Contract Negotiation, Design and Management in a Foodservice Company

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Abstract. The collective food service sector is composed of companies responsible for meal supply to defined clients such as industrial companies, hospitals, public and private organisations. This paper presents the results of a study of how the contracts between a food service company and its contractors are negotiated, designed and managed. The analytical framework applied is based on transaction cost and contract theories, and outsourcing. During contract negotiation and design, the company makes great efforts ex ante to ensure that the contract does not "congeal the relationship". The results show that uncertainty regarding the economic environment is the main cause of renegotiation. Opportunism is specifically constrained by additional clauses. The average duration of the contracts is eight years, which indicates a high level of stability in the relationships contracted. These findings demonstrate the importance of the analysis of the ex ante costs when drafting contracts, which in effect minimise the ex post costs.

1. Introduction

The service sector plays an important role in the Brazilian and world economy. Service suppliers perform ever more operations within companies and show a tendency to grow in both modern and developing economies. In this sector, foodservice segment is represented by companies involved in the supply of meals to companies, hospitals and public and private bodies.

The Brazilian foodservice market is the fourth largest in the world. The transactional characteristics of the food supply service form a hybrid governance structure, of outsourcing, that organises the sector, predominantly, from more formal contracts between foodservice companies and contractors.

The contractual agreement is frequently composed of clauses that govern the general, special and supplementary conditions, which are: supply administration, the content of the service to be supplied, the volumes, the values and the reasons which might lead to renegotiations or termination of the contract [1]. In these clauses the assets to be made available by the contractor, the parameters to be met by the contracted company, the value and form of payment for the service and the responsibilities of the parties involved are described [2].

Studies of service supply contracts have revealed that a series of crucial elements are especially difficult to be contracted and that the specific investments in this sector are, generally, small [3]. This is because the consumer of the foodstuffs (of the contractor) does not automatically know the quality of the service or the accuracy of the information offered by the supplier [4]. On the other hand, the contracted party finds it difficult to obtain precise details regarding the financial situation and reputation of the contracting company in the market. At the same time, it is often seen that those responsible for contracting meal services seek to define in number and in nature what the consumers will encounter in the restaurant, that is, the “theoretical” offer. Hence, the elaboration of a flexible contract that defines in detail, to a greater or lesser extent, a service supply with a certain number of deviations is a challenge for the sector [5].

The interest in studying the contracts between foodservice companies and their contractors is based on the understanding that the company is not only a producer of goods or services, but a governance structure that possesses in its transactions its basic analysis unit. The contract, for its part, serves as a guideline for the aims and objectives of such transactions, influencing the quality and stability of the relationship between the actors.

Among the different theoretical approaches, Transaction Cost Economy (TCE) has been used to study contractual relations, as it analyses the costs incurred in the relationship between two or more actors. These emerge due to relationship difficulties between the agents and their various co-ordinating structures. Such difficulties are inevitable given the different behavioural characteristics of those involved in the transaction and the variability of environment in which they are inserted [6].

The research carried out by Coase (1937) and Williamson (1985) gave rise to this new focus of economic theory, cost transaction. Since which, it has become practice to compare the costs of organising a given economic activity within or outside the firm. Thus, the costs generated by the diverse transactions are responsible for the form of the organisation of the markets and at the same time they constitute the *raison d’être* of the firms [7], [8].

Upon examining the nature of the firm, suggested that it exists due to its capacity to reduce transactional costs and of establishing and renegotiating contracts. It was found that the institutional environment and the characteristics of the transactions are key factors for the success of an efficient contractual arrangement and the success of firms acting in markets governed by transactions [7]. The challenge for organisations is to identify the specific attributes of the transactions, in order to, from this base, design and implement contracts that govern the transactions [8]. This effort generates a series of costs (ex ante) incurred in seeking information and designing contracts that are intended to lead to reduced costs in monitoring and even in the termination of contracts (ex post).

This study is based on the premise that, the contracted party (the food service company) and its contractors (industrial enterprises, hospitals, public and private organisations ....) would need to negotiate and design contracts capable of bringing stability and efficiency to the relationship. Therefore, the contracts need to take into consideration, though still to a limited extent, the main features of the transactions and, thus be capable of guaranteeing the resolution of conflicts and the maintenance of the continuity of relationship between the parties.

Hence, given these particular features of the transactions and taking into account that the contract is the element that presents the formal and informal stages of the relationship between the two parties, its analysis becomes of importance. For this reason, this study seeks to answer the following question: how are food supply contracts negotiated, structured and managed in order to contribute to the maintenance of the relationship between the parties? In order to answer this question, this study aims to characterise and analyse the negotiating, structuring and management processes involved in the contracts that regulate the relations between a food service company (Southern-Region of Brazil of the world leader in the sector) and its contractors.

2. Theoretical Background

With regard the set of problems involved in the transactions between the contracted parties (food service companies) and contractors (industrial enterprises, hospitals, public and private organisations...), the conceptual base that guided the construction of the analytical structure of this study is Transaction Cost Economics (TCE). Besides the transactional attributes considered within TCE, concepts linked to the theory of contracts and outsourcing are shown to be pertinent to the problems dealt with and integrate the analytical structure that guides the collection and analysis of data in the case study.

2.1 The Transaction Cost Theory

The costs of a transaction may be characterised as those that arise from difficulties in relationships, or those that are unforeseen and that, for some reason, have had to be incorporated into the costs of the product or the service. It can also be claimed that they are the costs of negotiating, writing and guaranteeing the fulfilment of a contract for purchase and/or sale of products or services [9].

