

Corporate political strategies: the case of the Brazilian railway sector

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Abstract

This research aims to identify the corporate political strategies employed by four Brazilian freight concessionaires in two cases of regulatory change and in a case of request for extension of the concession contracts. The theme has been gaining notoriety due to corruption scandals in the relationship between political and economic actors, both public and private, in Brazil. Multi case studies were performed and 33 interviews were conducted, both with managers of the concessionaires, as well as representatives of associations of interests, the regulator, the legislature, and experts in the sector. The collected data indicates that the strategic behaviors analyzed do not fit into a single generic type of strategy as portrayed in the literature. However, in general, there is a tendency towards a reactive stance in cases of regulatory change, in contrast to a proactive stance regarding the change in the contract terms of the concession.

Keywords: Corporate political strategies. Political market. Regulatory change. Brazilian rail freight sector.

Estratégias políticas empresariais: o caso do setor ferroviário brasileiro de cargas

Resumo

O propósito desta pesquisa foi, por meio de estudo de casos múltiplos, identificar as estratégias políticas empresariais empregadas por 4 concessionárias ferroviárias de cargas brasileiras em 2 casos de mudança regulatória e em 1 caso de pedido de prorrogação de contratos de concessão. O tema vem ganhando notoriedade em função dos escândalos de corrupção na relação entre atores políticos e econômicos, públicos e privados, no Brasil. Foram conduzidas 33 entrevistas, tanto com gestores das concessionárias quanto com representantes de associações de defesa de interesses, do órgão regulador, do poder legislativo e de especialistas no setor. As evidências apontam que os comportamentos estratégicos analisados não se enquadram em uma única tipologia de estratégia genérica encontrada na literatura. No entanto, de modo geral, há uma tendência à postura reativa nos casos de mudança regulatória, em contraste com uma postura proativa quanto à alteração dos prazos dos contratos de concessão.

Palavras-chave: Estratégias políticas empresariais. Mercado político. Mudança regulatória. Setor ferroviário brasileiro de cargas.

Estrategias políticas empresariales: el caso del sector ferroviario brasileño de cargas

Resumen

El propósito de esta investigación fue, por medio de un estudio de casos múltiples, identificar las estrategias políticas empresariales empleadas por cuatro concesionarias ferroviarias de cargas brasileñas en dos casos de cambio regulatorio y en un caso de solicitud de prórroga de contratos de concesión. El tema viene ganando notoriedad debido a los escándalos de corrupción en la relación entre actores políticos y económicos, públicos y privados, en Brasil. Se realizaron 33 entrevistas, tanto a gestores de las concesionarias como a representantes de asociaciones de defensa de intereses, del órgano regulador, del poder legislativo y de expertos en el sector. Los datos indican que los comportamientos estratégicos analizados no se encuadran en una única tipología de estrategia genérica encontrada en la literatura. Sin embargo, en general, hay una tendencia a la postura reactiva en los casos de cambio regulatorio en contraste con una postura proactiva en cuanto a la alteración de los plazos de los contratos de concesión.

Palabras clave: Estrategias políticas empresariales. Mercado político. Cambio regulatorio. Sector ferroviario brasileño de cargas.

INTRODUCTION

The 1990's in Brazil were marked by privatization and concessions of public service (FARIAS and RIBEIRO, 2002; PAULA and AVELLAR, 2008; HILMOLA and LAISI, 2015). Since then, companies, especially in sectors with structured and active regulatory agencies, have been working hard and developing competencies to respond to the growth and sophistication of the institutional and regulatory apparatus. This phenomenon is described by Levi-Faur and Bachar (2011) as “regulatory capitalism” due to the ubiquitous state presence in companies’ performance.

The strategic efforts of these political actors are present in the literature as “corporate political activities” (BASTOS and MACEDO-SOARES, 2015). This approach can be understood as the set of planned actions of companies aiming at gaining a public policy benefit for themselves or for the sector in which they operate (BAYSINGER, 1984; HILLMAN and HITT, 1999; BONARDI, HOLBURN and VANDEN BERGH, 2006; BASTOS and MACEDO-SOARES, 2007; OLIVER and HOLZINGER, 2008; KINGSLEY, VANDEN BERGH and BONARDI, 2012).

In this aspect, the Brazilian Railway Sector (BRS), especially the rail freight, which underwent significant changes from 2010 (SAMPAIO, DUTRA, GONÇALVES et al., 2015), falls into this category. These changes forced the national freight railroad companies, which operate under concession agreements (concessionaires), to invest in actions to adapt, influence or mitigate the public policies aimed at the sector. Among the institutional and political actors most relevant to the interests of national rail freight companies are the National Land Transport Agency (ANTT), the Ministry of Transport and the National Department of Transport Infrastructure (DNIT).

In addition to the aforementioned actors, the concessionaires relate to each other, directly and through a trade association – *Associação Nacional dos Transportes Ferroviários* (ANTF) (National Association of Railway Transport) – as well as with other agents that impact and are directly impacted by the companies’ operations, notably the general users, suppliers and communities where the train route interferes directly with people’s daily lives. Therefore, there is a complex set of public and private stakeholders. It should be noted that, for the purposes of this study, all components of institutional and regulatory environments, including the executive, legislative and judicial branches of government, are referred to as public actors.

