



Infrastructure In Brazil (Part I: *TRANSPORT*)

Airports

www.almeidalaw.com.br

INTRODUCTION: AN OVERVIEW OF THE SECTOR

Brazil lacks an adequate and well-developed airport infrastructure, resulting in higher logistics costs and inefficient patterns of both interregional and international trade.¹ From 2003 to 2010, global airport passenger traffic increased by 40% with an increase of 118% in Brazil during the same period. As a result, Brazil's national airport infrastructure cannot adequately sustain this increase and will need to be modernized rapidly if the country intends to play a key role in the global economy.

It is expected that tourism in Brazil will reach a peak in the near future because of international sporting events and the increasing wealth and rise of the middle class. Brazilian air traffic has notably increased in past years, but it has still not fully reached its potential. In this context, there is an obvious need for airport modernization. The latest investments made in the sector have not matched the growing passenger numbers. Relevant investments are needed to improve existing airport infrastructure. Therefore, the government is planning to privatize major airports to attract private investors. The expansion of air traffic, with new flight connections and more destinations, strongly depends on the development of airport infrastructure.

Against this negative background, the government approved a plan to invest 5.6 billion reais in the airports in the cities hosting the World Cup, but even this solution proved

¹ The World Economic Forum has rated its quality 3.3 out of 7.0 and Brazil has been ranked (in this category) 123th out of 148 world economies examined.

Source: World Economic Forum Competitiveness Report 2013-2014 available at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf.



Airports

inadequate because the timeframe to implement these infrastructure investments was very short due to the administrative delays involved in developing the projects, obtaining the necessary licenses, and conducting the public tenders. As a result, the budget execution (of authorized investments spent) has been below 50%. Therefore, the government has been looking for alternative solutions, such as the privatization of the main airports.

Back in 2009, the government put in place the **National Policy of Civil Aviation** (Política Nacional de Aviação Civil – PNAC),² including a set of guidelines and strategies for the development of the Brazilian civil aviation that are safe, efficient, economical, modern, competitive, compatible with environmental sustainability and integrated with other modes of transport. Its objective is to develop the availability of aeronautical and civil airport infrastructure and to increase the supply of air transport services. This will expand the availability of services, thus promoting the national welfare as well as further integration of the country in the international context, given the exceptional importance of aviation in modern social and economic activities.



In this chapter, we first outline the legal framework applicable to the sector (1.1.) before then identifying the main actors involved (1.2.). We conclude by referring to the most recent airport concessions that have been made in past years (1.3.).

1.1. Legal framework

The Brazilian Constitution (Article 21, XII, c) attributes the competence to exploit, directly or indirectly, the airport infrastructure to the Union. Indirect forms of exploitation are: (i) concession, (ii) permission and (iii) authorization.

² Decree No. 6.780/2009.



Airports

The Brazilian Code of Aeronautics (Law No. 7.565/1986) does not include permission, as it only refers to the direct exploitation by the Union or indirect exploitation via concession or authorization granted to public companies, the states or municipalities. The concession will be granted in case of regular air transport, while authorization shall be used for non-regular air transport services.

The definition of “airport infrastructure” is found in Article 26 of the Code of Aeronautics, according to which it includes all the landings, runways, taxiways, aircraft parking ramps, air cargo terminals, passenger terminals and associated facilities.

Any other service that does not fit into the two previous categories is an “auxiliary service” regulated by ANAC³ Resolution No. 116/2009. Auxiliary services can be provided by (i) the airfield operator, (ii) the owner of the aircraft or (iii) a third company specially contracted to carry out those services. The Brazilian Code of Aeronautics considers these services part of the airport infrastructure.⁴ The prices for the areas used for commercial exploitation must be negotiated between the interested company and the operator in charge of the concession.

The allocation of airport areas ((i) public administration areas, (ii) areas linked to the exploitation of the aviation public service and (iii) commercial areas) is regulated by ANAC Resolution No. 113/2009.

The rules concerning the prices that need to be paid for the exploitation of airports and airport facilities are defined in Law No. 6.009/73, regulated by Decree No. 89.121/83. The effective utilization of areas, buildings, facilities and equipment of an airport is subject to the payment of a proportional price to the federal



³ ANAC is the National Civil Aviation Agency (ANAC); see *infra*.