Depending on the period in which they occur, transaction costs are classified as ex ante or ex post transaction costs. The former refers to the search for information regarding the agents and the costs necessary for the negotiation of the characteristics of a relationship (and may be formalised through contracts). While the ex post costs arise from the incomplete nature of the contracts, which implies the need for monitoring, future renegotiation of clauses and dispute resolution [10], [11], [12].

When the Transaction Cost Economics is used to the study of contractual relations, a number of transactional attributes are taken into consideration, such as asset specificity, uncertainty and the frequency of the transactions. Likewise, errors in prevision and the necessity to ensure the fulfilment of certain activities resulting from certain behavioural characteristics in human nature (bounded rationality and opportunism) that are also considered as they affect the outcome of the transaction.

2.1.1 Bounded Rationality

One of the hypotheses that significantly affect transaction costs is the limited nature of human rationality (of consumers and suppliers) in discovering and processing all the information intrinsic to a transaction. In a complex dynamic environment, the difficulty of foreseeing all the variables that should be described in executing the contract become practically insurmountable. Moreover, even if all these possibilities were predictable, it would be extremely costly to specify them all.

2.1.2 Opportunism

Certainly the efficiency of the design that regulates the activities between the actors is limited by the imperfections arising from the bounded rationality, described above, and opportunistic behaviour. Therefore, economic activity should be organised in such a way as to guard against bounded rationality and, simultaneously, protect the transactions from the dangers of opportunism. Here, opportunism is understood as behaviour that seeks to create asymmetries and incomplete information [7].

These observations imply the premise that, in the presence of contractual impasses or ill-adapted conditions, man may behave unreliably and will act in his own benefit [13]. Thus, it is necessary to be aware of the potential contractual dangers and provide safeguards that are effective in inhibiting opportunism, though this may result in increased costs during the preparation of the contract.

2.1.3 Uncertainty

The unknown nature of the future events, in the world to be created and of their results, fits perfectly within the study of contracts, because as the probability of change increases, there is an increase in the possibility of unforeseen contingencies and, consequently, in the structure of contracts.

In the design and management of contracts ex ante, uncertainty is related to the lack of information on the parties involved in the transaction that will determine the existence of ill-defined characteristics within the relationship and consequently, may lead to errors in the decision making process affecting contractual clauses. Finally, uncertainties with regard the market conditions that will determine the quality and results of prior choices are included ex post.

In certain situations, the uncertainty element may be inserted in clauses that deal with very subjective questions (product or service quality, or behavioural principles such as co-operation). The subjectivity of some clauses make its fulfillment investigation very complicated, even if it is made by both parties of the relation or by a third party (such as the judicial system).

2.1.4 Asset Specificity

Though adaptations to contracts may be put into effect, their alteration will only be possible when the specificity of the assets involved are considered. The investments specific to a transaction are those that have their maximum value when used to serve a particular transaction [8], [14], [15]. That is, their degree of specificity will depend on the number of alternative uses and/or users that a product or service may have, without there being any loss in their value.

Investments in specific assets can be of a physical nature (equipment, fixed assets), human capital (training, hiring, specific learning-by-doing), specific location (the need for a specific location), the application of assets in general (investments made in general in the expectation of the business being put into effect and maintained) and the brand value (the attribution of the brand of the product/service to the contractor) [8].

The kind of transaction between the players will determine the type of specific asset for such a relationship. It is natural to expect that different transactions will require different specific investments. A single transaction may require the contraction of several types of specific assets. However, other transactions are found in which few specific assets are necessary, since the investments can be re-allocated, without loss of value.

The cited factors suggest the greater or lesser need for safeguards and renegotiations that ensure a stable contract and also, that there is no harm to either of the parties in the event of a possible termination of the relationship.

2.1.5 Frequency of Transactions

Understood as the level of recurrence to the market, frequency of transactions is a component that, with the other aforementioned transactional elements, will primarily determine the governance structure and, if applicable, the required contractual regime.

The frequency of transactions can be defined as the number of times that an agent needs to transact with other agents in order to obtain some product or service, be it within a previously institutionalised structure or beyond its limits. Thus, depending on the periodicity of the transaction, formal or informal agreements will be made, in such a way that the transaction costs do not become excessive.

In certain cases, frequency of transaction can be considered as the frequency of the contacts necessary to achieve the objectives of the parties, understood herein as the operationalisation of recurrent transactions [16].

2.2 The Contracts Theory

Contracts can be understood as institutionalised structures that govern the rights, duties and expectations of a transaction agreed between two agents. That is, it represents the central icon in the analysis of the method of co-ordination, facilitating respect and harmonisation of individual interests in a decentralised society [17].

Service outsourcing contracts should contemplate the dimensions of the context in which they are inserted with even greater care, given the intangibility of the expectations and results. Therefore, it should be fundamentally based on a detailed vision of the culture of the client in order that the relationship to be built on stable, yet flexible bases.

The conflicts and varied behaviour of the actors involved in a transaction can be understood through TCE, in which the transactional and behavioural elements that will characterise a given relationship are considered. However, the theory elucidates the difficulties involved in foreseeing all the future events that may affect a contract. In view of this series of difficulties, the parties normally choose to leave contractual gaps to be negotiated later. For this reason, when the outline of the contracts is studied, they are noticeably incomplete [11], [18], [19].

Contractual incompleteness is a characteristic that is determined not only by the uncertainties related to the environment, but also by the lack of knowledge regarding the behaviour and reactions of the actors involved in the transaction. The search for information is an important step that can lead to ex ante costs lower than the ex post costs necessary for delineating safeguards. Therefore, during the preparation of the contract, all the steps should be monitored in order to minimise the transaction costs of the relationship as a whole.

