THE ECONOMIC REGULATION OF BRAZILIAN INTERMUNICIPAL COACH TRANSPORT (TIPO): CONTRIBUTIONS THAT MAY ARISE FROM THE COURTS OF ACCOUNTS ROLE

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INTRODUCTION

Brazil has got a long tradition of considering its intermunicipal coach transport (TIPO) a public service, and the current Federal Constitution of 1988 (FC/1988) has adopted this tendency. Due to this characterization, the sector needs to be submitted to public regulation, audit and control. Brazilian TIPO has traditionally been run by private enterprises, subjected to public delegation, without public subsidies. Public management and regulation of this activity has been carried out by public road institutions or by public transport entities. However, recent reforms have changed these circumstances and many states have set up regulatory agencies, which still suffer lack of independence and effective power and practice.

This paper points out the theoretical and legal aspects that describe this means of transport as a public service and shows how the sector has been managed, regulated and controlled by the government of some states. The analysis has indicated that the sector has gained little attention from the public sector. It is also shown some alternatives that might contribute to tackle many problems that arise from the sector.

It is also shown a proposed model to be applied by auditors from the Courts of Accounts (or Courts of Audit) and intends to point out good regulatory practices for the TIPO sector. The model is based upon the learning from the Economic Regulation and the guidelines and experiences from the International Organization of Supreme Audit Institutions – INTOSAI and its affiliates for the development of economic regulation audits. The use of this model is not restricted to the courts, and other organizations, such as executive bodies and regulatory agencies can make use of it as well. As a basic premise it was considered the need to submit the sector to competitive tendering processes - in which operation performance criterion would be included - and thus bring competitiveness to the market and improve the service quality. This would force the operators to permanently seek for better efficiency and lower operational costs, so that the users would be the main beneficiaries from the process.

Hence, this paper aims to contribute to the modernization of the sector, by presenting some ideas that are thought to be good practices. The model will be applied to regulations and institutions from three Brazilian states and analyses and comments will be developed.

Brazilian Coach Transport Constitutional Framework And Its Characterization As Public Service

According to the FC/1988, Brazilian intermunicipal coach transport system has been divided into 4 components – international (between Brazil and one of its neighbors, e.g. Argentina, Paraguay), interstate (between cities of different states, e.g. from Rio de Janeiro state to Sao Paulo state), intermunicipal stricto sensu (between municipalities from one of the 26 Brazilian states, e.g. from Porto Alegre to Gramado, in the Rio Grande do Sul state) and districtal (between cities located in the Distrito Federal - Brazilian administrative division that holds the federal capital, Brasilia). The difference amongst them is given by the administrative level to which each one is submitted. Thus, international and interstate services have been managed and regulated by federal bodies (FC/1998, article 21, XII, e), districtal services by bodies from the Distrito Federal (FC/1988, article 32, §1º), and following Brazilian constitutional tradition, the intermunicipal travels has been subjected to the states control (FC/1988, article 25, §1º). The liability for urban and intramunicipal buses has lain in the municipalities (FC/1988, article 30, V).

Given the fact that Brasileiro et al. (2001) and Gomide and Martins (2005) have already studied the interstate and the international services and presented papers during the 7th and the 9th Thredbo, respectively in Molde and Lisbon, this work draws attention upon Brazilian intermunicipal stricto sensu services, from now on referred as TIPO.

Because the TIPO is a public service, the government holds the sector and may directly carry out the services or may delegate them to private entrepreneurs. By doing the latter, it has to comply with FC/1988 article 175, which imposes that every contract must be preceded by a public bid. This article is disciplined by federal law 8,987/1995, which is the first act that deals with the delegation issue in Brazilian whole constitutional history.

Brazilian TIPO has traditionally been run by private enterprises. However, in most situations, the sector has not yet been adapted to the current legal framework. So, two different realities arise, the real and the formal, the latter pretending to display that the system functions in accordance with the statutory obligations, and the former showing a major gap between what is intended by law and what effectively occurs in the field. This dichotomy leads to an archaic structure that shows many failures, where competition is not a rule, but an exception. Hence, there is neither a free market structure nor a competitive structure stimulated by some kind of economic regulation. Instead, the market is comprised, in almost its entirety, by exclusive rights to operate and strong barriers to new operators.

Besides this, in most of Brazilian states the adequate fulfillment of the services has not yet been achieved and the sector has faced many problems, be it for the lack of interest of the private companies to better their performance, or because of the government omission in regulating deviations from the market perfect competition model, or due to conflict of interests amidst municipalities, or even for the presence of the informal transport. It has also been noticed fall in demand and in the collection of taxes, increase of costs, paralysis of many routes, lack of services to less privileged towns, lack of public policy, financing deficit, and so on (Gifone Neto, 2002).

This situation is an unbearable and has to be submitted to reforms. These changes have already got the necessary legal structure, but a effective political decision to take it to terms is still in need. It is also need the development of regulations that seek the services' maximum efficiency and the social welfare. The gap between legislation and reality must be eliminated, and there are some institutions that might be helpful in tackling this challenge, such as the Court of Accounts. These bodies are responsible for controlling public expenditures and public services delegations, and may contribute to strengthen the role of the regulatory agencies, besides auditing them.

