



COLOMBIA - ANI PUBLISHES 5G CONCESSION AGREEMENT FOR INFRASTRUCTURE DEVELOPMENT

Colombia's National Infrastructure Agency (*Agencia Nacional de Infraestructura*) ("ANI") has published the template of the concession agreement (the "5G Template") that will be used for a series of infrastructure projects to be tendered as part of its new 5G infrastructure program. As of the date of this briefing, the Colombian government has announced 22 toll road, airport, waterway and railway projects as part of the 5G infrastructure program (see Annex I below).

The 5G Template builds on ANI's experience with the concession agreement used for the 4G infrastructure program (the "4G Template") and includes certain new features to be considered in the context of a bankability analysis. This briefing highlights some of the major changes carried into the 5G Template.

A New and Improved Top-Up Payment Regime

The 4G Template featured a top-up payment mechanism (*Diferencia de Recaudo*) pursuant to which ANI would make payments at the end of years 8, 13 and 18 of the concession to make up for any difference between the toll revenue actually collected and the toll revenue expected to be collected by the concessionaire through the end of each such year. In the 5G Template, the difference between expected and actual toll revenue will be calculated on an annual basis during the O&M phase of the concession, and ANI will make top-up payments (known as *Soporte de Ingresos*) for each year in which actual toll revenue falls short of the expected toll revenue set out in the concession agreement for such year.

This payment mechanism will provide annual income support to concessionaires, thereby reducing their need for liquidity support or other financing for periods in which toll revenue is lower than as set out in the concession agreement, in turn reducing the cost of funds to the concessionaires.

Suspension of Remuneration

Under the 4G Template, after the concessionaire delivered a Functional Unit (*Unidad Funcional*), it was required to complete any remaining outstanding "punch list items" within 180 days after delivery. If the concessionaire failed to complete these items within that period, the concessionaire would not be

entitled to receive any portion of the remuneration for the relevant Functional Unit until all outstanding items had been completed. Under the 5G Template, ANI will be entitled to withhold a portion of the remuneration (calculated pursuant to the Special Terms and Conditions of the corresponding concession) for the related Functional Unit until all pending items are completed, but the concessionaire will be entitled to receive the bulk of the remuneration following delivery of the Functional Unit.

VPIP Termination

Under the 4G Template, the concession had a guaranteed minimum term of 25 years. If at the end of the 25-year term, the concessionaire had not collected toll revenue at least equal to the present value of the toll revenue expected to be collected during the term of the concession as set out in the concession agreement (the "VPIP"), the term of the concession would be extended to up to 29 years. The concession would not, however, terminate early if actual toll revenue collected reached the VPIP before the end of the 25-year concession term. Under the 5G Template, the initial term of the concession will be 29 years; however, it cannot be extended even if actual toll revenue does not reach the VPIP, and the concession will automatically terminate as soon as actual toll revenue reaches the VPIP, even if this occurs before the end of the 29th year.

Termination Due to EER

The 4G Template stated that either party could terminate the concession agreement if a liability exoneration event ("EER") halted the performance of such party's obligations thereunder for a period exceeding 90 days. The 5G Template significantly limits the ability of the parties to unilaterally terminate the concession agreement in such a case by requiring mutual consent or approval by a dispute resolution board (*Amigable Compondor*) prior to termination. These changes raise the possibility of a delay in termination of the concession agreement due to an EER.

Termination Payment

Under the 4G Template, the termination payment was calculated as (a) the concessionaire's aggregate investment in the project discounted at a pre-set discount rate, plus (b) amounts owed by ANI to the concessionaire at the termination of the concession agreement, minus (c) the sum of (i) the remuneration paid to the concessionaire and (ii) any applicable deductions, penalties and fines. Under the 5G Template, the concessionaire's discounted investment amount (clause (a) in the preceding sentence) will be replaced by the lower of (i) such investment amount and (ii) the sum of equity contributions made and, during the Construction and O&M Phases, the principal amount of project debt outstanding on the date of termination. This does not mean, however, that the termination payment will in all cases be at least equal to the outstanding principal amount of project debt.

Environmental and Social Works

The 5G Template introduces the concept of "Social Works" (*Obras Sociales*), which are intended to improve the welfare of affected communities if ANI, territorial authorities or affected indigenous communities require the concessionaires to include them in particular projects. Under the 5G Template, the concessionaire will be required to fund a Social Work Subaccount with a

predetermined amount at the beginning of the concession and apply funds on deposit in the Social Work Subaccount to perform these Social Works.

Although this feature is designed to benefit affected communities, the 5G Template does not specify the treatment of potential cost overruns and operation and maintenance of these Social Works.

The Bottom Line

The 5G Template includes certain enhancements reflecting the experience of the 4G program; however, various bankability concerns have not been addressed and will need to be considered by potential investors and lenders. This briefing is not intended to summarize all significant developments or updates introduced in the 5G Template, nor is it intended to substitute a detailed bankability analysis of the 5G Template. We can provide you with our detailed bankability findings and discuss structuring ideas at your request – simply contact our team highlighted below.

ANNEX I

5G Projects

Project	
1.	ALO Sur
2.	Accesos Cali-Palmira
3.	Pasto-Popayán
4.	Accesos Norte de Bogotá 2
5.	Pereira-La Victoria, Cerritos-La Virginia
6.	Buga- Loboguerrero
7.	Loboguerrero - Buenaventura
8.	Ruta del Sol 2 (Puerto Salgar-Barrancabermeja)
9.	Ruta del Sol 2 (Barrancabermeja-San Roque)
10.	El Santuario-Caño Alegre
11.	Villeta – Guaduas
12.	Troncal del Magdalena
13.	APP Rio Magdalena Waterway
14.	Canal del Dique Waterway
15.	Canal de Acceso a Buenaventura Waterway
16.	La Dorada-Chiriguaná Railway
17.	Cartagena Airport Expansion
18.	Southwest Airport Expansion (Palmira-Buenaventura-Neiva)
19.	New Cartagena Airport (Bayunca)
20.	San Andres and Providencia Islands Airports
21.	El Dorado (Bogotá) Upgrade
22.	El Dorado (Bogotá) Expansion

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