2.3 The Outsourcing Approach

Outsourcing can be defined as the delegation of services to enterprises or individuals in exchange for remuneration and for a predetermined period of time. Generally the links between the agents are governed by contracts that limit the structure and conditions of the delegation.

Historically, almost-vertical activities and hybrid governance structures were facilitated by the opening of the markets that favoured the entrance of an increased number of suppliers. There was also a reduction in the costs of controlling these activities due to the advent of new information and communication technologies [20]. An example of this dynamic is demonstrated by some figures from the car industry, in which it is expected that approximately 80% of the added value of the cars manufactured in 2005 will be the fruit of the work of third parties [21].

The decision of a company to retain activities which lie beyond its core competencies was often made based only on the cost differences between in-house production (verticalization) and outsourcing (deverticalization). Currently, in a process that represents a revision of organisational frontiers, other aspects are taken into account when considering the outsourcing option. The decision should consider the complexity and the demand of the product/service and the technology and capacity required for its production and supply [22].

In this way, some authors consider the examination of some specificities to be indispensable when choosing the governance structure of a given operation, they are: location specificity; technical specificity (investments in equipment, quality specifications, the development of new products, new technologies and fixtures in general); and, last but not least, the human capital specificity (the development of capabilities and knowledge) necessary in order that the product or service is produced [1], [20].

In studying the food sector, Proença (2000) presents some inherent advantages of outsourcing food services: personalised service, know-how of the production processes and the needs and preferences to be met for the satisfaction of the client, reduction in the number of employees contracted by the client company, dynamism, hygiene and cleanliness awareness, cost and quality control, constant research to assess the degree of user satisfaction, reduced risk of equipment obsolescence, reduced expenditure with infra-structure and asset demobilisation [23].

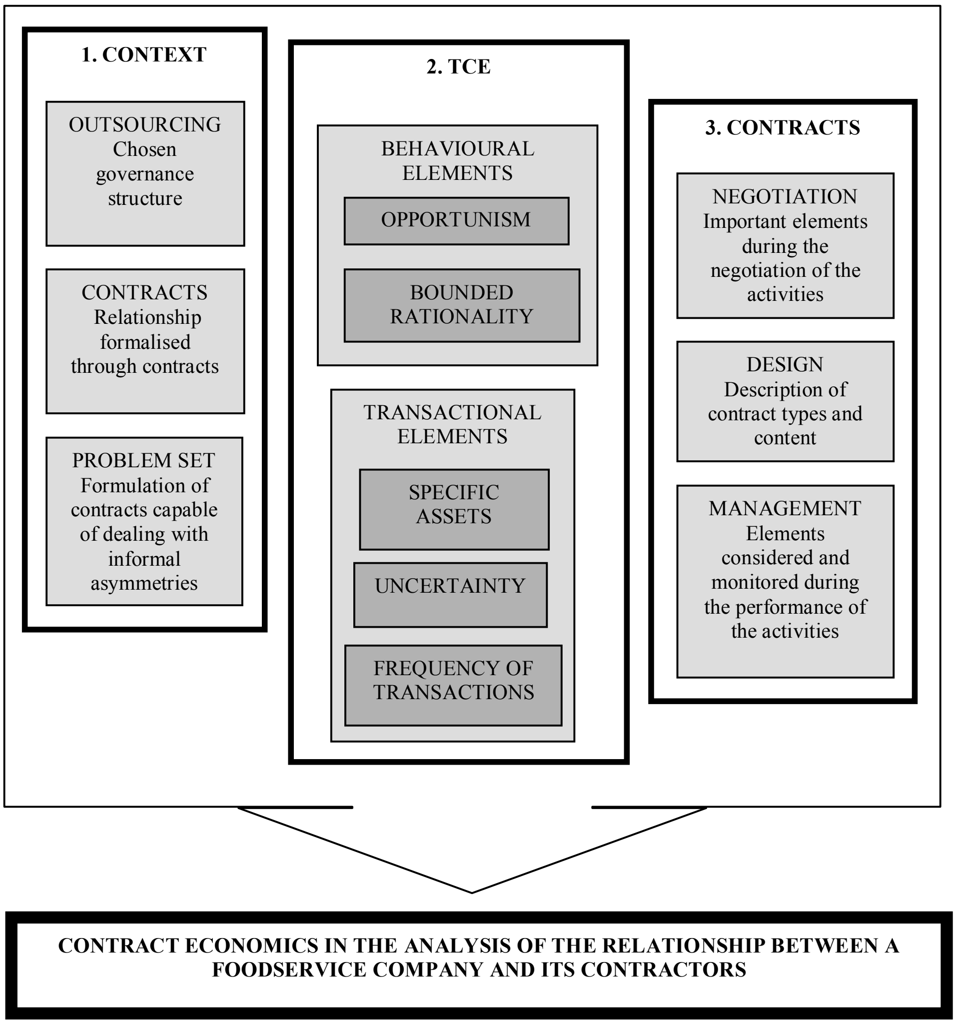
From the above discussion, it can be deduced that the reasons for which a company might decide to verticalise or not its food services and the commitment of the actors according to the service supply are linked to the attributes and the transaction costs that arise over the relationship length. The assets specificity, the regularity with which the service supplier interacts with the final client, the environmental and behavioural uncertainties and, also, the frequency of adaptations necessary in order for the service to be supplied indicate the importance of ensuring that these elements should be well defined when designing the contracts.

2.4 Analytical Framework

From the theoretical discussion on the intercompany relationships outlined above, it is possible to comprehend the complementary nature of the concepts dealt with. Transactions, with their different attributes appear at the centre of the decision making process when choosing whether to verticalise or outsource the different activities of the companies. Once the decision to outsource is taken, the negotiation, the design and management of the contracts that govern these transactions become the focus of the organisational efforts. The analytical scheme presented in Figure 1 includes the concepts considered and that will guide the collection and analysis of the data in the case study presented.