The objective of this study was to identify the political strategies developed and implemented by 4 (four) Brazilian rail freight concessionaires, and to compare them with the general strategies found in the literature, thus constituting a study of multiple cases. The aim is to contribute to the field of strategic management, especially that which is not oriented to the market, but essential to the companies operating in regulated environments.

THEORETICAL FRAMEWORK

The literature on companies’ political strategies, or Corporate Political Activities (CPA) (HILLMAN and HITT, 1999), is traditionally permeated by the following theoretical perspectives: collective action, positive politics, economic regulation, agency, stakeholder management and the institutional perspective (KEIM and ZEITHAML, 1986; LENWAY and REHBEIN, 1991; SCHULER, 1996; GETZ, 2001; OBERMAN, 2004; HOLBURN and VANDEN BERGH, 2004; OLIVER and HOLZINGER, 2008; BARRON, 2011; LUZ, CROOK and WOEHR, 2011; LAWTON, MCGUIRE and RAJWANI, 2013; HADANI, BONARDI and DAHAN, 201; MELLAHI, FRYNAS, SUN et al., 2016).

The theory of collective action and positive politics support the studies of CPA, because of the actions taken by companies to influence public actors, often through interest groups, as in the case of trade associations (OLSON, 1971; HILLMAN and HITT, 1999; GETZ, 2011; BONARDI, HOLBURN and VANDEN BERGH, 2006; OLIVER and HOLZINGER, 2008) and the search for influence in the institutional and regulatory environment in an objective way and guided by legitimate interests (HOLBURN and VANDEN BERGH, 2004; NUNES, 2002).

For the specific case of companies that operate in regulated sectors, the theory of economic regulation makes it possible to evaluate the conditions for the state’s intervention in economic sectors. According to Stigler (1971), the state contributes directly to the performance of companies in many industries. Therefore, identifying the assumptions around the reasons for state intervention in certain industries helps firms to build CPA (BIRNBAUM, 1985).

The other approaches that support this study are: stakeholder theory, which is dedicated to the diagnosis and management of stakeholders; the institutional theory, focused on the impact of isomorphic practices; and the agency theory, related to the information asymmetries and the conflict of interest between the agent and the principal, in this case and especially, between public and private agents (companies operating under concession agreement - concessionaires).

The proper recognition of critical stakeholders allows an organization to identify their needs, and to verify the relative importance of that stakeholder in the implementation of the actions. Thus, the company can develop specific strategies to relate better with these players (HILL and JONES, 1992; BARNETT, 2007).

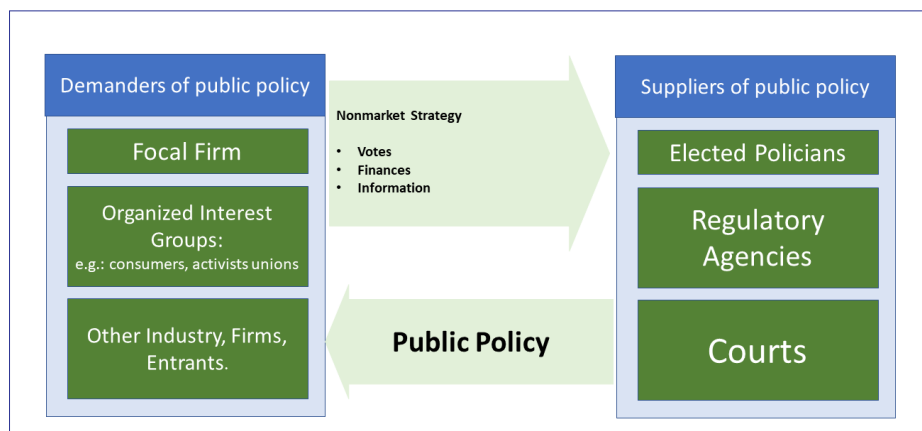
The perspective of the institutional theory applied to the CPA leads to an understanding that the motivation for an organization to act politically, is ultimately to obtain favorable institutional resources (GETZ, 2001). Furthermore, according to Lawton, McGuire and Rajwani (2013), the institutional perspective helps to realize how the culture, values, and historical and normative aspects are incorporated in the organizations of a given sector.

For Shapiro (2005), the “agency problem” – which analyzes the relationships between the principal (such as a company’s owner) and the agent (a company’s manager, for example), who do not always have convergent objectives (EISENHARDT, 1988) – brings relevant considerations to the political and economic environment, as the information asymmetry and the conflict of interest (inherent to the agency problem) are present in the relationship between multiple actors, public and private, who usually have divergent goals.

The process of creating and implementing public policies is embedded in a political market in which individual (often conflicting) interests, accommodate deliberations of public actors in a similar way to traditional market activities, such as consumers and suppliers of goods and services, and financial investors. In a political market, firms, through appropriate CPA, can influence policy makers (BONARDI, HOLBURN and VANDEN BERGH, 2006), as illustrated in Figure 1.

The role of regulatory agencies in a political market was highlighted by Bonardi, Holburn and Vanden Bergh (2006) and Kingsley, Vanden Bergh and Bonardi (2012), because in many industries regulatory agencies primarily implement public policies. Therefore, when changes occur in the regulatory agency’s form of operation, risks and uncertainties may occur. As highlighted in Figure 1, companies also employ non-market or non-market-oriented strategies (BASTOS and MACEDO-SOARES, 2015), which can be called CPA. Box 1 presents some definitions of this strategic stance.