⁴ Article 25 of the Brazilian Code of Aeronautics.



Airports

state or the entities of the indirect federal administration in charge of the airport administration. Those prices are either (i) airport tariffs approved by ANAC and applied in the entire national territory or (ii) prices established in specific areas by the agency or entity responsible for the administration of the airport.

1.2. Institutional players involved

The **Ministry of Defense** is responsible for the airway sector at the federal level. Created in 1999, it substituted the former Ministry of the Air Force.

However, the aviation sector is also under the direct responsibility of the Presidency of the Republic. The **Secretariat for Civil Aviation (SAC)**, linked to the Presidency of the Republic, was created in 2011 with the aim of developing studies, coordinating and formulating policies for the development of the civil aviation sector, airport infrastructure and civil aeronautics in conformity with the other competent bodies of the sector.⁵ Its structure, defined by Decree No. 7.476/2011, comprises a Cabinet, an Executive Secretariat, the Secretariat for Civil Aviation Regulatory Policy, the Secretariat of Airports and the Secretariat for Civil Air Navigation. The SAC also develops and implements the strategic planning of the sector, drafts and approves the concession plans for the exploitation of the airport infrastructure and administers resources, funds and programs for the development of civil aviation infrastructure.



⁵ Article 48 of Law No. 12.462/2011 on Differential Public Procurement Regime (RDC), altering Law No. 10.683/2003.



Airports

The **Council for Civil Aviation (CONAC)** is an advisory body to the President of the Republic. It is in charge of formulating civil aviation policies.⁶ Among its competences, it is worth mentioning: (i) the establishment of the guidelines for the representation of Brazil in conventions, agreements, treaties and acts of international air transport with other countries or international organizations of civil aviation; (ii) the proposal of the airport infrastructure concession model; (iii) the approval of the guidelines providing resources to airlines and airports strategy – under an economic or touristic perspective; (iv) the coordination between the flight protection activities and aerial control activities; (v) the approval of the general granting plan of airlines; and (vi) the establishment of guidelines for the applicability of the concession or permission in the commercial exploitation of airlines.



The longtime state-controlled airway sector was opened to competition less than ten years ago. Pursuant to Law No. 11.182/2005, the **National Civil Aviation Agency (Agência Nacional de Aviação civil - ANAC)** was established as being responsible for the exploitation, via concession or authorization, of airport infrastructure.⁷ ANAC is a special autarchy with the status of a regulatory agency. It is administratively and financially

independent. The Agency is linked to the SAC and its headquarters are in Brasília. There are regional offices in Rio de Janeiro, São Paulo, Porto Alegre and Recife. ANAC Resolution No. 110/2009 defines its internal Rules of Procedure. The Agency is responsible for regulating

⁶ Decree No. 3.564/2000.

⁷ See Article 8, XXIV, of Law No. 11.182/2005. ANAC is also in charge of the regulation and the safety oversight of civil aviation. Established as a regulatory agency in 2006, it incorporated the staff, the structure and the functions of the former Civil Aviation Authority, the Air Force Civil Aviation Department (DAC). It is led by five board members (directors) -one of them being the president. Their mandate is up to five years and each director is in charge of one or more areas. They are all appointed by the president of Brazil, with prior approval of the Senate.



Airports

the aviation industry and overseeing safety procedures. It is also involved in a series of regulatory activities, such as air transport safety, users' rights, price monitoring, airport infrastructure, etc.

The responsibility to exploit major Brazilian airport infrastructure lies with **INFRAERO**, a federal public company created back in 1973 by Law No. 5.862/1972. INFRAERO is the public airport operator and it provides infrastructure and airport services as well as aerial navigation. It is linked to the Ministry of Defense. It deploys, manages, operates and exploits the airport infrastructure allocated to it by ANAC. It manages small-to-large Brazilian airports, representing around 97% of air transport traffic in the country.⁸ Being a government entity, it does not formally own the airports that it administers, which instead belong to the Union. Its headquarters are in Brasília, but it has regional offices across Brazil. It also has a network of 34 Freight Logistics Terminals (Teca Network) operating national and express freights.