Brazilian Public Administration Control

The public administration control is commonly run by institutions with specific and exclusive functions. According to its position, the control may be designated as internal or external, depending whether it belong or not to the executive structure. This paper will focus on the latter, which in most situations is linked to the parliaments, audits the executive bodies and is generally named as Court of Accounts or Audit Office (Dromi, 2005). These bodies must have functional and financial independence, may develop audits through self-imposed initiatives - within the constitutional limits - or may get specific mandates from the parliaments, or still may check out eventual complaints, demands or denunciations made by citizens against public entities. Besides scrutinizing public organizations' accounting, budgetary, financial, fiduciary and administrative activities - including public bidding processes - compliance with legal directives, these institutions may also evaluate the performance's effectiveness, efficiency and soundness of organizations and entities under their jurisdiction and of governmental systems, actions and programs (Dromi, 2005; TCU, 2007).

The external control institutions usually follow two traditions: a collegiate body, inspired by the French Cour de Comptes model, in which the members share liabilities, and a single organization, headed by just one individual that carry the responsibilities, structured like general audit offices or general comptrollers, and adopted by countries from the Anglo-Saxon tradition (Barreto, 2004). Examples of the former are found in Germany, Brazil, and Spain, and the latter in the United States, the United Kingdom and Australia.

The external control in Brazil is organized in accordance with the political division of the country. Thereby, the control exerted on federal institutions (federal government) is due to The Brazilian Court of Audit (TCU), and the one on regional (state governments) and local (municipalities) institutions are carried out by another set of bodies, comprised by twenty-six Regional Courts of Audit (e.g. The Rio de Janeiro State Court of Accounts, The Pernambuco State Court of Accounts), responsible for auditing the states and their municipalities, except the expenditures of the cities from the states of Bahia, Ceará, Goiás and Pará, for which there are other four specific Municipal Court of Accounts. There are also more two courts just to audit the accounts of the two biggest cities of the country (São Paulo e Rio de Janeiro) and a court to audit the Federal District, where the federal capital – Brasília – is placed.

At international level, it is important to cite the International Organization of Supreme Audit Institutions – INTOSAI, an organization that was founded in Havana in 1953 by representatives of thirty-four countries, and objects to help its members to develop and change experiences and knowledge. INTOSAI is a non-political, independent and autonomous organization, and holds a consulting status in the Economic and Social Council of the United Nations. Currently INTOSAI has got one-hundred and eighty-six affiliates, and the TCU is the Brazilian representative at the institution.

Building the Proposed Model

Based upon Brazilian coach system characterization as a public service, it was developed a model that would assist the court of accounts in their audits, and also would be useful for other institutions involved with the TIPO sector. It is necessary to say that the model does not intend to comprise every aspect involved with the services. It aims to be more a contribution than an ultimate solution for every aspect related to the TIPO sector. Neither the model can be applied to every circumstance, given the differences of approaches and realities that arise from each country.

Two perspectives were considered during the model development: a) it was observed the learning from what the Economic Regulation consider best practices, whereupon some parameters were established (table 1); b) it was chosen some of the INTOSAI guidelines on best practice for the audit of Economic Regulation (table 2). The former group was applied to clarify the latter, which is more conceptual and does not come to a more operational usage. The proposed model may be schematically as shown below.

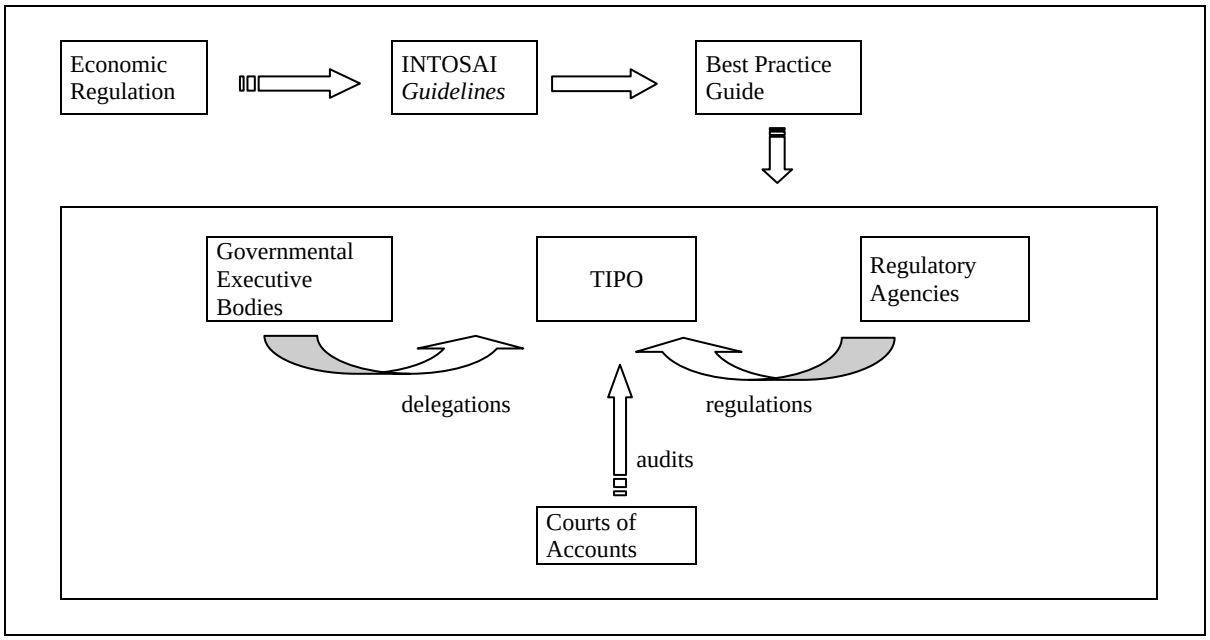

Figure 1: Proposed model scheme

Regulatory best practices (theoretical)

This sub-section exhibits the principles that guided the selection of the parameters shown in table 1. These elements were adopted in the development of the proposed model and inspired the criteria stated below in table 3.

