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**Working Party No. 2 on Competition and Regulation**

**Competition and Regulation in the Provision of Local Transportation Services – Note by  
Colombia**

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More documents related to this discussion can be found at  
<https://www.oecd.org/daf/competition/competition-and-regulation-in-the-provision-of-local-transportation-services.htm>

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### 1. Abstract

1. This contribution is about the interaction between the Colombian regulator (The Ministry of Transport) and the Superintendence of Industry and Commerce (SIC), concerning the competition assessment made by the SIC on the implementation of electronic tolls and the importance of using electronic devices (tags) on vehicles to facilitate going in and out of the city. The document describes the regulatory proposal, the recommendations made by the SIC on interoperability and incentives to compete and the lessons learned.

### 2. Market Context

2. The development, emergence, modifications and, in general, the series of structural changes in local public transport systems in emerging economies has been part of the discussion agenda in recent decades. This is due to the increasing speed of applicable technological innovations and the unusual demographic growth of urban areas. This fact has led to the idea that the infrastructure necessary to accommodate the new forms of transportation must also evolve and provide space for multimodal passenger transportation systems to be articulated with the mobility of passenger vehicles such as individual cars.

3. According to official data for the year 2021, there were 17.020.451 vehicles in Colombia (motorcycles, automobiles, buses and machinery) of which, about 15.675.170 (93%) corresponded to private vehicles. The city with the greatest mobility problems in the country at present is Bogotá, which has 2.626.905 registered vehicles, representing 38% of the total number of vehicles, excluding in these last two figures the total number of motorcycles.

4. A particularly sensitive point in the growth of the infrastructure needed to accommodate the new models of passenger transportation efficiently and effectively in cities is the collection of tolls. Some of these, at least in Colombia, are located at the exits and entrances to the cities, and at peak hours of traffic congestion, they end up generating important and difficult limitations to mobility.

5. According to Valora Analitik about 20% of citizens of major cities, it takes 1 hour mobilizing to their place of work or study, in other words, adding the round-trip time involves 20 days a year of productive time mobilizing.

6. On the other hand, according to Sinnetic, by 2021, according to a statistical study, 56% of Colombians have low quality and problematic mobility, which illustrates the sensitivity of all those strategies of local and national governments in order to improve this situation.

7. But returning to the mobility situation at the exits and entrances to the cities, the main reason for the slow operation is due to the technological lag in these technologies used in the country, which has meant that even today the large volume of toll collection is collected in cash, rather than through electronic devices. For this reason, the current government has structurally reviewed the regulation regarding the implementation of electronic tolls, and part of this regulation has been evaluated by the Colombian competition authority, with important recommendations on interoperability and alignment

of incentives to compete. This contribution is aimed at showing what has been the interaction between the regulator and the competition authority in this direction.

### 3. Regulatory Tackled Issue

8. The Ministry of Transport identified the need to adapt the rules applicable to systems for electronic toll collection due to several deficiencies in previous regulation. In this sense, shortcomings in the previous model had prevented the consolidation of a nationwide interoperable system for electronic toll collection (IP/REV) through radio-frequency identification (RFID). According to the regulator, by implementing this initiative, users' travel times would be reduced by overcoming the bottlenecks in traffic caused by tolls. Likewise, the operating expenses (OPEX) of highway collectors would be reduced, and the offering of new services to consumers by massifying the use of RFID technology could now be achieved. On the other hand, it is important to clarify that, through this initiative, the Ministry of Transportation did not intend to generate a pass-through effect of the IP/REV costs to users, so as not to increase toll road fees.

9. The Superintendence of Industry and Commerce reviewed the regulatory draft on two occasions since, after an initial version of the regulation was presented, and several competition advocacy recommendations were issued by this Authority, the regulator submitted a second version of the draft, in which several provisions were amended. In this vein, the main themes analysed by the Competition Authority in both advocacy opinions will be briefly explained, as well as their relationship with free economic competition and several lessons learned from this experience:

#### 3.1. Fees paid by the toll road collectors to the intermediaries

10. Under this initiative, the toll operator was under the obligation of paying a commission fee to the intermediary that would manage the RFID TAG. On this issue, the regulatory draft proposed a methodology to establish the maximum rate by which the services provided by the intermediary were to be remunerated. However, the SIC considered that the model used to define such fee did not properly assess the nature of the market and the associated externalities (one-sided market or two-sided market), and the interactions between demand groups.

11. Due to the foregoing, through this opinion, the Competition Authority issued the following recommendations to the regulator: **(i)** To duly support the economic foundations of the formula established for the calculation of the fee, and **(ii)** to conduct a regulatory experiment or trial period (such as a Regulatory Sandbox) in order to learn about the developing market and avoiding adverse results due to the definition of a fee cap value that did not match the conditions of the IP/REV System.