Even with the recent privatization of the larger airports, it is expected that INFRAERO will continue to administer two thirds of all passenger traffic in Brazil. Part of the concession fees will be used for investments to develop the smaller airports via the National Fund of Civil Aviation (Fundo Nacional de Aviação Civil – FNAC).

Finally, it is important to note the existence of the **National Council of Airport Authorities (CONAERO)**, created by Decree No. 7.554/2011 with the aim of facilitating the coordination between the various institutional actors involved in airway transportation. It is composed of representatives of the various ministries dealing with airports, the SAC, ANAC and the Presidency of the Republic. It aims at improving procedures and increasing the quality, safety and speed of operational processes. It also contributes to the improvement of normative acts and establishes performance indicators. Concurrently, airport authorities have been established in the airports of Brasília, Belo Horizonte, São Paulo (Guarulhos and Congonhas) and Rio de Janeiro (Galeão and Santos Dumont).

⁸ Source: INFRAERO website - <http://www.infraero.gov.br/index.php/us/institutional/the-enterprise.html>.



Airports

1.3. Concessions: a wave of privatizations in the Brazilian airport sector

Brazilian airports are constructed, maintained or exploited:

- (i) directly by the Union;
- (ii) by the indirect federal administration or its subsidiaries, legally constituted for this purpose;
- (iii) directly by the states and municipalities, through an agreement; or
- (iv) via concession or authorization.

In 2008, then-President Lula decided Brazil had to attract private capital in order to expand and modernize the airports. However, since the government intended to maintain the public ownership of airport infrastructure, it chose to go along the line of the concession model. ANAC commissioned to **EBP (Estruturadora Brasileira de Projetos)**⁹ the duty to develop the economic, technical and environmental studies required for the concessions, while the **Brazilian Development Bank (BNDES)** announced that it would finance 60% of the construction work and 80% of the acquisition of national equipment.



1.3.1. National airports

The first airport to be privatized was the international airport of **Natal** in August 2011, which was assigned to Consórcio Inframérica, formed by the Brazilian engineering group Engevix

⁹ EBP was created in 2009, by a group of public and private banks. Its mission is to develop infrastructure projects with impartial and transparent processes, contributing to the social and economic development of Brazil and creating investment opportunities for the private sector. EBP develops traditional infrastructure projects for federal, state and municipal governments, such as highways, airports, railroads, waterways, ports, urban transportation, and sanitation as well as social infrastructure projects like hospitals, schools and prisons/penitentiaries, among others.



Airports

(50%) and the Argentine group *Corporación América* (50%). *Consórcio Inframérica* has three years to build the terminals and will be authorized to commercially exploit the facility for 25 years (with one possible five-year extension). Unlike other airports in the process of privatization, in which INFRAERO will retain 49% of the shares, in Natal, the *Consórcio Inframérica* holds 100% of the shares.¹⁰

Other airports which have been granted for concession are Brasília, Viracopos and Guarulhos, which are the largest in the country, accounting for 30% of the total passenger traffic and 57% of the total cargo traffic. Their concession was included in the federal government's National Privatization Plan ("Programa Nacional de Desestatização" – PND) on July 21st, 2011, through Decree No. 7.531/2011, attributing to ANAC the responsibility for the execution and follow-up of their concession process.

Their auctions occurred in February 2012. The **Brasília airport** was assigned to *Consórcio Inframérica*. Private sector investments are expected to total 2.8 billion reais during the 25-year concession period.

The winning bid for the **Guarulhos airport** was 16.213 billion reais with a premium of 373.51% by the Invepar ACSA Consortium, which includes the companies *Investimentos e Participações em Infraestrutura S/A* (Invepar) and *Airports Company South Africa SOC Limited*. Private sector investments are expected to total 4.6 billion reais during the 20-year concession period.

For **Viracopos airport**, the winning bid was 3.821 billion reais with a premium of 159.75% by the *Aeroportos Brasil Consortium*, which is made up by the companies *TPI Triunfo Participações e Investimentos S/A*, *UTC Participações S/A* and the French *EGIS Airport Operation*. Private sector investments are expected to total 8.7 billion reais during the 30-year concession period.

¹⁰ *Consórcio Inframérica* also won the concession of the Brasília–Presidente Juscelino Kubitschek International Airport (see *infra*).