Figure 1
Demand and supply components of a political market



Source: Bonardi, Holburn and Vanden Bergh (2006, p. 1211).

There are variations in the definitions presented, but these variations reflect more complementarity than conflict. As observed below, the purpose of CPA is to influence the decision maker in public policy for the benefit of a particular company or sector.

However, research on CPA have been limited to the performance of the political actions rather than looking at their precedent or predisposing factors (LAWTON, MCGUIRE and RAJWANI, 2013).

Box 1
Definitions for corporate political activities

Definition of political action	Reference
Political actions are means to minimize external threats from the political environment and enable to achieve corporate goals.	Baysinger (1984)
Political actions are decisions of a company in order to produce public policies that are favorable to the firm's sustainable economic survival.	Schuler (1996)
Political actions are any deliberated action taken by companies seeking to influence a governmental process or policy.	Getz (1997)
Political actions are companies' efforts to influence public policies.	Hillman and Hitt (1999)
Political actions seek to influence governmental policies.	Pearce, De Castro and Guillén (2008)
Political actions are a set of planned and implemented measures of a company in a political environment with the goal of maximizing economic returns.	Oliver and Holzinger (2008)
Political actions aim to shape public policies in order to benefit the firm, as well as to have competitive advantage over the competition.	Rudy and Johnson (2013)
Political actions are initiatives that influence public policies to benefit the company, understanding the political environment not as a restriction, but as subject to manipulation.	Nell, Puck and Heidenreich (2015)

Source: Elaborated by the authors.

Thus, it is believed that a better perception of the motivations for the companies' strategies in the political market, would contribute to a more in-depth analysis of the choices made (HILLMAN, KEIM and SCHULER, 2004; OLIVER and HOLZINGER, 2008; LUX, CROOK and WOEHR, 2011; KUMAR, THAKUR and PANI, 2015). This leads to Box 2, which presents examples of motivations and factors that determine the company's actions in the political market.

Box 2
Antecedent factors to actions of companies in a political market

Antecedent factor	Characteristic	Reference
Generating competitive advantage	Search for a superior value as a result of relationship and experience in dealing with public-political actors.	Oliver and Holzinger (2008); Barney and Hesterly (2011)
Public-political issue, theme or subject	A specific political issue can mobilize firms to act in the political Market.	Hillman and Hitt (1999); Oliver and Holzinger (2008); Hillman, Keim and Schuler (2004); Lux, Crook and Woehr (2011)
Firm's size	Larger firms are more inclined to act in the political market.	Hillman, Keim and Schuler (2004); Lux, Crook and Woehr (2011); Schuler (1996)
Dependence from government	Revenues associated to government purchasing. Prominent regulation. Regulatory uncertainty.	Hillman, Keim and Schuler (2004); Lux, Crook and Woehr (2011); Kingsley, Vanden Bergh and Bonardi (2012)
Availability of resources	Companies with available resources are more active in a political market.	Hillman, Keim and Schuler (2004); Lux, Crook and Woehr (2011); Schuler (1996)
Concentration of the industry	More concentrated industries (or economic sectors), with low level of competition among the participant companies, tend to get involved politically.	Olson (1971); Lux, Crook and Woehr (2011)

Source: Elaborated by the authors.

The factors highlighted allow a better understanding of the reasons why certain companies are more politically active than others, as well as indicating which CPA would be more appropriate depending on the motivating factor or antecedent. Thus, the literature on CPA offers the set of actions most commonly observed in companies that aim to obtain competitive advantages in the political market, especially those operating in sectors regulated by agencies (MAHON and MURRAY, 1981).

In general, authors who orbit the issue of CPA describe the approach as proactive/anticipatory or reactive/defensive; collective or individual and transactional or relational; For those describing the approach as proactive or anticipatory, the company seeks to act in the political market in order to influence decisions in public policies before they are deliberated or analyzed (HILLMAN and HITT, 1999; OLIVER and HOLZINGER, 2008). This action can be either collective (for instance, through trade associations) or individual (KEIM and ZEITHAML, 1986; HILLMAN and HITT, 1999). In addition, according to Hillman and Hitt (1999), a proactive stance in the political market can be driven by a specific (transactional) question or by the search for a greater rapprochement with public and political (relational) managers. The main generic policy strategies found in the literature are presented in Box 3.

Box 3
Generic political strategies

Generic strategy	Description	Reference
Constituency building – public opinion formation	Several actions are undertaken aiming to raise the awareness of public-political actors about a particular issue of interest of the company or sector. This is to influence stakeholders, so they can claim from public policy decision-makers measures that are favorable to the company's interest.	Keim and Zeithaml (1986); Hillman and Hitt (1999); Oliver and Holzinger (2008); Deng, Tian and Abrar (2010); Meckling (2015)
Advocacy advertising	Slightly different from the previous one, the corporate political activities of advocacy advertising aim at raising awareness in a specific group in relation to a certain issue.	Keim and Zeithaml (1986); Meckling (2015)
Coalition building – trade associations	This type of political strategy can be understood as the building of alliances between stakeholders that are convergent to the political market, especially with regard to a certain public policy issue.	Keim and Zeithaml (1986); Hillman and Hitt (1999)
Information	“Information” as a policy strategy aims to offer to public policy or issue decision-makers with technical elements that support the objectives pursued by a company or a group of companies.	Hillman and Hitt (1999); Meckling (2015)
Financial incentives	It is the direct financial support to politicians or public institutions. It is the case of campaign donations and promises of future jobs made to employees in regulatory agencies, for example.	Mahon and Murray (1981); Baysinger (1984); Schuler (1996); Hillman and Hitt (1999); Oliver and Holzinger (2008)

Source: Elaborated by the authors.