The Regulation Economics, more precisely the Economic Regulation, try to keep an environment of competition in markets that, by themselves, are substantially moved away from the model of free competition, because of market imperfections. The INTOSAI refers to Economic Regulation

> "as the exercise by the state, either directly or indirectly, of control and influence over suppliers, whether publicly or privately owned, of services to consumers. It addresses a number of objectives, some of which are in competition with one

> another, for example protecting consumers from abuse by monopoly suppliers, while seeking to ensure that suppliers are able to finance the provision of essential services, such as utilities, public transport and financial services, to specified standards" (INTOSAI, 2001).

The regulatory rules (Orrico Filho et al., 1998) or regulatory remedies (Aragão et al., 2004) refer, among others, to: definition of the conditions of entrance in the markets; ways of contracting; suppliers' rewarding; performance and the quality indicators; definition of types and amounts of service; incentives to productivity and to cost reduction; tariff, price and subsidy policy; social control; users' rights.

The World Bank (2001) says that, when appropriately regulated, the competition best guaranties the efficiency of the systems of public transport and the concessions may help the development of low cost operations that may better the quality of the services and their prices. In contrast, an inadequate regulation will bring extremely harmful effects to the competition.

In the same way that Brasileiro et al. (2001), Santos et al. (2001) also consider that the medium and long distance means of transports by coach do not have the typical nature of public service, given the eventual relation that happens between the user and the service, alike the regular one that is usual in cities and metropolitan areas. This could lead to consider them as a commercial activity. However, this consideration seems not to be convenient for all the situations. In fact, if developed countries present structural conditions that allow the displayed characterization, in developing countries, among which Brazil can be inserted, where large parcels of the population do not make use of another possibility of service beyond the road transport by coach, it is more appropriate to consider the activity a public service. This introduces the quarrel on contracts and stated periods from the regulatory point of view (Santos et al., 2001). Gomide and Martins (2005) share this opinion and consider that there are not economic rationale that would justify the submission of the sector to regulation, but because of other underlying reasons, such as social reasons (e.g. the need to provide services to the poor and to the ones who live at sparsely populated areas) and motives of national unity and integration, the FC/1988 has imposed public regulation to the TIPO.

In the scope of this work it is considered that regulation and competition are not two excluding elements, and also that one should not confuse deregulation with incentive to competitiveness. The guiding principle of the proposed model is that the regulation comes indeed to allow the public sector to guarantee to the infrastructure markets – including the TIPO provision - a healthful and sustainable competitiveness throughout time. The competition not necessarily needs to be given in the field, but at the moments of entrance in the market - that should occurs with the highest possible frequency - which happens at the moment of the initial public contest and the following biddings (Smith, 2003). This tendering model of inducting competition is similar to the one adopted in Sweden (Alexandersson et al., 1997). Muren (2000) remembers that processes of competitive tendering have contributed to reduction of costs in many sectors with a public service characterization, and the results have been particularly important in the bus sector.

In relation to countries with poor population - as it is the case of Brazil - and mainly because the most users of TIPO correspond to the less favoured parcels of the population, it is fundamental that the applied regulatory drawings do not be limited to imported models from industrial developed countries. The TIPO regulatory model may follow general principles adopted at industrialized countries, but different approaches and emphases should be developed (Smith, 2003). Amongst the aspects to be considered, it could be distinguished the

necessity not only to improve the convenience of access to the individuals who already reach the market, but also to extend services to the less favoured people. Concerns with the prices should also be considered, in a way that the poor may access the formal systems and pay for the services. These factors must be especially considered for the ones that live at agricultural areas and at towns and villages faraway from the main centres (Smith, 2003).

Santos et al. (2001) also affirm that the process of modelling the delegations of the medium and long distance coaches depend upon where it takes place. However, a common characteristic may be pointed amongst the delegations' processes: to the public power competes the strategic definitions (planning and designing services network, tariff policy, minimum standards of operation) and to the operators compete minimizing production costs and maximizing the attraction of passengers, through operational decisions (e.g. maintenance strategies, staff schedules, definition of vehicle models, timetables) (Santos et al., 2001). Santos and Orrico Filho (1998) add that the tactical definitions (e.g. itinerary, vehicle technology, frequencies and periods of operation) could be designed either to the public sector or to the operators, depending respectively whether the regulatory policy is more or less strict.

It is also convenient to mention that Brasileiro et al. (2001) and Aragão et al. (2004) consider that it should be adopted less rigid regulatory strategies to the regional means ofg transport than to the urban modes. Besides greater decision power to the operators, competition in the field could be allowed, since the rights and interests of the users were respected.

In order to induce the quest of better efficiency by the operators, it should be harnessed the contractual renewal's possibility and the extinguishing of the delegation to the accomplishment or not, respectively, of performance indicators (Santos et al., 2001; Barboza, 2002). This would induce the contracted companies to a constant search of cost reduction and improvement of the efficiency of the service's fulfilment, as well as would bring a greater transparency of the performance of the firms (Smith, 2003).

