

Peruvian criminal court intervenes in toll dispute

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The Línea Amarilla toll road (Credit: Lamsac)

A French-owned road concessionaire has appealed a Peruvian criminal court's order for it to reduce tolls on a Lima highway while a dispute over the rates is heard at the International Arbitration Chamber of Paris.

On 14 January, Peruvian concessionaire Línea Amarilla SAC, known as Lamsac, announced it was appealing the judgement, which it said violated the arbitral tribunal's "exclusive jurisdiction to resolve the tariff issues."

Lamsac, which is owned by France's Vinci Highways, filed a claim at the International Arbitration Chamber of Paris (CAIP) in 2018, when it became involved in a dispute with the Metropolitan Municipality of Lima over the calculation of a road toll and other issues.

The dispute arises from a 40-year concession contract that Lamsac signed with the Municipality in 2009 to build, maintain and operate the 25-kilometre Línea Amarilla toll road around the centre of Lima. Lamsac was owned at that time by Brazilian construction company OAS, but was sold to Brazil's Invepar in 2012 before being acquired by Vinci four years later.

The Paris-seated tribunal is chaired by Italian-British arbitrator **Luca Radicati di Brozolo** of ArbLit in Milan, flanked by Lamsac's appointee **Guido Tawil** of Argentina and Peruvian **Elvira Martínez Coco**, appointed by the municipality.

Hearings were held in Miami in September last year and Lamsac says an award is expected in March.

Baker McKenzie's Peruvian associate firm Estudio Echeopar is representing Lamsac. The municipality is using Foley Hoag along with Jenner & Block partner **Mélida Hodgson**, who [left Foley](#) last year.

The dispute is understood to be worth over US\$50 million. While there are monetary claims, Lamsac's main claim in the arbitration is for declaratory relief concerning how the toll should be set.

Before the arbitration was launched, Peru's Congress had already ordered a corruption investigation into projects of Brazilian construction companies in Peru, including OAS, in the wake of the scandal over the Lava Jato investigation in Brazil.

Last year, the former president of OAS, Leo Pineiro, [reportedly confessed](#) to paying bribes in relation to the concession, and former municipality officials admitted to receiving them. Criminal investigations concerning the Línea Amarilla project remain pending in Peru, though there have been no charges brought against Lamsac in relation to these matters.

The Peruvian court's latest order is a preliminary measure requiring Lamsac to reduce the toll. It arises in a criminal proceeding against a former municipality official who was found guilty of permitting what were deemed as unlawful toll increases and sentenced to four years in prison. The official is appealing the sentence.

Lamsac was adjoined to the criminal proceeding as the entity benefiting from the former official's conduct. The municipality is not a party to the proceeding and the measure was requested by a Peruvian state prosecutor.

Lamsac argues the court's order violates a procedural measure ordered by the CAIP tribunal last year to maintain the toll at its existing rate while the arbitration is pending.

The concessionaire says it is "worrying" that the Peruvian state is "unaware of a decision validly issued in an arbitration proceeding." Lamsac points out that it has not been convicted on any corruption charges.

Lamsac adds that it is "respectful of judicial decisions" and would reduce the toll rate as requested by the court.

Lamsac is understood to have informed the tribunal of the judgment, alleging a breach of the status quo ordered. On 21 January, the tribunal issued a new procedural order instructing the municipality to inform it and Lamsac of any actions it plans to take before the state prosecutor and judge. The tribunal also ordered both parties to inform the judge and other Peruvian authorities of the existence of the CIAP arbitration.

CIAP was established in 1926 at the Paris Trade Exchange as a non-profit organisation to settle agricultural disputes and has grown over time to cover a wide range of economic sectors.

Línea Amarilla SAC v Municipalidad Metropolitana de Lima

At the International Arbitration Chamber of Paris

Tribunal

- **Luca Radicati di Brozolo** (Italy/UK) (chair)
- **Guido Tawil** (Argentina) (appointed by Lamsac)
- **Elvira Martínez Coco** (Peru) (appointed by the Municipality)

Counsel to Lamsac

- Estudio Echeopar – Baker McKenzie

Partners **María del Carmen Tovar** and **Javier Tovar** and associate **Javier Ferrero** in Lima

Counsel to the Municipality

- Foley Hoag

Partner **Kenneth Figueroa** in Washington, DC

- Jenner & Block

Partner **Mélida Hodgson** in New York

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