It should be emphasized that CPAs tend to focus on the actor who has the greatest decision-making power or influence on the company's issue of interest. Thus, the company will increase its chances of success in a given political market by reducing the inappropriate use of resources and favoring the relationship with the actors that are critical or relevant to the company's activity (BONARDI, HOLBURN and VANDEN BERGH, 2006).

METHODOLOGY

This research focused on the Brazilian railway sector (BRS), specifically on four rail freight concessionaires that, in 2015, accounted for approximately 99% of all cargo transported on Brazilian railroads (ANTT, 2016). These four concessionaires were the object of empirical investigation, constituting a multiple case study. There were several data sources and the triangulation of data collection methods allowed for relevant analyzes. According to Yin (2015), case studies are better suited to research in which there is little, or no control of the phenomenon investigated, dealing with contemporary events in their real context. Such is the case of this research.

Interviews were conducted with managers of these companies and there was access to documents regarding their performance in three processes of regulatory changes:

1. The so-called “new regulatory framework”, with the edition in 2011 of the following resolutions:
 - Resolution no. 3694 – which dealt with the rights of rail freight users;
 - Resolution no. 3695 – which regulated matters related to the right of way and mutual traffic of concessionaires; and
 - Resolution no. 3696 – which established production and safety targets for concessionaires;
- 2 The first revision of the tariff ceiling, which occurred in 2012; and
3. The process of extension of the railway concession agreements, started in 2015, and still under negotiation with the regulatory body. At the time of writing this article, there was no signed agreement.

In addition to the actions of the concessionaires, the study observed the actions of other relevant actors in the processes of regulatory change, such as the regulatory agency; organizations defending the interests of rail freight users and institutions representing the interests of the concessionaires; and the legislative branch. The research counted on 33 in-depth semi-structured interviews, with an average duration of 90 minutes, by telephone, in person or via Skype®.

The interviewees were one federal deputy with knowledge and focus on the rail freight sector’s legislation; one regulatory agency manager; nine employees of rail freight concessionaires, including directors, managers and analysts (all of them working in the regulatory area and in institutional relations of their respective companies); five employees of associations (both users and trade associations), including executives and managers; five specialists in regulation in the area of rail transportation in Brazil, from universities and from a federal public foundation; six researchers specialized in the Brazilian transportation sector and in CPA, also from universities; three BRS consultants; one railway service provider; and two members of a research center.

For reasons of confidentiality, the names of the organizations and the interviewees are not exposed. The rail freight concessionaires were randomly assigned an alphabetical code and the respondents were coded according to the prefixes shown in Box 4, based on their designation in Portuguese, followed by a number corresponding to the person interviewed in that function.

Box 4
Criteria used to code the interviewees

Function/Role	Prefix	Organization	Prefix
Executive	EX	Trade association	ASSOC
Director	DIR	Regulatory agency	ORG
Administrator	GES	Concessionaire	CONA
Manager	GER		CONB
Analyst	ANA		CONC
Specialist	ESP		COND
Researcher	PES	Federal Public Foundation	FUN
Consultant	CON	Research center	CEN
Federal Deputy	DEP-FED	University	UNI
		Service provider	FOR

Source: Elaborated by the authors.

As suggested by Yin (2015), the study used data from public sources, such as newspapers, books, general media news and websites of organizations involved in the rail freight sector (such as the websites of the four concessionaires and of the regulatory agency). The comparison of different data sources (triangulation method) allows to learn from the studied cases and obtain scientific knowledge, although the conclusions are not subject to generalization (YIN, 2015).

The narratives collected through the interviews were submitted to content analysis (FLICK, 2004; FRANCO, 2008; MUYLAERT, SARUBBI JUNIOR, GALLO et al., 2014). With the support of the software ATLAS TI® for qualitative data analysis, the content was coded to reflect the following perspectives:

- The political actions employed by the railway concessionaires in the processes of regulatory changes selected for the study; and
- The perception of the interviewees regarding the regulatory and institutional environment around the Brazilian rail freight sector.

Extracts from the speeches were codified according to ‘families’, in order to facilitate the analysis: i) political actions, based on the generic strategies presented in Box 3 (such as ‘public opinion formation’); ii) regulatory processes, indicating each of the three processes studied (e.g., 2012 tariffs revision); and iii) institutional and regulatory environment, without a previous list of categories, which were built based on the results of the interviews (e.g., maturity of the regulatory body).

BRAZILIAN RAILWAY SECTOR

The rail transport in Brazil started in the middle of the 19th century, with the installation of the first railway line in the state of Rio de Janeiro. Rail transport was the main means of freight transport in Brazil until the early 1950s, when investments in road transport gradually reduced the importance of rail transport in the country (RODRIGUEZ, 2004; GERODETTI and CORNEJO, 2005; BOITEUX, 2014).