Initially, the plan presents the set of problems associated with outsourcing and the choice of governance structure that is incorporated through long term contracts. This structure aims to facilitate the maintenance of the relationship between the actors and minimise the transaction costs. It is understood that this context, in which the actors are inserted, will determine the expression of the behavioural and transactional elements throughout the phases of the relationship between the contractor and the contracted party in the outsourcing process.

Figure 1. Analytical Plan of the Research



3. Research Method

This study covers the relations between a food service company and its contractors. The aim of the study was to analyse the process of negotiation, design and management of the contracts signed in the region of Southern Brazil (the States of Santa Catarina and Rio Grande do Sul). The studied company consists of foreign capital (Anglo-French) and has been doing business in Brazil for around 30 years. At present, this company is considered the largest food service company in the world and is responsible for the greater part of the meals served in Brazil.

The study was carried out in an exploratory manner, with quantitative and qualitative analysis of the data [24]. The qualitative stage of the research refers to the semi-structured interviews held with executives of the company with the aim of characterising the process of negotiation, design and management of contracts for the supply of restaurant services. During this stage, interviews were held with two commercial managers, four operational managers and the director general responsible for the company's business in southern Brazil. The quantitative stage consisted of the observation and surveying of elements / attributes of 92 contracts signed between the company and its contractors in the south of Brazil. The data collected from the contracts gave rise to a series of dichotomy elements in proportion to the presence (Y) or absence (N) of certain clauses in the contracts. In this way, it was possible to investigate the frequency of the contractual clauses and the presence or otherwise of links between the variables investigated. The interview guides, the contract data/element collection forms, as well as the final data analysis were based upon the analytical structure presented in section 2.4.

4. Results

The results of this study are presented in two stages. The first includes the characterisation and the analysis of the process of negotiation, design and management of the contracts from the point of view of the executives involved in this process. In the second stage, in an attempt to characterise how they are put into practice and managed, 92 contracts signed by the company in the south of Brazil are quantitatively analysed.

4.1 The Dynamic of Contract Negotiation, Design and Management

In the first place, it was sought to understand the process of negotiation, design and contraction of food services. The understanding of this dynamic was achieved from interviews with functional groups: The Commercial Department, Operational Department and the Director for Southern Region of the company.

The work of the commercial department was carried out in several stages. First, new clients are prospected (a market survey of the business possibilities); later a proposal is formatted that can be accepted or rejected. In the positive case, a Letter of Intention is requested, a document signed by both parties assuring the initiation of the partnership and the implementation of the service. The operational department, like the others, participates in 80% of the cases of elaboration of the Proposal, seeking the information necessary for the planning of the service to be supplied.

The contract is designed by the commercial department with the legal department (based in Sao Paulo). Despite the use of a standard contract furnished by the service supplier (which receives additional clauses seen as important by the client company), the negotiation of the contract may take some time. Nevertheless, once the contract is signed, the unit should enter in operation within 30 days. The participation of the commercial department remains fundamental in the execution and operationalisation of the relationship, mainly in the necessary renegotiations ex post the signing of the contract.

The operational department procures information regarding the client and focuses on determining the profile of the contractor and its expectations: types of service, menu composition, frequency of some types of preparations, volumes, quantities, schedules, equipment and utensils, designated area and the form of transporting the employees of the contracted party.

With regard the negotiation and design of the contracts, one of the main factors reported by the interviewees is that this is done in such a way as to guarantee that the contract will not "congeal the relationship", so that when a certain clause is not sufficiently flexible, negotiation is permitted and carried out, in order to allow the necessary concessions and adaptations. This flexibility can be seen in practice in the following situation "requests made by the client can be rapidly dealt with, as long as the request does not alter costs. Otherwise, the operations manager is informed and with the interlocutor they renegotiate the request". The alterations can be informal or formal, through a contractual additive.

It is not possible to state exactly with what frequency such renegotiations are carried out, here understood as frequency of transactions, but they normally arise from a necessity of the service supplier (contracted party). Also, there is no standard behaviour pattern, some are easy others not so easy (requiring several meetings). The ease or difficulty of the negotiations depends less on their complexity than on the autonomy that the client has (the individual responsible for the negotiation) to accept or reject proposals. This type of conduct has led to the establishment of long term relations (average 8 years) between the foodservice company and the contracting companies.

According to the theoretical base used, one of the fundamental elements necessary for understanding the dynamic of relationships between the contracted company (foodservice company) and the contracting companies (industrial companies, hospitals public and private organisations...) is the characterisation of the transactions carried out between both at different stages of the relationship: negotiation, design and management of the contracts. The variables and transactional attributes considered were asset specificity, uncertainty and frequency of transactions.

Table 1 shows the main attributes of the relationships and how their dynamic develops through the different stages of the relationship between the contracted party and the contractors throughout the design and fulfilment of the contract.

Table 1. Main attributes and dynamic of the transactions

	NEGOTIATION	DESIGN	MANAGEMENT
ASSET SPECIFICITY	The equipment and utensils necessary for the supply of the service are foreseen and negotiated.	The contractors safeguard themselves in relation to the fixed assets of their responsibility.	The clauses contemplate possible renegotiations. The agents do not consider the assets as an element capable of causing contractual instability.

