

GOBIERNO DE CHILE
MINISTERIO DE HACIENDA
DIRECCIÓN DE PRESUPUESTOS

Contract Renegotiation: Chilean Case

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Agenda

- Chilean PPP System
- Current regulation
- Some Results
- Case: Contracts Renegotiation
- New regulation
- Conclusions





Chilean PPP system

Problems to solve (early 90's):

- Infrastructure deficit
- Barriers/bottlenecks to economic growth

Solution:

- Promote private participation in infrastructure provision
- Public-Private Partnership (PPP or concession)

Concession: Private company (design) finance, build and operate during a pre-established term and then return the infrastructure to government.





Chilean PPP system (continuation)

Conditions:

- Maintain fiscal discipline
- Maintain process of reducing the public debt
- Improve efficiency: Bias in investment v/s maintenance
- Financing by users





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Chilean PPP system (continuation)

Implementation:

- New Law for Concesiones in 1991 (modified in 1996).
- Infraestructure bond.
- Institutional side: Concesiones Unit at the Ministry of Public Works.





Current Regulation

Key features:

- Ad-hoc legal framework
- Open to competition
- Open to private initiative
- Concessions can be sold
- Clear conflict resolution system
- Finance guaranties





Current Regulation (continuation)

Actors involved:

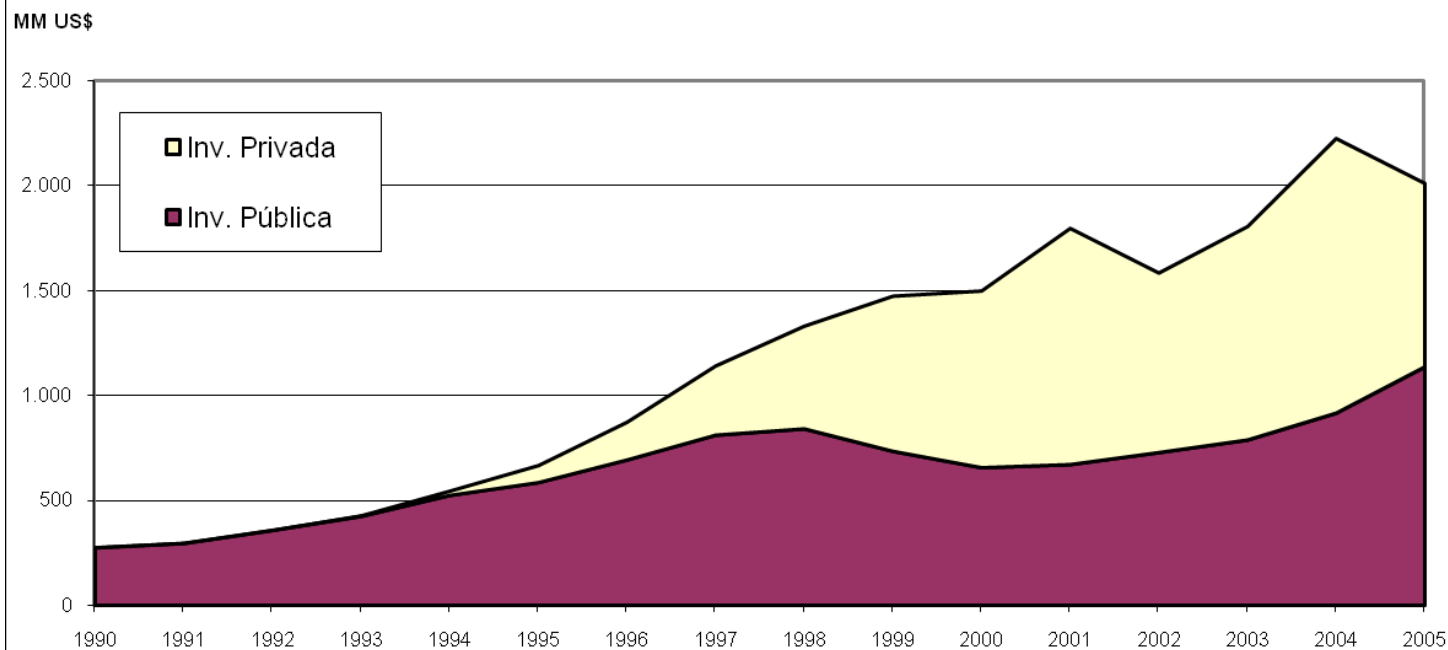
- Concessions Division at Public Works Ministry
- Finance Ministry
- Planning Ministry (Social Evaluation)
- Comptroller General of the Republic
- Other Ministries (constituents)





Some Results

Public Infraestructure Investment
1990-2005





Summary of Results

US\$ 10 billion investment

- 1.520 km Ruta 5 interurban highway
- 400 km other highways
- 6 urban highways (free flow toll system)
- 6 Jails and the *Justice Center*
- 8 Airports
- Various other public infrastructure
- Deepening financial markets





Case: Contracts Renegotiation

Problems observed:

- Gran número o grandes montos
- Overruns on average from 30%
- In some cases reaching 100%
- Difficult to predict – fiscal surprises?
- Payment is a result of bilateral negotiation (no competition)





Case: Contracts Renegotiation

(continuation)

General explanations:

- Contracts are incomplete
- Long term contracts
- Variables with uncertainty (demand, demography, economic growth, macroeconomic variables, politics)





Case: Contracts Renegotiation

(continuation)

Some concrete reasons:

- Needs of expansion
- Aspects not covered by the contract
- Incomplete studies
- Conflicts between government and dealers
- Enhanced standard
- Social needs
- Politics decisions
- Emergency political concessions
- Opportunities





Case: Contracts Renegotiation

(continuation)

Current Regulation:

- Looking after “Restoring the financial balance of the contract”
- Characteristics
 - Any change could have financial impacts on the contract
 - Must be authorized by the Finance Ministry
 - Protracted negotiations, so there must be a quick reaction mechanism
- To restore the balance we can establish:
 - Payments of the government
 - Increased tariff
 - Time extension.





Case: Contracts Renegotiation

(continuation)

However...

- Government captured by the company (urgent works, works already undertaken, etc.).
- Sometimes it is aimed to correct a problem generated by pre-contract studies, then traded fast and therefore, the results are not the best
- Asymmetry of information about the real costs (labor, financial)





New regulation

Unilateral modification:

- Government can ask for better levels of services
- During both construction or operation stage
- Maximum of 15% of the initial budget
- Before 75% of the term of concession
- If during operation, works must be bid.





New regulation (continuation)

Agreement modification:

- During construction, if it's more than 25% of the initial budget, concession is terminated
- During operations, no limit, but works have to be bid
- Net present value of the marginal project must be zero





New regulation (continuation)

General improvements:

- Government can terminate the contract if it's necessary (of course with compensations for the concession company).
- Concession must be terminated if modifications during construction are over 25% of initial budget
- Council of concessions must approve modifications





Conclusions

Despite good regulations, the efforts to avoid contract modifications should be oriented to:

- Good quality engineering studies
- Correct contract specification
- Efficient risk allocation
- Correct contract selection (BOT, DBOT, PBC)
- Feedback
- Budget provisions

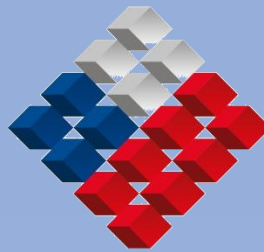




Conclusions (continuation)

- Realistic times
- Look at short and long term
- Flows have to be estimated not expected
- Disclosure of information
- Comparations between public or private provision
- Check & balance





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