During the 1990s, the Federal Government started a process of privatization in several economic sectors, including rail freight transport. Therefore, the Brazilian railway network is currently run through concession agreements with private companies. Box 5 shows the main companies and the region they operate.

Box 5
Main railway companies and the Brazilian regions where they operate

Company	Region
Rumo Logística	South, Central-West and São Paulo
MRS Logística	Southeast
VLI	Northeast and Sountheast
Vale	North and Northeast
CSN	Northeast

Source: Elaborated by the authors.

The companies mentioned in Box 5 have operational control of more than 95% of the Brazilian railway network and account for more than 99% of the total rail freight transport (ANTT, 2016). The main cargo transported in Brazilian railways is iron ore, which in 2016 accounted for more than 70% of the total cargo transported in the country, followed by soybeans and derivatives, with approximately 5% of the cargo transported (ANTT, 2016). In the case of iron ore, the total volume transported is under the operation of the four concessionaires studied here, identified as A, B, C and D.

It should also be pointed out that concessionaire A holds the shareholding control of companies B and C, forming a large group engaged in national rail freight transport. This concentration of rail freight transport in the sector is pointed out in the perspectives of the interviewees:

That's what I was going to tell you. It's very easy for you to understand the industry. There are two big players: [Concessionaire D] and [Concessionaire A]. In my head it's very clear. From Minas (The state of Minas Gerais) to the North of the country you have [Concessionaire A] and from Minas to the South, you have the [Concessionaire D] (ESP-UNI-17).

Another relevant issue... The fact that there are monopolies and oligopolies. I think there is a power shadowing, right? So, you have both ANTT and the Cade [Administrative Council of Economic Defense]. My critique to the current model is important. We left behind a public monopoly and today we are in the hands of a private oligopoly, which are basically [Concessionaire D] and [Concessionaire A] (PES-UNI-12).

The level of concentration of an industry is considered an antecedent factor to a more effective action in the political market, facilitating the defense of common interests (OLSON, 1971; LUX, CROOK and WOEHR, 2011). On this joint action, an interviewee says:

The concessionaires are very close. For example, next week there will be a meeting with all companies to talk about the contract. Since it is going to be a standard contract, the concessionaires come together and state what is correct, what is not correct, what is illegal, what is acceptable, what is unacceptable. (GER-CONB-20).

Added to the concentration of industry, the regulatory changes that occurred in the beginning of the 2010 gave rise to a new attitude of the concessionaires with the government authorities and the regulatory agency, as shown in the following section.

POLITICAL MARKET IN THE BRAZILIAN RAILWAY SECTOR

To facilitate the understanding of the political market in the Brazilian Railway Sector (BRS), it is important to present some considerations about the institutional and the regulatory environments, which are in constant interaction through the activities of their various actors.

Institutional environment

The diversity of institutional actors influences the type of policy strategy employed by a company or group of interest (MECKLING, 2015). It can be seen that institutional actors, especially public actors, are well established in the political market, as evidenced by one of the interviewees reflections:

Government actors: Ministry of Transport, ANTT, DNIT [...]. Government actors related to the inter-modality, the economic aspects: [...] BNDES (Brazilian Development Bank), Chief of Staff of Brazil, Ministries of Economy and Planning. Institutions representing users, transport and shipping companies, with the help of trade associations and unions, federations, and others (DEP-FED-02).

In a sense, the concessionaires direct their efforts in the political market to the Ministry of Transport and, in particular, to ANTT, as can be seen in opinions such as:

Without a doubt ANTT, without a doubt. Top priority! If I were on their side and if I had to choose a priority, for me it would be the agency (GES-ORG-08).

Well, we have two main actors, which are DNIT and ANTT! Who has more interaction, which is the government authority that grants the concession, is the one that makes us work harder, which is the government agency ANTT (GER-COND-23).

Our work is all about our obligations to the agency. [...]. So, we try to follow exactly what is defined by the agency (ANA-CONC-14).

Given the reflections brought up in these interviews, it is noted that the focus of the concessionaires' interactions is the regulatory agency. This corroborates the perspective defended by Holburn and Vanden Bergh (2004) and Kingsley, Vanden

Bergh and Bonardi (2012), that in a political market a company or group of interest will seek to maximize resources directing political actions to the most relevant institutional actor.

Regulatory environment

The regulatory agency started to act strongly in the BRS, specifically with rail freight transport from 2010 on, when, in the view of some interviewees, ANTT changed its positioning, acting through publishing resolutions that became known as the new regulatory framework of the sector. This new stance of the agency led to a change of behavior and the structures of the concessionaires.

All the concessionaires analyzed in this study established in their organizational structure an area dedicated to institutional relationship. This area was responsible for teams specifically prepared to deal with the regulation. This response of the concessionaires to the change of position of the regulatory agency was summarized in the following reflection of the interviewees:

Well, I joined the company because of those resolutions from the 2011 regulatory framework. When they were published, [Concessionaire D] felt the need to create an area to handle it. So, on account of that, I ended up joining the company (GER-COND-23).

There was a brutal change! But I have associated this much more with the president of the company, but today I realize that he was motivated by these resolutions (GER-CONC-22).