In the opposing and more radical option to regulation, Berechman (1993) considers that the public sector should adopt the deregulation to the non-metropolitan interurban transport. However, this alternative does not seem to be most appropriate to developing countries or nations with poor population that depend on the public transport system, as it is the Brazilian case. Thus, a less radical alternative could be the one suggested by Smith (2003) to countries with poverty: deregulation with liberalization and fall of entry barriers to new operators in regions not reached by the formal system. In this case, special attention in the management of the borders between the two markets should be taken, despite the benefits that should be gained by the formal system in being fed by the liberalized one. In this hypothesis it would be convenient to decide which kind of barriers' loosening should be imposed: lighter or not to smaller operators; stricter or not to bigger operators; more conventional or not to operators from the formal system who eventually have became interested in these routes.

As Brazilian constitution imposes the TIPO as a public service, the proper model to be applied would be the one similar to the one adopted at the Nordic countries, where competition must be stimulated not necessarily in the field, but in the moment of the allowances to get into the market.

It can be perceived, therefore, that the strategies for a good regulation of the TIPO sector should pass through the adoption of competitive public bids (competitive tendering), that seem to be the better way to increase the competitiveness and, in result, to improve the efficiency of the services. In Brazil these contests must follow the rules of federal laws 8,666/93, 8,987/1995 and the infra-constitutional legislation imposed by each state. It has to

be pointed out that the great majority of the current permissions have not yet been submitted to market tests based upon this legislation, and have been legalized through the extension of contracts that had been established prior to the advent of the mentioned laws, that had not been subjected to public bidding.

INTOSAI guidelines for economic regulation audits

This sub-section presents some recommendations developed by INTOSAI Working Group on the Audit of Privatization (INTOSAI, 2001). These guidelines, which have also been cited by Marshall (2000), serve to advice the INTOSAI affiliates how to behave in their relationship with economic regulators and how to proceed in audits related to economic regulation, when checking out the efficiency and effectiveness of regulators' actions before their tasks. The many Brazilian Courts of Accounts are the audit institutions (Supreme Audit Institutions – SAIs) that the INTOSAI makes reference, and that the TCU is one of the 186 (one-hundred and eighty-six) current members of the INTOSAI. The guidelines result from a survey conducted by INTOSAI about the proceedings taken by its affiliates when auditing the issue of Economic Regulation, and comprises the compilation of the information given by the 67 (sixty-seven) respondents to the requests.

In the proposed model some of the INTOSAI guidelines were not considered (e.g. recommendations to the functional structures of the control institutions and environmental aspects), in order to focus attention upon questions more related to classical regulation matters, mainly the ones linked to competition, entry barriers, contract term, among others. Thus, the selected guidelines are shown bellow, in accordance with the sections with which they are divided.

Section 2: The Business of Regulation

- Guideline 3 - The regulatory framework: In order to set about performance evaluations the SAI needs to have a clear understanding of the context in which the economic regulator is operating (INTOSAI, 2001).
- Guideline 4 - Objectives, functions and powers: The SAI needs to have a clear understanding of the objectives, functions and powers of the regulator in order to examine how effectively it is addressing its tasks (INTOSAI, 2001).
- Guideline 7 - Information needs: The SAI should establish whether the regulator is able to obtain sufficient reliable information about suppliers to enable it to carry out its functions efficiently and effectively (INTOSAI, 2001).

Section 3: The Supply of Service

- Guideline 9 - Security of supply: The SAI should examine the arrangements which the regulator has put in place to ensure that suppliers provide at least the basic statutory services and that consumers are compensated if failures of supply occur (INTOSAI, 2001).
- Guideline 10 - Consumer access: The SAI should examine how the regulator has sought to secure consumer access to services and whether suppliers are prevented from discriminating unfairly between different groups of consumers (INTOSAI, 2001).
- Guideline 11 - Supplying vulnerable consumers: The SAI should examine how the regulator monitors whether suppliers comply with their statutory duties to provide access to vulnerable groups (INTOSAI, 2001).

- Guideline 12 - Service standards: The SAI should examine what the regulator has done to establish minimum standards of service for consumers, to monitor the performance of suppliers, and to secure improvements when suppliers' performance falls short of those standards (INTOSAI, 2001).
- Guideline 13 - Dealing with consumers' complaints: The SAI should examine whether regulators and suppliers have set up well-publicised procedures to enable consumers' complaints to be satisfactorily addressed (INTOSAI, 2001).

Section 4: The Price of Service

- Guideline 15 - Controlling prices: Where the economic regulator has responsibility for controlling the prices charged to consumers by suppliers, the SAI should examine whether the regulator has implemented a well designed and transparent pricing regime in line with the regulatory objectives (INTOSAI, 2001).
- Guideline 16 - Linking price to quality: The SAI should examine whether the regulator has sought to ensure that the price consumers are required to pay is matched by the quality of service provided (INTOSAI, 2001).
- Guideline 17 - Encouraging supplier efficiency: The SAI should investigate whether the regulator has sought to encourage suppliers to reduce their costs and improve their efficiency (INTOSAI, 2001).
- Guideline 18 - Suppliers' financing costs: The SAI should examine whether, in setting price controls or other limits on suppliers' income, the regulator has examined the likely cost to suppliers of raising capital, including both debt and equity capital, having regard to factors such as the proportions of suppliers' balance sheets made up by different sources of finance, and taxes on profits and interest (INTOSAI, 2001).
- Guideline 19 – Investment: The SAI should examine whether the regulator is monitoring supplier investments, checking in particular that suppliers are fulfilling any investment requirements and undertakings, and that the investment is having the desired beneficial effects for consumers (INTOSAI, 2001).