UNCERTAINTY	Negotiation of the readjustments necessary due to the instability of the market; Bounded rationality, search for information on the necessities and expectations of the contractor.	The contracts include annual cost readjustment clauses; Lack of precision regarding the standard of service required and offered.	Failure to include a demand oscillation formula and cost readjustment hamper renegotiations; It is sought to attend the service sold by the commercial department, the better the client is known, the easier it becomes to negotiate and adapt the standard of menus required to satisfy the customers.
TRANSACTION FREQUENCY	There is no standard period to conclude commercial negotiations.	The contract stipulates annual renegotiations corresponding to annual adjustments.	The renegotiations referent to cost readjustments and meal price are frequent and represent the greatest and most significant efforts necessary for the maintenance of a stable relationship.

The table above shows the significance of the ex ante effort made by the company in order to negotiate, design and implement its contracts.

4.2 Analysis of the Contracts

This stage of the study sought to take a quantitative approach to the data obtained from the contractual clauses found in the 92 contracts studied and in the documents that describe certain completed negotiations. The analysis of the contracts aimed to describe the type and content of the contracts and verify how the transactional and behavioural elements (inherent to the environment and the actors involved in the relationship) are translated in the contracts. The examination was based on the presence or absence of contractual clauses and of renegotiations carried out during the period of it fulfilment.

Due to the varied nature of the data, the presentation of these results is divided into two stages: A General Descriptive Analysis of the contracts; and an Analysis of the Transactional Attributes and their relation to the negotiation, design and management of the contracts.

4.2.1 A General Descriptive Analysis of the Contracts

The sample analysed consisted of 92 contracts of three types: Mandate Contracts (MD), where the contracted party (food supplier) effectuates administratively and fiscally the purchase of all the inputs by order, and in the name of the contractor (client); Indirect Management (IM), where all the receipts for inputs are emitted, released, and controlled in the name of the contracted party; and Direct Management (DM), where the contracted party is fiscally responsible for purchase of all the inputs, while not using the corporate name of the contracting company (client).

The survey of the types of contracts reveals that 81.5% of these are the Direct Management type (DM); 7.6% are Indirect Management type (IM); and 10.9% are the Mandate type (MD). The preference of the contractors (clients) for this type of contract appears clear, given their minimum involvement in the supply of the service.

An analysis of the contracts in conjunction with the statements of the interviewees reveals some elements of the contracts characteristics and of the choices made by the contracted parties and the contractor. The DM contracts have the advantage of administrative simplicity for the client, as the client only has to validate the figures relating to the service and pay a fixed price for the service. Nevertheless, the disadvantages are: rigidity in the service supply, the pre-established standard of the services must be followed; the client does not benefit from purchase price opportunities; renegotiations are frequent for whatever alteration or the introduction of new services and there is the application of readjustment rates for the realignment of prices.

The IM contracts, like the MD type, are totally flexible. They offer immediate attention to whatever request from the client without the need for contractual renegotiations. There is transparency in relation to service costs and the remuneration of third parties. The client benefits from the gains obtained from price opportunities and co-management on the part of the client. The disadvantage of both contract types is that there is no pre-established price, but a commitment to expenses.

The relationships between the contractors and the contracted party can be considered long lasting, as 44.6% last an average of 8 years. The stability of the relationship is confirmed by the fact that in 93.5% of cases the period of validity of the contracts is indeterminate and even so, they are renewed annually.

It is worth pointing out that, as a result of the long-term nature of the relationships and the indeterminate nature of the contract validity, the majority of the contractors (82.6%) have only one signed contract with the contracted party throughout the duration of the relationship. These data demonstrate the flexibility of the contracts that normally are only renegotiated and renewed without incurring costs in the design of new contracts.

With reference to the value of the contracts, they are classified by the food service company as of low, medium and high value according to the number of daily meals contracted. According to this, 62% of the contracts are of low value, having a demand of up to 300 meals; 28% are medium, with 300 to 1,000 meals contracted and 10% are high value, with more than 1,000 meals.

It was also sought to analyse the correlation between the types of contracts and their value. In order to facilitate the analysis proposed here, the contracts were regrouped into DM and Non-DM (NDM), as the MD and IM contracts have a common element in the presence of the contractor in their management, while with the DM contracts the management is entirely the responsibility of the contracted party. The results are presented in Table 2 below

Table 2. Contract value *versus* Contract Type

CONTRACT VALUE	CONTRACT TYPE			
	DM		IM+ MD (NDM)	
Low	51	68,0%	6	35,3%
Medium	19	25,3%	7	41,2%
High	5	6,7%	4	23,5%

The data demonstrate the existence of a preference among the clients that require larger numbers of meals for contracts of the IM or MD types that is NDM. This tendency can be explained by the fact that they permit the contractors to have a greater participation in their management. There is greater flexibility and transparency in relation to service costs and the relationship that is established is of co-management on the part of the client. One of its main advantages is the benefits gained from purchase price opportunity.

4.2.2 – Analysis of Transactional Attributes

With the aim of elucidating how the elements linked to transactions are transcribed in the contracts, we made a frequency analysis of the transactional attributes: asset specificity; uncertainty; frequency of transactions; opportunism; and bounded rationality.

4.2.2.1 Asset Specificity

Asset specificity, in this type of service supply is represented by the following clauses: a clause with an inventory description, citing the investments made and the party responsible; indemnification clause, that previews indemnify in the case of the relationship termination; human capital assets, describe some demand in relation to the employees of the contracted party, like good technical ability, attention to the health and safety requirements, etc.; amount invested, percentage invested by either one of the parties, or the contract period necessary in order to obtain a probable return.