#### 3.2. Number of intermediaries allowed to simultaneously enter into an agreement with the same user

12. One of the benefits of interoperability is that each vehicle requires a single RFID TAG in order to pay any toll in the country. However, the regulatory draft established that each user (that is to say, a natural person or a legal entity) could have a single contractual relationship with an intermediary. Consequently, if a user owned several vehicles, they should all have RFID TAGs from the same intermediary. The assessment of such limitation was important from the user perspective, given that users could have different needs or preferences depending on the use given to each individual vehicle. In this vein, under a

hypothetical scenario, the user may own both private vehicles and vehicles for transporting cargo or passengers. For private vehicles, such user could have preferred an intermediary that offered attractive additional services from a personal perspective. Conversely, for cargo or passenger vehicles, the user might have favored an intermediary that offered additional services related to the vehicle's specific economic activity, or with greater availability of recharging points on the routes frequented by said vehicles.

13. On the other hand, limiting the provision of the collection service to a prior contractual relationship between the user and a single intermediary implied that competition among intermediaries would be more rigid. The former, considering that by having a prior contractual relationship with an intermediary for a single vehicle, the user would be bound to acquire the services from the same intermediary for any additional vehicle, regardless of better service conditions offered by other intermediaries. The foregoing implied that a new intermediary could only increase its clientele by linking consumers who did not yet participate in the electronic toll collection system, or by persuading users to terminate the contract with their current intermediary and unlink all the vehicles that already have a TAG installed.

### 3.3. The dispute resolution mechanisms and the provisional fee

14. The regulatory draft also established that each toll operator and intermediary must reach an agreement on the conditions of the *basic interoperability offer*. If the parties did not reach an agreement on any issue, they were under the obligation of defining an alternative dispute resolution mechanism (for example, arbitration). On this provision, the Superintendence considered that the parties' ability to freely agree upon such mechanism could delay the implementation of the system, therefore jeopardizing interoperability, and mobility benefits for users. Likewise, such provision did not consider international experiences (EU Directive 2019/520), by which the creation of an independent efficient body that could settle the disputes between such market agents was recommended.

15. On the other hand, the draft proposed that, if the dispute among market agents regarded the intermediary's fee, a provisional fee equivalent to 50% of the maximum fee would enter into effect until a settlement could be reached. Regarding this issue, the Superintendence of Industry and Commerce did not find the technical basis for establishing such provisional commission, or whether it adequately recognized factors such as the costs for intermediaries, concluding that such measure could create a barrier to entry for intermediaries. Likewise, such provisional fee was considered as a potential tool that toll operators could take advantage of in order to prolong the disputes and force intermediaries into accepting their offers.

### 3.4. The Technical Operation Committee

16. The regulatory draft mandated all Colombian travel intermediaries and operators to participate in the Technical Operation Committee. Such measure was aimed at resolving operational issues of the IP/REV system and achieving complete interoperability in benefit of cargo and passenger mobility throughout the country. Although this body pursued important goals, the Competition Authority found that it could also be used as an instrument for facilitating anticompetitive practices through the sharing of commercially sensitive information amongst competitors, allowing for coordinated practices, and even leading to price fixing agreements or other forms of antitrust infringements. In light of this issue, the Superintendence recommended including rules aimed at restricting the collection and use of commercially sensitive information of market agents that were part of this Committee.

#### 4. Lessons learned

17. The creation of an interoperable system for electronic collection favors faster mobility on national highways, which in turn reduces operational costs for toll concessionaires and operators, which can translate into additional investments in infrastructure or a better user experience. As identified by the regulator, users could pay more than 120 million trips with RFID tags annually by 2030. Despite all these benefits, assessing this model from a free economic competition perspective is of great importance to ensure that the market operates adequately. Likewise, it is important in order to guarantee that there is a plurality of intermediaries with their respective value offers, that rates are defined according to the investments and costs of these agents, that unjustified barriers to entry are not artificially created and in order to avoid the creation of mechanisms by which certain market agents capture economic benefits that harm consumers.

18. Ultimately, competition ensures that adoption of this system and its benefits are not delayed, and that competitive pressure and innovation contribute to a dynamic market in the long run. In the same way, a timely review of the methodology established for the determination of the intermediation fee caps can translate into greater efficiencies from the point of view of the toll operator and the intermediary, which will not translate into a higher cost for the consumer. Allowing users to access affordable rates to acquire TAGs encourages greater overall agility in transportation.