Some interviewees indicated that, after the new regulatory framework was published, the regulatory agency started to closely follow the implementation of the public service related to rail freight transport, either through the issuance of resolutions and other normative provisions, or through inspections. This is evidenced in the following statements:

As I said, it is a fairly regulated environment, both from the point of view of the number of resolutions, but also the depth of the resolutions (EX-ASSOC-19).

There is an excess of regulation (ANA-CONA-24).

But one thing that surprised me a lot is the size of ANTT's interference in our daily lives. I did not imagine it was so much (GER-CONC-22).

It tries to add a lot of rule, a lot (GER-COND-23).

Apparently, this “excess of regulation” causes a change in the structure and policy of companies in a regulated sector. As Hillman, Keim and Schuler (2004) and Lux, Crook and Woehr (2011) have argued, in an industry in which the regulator actor is more active, firms tend to engage more actively in political terms, seeking to mitigate the impact of actions of the regulator in the firms' day to day.

However, some interviewees apprehend that the regulatory body is in the process of maturation in terms of regulation and, at the same time, it has to respond to the wishes of the actors operating in the sector, as expressed in the following statements:

ANTT is still a new agency, is being structured, and therefore, it still has much to improve (DIR-CONC-15).

When considering that ANTT is not such an old agency... it is possible to observe that ANTT is still an evolving organ (EX-ASSOC-21).

In addition to be a young agency, in the perception of the interviewees, ANTT has suffered in recent years lack of political independence to manage its agenda, as well as to deal with difficulties such as insufficient budget and lack of resources, which is highlighted in extracts such as:

We do not have agencies that operate with the autonomy and independence necessary to easily fulfill their role (PES-UNI-12).

ANTT is one of the agencies that had the most vacant positions and interim directors (ESP-UNI-03).

ANTT is one of the most recent agencies. It has suffered a lot with the issue of counting on interim directors, professionals without a mandate, who spent a lot of time in leading positions (ESP-UNI-07).

STRATEGIC APPROACHES

This topic presents evidence of how the concessionaires' actions occurred, particularly in the processes of regulatory change studied. This is not to say that, in other situations, activities with different strategic positions may have been observed.

The process of the new regulatory framework

The so-called new regulatory framework was established because of the edition of the three resolutions previously mentioned, which put in place a new paradigm for the operation of the ANTT. For the first time, the agency has established rules aimed at safeguarding users and convoy traffic between concessionaires.

As such resolutions resulted in significant changes in the status quo of the companies, some interviewees observed that it was a very delicate time where the agency worked to solve conflicts of interest between rail freight users and concessionaires. The following extracts highlight this position:

The process of building and negotiating the resolutions of 2011 that addressed the users' rights was a very difficult process because, in principle, they did not want to accept these resolutions. [...] They had political pressure on their side. On the business side of the things, right?! [...] They even went so far as to put a former minister of the supreme federal court to defend the concessionaires (EX-ASSOC-05) at a public hearing.

The edition of the 2011 resolutions was a struggle! For us to arrive at that final design, at the way they were published, it was a long journey. [...] they [the concessionaires] fought hard because we were taking them out of the comfort zone. So it was a real struggle (GES-ORG-08).

This is a long story, you know?! Let me try to answer you. These were some of the biggest clashes about the issues we care for (EX-ASSOC-21).

As of 2011, there has been significant changes in the regulatory framework. As I told you, since that time we have been in a period where we strongly felt some abuse from the regulatory point of view. [...] in fact, the rail companies really fought back during this period (EX-ASSOC-19).

The former minister of the Supreme Court mentioned by interviewee EX-ASSOC-05 was one of the lawyers who defended the interests of the concessionaires. The argument of the former minister was that the provisions in the minutes of the resolutions violated the current contractual clauses and would provoke juridical insecurity, as expressed in the excerpt from the minutes of Public Hearing 115 that discussed the issue:

He then gave the floor to the [former minister of the STF], representative of the National Association of Railway Transport, who stated that the resolutions dealt with at this hearing present relevant legal obstacles. He therefore mentioned that there are legally inadmissible points regarding the concession of the public service, the exclusivity and the consequent breaches of the constitutional and legal guarantee of the economic-financial balance, which is essential to long-term agreements such as those of the concessions (ANTT, 2017).

Box 6 summarizes the perceptions about the strategic political actions employed by the concessionaires in the process of changing the regulatory framework of the rail freight transport sector. To characterize them, we used the generic strategies obtained in the literature, previously illustrated in Box 3.

Box 6

Generic strategies adopted by concessionaires in the process of the new regulatory framework

Generic strategy	Characteristics
Information	Based on the description provided by interviewees and other sources such as newspapers and magazines, which recorded the events at that time, the concessionaires defended their positions, mainly through the trade association ANTF, using technical mechanisms, both from the point of view of financial impact in the companies' operations and from the legal point of view. This political strategy of information aimed at the main political decision maker, ANTT, as evidenced by the statements of several interviewees, in the opinions and speeches of the participants in the public hearing.
Defensive	The actions of the concessionaire may be considered defensive, since they sought to maintain the status quo. Traditionally, external resources are used, such as trade associations and legal consultancies. One view of defensive or protective political strategies is that presented by Meckling (2015), who says that these types of strategies are manifested when the costs perceived by a company in relation to a political issue justify actions in the political market. In this context, the concessionaires evaluated that the new regulatory framework promoted a greater competition for the sector, which could reduce the companies' financial margins.
Coalition building – trade associations	As already mentioned, many of the concessionaires' actions were jointly designed and employed through the trade association that represented them. In a sense, as a manager of one of the companies stated, "concessionaires are very close" (GER-CONB-20), and in the case of the process that culminated in the new regulatory framework was no different.