Table 3. Specific Asset Clauses

VARIABLE	CLAUSES	PRESENT	ABSENT
ASSET SPECIFICITY	Inventory Description	90,2%	9,8%
	Indemnification clauses	97,8%	2,2%
	Human capital assets	68,5%	31,6%
	Amount invested	5,4%	94,6%

Analysis of the table 3 demonstrates a concern among the actors to ensure that the investments made are recovered. At the same time, there is a certain attention to the contraction of human capital, although the specifications in this area are very vague.

4.2.2.2 Uncertainty

The search to minimise the commercial, economic and behavioural uncertainty is revealed by the presence of some clauses. The percentage of contracts that contain clauses linked to uncertainties is shown in brackets. They are: number of meals contracted (90.2%); demand oscillation formula (25%); contract rescission clause, citing the possibility of rescinding the contract (98.9%); payment delay or unpaid services clause, describing penalties to be applied (97.8%); fee renegotiation, suggesting the possibility of readjusting the values of services due to increases in tax rates and possible labour union renegotiations (98.9%); renegotiations of cost realignment, due to possible alterations in the cost of raw material (94.6%), descriptions of causes of contract rescission (100%); dispute resolution clause, naming the tribunal that would mediate any possible dispute (100%).

Similarly, the uncertainties in relation to content of the service proposed or required (meals) can be clarified by clauses that include: a table indicating the number of preparations, specifying the frequency with which the preparations are to be offered (92.4%); weight of portions (97.8%); the number of portions (95.7%); necessity of microbiological analysis, previewing the obligation of water analysis, food handlers, raw material, equipment, etc. (25%); hygiene standards, describing the standard of hygiene to be followed by the contracted party or any demand reported by the contractor (69.6%); use of samples, requiring the collection of samples for analysis (4.3%); indemnity clause in the case of possible intoxication, guaranteeing indemnity to the contractor for work not done by employees and/or the payment of health costs of those intoxicated by the food supplied (53.3%); environmental specifications, containing the requirements of the contractor with regard the atmosphere in which the service is to be performed (10.9%); need for innovation, for the improvement of the services and products offered (2.2%).

The data show that there is as much ex ante interest on the part of the actors in creating mechanisms that impede the termination of the relationship, as there is concern with the description of the services required and/or proposed, that could reduce the possibility of incurring higher ex post transaction costs, resulting in the maintenance of contractual stability.

4.2.2.3 Frequency of Transactions

In this study, frequency of transaction is defined as the number of negotiations or renegotiations carried out in all the stages of the relationship between the contracted party and the contractor. This variable seeks to show: the negotiation time of the contract; number of renegotiations held by the contractor and by the contracted party; main causes of renegotiations.

It was not possible to establish the negotiation time of 39.1% of contracts, due to the non-existence of data, however, the remaining contracts had the following distribution of frequency: 47.8% were negotiated within 1 month, 5.4% in 2 months, 3.3% in 3 months, 2.2% in 4 months, 1.1% in 8 and e 1.1% in 9 months. The negotiation can be defined as rapid.

The number of renegotiations requested by the contractors is distributed in the following form: 76.1% did not request any renegotiations, 22.8% requested up to five and 1.1% of contractors requested from five to eight renegotiations. The number of renegotiations requested by the contracted party is extremely variable, being from none up to 17 renegotiations, found in the analysed contracts. However, the highest percentage was of 2 renegotiations, found in 25% of contracts. The renegotiations requested by the contracted party have a single cause, the renegotiations of readjustments or updates of the contract value, showing that although readjustments are contemplated in the contracts, this readjustment is nearly always the result of negotiations between the parties.

Another variable linked to frequency of transaction is the monitoring of contracts and its activities. The analysis of monitoring is relevant, as the insertion of the monitoring clauses may have an impact on the ex post costs of accompanying the execution of the contract. Therefore, it was sought to find out how monitoring is treated in the different contracts. For this, variables related to the frequency of monitoring were grouped: monitoring performed with a frequency greater than once a month (daily, weekly, fortnightly or >1x/month monitoring); monitoring performed monthly or less than once a month (tri-monthly, six-monthly, annually or ≤1x/month). Since some contracts have no clauses related to monitoring (they were not formally contracted), the sample contemplated the 73 contracts containing them.

With the intention of identifying the types contract that require more frequent monitoring, the data relating to the frequency of monitoring were crossed with the types of contract. DM or NDM. The results are presented in Table 4, below.

Table 4. Frequency of Monitoring *versus* Type of Contract

FREQÜÊNCY OF MONITORING	TYPE OF CONTRACT			
	DM		NDM (IM+ MD)	
More than once a month	14	24,1%	14	93,3%
Less than once a month	44	75,9%	1	6,7%

It is noticeable that the DM type contracts need a greater frequency of monitoring. This tendency can be explained by the fact that the client only monitors the contracted parameters and pays a fixed price for them. While, in IM and MD type contracts the main characteristic is the participation of the contractor in the specification and management of the services supplied, and for this reason the monitoring of the activities is more frequent.

4.2.2.4 Opportunism

The variables that preview opportunistic behavior are described by the following clauses: a clause regarding reputation and aptness, inferring the parties are reliable or that they have and maintain their good name in the market; a clause regarding the transfer of know-how, stating that the contractor cannot contract, for the period of six months following the termination of the contract, any of the employees of the contracting party for the provision of the same kind of service; a clause referring to the non-fulfillment of activities; a clause regarding the confidentiality of exchanged information, assuring that the parties treat exchanged information with care.

Table 5 below, shows that the actors face the question of the possibility of opportunistic behavior in a general manner, mainly assuring that the agents act in an appropriate manner (not transferring know-how and maintaining confidentiality) and that they will fulfill the agreed activities, justifying the existence of the contracts.