Section 5: Developing Competition

- Guideline 20 - Reducing monopoly and market domination: Where the regulator has the objective of promoting competition in order to reduce monopoly and market domination, the SAI should examine what has been done in pursuit of that objective and with what results (INTOSAI, 2001).
- Guideline 21 - Promoting consumer choice: The SAI should examine what the regulator has done to assess whether consumers have the scope to change supplier, whether there is sufficient information for them to make rational decisions about which suppliers they choose, and whether there are effective arrangements for those consumers who want to change supplier (INTOSAI, 2001).
- Guideline 22 - Combating anti-competitive practices: The SAI should examine whether the regulator seeks to identify and deal promptly with alleged anti-competitive practices (INTOSAI, 2001).

The model

As said above, the proposed model was developed in accordance with the learning from the Economic Regulation and the recommendations of the INTOSAI. Besides the theoretical aspects described above as regulatory best practices, it was applied upon the INTOSAI guidelines some parameters based on the studies of: a) Barboza (2002), that has analyzed three models - COPPETEC/GEIPOT (1995); ANTP, NTU and Fórum Nacional de Secretários de Transporte Urbano e de Trânsito (1999); and SEDU (2001) – and has established some variables that have been applied upon the regulations of 11 (eleven) Brazilian urban bus systems; b) Gifone Neto (2002), that has analyzed the regulation framework of 3 (three) Brazilian states intermunicipal coach systems; c) Orrico Filho *et al.* (1998), that have studied 8 (eight) Brazilian urban bus systems. Thus, table 1 exhibits the best practice parameters from the Economic Regulation that were selected to be used in the proposed model.

Table 1: Best practice parameters from the Economic Regulation Theory

Ref.	Description
A	Organizational structure
B	Access to information from the services' fulfillment
C	Duties' definition
D	Users' rights and social control
E	Services' reach to regions outside the conventional market
F	Quantity and quality control
G	Tariff and subsidy policy
H	Incentives to productivity and to cost reduction
I	Suppliers' rewarding
J	Defining tariffs
L	Risks distribution
M	Entry barriers and access to the market
N	Competitive structure
O	Ways of contracting and delegating services (or Services contracts and delegations)
P	Contracts' terms
Q	Supply segmentation
R	Services' grouping

Table 2 shows the distribution of the selected parameters from table 1 amongst the INTOSAI guidelines.

Table 2: Adopted indicators

INTOSAI Guidelines		**Economic Regulation Parameters**
Section 2: The Business of Economic Regulation		
3	The regulatory framework	A
4	Objectives, functions and powers	A
7	Information needs	B
Section 3: The Supply of Service		
9	Security of supply	C, D
10	Consumer access	D
11	Supplying vulnerable consumers	E
12	Service standards	D, F
13	Dealing with consumers' complaints	D
Section 4: The Price of Service		
15	Controlling prices	G
16	Linking price to quality	F
17	Encouraging supplier efficiency	H
18	Suppliers' financing costs	I, J
19	Investment	C, L
Section 5: Developing Competition		
20	Reducing monopoly and market domination	N
21	Promoting consumer choice	D, Q, R
22	Combating anti-competitive practices	M, N, O, P

Table 3 indicates the adopted criteria that classify the regulatory practice as good, and corresponds to the proposed audit model that may be applied upon an intermunicipal coach system. An improvement of a regulation would be achieved by the alteration of its elements characterized as inadequate, through the introduction of the best practice, according to explanations from table 3. Thus, the best practice leads to an adequate regulation.

Table 3: Best practice criteria

INTOSAI Guidelines	Economic Regulation Parameters	The adequate regulatory practice consists in:
3 - The regulatory framework	A - Organizational structure	existing a regulatory agency not tied, nor playing the role that competes, to the executive branches of the government, in order to preserve the agency's independence.
4 - Objectives, functions and powers	A - Organizational structure	specifying and clarifying the competences of every entity, and not allowing the regulation of the sector and the regulation of the contracts be developed by the same institution. The former should be performed by executive bodies and the latter by regulatory agencies (Brasileiro *et al*., 2001; Amaral, 2005).
7 - Information needs o	B - Access to information from the services' fulfillment	the regulator body having access to every important information regarding the operators' actions, including the fundamental one to the planning and formulation of the public bidding's terms and contracts. This information must include helpful data to the regulator's survey of the carriers' costs and to the establishment of the tender's maximum admissible tariffs (with which the user might be charged).
9 - Security of supply	C - Duties' definition	considering elements that define supplying obligations of the services to the operators and establish quality's minimum patterns to the services' fulfillment and to the operational security.
	D - Users' rights and social control	being established alternatives to supplying failures of the services, and also to temporary increases of demand.
10 - Consumer access	D - Users' rights and social control	assuring the users access to the services and avoiding bias against less privileged people (*e.g.* the elderly, the poor and the disabled).
11 - Supplying vulnerable consumers	E - Services' reach to regions outside the conventional market	existing the possibility to extend the services to less privileged places, where conventional services do not reach (*e.g.* because of little demand or difficult access). This is given by the feature of essentialness imposed to Brazilian public services by the Constitution.
12 - Service standards	D - Users' rights and social control	existing elements that assure reimbursement to the users as a result of operators' failures in providing the proper services.
	F - Quantity and quality control	existing the establishment of performance indicators to the operators (Aragão *et al*., 2004), *e.g.* benchmarking, yardstick competition. These elements should reflect patterns of efficiency, efficacy and effectiveness to the services' fulfillment. Furthermore, the active involvement and the interaction of every actor of the process (public administration, operator, regulator, user) should be stimulated, in order to be achieved better services (Sousa and Lindau, 2005).
13 - Dealing with consumers' complaints	D - Users' rights and social control	existing specific bodies responsible for receiving complaints and demands in consequence of operators' misbehave or misconduct.
15 - Controlling prices	G - Tariff and subsidy policy	the maximum admissible tariffs (ceiling prices) being defined by the public administration on the bidding's terms. Bellow this limit the potential operators should attract users by their own price policy.
16 - Linking price to quality	F - Quantity and quality control	existing effective mechanisms of field enforcement that allow knowing whether the services are being developed in accordance with the specifications and whether the schedules are being followed.
17 - Encouraging supplier efficiency	H - Incentives to productivity and to cost reduction	subjecting contracts' maintenance and renewals, tariffs' revisions and eventual subsidies' concessions to the accomplishment of performance indicators (Smith 2003).

