pasto Rumichaca toll road, the Alto Magdalena toll road and the Ruta del Cacão toll road were financed by development finance institutions or export credit agencies (ECAs), including US DFC (formerly known as OPIC), Central American Bank for Economic Integration (CABEI) and IDB Invest (a member of the Inter-American Development Bank). In many of these 4G transactions, the bond, bank or ECA financing sat alongside a tranche of Colombian peso-denominated debt provided by local Colombian banks or, less frequently, a U.S. dollar-denominated local bank tranche. Several infrastructure funds



joined the local commercial bank tranche. In many cases, these finance providers also extended interest rate and currency hedges to the concessionaire as part of the financing. Many of the 4G concession financings also benefited from a liquidity line, most frequently provided by Financiera Nacional de Desarrollo (FDN), the Colombian development bank, with its own set of terms and conditions. In more recent projects, FDN has participated in the commercial bank tranche as a senior lender, further validating the attractiveness of the 4G concessions and inviting traditional sources of financing to participate in novel and creative structures.

Despite the unexpected challenges of COVID 19 and the effects of the pandemic, the 4G concessions have continued to move forward with construction and financing and, in the case of the Pasto Rumichaca toll road, have even successfully reached financial close.

4G CONCESSIONS EVOLVE – THE NEW 5G PROGRAM

The 4G concessions have now moved into a more mature phase. Construction is advancing and several projects are on track to reach completion with minimal overall project disruption, notwithstanding the pandemic. Milbank has advised both the sell-side and the buy-side of various 4G concessions which have already been the subject of trades at the sponsor level, including in relation to the Costera and Perimetral Oriental de Cundinamarca toll roads, with a majority or all of their interests in the projects being sold by the initial sponsors and acquired by existing or new entrants in the Colombian market. We are presently supporting potential buyers and sellers in future trades and expect to see more M&A activity with respect to the 4G projects, particularly as the 4G concessions near completion of construction and with the launch of the 5G (Fifth Generation) program.

In addition, many of the 4G projects are reaching a refinancing phase for which interest from financial institutions remains strong, including from banks that were not involved in the construc-



tion financings. We are currently advising two such projects in their refinancing efforts and expect several more to come to market in the near future.

“ **Colombia’s 4G program sought to inject approximately USD\$24 billion into the construction or rehabilitation of over 7,000 kilometers of roads.** ”

As of April 2020, 18 of the 29 projects in the 4G program had reached financial close, with seven projects moving toward that goal on a delayed basis. Earlier this year, ANI announced that

it would proceed to launch the 5G program, only slightly delayed due to the pandemic. Unlike the 4G program which focused on toll roads, the 5G program will be a multimodal program including toll roads, river navigation projects, railways and airports. The first wave of tenders is expected to consist of 12 projects with a total cost of approximately US\$5 billion, while the second wave is expected to consist of 11 concessions with a total cost of approximately US\$8 billion (likely to be implemented in the subsequent administration). ANI has issued the template for the 5G concession agreement, which is intended to improve on the 4G concession template. As more 4G projects become operational and with the introduction of the 5G program (with the Cali-Palmira toll road being the first 5G concession being put out to bid), Colombia is well positioned to enjoy continued success with its bold and comprehensive infrastructure renewal plan.