

# Report Railways Projects



AGÊNCIA NACIONAL DE  
TRANSPORTES TERRESTRES

## **PL 261/2018: Rail transport authorization on privately owned infrastructure and rail self-regulation.**

Positive outlook for the PLS 261/2018 in the Senate, which has the support of the Minister of Infrastructure, even though it may change during the legislative process. It intends to insert two milestones for the rail sector: (i) authorization regime for new railway undertakings, **waiving the concession regime under** certain circumstances and implementing regulatory changes, and (ii) railway **self-regulation**.

From this milestone, opens up a range of investment opportunities in the sector, creating the figure of the private rail service, such as shortlines, experience observed today in the United States, where it is common to have small operators in short lines with the presence of 603 shortlines, corresponding to 29% of the country's rail transport. According to the original wording of the bill, large operators could return portions considered unprofitable, which may eventually be absorbed by investors who see them with economic interest, with exploitation via authorization grant model.

With the deregulation and consequent self-regulation of the sector, with the use of systems and mechanisms standardization, the Regulatory Agency has the role of high level supervisor, preserving the main principles of adequacy of the public service. The creation of a private entity to regulate these operators and resolve any conflicts is foreseen. However, any aspect of self-regulation that has an impact on the rail system as a whole would be screened by ANTT in terms of its suitability. Still, ANTT would be closer to security and sharing issues, especially when involving the rail system as a whole.

It is intended to bring to the railways what is positive in the regulatory framework of ports, as observed in the Port of Santos. In 2014, with lighter operator regulation focused on operational and technical regulations, private terminals were allowed, which now carry 67% of the cargo. There is also similarity to the IATA (International Air Transport Association), for airports, and ONS, for the electricity sector.

The Federal General Accounting Office (TCU) emphasized that attention should be paid to the self-regulation mechanism so that it does not end up being dominated by the big players that already exist, making new entrants unfeasible.

**Technical Panel with the TCU (09/26/2019):** the advantage of extending the concession agreement of Rumo Malha Paulista is demonstrated.

The extension of this contract is under the judgment of the TCU, which process is complex and large (R \$ 7 billion in investments). The claim has lasted more than four years, and changes the whole regulatory logic of the rail sector and the contract itself. To this end, ANTT and TCU have been building developing maturity, robustness and convergence, in order to modernize the economic model and the grid, raising it to standards that have been required for railways of this nature.

The studies involve: upgrading of the relevant trunk and branch lines, combined with a set of interventions for duplication of sections and related signaling, making the fleet and rolling stock equipment compatible. In this step, the speed level of the current line will be gradually improved, according to performance parameters materialized in the studies that are defined in the obligations.

ANTT met 17 of the 18 determinations proposed by the TCU technical area. It is noteworthy that of R\$ 7 billion in investments there were no CAPEX notes, no signs of overvaluation or overpricing, nor serious restrictions for the extension to occur. They discuss punctual matters now. The dissonant recommendation focuses on whether or not to disallow the asset base, which is the leasehold improvements. The TCU understands that the disallowance should be made now, since there would be a risk that among those improvements would be compositions that should not be compensated to the concessionaire. The ANTT understands that this situation would be an exception if it occurs, since more than 90% of the improvements are made in infrastructure and rolling stock, that is, goods that will be reversed to some extent. The full disallowance is a very high value, almost \$ 440 million to be spent by the other party. Thus, it argues that the disallowance should be made only after the inventory, which will demonstrate the real value of the asset. Also, considering the time required and the respective reflection on the grant amount, ANTT advocates that the inventory be carried out after the contract is signed.

ANTT pointed out that it is inserting safeguard in the extension contract that encourages the execution of investments on time, under the risk of the concessionaire losing the extension.

Regarding the resolution of the judicial pending issues, among them the issue of unpaid grant, ANTT stressed that these are conditions for signing the extension of the contract.

**National Development Plan (PND):** qualifies and sets priorities. For the rail sector, there are priorities in new concessions and new extensions.

**New project and investment: Rondonópolis-Sorriso Project:** The northern section from Rondonópolis to Sorriso was returned from the original contract of Rumo Malha Norte. The government has the priority list published, but the passage has not been prioritized. The best regulatory arrangement for the exploration of the stretch can only be decided after the the Rumo Malha Paulista extension has been defined. The options for the passage will be studied with the Special Secretariat of the Investment Partnerships Program (SPPI), Ministry of Infrastructure (Minfra) and the Presidency of the Republic. There is the possibility of using the authorization of PLS 261/2018, with public call of interested parties. Another option would be for the concessionaire to present a study with a clear interest in exploring the stretch, possibly using art. 27 of Law 13,448 / 2017, which allows to compare that isolated stretch, in terms of its viability or not, and then be added or not to Rumo Malha Norte.

**Ferrogrão:** According to the priority list, the process is in the market sounding phase to understand the market and the connections with investment decisions. The process instruction will be sent to TCU at the end of 2019. Regarding the project's financing, the National Bank of Economic and Social Development (BNDES) is discussing and revising the CAPEX, analyzing demand, simulations, issues related to RUMO itself and eventual extensions or not of the North Mesh, which may impact the project. In addition, BNDES is doing an internal work of revision of normative (guarantees). The possibility of making partial conclusions in projects and the possibility of using the regulatory asset as part or as a guarantee composition of the financing has been evaluated. There is a very large integration of BNDES with ANTT and MINFRA to make the project viable.

**Systems standardization and sections interoperability. Infrastructure Sharing:** It is observed that the natural tendency of the system is to evolve to standardized systems, without substantiating the regulatory imposition of a single signaling, control and performance standard, since it could place a burden on the economic and financial equation of the contract and lead to contractual rebalancing, since freedom of mesh signaling is an intrinsic feature of railway concession contracts. An amendment has been signed between the concessionaires to ensure sharing, in the specific case of North-South, and the concessionaires have been performing operating contracts based on this case.

**Breakdown of scrapped fleets of over 40-year-old wagons and locomotives under the custody of the concessionaires:** Law 13,448 / 2017 provided for the decommissioning of equipment and replacement for modern wagons and locomotives to supply the legal vacuum. The government is drafting a decree to regulate the issue, today is under adjustments in legal advice to follow the Civil House. Thereby, the necessary contours will be made so that both the Agency and the concessionaires can undo these assets and avoid the accumulation of scrap and expenses arising from the obligation to maintain and control this liability. In fact, the National Department of Transport Infrastructure (DNIT) expends resources on the liabilities of the Railway's Network in this regard.

**Technology used by freight railways:** Studies for new concessions and extensions are concerned with updating and technological standards.

**BNDES's role in contract renewal:** BNDES maintains its position of fostering the railway equipment segment. There is a strong Bank interest in continuing to support the rail sector.

*\* Information updated based on the 9th edition of Café com Mercado, held by ANTT, in Brasília, on 10/04/2019.*