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Alternatives to Non-Compete Clauses in Toll Development Agreements

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Toll Revenue Success in a "Tax-Supported" Road Network

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<tr><td colspan="2">Abstract:
This research product is a brochure summarizing best practices in toll project development agreements that may minimize the impact of traffic competition between tolled and non-tolled facilities, and thus reduce the need for a non-compete clause. These practices are extracted from 20 case studies of toll agreements in several U.S. states and internationally. The details of the case studies are presented in Technical Report 0-5020-1.</td><td>Keywords:
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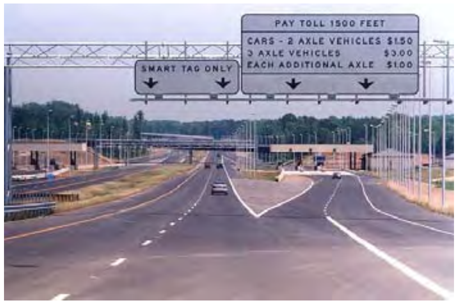
To minimize competition for traffic between tolled and non-tolled roads, toll project developers may request a non-compete clause in the agreement. However, such clauses can constrain public agencies from making needed improvements in a region. In the case of the SR 91 Express Lanes, the public sector had to buy out the franchise after just a few years in order to address safety and congestion problems on adjacent routes.

The following practices in toll agreements have been synthesized from 20 case studies of several U.S. states and other countries. These stipulations attempt to assign the risks in toll investments on the basis of which party is best able to shoulder each risk. By ensuring that both the public and privates sectors have a stake in the success of toll projects, these provisions may be effective alternatives to non-compete clauses.

SR 91 Express Lanes, California

Practices that Benefit the Public Sector	Where Used
1. Require competitive bidding; establish defined set of tools for evaluating bids.	Texas
2. Place a value on expansion options.	Brazil
3. Establish minimum and maximum guarantees linked to rate of return.	Chile
4. Set standards and defined categories for expenditures on reimbursement contracts.	France
5. Require adequate performance bond.	Texas
6. Include sunset provisions; re-bid at defined stage of franchise.	Spain
7. Package entire corridor as single project; use surpluses to subsidize low-traffic segments; match incentives to project feasibility.	Chile, Ireland
8. Require same standards as public projects; design review by DOT.	Texas
9. Require exceptions to non-compete clause for safety or projects in an approved plan.	California
10. Define maintenance schedule, or determine that DOT will take responsibility for maintenance.	Texas

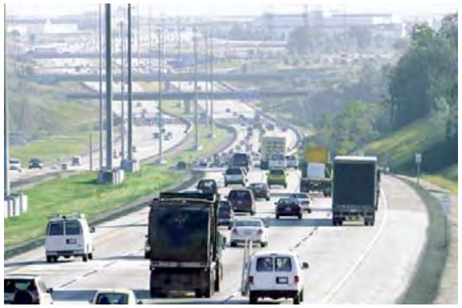
Melbourne City Link, Australia



Pocahontas Parkway, Virginia


Italian Toll Road

11. Regulate toll rates; require capacity improvements if demand exceeds defined level.	Canada
12. Separate funding obligations by category; make spending information available to the public.	Australia
13. Define projects and selection process in advance.	Ireland
14. Rebate gas tax or discount toll by equivalent amount.	
15. Provide income-related toll discount.	
16. Provide non-tolled alternate route.	Texas
17. Maximize traffic throughput.	
Practices that Benefit the Private Sector	
1. Establish a minimum percentage of project cost assigned to each party; segregate equity by asset, e.g., one party pays for right-of-way (ROW), the other for pavement, etc.	Texas
2. Try to obtain tax-free bonds.	
3. Leave franchise period open; determine a value at transfer based on returns to date = cap on present value of total return.	Chile
4. Secure minimum guaranteed revenue or subsidies, e.g., shadow tolls (= rent).	Britain
5. Transfer revenues from lucrative segments.	Florida
6. Establish bonuses when public objectives met, e.g., carpooling targets, level of service (LOS), etc.	
7. Take advantage of tax benefits.	
8. Negotiate non-toll revenues in advance, e.g., share of taxes; sale of traffic information.	
9. Use "grandfather" clause or try to obtain payback in shortest period possible.	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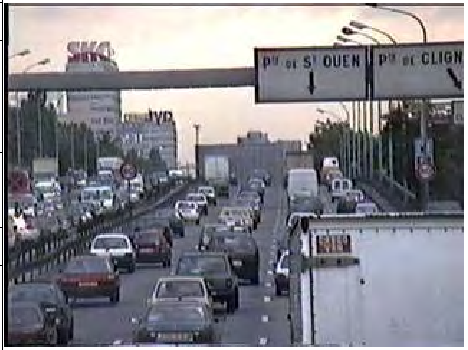
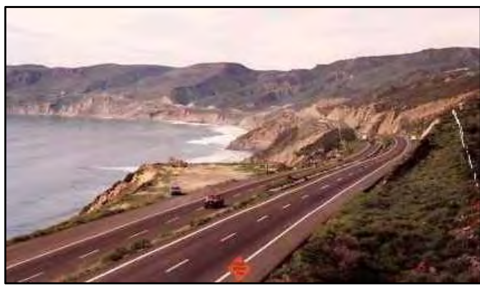

Highway in France

Ruta 5 Toll Road, Chile

M6 Toll Road, Birmingham, UK

10. Utilize a monthly reimbursement schedule.	
11. Establish buyout valuation process/terms.	Chile
12. Establish debt assumption rules.	Mexico
13. Seek congestion relief projects over economic development goals.	
14. Allow projects in approved plan but require compensation for revenue impacts.	California
15. Provide better service (guaranteed travel time, separation from trucks, etc.).	
16. Include upgrading of connectors in agreement.	Australia
17. Establish standards for ramp spacing.	
18. Design project for easy phasing/expansion; define thresholds for adding capacity based on v/c ratios or LOS.	Canada
19. Use standard signing conventions.	
20. Use rapid repair systems; provide proper detour information.	
21. Contract with public agency providers.	Florida
22. Be prepared to upgrade technology.	Italy
23. Negotiate environmental requirements.	
24. Use DOT standards for roadside advertising.	
25. Remove identifiers from user information.	
26. Agree that regulations are only enforceable if implemented on most public facilities.	
27. Use industry ranges for toll rates; increase regularly to match inflation.	



Mexican Toll Road

SH 130, under construction, Central Texas

For details on the case studies and explanation of the applications, see K. Persad, C. M. Walton, and J. Wilke, TxDOT Research Report 0-5020-1. Alternatives to Non-Compete Clauses in Toll Development Agreements, Center for Transportation Research, 2005.