Airports

The proposed model for the concession of the three aforementioned airports foresees the establishment of Special Purpose Company (SPC), whose 49% of the capital will be detained by INFRAERO, the remaining 51% by the winning consortium.

This same pattern has been retained for the concession of two other key Brazilian international airports, Rio de Janeiro Galeão and Belo Horizonte Confins. Their concession was included in the federal government's National Privatization Plan on February 1st, 2013 through Decree No. 7.896/2013.

Consortia participating in the auction had to be composed of at least one member with experience in operating airports serving no less than 22 million (Galeão) and 12 million (Confins) passengers per year.¹¹ This experience had to be demonstrated in at least one of the last five preceding years, by an operator detaining a minimum 25% stake in the consortium.¹² The requirement could be met by up to two airport operators provided that both fulfilled the requirement of technical capability. The auctions occurred on 22nd November 2013 and yielded a total of 20.838 billion reais, or an average premium of 253% over the original minimum price (5.924 billion reais) set by the government for both airports. The two winning bids combined represent the largest fixed inflow of capital into Brazil's airport system.

The "Aeroportos do Futuro" Consortium, formed by the Brazilian company Odebrecht and Singapore's Changi Airport Group won rights to expand and operate **Rio's Galeão airport** for 19.018 billion reais, nearly four times the stipulated minimum bid of 4.8 billion reais. The concession also requires about 5.7 billion reais of additional investments over the next 25 years.

¹¹ In the previous airport concessions (Guarulhos, Viracopos and Brasília), the requirement was of 5 million passengers per year.

¹² For the airports of Guarulhos, Viracopos and Brasília, the minimum stake requirement was of 10%.



Airports

The Aerobrasil Consortium, formed by companies CCR, Zurich Airport and Munich Airport, was awarded management of **Belo Horizonte's Tancredo Neves International Airport (Confins)** with a winning bid of 1.820 billion reais, an amount 66% higher than the minimum asking price of 1.096 billion reais. The aforesaid concession requires investments of about 3.5 billion reais over the next 30 years.

According to the rules laid down in the bidding documents, the winner of the auction was the investor offering the highest contribution to the airport system. The auction of both airports occurred simultaneously, subject to the constraint that the same economic group, alone or in a consortium, could only be the winner for a single airport. The participation of the winners of the Guarulhos, Viracopos and Brasília airports was limited to 14.99% of the consortium, without controlling stake.

The current model maintains INFRAERO as a minority shareholder with 49% and the private sector as a majority shareholder with 51%.

1.3.2. The challenge ahead: regional airports

In parallel, the government announced its intention to expand regional aviation, linking small-to-medium-sized city airports to the *hubs* or airports in capital cities. The underlying idea is to develop regional airports near industrial clusters as well as in remote or disadvantaged regions, such as the Amazon.

The planned infrastructure investment is 1.7 billion reais, encompassing 270 airports, with the ultimate goal of having 96% of the population living within 100 km of an airport. Resources from the National Fund of Civil Aviation, raised through the operations of main airports (in São Paulo, Brasília, Rio de Janeiro and Belo Horizonte) will be allocated to finance the project.

The project will promote the improvement, modernization, reform and expansion of airport infrastructure, both its physical facilities and equipments. The investments will include, for



Airports

example, the repair and construction of runways, improvement of passenger terminals, expansion of courtyards and revitalization of signs and pavements, among manifold others.

The volume of passengers and cargoes, scheduled flights and operational results are a few of the criteria considered while assessing the relevant characteristics of the aerodrome. However, it is interesting to note that other factors will be taken into account, such as socio-economic aspects, the level of accessibility in the Amazon, potential tourism and the encouragement of national integration. Besides investments in airports located in small and medium-sized cities, measures to encourage regional aviation focused on enabling low and medium-traffic routes are also contemplated.

In order to develop regional airport infrastructure, it is of outmost importance to overcome the existing institutional, legal, financial and physical bottlenecks in the market. The current institutional and legal frameworks are inadequate. Long-term planning consistent public policy, adequate economic regulation and a legal framework are needed. It is essential to provide legal certainty to foster private investments for overcoming the scarcity of public resources. The physical-operational integration between regional airports is equally essential, as well as the possibility to reserve slots for regional flights in the *hubs* and main national airports and thus create a sort of secondary market for slots.

