

ARGENTINE RAIL FREIGHT CONCESSIONING: ACHIEVEMENTS AND CHALLENGES

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SUMMARY

The rail freight concessioning program in Argentina has been far more successful than its early supporters dared to hope. Traffic has nearly doubled, labor productivity has quadrupled, a more than 200 million peso annual deficit in freight operations alone has been erased, and rail tariffs have fallen by about 35 percent. Conversations with major shippers confirm that service is far better than in the days of FA. **Argentina** is better off – to the tune of at least P\$300 million annually.

Unfortunately, the achievements to date may be lost because of delays in bringing the freight concessions into conformity with current conditions. The concessions began during a period of great uncertainty about the future. The time taken in transferring the concessions was long, and there were a number of natural disasters in the interim. The concessions were awarded in accord with a bidding formula that encouraged unclear and over-optimistic bidding. As the concessions developed, rigid interpretation of the terms turned natural partners into antagonists. Commitments by public authorities to pay for track usage were ignored. As a result, neither concessionaires nor government know what to expect – hardly an environment for long term planning or investment.

In the current impasse, the government has a large number of claims against the concessionaires for alleged non-compliance with the investment provisions of the concession agreements: in fact, there is a *prima facie* case that the original investment plans were too optimistic. The government has claims against the concessionaires for alleged non-payment of the canon. These claims are increased by interest allegedly owed. On the other side the concessionaires have a number of contract defenses they can assert including acts of God, unforeseeable changes in the Argentine economy and freight transport markets, delays in conveyance of concessions, and unpaid passenger access charges for track usage by public authorities running passenger trains. As circumstances stand now all of the concessionaires appear to be in default under the concession agreements, but the government has large claims and fines lodged against them. This will make it extremely difficult for the concessionaires to obtain financing in the capital markets, and it poses the threat of harm to the transport sector in Argentina.

The basis for an equitable re-negotiation clearly exists. Updated capital plans, made more flexible in time and specific location, would give concessionaires better control over their spending while at the same time assuring government of a rail network in appropriate condition. The initial canon commitments can be made more flexible but, in return, can permit government a reasonable share in concessionaire success. Local or

provincial governments wishing to run passenger trains should be charged, and be required to pay, reasonable access fees. With these changes agreed, the process of adjudication of differences can be faster and fairer. Longer term issues, especially assured access to vital real estate for rail operations, strengthening of Government's regulatory capabilities, and equitable taxation and policing of truck operations should also be possible to resolve.

The outcome will almost certainly depend on how the issues are framed in the public arena. If the debate hinges on who is "at fault", and if specific performance against each and every one of the conditions and terms of the original bid and contract conditions is the sole criterion of who "wins" or "loses", then there will certainly be no winners. The investigation clearly shows that there is plenty of "fault" to go around.

The investigation also shows that if the actual objective of the concessioning was to provide **Argentina** with a far more efficient, customer-driven rail system, with no call on the Federal budget for subsidies, and offering shippers lower prices for better services, then Argentina is **already** the winner. Benefits to the country have far outweighed the value of the arguments over the shortfalls in the canon payments, and, based on opinions expressed by major shippers, investment by concessionaires and third parties has met the actual, economically justified needs of the system (though it has, to be sure, fallen short of the inflated promises in the bids). From this perspective, there is a great deal at risk if the process of adjusting the concessions is unsuccessful due to intransigence on either side.

Argentina led the world in bringing private sector operations back into state railways, and Argentina derived enormous benefits from this initiative. Now, it seems only reasonable that Argentina should lead the world in showing how to adjust the terms of the concessioning program so that the success to date can continue.

INTRODUCTION

The long period of state ownership and operation of Argentine Railways (Ferrocarriles Argentinos, or FA) was a failure, both for the railway and for Argentina. Except for a small up-turn in rail traffic (and grain production) in the early 1980s, state ownership saw almost continuous decline in rail traffic and finances [see Figure A]. By the end of the 1980s, FA had become the largest single drain on the state treasury, losing between US\$800 million and US\$1 billion annually (around 0.8 percent of GDP) on its freight, intercity passenger and suburban passenger services.¹ Despite many studies and rescue plans during the decade of the 1980s, no approach to improving FA's performance under state control had actually worked, and the Government had reached the conclusion that either more dramatic actions had to be taken or FA should be closed. The end-stages of FA's collapse coincided with the implosion of the Argentine economy in the early 1990s, giving the Government both a reason and an opportunity for action.

¹ Estimates of FA's losses are imprecise and different answers can be found depending on the source and the method of estimation. The estimate used here is an average of the various numbers available.

The Government chose to break FA into three components, freight, intercity passengers and suburban passengers (the metro – the Subt  – which had belonged to the City of Buenos Aires, was also added to the concessioning program). The freight services were awarded in concession to private operators.² Intercity passenger services were terminated at the national level, but several provinces chose to continue to operate these services on their own responsibility. Suburban passenger services and the Subt  were concessioned to private operators. This paper concerns only the concessioning and subsequent operation of the freight services.