INTOSAI Guidelines	Economic Regulation Parameters	The adequate regulatory practice consists in:
18 - Suppliers' financing costs	I - Suppliers' rewarding	the operator's remuneration being given by the tariffs. Subsidies should be avoided. Besides the tariffs, operator's revenue would be constituted by fiscal incomes and by eventual associated venture (Barboza, 2002). The incorporation of alternative, complementary and accessory proceeds must result in tariff reduction to the benefit of users, as imposed by Brazilian constitution.
	J - Defining tariffs	not defining the tariff by the cost plus model, which does not stimulate the efficiency and the reduction of tariffs. The main deficiency of the cost plus model is the impossibility of transferring the operators' gains of productivity to the users (Gomide and Martins, 2005).
19 - Investment	C - Duties' definition	the public administration establishing the service network. Where possible and convenient the specifications should be flexible to give the operators greater freedom and chance to take advantage of new opportunities. This flexibility should not be confused with an undesirable leniency (Barboza, 2002).
	L - Risks distribution	attributing risks of demand and of cost to the operators. Prior to the services' accomplishment, price realignments' rates should be established on the bidding's terms and contracts. The realignments should be applied upon contracts' prices and not upon services' input prices, in order to avoid the Averch-Johnson effect. It is necessary to say that, according to Brazilian legislation, operators have the guarantee of the maintenance of the contracts' initial financial economical equilibrium. Nevertheless, inputs' prices and demand's fluctuation should not be alleged as unexpected events to justify prices' realignments.
20 – Reducing monopoly and market domination	N - Competitive structure	inducing verifications of anticompetitive practices through market dominance. The statutes should stimulate the cooperation amongst executive bodies, regulators, fair trading offices and competition, monopoly and merger commissions, in order to verify aspects related to market concentration and mergers that would mask the intention of avoiding an effective competition. Hence, instead of checking out the accordance with regulations of single contracts, it would be possible to conduct systemic analyses at regional level, in a broader scope, which would allow knowing if undesirable economic abuses are being caused by operators.
21 - Promoting consumer choice	D - Users' rights and social control	enlightening users about rights, duties, ways of accessing services, prices and tariffs, alternative services and suppliers and how to access these opportunities.
	Q – Supply segmentation	diversifying the supply and not allowing the formation of monopolies. Vertical detachment should be sought, and it would be helpful not delegating all the services – regular, supplementary (vans, minibuses, etc), and associate (parkings, stations, ticketing systems) – as a whole block. The greater the number of operators the better to the improvement of competition, efficiency and costs reduction.
	R - Services' grouping	avoiding a single operator in the same geographical area.
22 - Combating anti-competitive practices	M - Entry barriers and access to the market	allowing the greater number of potential entrants to tender for the public bids. In order to accomplish this purpose the entry barriers should be minimized and the bidding's terms, including the criterion that defines the best proposal (which will determine the bid's winner), should respect the principles of reasonableness and proportionality.
	N - Competitive structure	establishing the competition to the market, through public bids (*e.g.* competitive tendering processes). When convenient and possible, the competition in the market would be allowed, through horizontal detachment, with fragmentation of routes and timetables amidst many operations instead of only one, which would result in effective competition in the field (Barboza, 2002).
	O - Ways of contracting	delegating the services in accordance with the current legislation (federal law 8,987/1995), preceded by biddings in agreement