Table 5. Frequency of Clauses Impede Opportunism

VARIÁBLE	CLÁUSES	PRESENT	ABSENT
OPPORTUNISM	Regarding reputation and aptness	72,8%	27,2%
	Regarding transfer of know-how	14,1%	85,9%
	Referring to the fulfillment of activities	98,9%	1,1%
	Regarding the confidentiality of exchanged information	5,4%	94,6%

The additive terms, which refer to the formalisation of renegotiations, are included here, as they impede any party from acting in bad faith during renegotiations and alterations to the relationship to be incorporated into the contract. The frequency with which they appear in the contracts is the following: 71.7% of the contracts do not contain additive terms; while 29.3% have at least one additive term.

Once again following the exploratory approach of this study, it was attempted to verify the existence of a link between the number of additive terms and the type of contract. This can be achieved more effectively by grouping the contracts into two groups, according to the presence of absence of additive terms. Table 6 below illustrates this correlation.

Table 6. Frequency of Additive Terms *versus* Type of Contract

ADDITIVE TERMS	TYPE OF CONTRACT			
	DM		NDM (IM + MD)	
Present	60	80,0%	6	35,3%
Absent	15	20,0%	11	64,7%
TOTAL	75	100,0%	17	100,0%

The table reveals that the majority of MD contracts have additive terms and that IM and MD contracts, on the other hand, normally do not have additive terms. This observation confirms the description used by the contracted party, in which the IM and MD contracts are more flexible, without the need for renegotiations to be formally included in the contract.

4.2.2.5 Bounded rationality

Lastly, the possibility of the contractual clause being revised expresses the bounded rationality of the actors in the contract design. This clause is present in the vast majority of the contracts (85.9%) and states that the parties agree to revise the contract whenever socio-economic circumstances affect the relationship. Only 14.1% of the contracts did not allow the possibility of suggestions or alterations to the contract, which demonstrates the flexibility of the contracts analysed. Besides the negotiable elements, efforts to delineate aspects linked to the content of the service, as shown in section 4.2.2.2 that deals with contractual uncertainties, reveal the effort made to achieve greater sovereignty over the relation to be contracted.

4.2.3 Final Consideration Regarding the Analysis of Contracts

From the discussion presented above it is possible to synthesise, as shown in table 7 below, how the elements, the transactional attributes and the expected transactions costs are delineated and take form over the period of the relationship between the studied catering company and its contractors.

Table 7. Transactional Elements and Attributes in the Contracts

Transaction Attributes	Ex ante elements of transaction costs	Ex post elements of transaction costs
Asset Specificity	Both parties safeguard themselves. The contractors assume the physical capital assets. The foodservice company assumes the human capital assets.	Not a cause of transaction costs.
Uncertainty	Readjustment clauses are specified in the contract; Clauses referring to service content are difficult to be contracted due to subjectivity.	Price readjustments are significant transaction costs due to the frequent renegotiations required. The service is monitored throughout the relationship generating transaction costs.
Frequency of Transaction	The renegotiations are previewed as annual.	High frequency of renegotiations, mainly in the Non-Direct Management (NDM) contracts.
Opportunism	The actors safeguard themselves against opportunism in a broad manner.	Manifestations of opportunistic behaviour are not seen.
Bounded Rationality	The possibility of the contract being renegotiated is contemplated. There are effective efforts to delineate the content of the service supplied.	Socio-environmental changes, mainly economic, are the main motivating elements behind contractual revisions.

Table 7 shows the important ex ante efforts made in the negotiation and design of the contract, in order that the ex post costs, execution and monitoring of the contracts, are minimised. It is also important to highlight the high level of integration between the actors during the fulfilment of the services contracted. In this way, it can be argued that the high frequency of renegotiations, though representing greater ex post costs, facilitate the transfer of information and knowledge, generating a high degree of confidence and commitment between the actors, maintaining contractual stability.

5. Conclusions

The aim of this research was to investigate the process of negotiation, design and implementation of foodservice contracts by a subsidiary of the world leader in the sector, in the southern region of Brazil.

From interviews with foodservice company executives and viewing the documentation it can be learnt that, in the contract negotiation and design stages, the company makes a great ex ante effort, and the main aim is to ensure that the contract does not "make the relationship inflexible", incorporating elements in the contractual clauses that permit greater flexibility in the relationship by means of renegotiations and contractual adaptations.

Three types of contract were seen: Mandate (MD), where the contracted party effects the purchase of inputs at the behest and in the name of the contractor; Indirect Management (IM) where all the receipts for inputs are emitted, released and controlled in the name of the contracted party; and Direct Management (DM), where the foodservice company is fiscally responsible for the purchase of all the inputs, not using the corporate name of the contracting company (client). The survey of the types of contracts reveals that 81.5% of them are the DM type. The preference of the contractors (clients) for this type of contract is given by their minimal involvement in the supply of the service.

As far as the management and monitoring of the contracts is concerned, the uncertainties in the economic environment demand greater efforts in the maintenance of contractual stability and represent the main causes of renegotiations, which in large part refer top tax adjustments and union dissension, as well as cost realignment. The difficulty of establishing a quality standard is one factor of uncertainty, although it appears in a very broad form in the contracts. Hence, uncertainties in relation to the environment and quality represent sources of ex post transaction costs.

Specific assets require little concern on the part of the contracted party, as, for the most part, the investments are made by the contractor that ensures them via clauses that describe the inventory of goods. However, the mobilisation of the human resources with good technical training, required in the contract, creates space for the contracted party-to safeguard its interests through indemnity clauses.

Although opportunism is not common behaviour in the relationships studied, it is inhibited mainly through clauses that describe some form of penalty in the case that the agreed activities are not performed (ex ante) and additive terms (ex post). Thus it can be seen the greater interest of the actors is to create mechanisms that impede the breakdown of the relationship through indemnity clauses.