Source: Elaborated by the authors.

As concluded from the above evidence, the new regulatory framework effectively "did not generate the expected competitiveness for the sector" (EX-ASSOC-05). However, it was a watershed in ANTT's operation, forcing a restructuring process within the concessionaires to be able to respond to the new profile assumed by the regulatory body.

Tariffs revision process

In 2012, more than ten years after the start of ANTT's activities, the first revision of the tariffs applied by concessionaires in the rail freight transport sector was carried out. This happened fifteen years after the concession agreements were signed (POMPERMAYER, CAMPOS NETO and SOUSA, 2012). According to the opinion of some interviewees, there was a need to revise the tariffs charged by the concessionaires to reflect the reality of the sector, as exemplified below:

It must be stressed that the tariff ceiling was at a very high level, right?! There was too much room for profit! [...] Then, it was necessary to force a greater competitiveness in the price of the railway tariffs (PES-UNI-12).

Because ANTT had not given the attention the user deserves within the process...And the agency reviewed the tariff ceilings. It took down a tariff ceiling by almost 50%. The tariffs were absolutely unrealistic (EX-ASSOC-05).

On the other hand, some interviewees judged ANTT intervention in the revision of the tariffs as an arbitrariness, which violated the concession agreement:

This issue of tariff ceiling, for me, is all about the pressure to obtain lower tariffs. The government granted a concession with a tariff limit and then decided to change it, because of the pressure of the user, you know?! (DIR-CONA-06).

In the issue of the tariff ceiling, we had a problem. We had a decrease. In some parts there is a bigger gain, but others result in deficit (GER-CONB-20).

The policy actions adopted by the concessionaires in the 2012 tariffs revision process observed by the respondents in this study, are summarized in Box 7. To characterize them, the generic strategies obtained in the literature previously shown in Box 3 were used.

Box 7
Generic strategies adopted by concessionaires in the 2012 tariffs revision process

Observed generic strategy	Characteristics
Information	As was the case during the process leading to the issuance of the resolutions of the new regulatory framework, the concessionaires sought during the public hearings of the 2012 tariffs revision process to base their expectations, sending contributions individually, and also through ANTF, arguing the method used by the regulatory agency to revise reference rate values.
Defensive	In order to maintain their status quo, utilities have employed protection (defensive) strategies to maintain their margins in the case of ceiling rates.
Coalition building – trade associations	The companies clustered to defend their position, mainly through using their trade association, ANTF.

Source: Elaborated by the authors.

A similarity in terms of corporate political activities is observed in the case of tariffs revision when compared to the CPA observed in the case of the new regulatory framework. However, in the tariff's revision, one of the concessionaires called on the judiciary to maintain the reference tariffs, as mentioned in the interviews:

In this case, the [concessionaire D] filed a lawsuit against the tariff ceiling reduction resolutions and obtained an injunction, an injunction not to apply the resolutions (GER-COND-23).

Concession renewal process

The concession agreement established between the government authority and the companies in the rail freight transport sector states that it is possible to renew the concession, not determining a specific moment for renewal or extension to be signed. Thus, some concessionaires started negotiating with the Ministry of Transport and the ANTT in order to renew their agreement in the middle of 2015, approximately 10 years before the conclusion of the agreements in force.

For some of the interviewees, in the specific case of negotiating the renewal of concession agreements, the position of the companies is more proactive, anticipating the relation with the government:

Now, in the case of the renewal process, it is a totally proactive model. Each concessionaire proposes its model, within its characteristics, based on what is more advantageous (DIR-CONC-15).

In this case, we took the lead in the process, we were pioneers (GER-COND-23).

This summarizes the position of the companies in the relationship with the government authority that grants the concessions, which is to show the advantages of anticipating the renewal of the agreements, based mainly on the argument that when extending the contracts concessionaires will invest more. As expressed by DIR-CONC-15:

[...] we will anticipate investments that would not be made now, we will invest before the scheduled date, precisely to renew these concession agreements before the deadline provided in the current agreement.

Box 8 summarizes the observed generic policy strategies used by companies in the rail freight transport sector in the renewal of their concession agreements. They were characterized using the generic strategies obtained in the literature previously illustrated in Box 3.

Box 8

Observed generic strategies adopted by companies in the process of renewing the concession agreements

Observed generic strategy	Characteristic
Information	The companies operating in the sector sought to convince the government authority (ministry and regulatory agency) using technical analysis and highlighting the potential advantages of anticipating the concession renewal.
Anticipation	The concessionaires acted in a proactive way (anticipating) when requested the renewal of their concession agreements. Perception of the proper environment to make this decision. <i>“what I understand as the most critical in this matter is the possibility of renewing the concessions [...], the bargaining power is all in the concessionaires’ hands, not in the government authorities”</i> (ESP-FUN-13).

Source: Elaborated by the authors.