INTOSAI Guidelines	Economic Regulation Parameters	The adequate regulatory practice consists in:
	and delegating services	with the Federal Law 8,666/1993 and its alterations. Special attention should be given to the sub-delegations, to the transferences of delegations and to the stock controls' transfers (Amaral, 2002). To the two first cases previous public bid is compulsory (as, respectively, imposed by article 26 of federal law 8,987/1995, and by Constitution's systemic analysis of article 27 of federal law 8,987/1995 in association with article 175 of FC/1988). The third situation does not require previous public biddings, however the possibility of transfer has to be foreseen on the contests' terms in order to permit posterior approval of the transference by the public power. The extinguishing of the delegation only can be given by one of the forms foreseen in the law 8.987/1995. Additional care has to be given to eventual modifications of the contracted services, in order to prevent that the alterations do not deprive of the characteristics of the contractual object, and also do not mask the attempt of escaping from the constitutional rule of the previous contest.
	P – Contractual stated periods	providing successive rounds of public biddings, after short contractual stated periods. The contractual term should be sufficiently long so that the operator may recoup its invested capital and short enough so that the competition for the market (competitive tendering) may be established again. Santos *et al.* (2001, our translation) have stated that the periods should be "approximately defined to be equivalent to the optimal cycle of the vehicle's assets (that is, to reflect the minimum average cost of utilization of the fixed capital in vehicles)". Here it should be considered not only the contractual stated period, but also the eventual contract's renewal, that should be harnessed to the compliance with performance indicators (Santos *et al.*, 2001; Barboza, 2002). It should be remembered that the shorter the contractual stated period, and the stronger the enforcement (fiscalization, control, performance analysis) of the regulation, the bigger the concerns of the operator with the improvement of the efficiency and with the reduction of costs will be. In another words, the longer the stated periods, and more lenient the enforcement, the weaker is the competitiveness and the bigger is the trend to cartelization, with consequential higher risks to the system (Santos et al., 2001). The Swedish experience recommends stated periods between 3 and 5 years (Alexandersson *et al.*, 1997), and it should reach a maximum of 7 years, including eventual renewals, harnessed to performance analyses (Santos *et al.*, 2001). The European Commission (2001) also recommends a five-year stated period for contracts deriving from public bidding processes.

An Application of the Model

This section summarizes the analyses developed upon regulations and institutions related to the TIPO sector from the Brazilian states of Bahia, Rio de Janeiro, and Santa Catarina. These cases were chosen because some activity done by the Court of Accounts of these states was detected. Despite the interstate transport be managed by federal bodies, the examination was also extended to this component, due to a more intense activity developed by the TCU upon the sector than the ones exerted by the state courts. As the interstate and the intermunicipal modes have almost the same characteristics, virtually differing only on the administrative level to which each one is submitted, the TCU would not be ignored. Figure 2 shows a Brazilian map, where the selected states can be better identified.

Figure 2 Brazilian Map

Table 4 presents concise results of the comparative analyses made amidst the four selected systems. As the model presents 16 guidelines, and 25 clarifying parameters, it is not viable to discuss every result that arose from the investigation. Thus, it was decided to focus attention in this paper upon the aspects more related to competition, *i.e.*, guideline 22 (Combating anti-competitive practices), parameters M (entry barriers and access to the market), O (ways of contracting and delegating services) and P (Contractual stated periods).

Table 4: Comparative analyses

INTOSAI Guidelines	Parameter	Federal Government	Selected Brazilian States		
			Bahia	Rio de Janeiro	Santa Catarina
3 – the regulatory framework	A	×	×	×	×
4 – objectives, functions and power	A	× *	× *	×	×
7 – information needs	B	✓	✓	✓	✓
9 – security of supply	C	✓ *	✓ *	✓ *	✓ *
	D	✓	✓	✓	✓
10 – consumer access	D	×	✓ *	✓	×
11 – supplying vulnerable consumers	E	× *	× *	✓ *	✓
12 – service standards	D	✓ *	✓ *	✓ *	✓ *
	F	× *	×	×	×
13 - dealing with consumers' complaints	D	✓	✓ *	✓	✓
15 – controlling prices	G	× *	×	× *	×
16 – linking price to quality	F	✓	✓	✓	✓
17 - encouraging supplier efficiency	H	× *	×	×	×
18 – suppliers' financing costs	I	× *	×	×	×
	J	× *	× *	×	×
19 - investment	C	✓	× *	✓	✓ *
	L	× *	×	×	×
20 - reducing monopoly and market domination	N	✓ *	× *	× *	×
21 - promoting consumer choice	D	✓ *	✓ *	× *	× *
	Q	×	×	×	×
	R	×	×	×	× *
22 - combating anti-competitive practices	M	✓ *	×	×	× *
	N	✓	×	× *	× *
	O	✓ *	× *	× *	× *
	P	× *	× *	×	× *

Legend: ✓: good practice; ×: inadequate practice

There are some situations with both good and inadequate practice being observed in the same guideline. These cases are signalled with a (*) and are due to the selected regulations show some good aspects based on table 3 criteria, even when not entirely in accordance with the stated best practice. However, for the purpose of this paper, it was decided to cite only the practice that is the most representative to the guideline. This will define how the parameter has been considered, according to the proposed model, after a balance between the pros and cons of their rules.

Parameter M: entry barriers and access to the market

Brazilian federal law 8,987/1995 has adopted two species of delegation - concessions and permissions - and the difference between them lies in the requirements for the adoption of each mode, the former being more demanding than the latter. For instance, the concession mode does not allow individuals tendering, and only admits established companies or consortia to participate in public bids. Both modes are formalized through contracts, but if the public administration perceives the necessity to extinguish the services (e.g. due to operator misbehave or service non completion) it would be easier to do on the permissions, and the compensations might be smaller.