The frequency of transactions agreed ex ante (annual) is not sufficient to make amends for the environmental uncertainties and the limited responsibility of the actors. The relationship requires many others renegotiations in order to ensure the stability of the contract.

The possibility of revising contractual clauses demonstrates that the bounded rationality of the actors is a characteristic taken into consideration by the agents and that is habitually contracted. At the same time, the admittance of the revision of contractual clauses and addition of new clauses highlights the incomplete nature of the contracts signed by the actors.

The picture reveals the significant ex ante efforts made in order to minimise the ex post costs. Here, it is critical to analyse an important characteristic of relational contracts, the high level of interaction between the actors. In this way, it can be asserted that the higher frequency of renegotiations, despite representing greater ex post costs, facilitates the transfer of information and knowledge, generating greater confidence within and commitment from the actors, maintaining contractual stability.

Bibliographical References

1. Barthelemy, J.; Quelin, B. Contractual Agreements and Outsourcing: A Transaction-Cost Analysis. In: International Society for New Institutional Economics (ISNIE), Alemanha; (2000). Disponível em: www.isnie.org. Acesso em: 07 abr. 2004.
2. Knoepfel, H.; Burger, R. Project Organization and Contract Management. Project Management. v. 5, n. 4, (1987).
3. Bréchemier, D.; Saussier, S. What Governance Structure for Noncontractible Services? An Empirical Analysis. In: International Society for New Institutional Economics (ISNIE), USA, (1999). Disponível em: www.isnie.org. Acesso em: 07 abr. 2004.
4. Maze, A. *et. al.* Quality Signals and Governance Structures within European Agro-Food Chains: A New Institutional Economics Approach. In: Economics of Contracts in Agriculture and the Food Supply Chain. Anais 78th EAEA Seminar. Copenhagen, jun. (2001).
5. Poulain, Jean-Pierre. Sociologias da Alimentação: os comedores e o espaço social alimentar; tradução de Rossana Pacheco da Costa Proença, Carmem Sílvia Rial, Jaimir Conte. Florianópolis: UFSC, (2004).
6. Rigatto,P.; Padula, A. D.; Larson, D. W. Differences Between Supply-Chain Structures Within a Given Industry: Insights from the Brazilian Peach Canning Industry. International Journal of Logistic Systems and Management, v. 1, n. 4, (2005), pp. 311-330.
7. Coase, R. The Nature of the Firm. Economica. Oxford, n. 4, p. 386-405, (1937).
8. Williansom, O. The Economic Institutions of Capitalism. New York: Free Press, (1985).
9. Kupfer, D.; Hasenclever, L. (org). Economia Industrial. Rio de Janeiro: Campus, (2002).

10. Williamson, O. The Theory of the Firm as Governance Structure: From Choice to Contract, (2002). Disponível em : http://groups.haas.berkeley.edu/. Acesso em: 26 ago. 2003 .
11. Saussier, S. When Incomplete Contract Theory Meets Transaction Cost Economics: A Test on Contractual Choices. In: International Society for New Institutional Economics (ISNIE). França, (1998). Disponível em: www.isnie.org. Acesso em: 21 dez. 2003.
12. Nakhla, M. Information, Coordination and Contractual Relations in Firms. International Review of Law and Economics. v. 23, p. 101-119, (2003).
13. Williamson, O. Human Actors and Economic Organization. In: Conferência Anual da Sociedade Internacional da Nova Economia Institucional. Paris, (1998).
14. Lyons, B. Specific Investment, Economies of Scale, and the Make-or-Buy Decision: A Test of Transaction Cost Theory. Journal of Economic Behavior and Organization. v. 26, (1995).
15. Arnold, U. New Dimensions of Outsourcing: A Combination of Transaction Cost Economics and the Core Competencies Concept. European Journal of Purchasing & Supply Management, v. 6, p. 23-29, (2000).
16. Brockhoff, K. R&D Cooperation between firms – A perceived transaction cost perspective. Management Science**.** v. 38, n. 4, p. 514-525, (1992).
17. Brousseau, E. Théories des Contrats, Coordination Interentreprises et Frontières de la Firme, (1995). Disponível em: http://www.brousseau.info/fr. Acesso em: 28 abr. 2004.
18. Brousseau, E. e Fares, M. Incomplete Contracts and Governance Structures. ATOM, Paris I, (1998). Disponível em: http://atom.univ-paris1.fr/documents. Acesso em: 29 abr. 2004.
19. Fine, A. Transaction Costs and Contractual Completeness. Journal of Economic Behavior and Organization. v. 42, n. 2, p. 189-206, (2000).
20. Stuckey, J.; White, D. When and When Not to Integrate. Sloan Management Review; v. 34. n. 3, p. 71-84, (1993).
21. Veloso, F.; Fixson, S. Make–Buy Decisions in the Auto Industry: New Perspectives on the Role of the Supplier as an Innovator. Technological Forecasting and Social Change. v. 67, p. 239-257, (2001).
22. Lehtinen, U.; Torkko, M. A Contract Manufacturer Goes Lean: How to Analyze and Develop Value Streams. In: Proceedings of the Fifth International Conference on Chain and Networks Management in Agribusiness and Food Industry. Noordwijk, p. 859-869, (2002).
23. Proença, R. Inovação Tecnológica na Produção de Alimentação Coletiva. Florianópolis: Insular, (2000).
24. Roesch, S. Projetos de Estágio e de Pesquisa em Administracão: Guia para Estágios, Trabalhos de conclusão, Dissertações e Estudos de Caso. São Paulo: Atlas, (1999).