Unlike the strategic approaches adopted in the processes that led to the new regulatory framework for the sector in 2011 and in the 2012 tariffs revision, in the case of negotiations for the extension of the concession agreements, the concessionaires acted individually:

Individual! This is where I told you that the association acts very little (DIR-CONC-15).

FINAL CONSIDERATIONS

This study evaluated the CPA of Brazilian concessionaires of rail freight transport in two regulatory change processes: the new regulatory framework of the sector in 2011, and the first tariffs revision promoted by the regulatory agency in 2012. In addition, the study analyzed the companies’ request for extension in their concession agreements, negotiations that started in 2015.

Based on interviews with stakeholders operating in the Brazilian Railway Sector (BRS), particularly in the rail freight, and triangulating them with other data sources, such as minutes of public hearings, newspaper publications that reported the events analyzed, as well as the public data provided by the concessionaires, the study classified the corporate political activities of the concessionaires according to the typologies of generic strategies found in the literature, which have targeted the regulatory agencies and other actors in the institutional, legal and regulatory environment (political market).

For the cases of regulatory changes, both in the process leading to the new regulatory framework in 2011 and in the 2012 tariffs review process, the concessionaires showed reactive and defensive postures. They sought to influence the regulatory agency through technical information to defend their positions and, notably, acted collectively through the trade association representing their interests and sector.

It is important to note that, during the periods of regulatory changes analyzed, there was a recognized change in ANTT’s operation stance. This fact was imperative for companies in the sector to restructure, aiming to respond to the more active presence of the regulatory agency.

In 2015, with the first actions of some concessionaires seeking to anticipate the renewal of the concession agreements, a different positioning was observed with regard to the political actions. The companies took the lead, understanding it was a favorable political moment. Thus, they acted in a proactive and anticipatory way. However, it can be said that the main political strategy used was still the information. In this case, they did not seek to defend themselves from an action by the regulatory agency, but rather to influence it, arguing that the renewal of the concessions at that time would bring economic benefits to the sector.

In view of the analysis of the CPA adopted by the concessionaires operating in the Brazilian rail freight transport in the situations described, it was observed the partial adoption of the generic strategies found in several typologies provided in the literature, with emphasis on the alternation between reactive and proactive positioning. However, it was evidenced that none of the existing typologies can explain the totality of the companies’ actions in an evolving and complex environment such as

in the case studied. There are political, legal, regulatory, cultural, business and even ideological issues involved that are not captured by the strategies present in the international literature in the field of CPA. Particularly in the Brazilian economic, political and institutional context, where business ethics and the relationship of public and private agents are under scrutiny, such discussion gains relevance and shows that there is a great path of knowledge to follow.

Although it has not been the object of this research, it is worthwhile emphasizing that the field of strategy is lavish in studies that relate strategic positioning to performance. For this purpose, the studies use typologies of generic strategies and strategic groups to evaluate the so-called 'winning strategies', vis-à-vis the performance of companies. However, indicators of business performance, in the case of public service concessions, and particularly those that result from strategic decisions of a political nature, are particularly difficult to delimit. This is another challenge that was observed in this study. Although clearly addressing strategic actions carried out due to regulatory changes, it was not possible to identify performance indicators that objectively capture positive or negative outcomes from these actions.

It is also important to highlight the mismatch between the abundant international literature and the scarce national literature in the topic addressed in this study. This may be explained by various reasons, such as the maturity of the institutional and national political context, and the deleterious connotation of lobbying that has been developed in Brazil. Objectively, CPA are, in fact, lobbying activities, advocacy. An activity that, in addition to not being regulated in Brazil, carries a negative understanding of 'bad business behavior' and 'seeking undue advantages', in this case clashing with the notion of business ethics. This is a distortion that should be explored in future research, and we understand that bringing up this issue is a contribution of this research.

As a more objective contribution, this study indicates that, individually, the typologies of generic political strategies are limited and consolidating them should be a task for future research. It was also observed the value of transparency in the relationship between companies and the other actors of the institutional and political environment, which is, in a way, contrary to the knowledge established in the field of strategic management for CPAs. In addition, this study contributed to observe that the maturity of the institutional and regulatory environments is determinant in the actions of the agents and, consequently, in the strategic positioning of the companies that operate in such contexts, especially in sectors with a high degree of regulation.

As for the limitations of a multiple-case study, the findings of this research are not to be generalized. An extension of similar studies to other regulated sectors could both reinforce the results observed here and add new elements to the theme of corporate political activities. We also suggest quantitative studies that address the relationship between action and performance.

Finally, it should be noted that the CPA theme concerns not only companies that are concessionaires of public services, which are therefore highly regulated, but private companies in sectors less pressured by the institutional, legal and regulatory environment, that is, in a traditional market situation. However, in regulated sectors, theoretical knowledge with practical implications, is of even greater importance, as for example in the sectors of electric energy distribution and transmission, commercial aviation and transport.

The case of the Brazilian Railway Sector (BRS), especially the rail freight which is object of this study, is of singular importance among Brazilian modes, given the country's dependence on road passenger transport and, particularly, the dependence on cargo transport, which could be observed in the major consequences of the shutdown of these services in May 2018 due to a national strike. The discussions and findings of this research aim to contribute to a deeper debate on the country's future logistics model, with a more rational distribution of modalities.

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