When analyzing table 4, it can be observed that a good practice was stated only to the federal government level. This is because this is the system in which the permission is the only adopted specie of delegation. The three state regulations impose the concession as a general rule to the most of their routes (sometimes the permission is the adopted mode to particular situations) and, by doing this, individuals have been excluded from the systems and entry barriers have been raised. Besides other implications, this might mean losing some opportunities in tackling the problem of supplying vulnerable consumers (e.g. because of little demand or difficult access). Other barriers have been imposed, as cited below:

- The regulations of the state of Bahia:
- demand that the potential entrants possess at least three vehicles in accordance with the state regulatory agency specifications in order to apply to public bidding processes;
- establish as criteria to define the best proposal the entrant tradition in providing similar services and the length of routes that the company already serves by the time of the bids;
- allow other factors, besides the tariff value, to define the bidding's winner, such as: administrative and financial potential, size of the fleet and plants, fixed assets;
- demand that the vehicles to be employed on the services must be registered in the state of Bahia;
- The regulations of the state of Rio de Janeiro require that a potential entrant must have a specific purpose, in order that one applying to conventional services can not address other segments (special, private transport, school transport);
- The regulations of the state of Santa Catarina:
- establish that at public biddings, upon the same conditions, incumbent operators will be given preference against potential entrants;
- fix as criteria to define the best proposal: I – the company already be an operator of any station intercepted by the route under contest; II – the entrant be established in one of the terminals of the route;
- determine as bidding's casting vote criteria: I – the headquarters' bidder be established in the state of Bahia; II – the company have already got any permission to operate in the system; III – priority to the contender that already operate the longer extension of section over the route in dispute;
- demand that the potential entrants possess at least two vehicles in order to apply to public bidding processes.

Parameter O: ways of contracting and delegating services

As said before, the article 175 of Brazilian FC/1988 imposes that every public service delegation must be preceded by a public bid. The regulations of the three analyzed states comply with this requirement regarding the concessions, likewise the federal regulations

concerning the permissions. However, the state regulations do not respect the constitutional principle when dealing with the permissions, since the need to previous bid is loosened, and the operators may be directly given the delegation, without being submitted to competition.

Another problem that arises from the four regulations is the possibility of permission and concession transferences from established operators to other companies, without being carried out public biddings. Besides masking the real intention of avoiding an effective competition, this practice also wounds the constitutional principle of prior bidding to any new public service contract.

Parameter P: Contractual stated periods

The contractual stated periods have consisted in one of the biggest barriers to the realization of public biddings throughout the whole country. By alleging respect to old contracts, that had been established prior to the current FC/1988 and to its infra-constitutional legislation (federal law 8,987/1995 and the federal and state specific regulations) and that in most situations had never been preceded by public contests, incumbent firms have been perpetuated without being submitted to market tests through public bids. Besides this, even when the contractual period has already come to a term, very few biddings have been carried out, being it for the governmental omission in putting the sector in accordance with the new rules, or due to operators' collusion in refusing to participate in the contests that have been carried out, as suggests a bidding process in the state of Bahia that resulted desert in consequence of absence of any potential entrant. The lack of biddings has guided the contracts to be directly renewed, what has compromised the competition.

It has to be said that some contests have been developed following the rules established after the FC/1988. But even in these cases the new contractual periods that have been adopted can not be considered an adequate regulation practice, given their lengths. The regulations do not determine that the periods should be determined after the development of economical and financial feasibility studies. Instead, they impose periods that seem to be very long, and that may be renewed too, without being submitted to new tests of market nor having to comply with performance indicators. Table 5 shows the periods allowed by each regulation.

Table 5: Contractual periods authorized by each analyzed regulation

Contract	**Federal Government (permission)**	**Selected Brazilian States**		
		Bahia (concession)	**Rio de Janeiro (concession)**	**Santa Catarina (concession)**
Initial	15 years	10 years	10 years	10 years
Renewal	not allowed	10 years	10 years	10 years

CONCLUSIONS

The proposed model does not intend to deplete every Economic Regulation issue regarding the TIPO sector. Indeed, it is an attempt to contribute for a better management of a sector that has not had enough attention from the public authorities, nor has been submitted to biggest academic studies. It has to be strengthened that the proposal, although addressed to the Courts of Accounts' applications, can also be used by other interested parties in the subject.

The developed studies intended to add the learning from the Economic Regulation to the recommendations of the INTOSAI, and the most relevant finding is the evidenced necessity of opening the sector to competition, what could be accomplished through the planning and development of procedures alike to competitive tendering processes. This practice, in spite of already being inserted in the national juridical framework, effectively has not been put on terms, and monopolies have been perpetuated in the provision of the services throughout the diverse states of the Brazilian federation.

Despite the fact that the use of competitive tendering processes to every situation has been criticized and put in doubt, and other ways of contracting have been discussed (Hensher and Wallis, 2005), the Brazilian case is still at an anterior stage if compared with other countries where major reforms have already been put on the transport agenda. Here, initial rounds of competitive tendering, at a broder level, have yet to be initiated, and this seems to be the most difficult task to be faced. It has to be remembered that the sector has traditionally been run by private enterprises, without public subsidies, and imposing these companies to competition is urgent. Moreover, by the time of the specifications of the public biddings' terms, it would be the best opportunity to establish performance indicators to be obeyed by the future operators. It has to be remembered that, given the current constitutional framework, other ways of delegating services, such as negotiated performance-based contracts, would require major constitutional reforms.

The informal transport has disputed shares of market with the formal systems and needs to be brought to legality. This would benefit the sector, given the addition of new possibilities to the services' provision, with consequent increase of the system's robustness and greater attendance of the users' necessities. Other important factors stressed by the model are the accountability in the management of the services and the need to address trustworthy information to the users, as well as the existence of specific bodies responsible for receiving claims and complaints.

Hence, the developed analyses show that reforms at infraconstitutional level are in need, and the sate regulation regarding the TIPO provision has to seek a modern pattern. The proposed model, and the Court of Accounts role in auditing the sector, may awake the government to the urgency of giving the sector better care and attention.

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