FA had long been organized into six operating groups: four broad gauge (1676 mm) railways (Roca, San Martin, Sarmiento and Mitre), the Urquiza, a standard gauge railway (1435 mm), and the Belgrano. In the concessioning process, the Urquiza (now known as the Mesopotamico or MGU), Belgrano, Mitre (now the Nuevo Central Argentino or NCA) and San Martin (now Buenos Aires al Pacifico or BAP) were offered essentially without change, whereas the old Sarmiento was combined with pieces of the Roca to create the new concession which became known as Ferro Expresso Pampeano (FEPSA) and the remainder of the Roca became the new Ferrosur Roca (FSR). [[see map](#)]

The concessioning period began in 1989 with the call for proposals on the FEPSA concession and ended in October of 1993 when the MGU transfer was completed.

	FEPSA	NCA	FSR	BAP	MGU
Call for bids	11/89	01/91	02/92	01/91	11/91
Award	12/90	03/92	09/92	12/92	01/93
Transfer	11/91	12/92	03/93	08/93	10/93

Thus, some concessions have been operating for up to 9 years, and there are six complete years in which all of the concessions have been operating.

There are three aspects of the freight concessioning that deserve specific mention. First, the Argentine Government actually initiated a process of private sector involvement in railways that later became a basis for similar programs in a number of other countries (Brazil, Chile, Mexico, Sub-Saharan Africa, Jordan and the UK). Because it was the first concessioning experience, the Government did not have the advantage of learning from the experience of others, and the concessioning approach was necessarily based on a philosophy of getting the process done with the knowledge that mistakes would have to be fixed later. This sense of urgency was also influenced by the extreme fiscal crisis the Government was facing.

Second, at least partly because of the lack of experience, the concessioning process involved a great deal of preparation and subsequent negotiation as details and conflicts

² With the exception of the meter gauge Belgrano railway which did not generate acceptable offers from concessionaires and thus remained in Government hands. The Belgrano was eventually transferred to the control of the main railway labor union, but received massive Government capital support during the mid 1990s and continues to receive operating assistance.

emerged. The table above shows that one result was considerable delay between the call for bids (when proposals were prepared) and the actual transfer to concessionaire control. The time delay averaged about two years which meant that the rail properties and the economic outlook on the day of takeover were often quite different from the expectations at the time of the preparation of the bids. When combined with the radically changing economic environment of Argentina of the early 1990s, this meant that the government and concessionaires were subjected to an unusual degree of bidding risk.

Third and probably the most important was the effect of the unusual structure of the bidding process (almost certainly reflecting the lack of experience with privatization of railways). Rather than depending on a maximum bid price approach, the Government attempted to combine a number of factors into the bid evaluation through use of a points formula:

Bidding Criteria Used in the Railway Freight Concessions³

Criterion	Weight
Bidder's Experience, Key Personnel, Business Plan	23 percent
Basic Investment Plan (amount and quality)	33 percent
Additional Investments Proposed	5 percent
Annual Fee ("Canon") paid for infrastructure and equipment rents	10 percent
Access Prices (toll to be charged for passenger operators)	5 percent
Employment (number of FA employees to be hired)	15 percent
Argentine Presence (role of Argentine investors and managers)	9 percent

With the benefit of hindsight, it is clear that the bid evaluation formula had three serious problems: it contained qualitative factors (the bidders' experience and Argentine presence) which were hard to evaluate or enforce, and which, in the case of Argentine "presence", were only tenuously related to the ability of the bidder to operate successfully; several of the factors were in direct conflict (employment, access prices and canon); and, the high emphasis on investments (38 percent of the award formula) encouraged overly detailed and highly optimistic bidding.

In summary, the bidders were acting under conditions of unusual uncertainty and risk, they were required to submit bids well in advance of any possible takeover, and they faced an imprecise and conflicting bidding formula which encouraged unrealistic bidding, especially on the capital plan (but also on the qualitative factors). From this beginning, it was a virtual certainty that the concessionaires would have great difficulties in meeting their commitments, and that the concessions would eventually reach a condition of effective default, no matter how well they managed the concessions after

³ The award formula for FEPSA was slightly different from the numbers shown.

takeover. [see, for example, Antonio Estache *et al*, “Argentina, Transport Privatization and Regulation: The Next Wave of Challenges,” World Bank Report No. 14469, June 14, 1995, pp 14-16 for an early discussion of the issues].

Predictably, the freight concessions did have problems from the beginning. Due to the delays between award and takeover, the concessionaires received businesses that were different from those they had bid for. There were a number of natural disasters, especially flooding, which affected demand and operations. The investment commitments were generally not met (either in amounts or on specific projects). The access fees from provincial passenger operators were essentially never paid, though the proposal for the access fees constituted 5 percent of the award formula. In the last several years, as the unreality of the concessioning terms has become ever clearer, disputes (and non-payment) of the canon, rents and access fees have also emerged. Today the concessionaires are hindered in their ability to plan and invest for the future by concession agreements that are clearly infeasible for any of the parties to live up to, but which have not been successfully renegotiated. The future course of the rail freight concessions, and of the Argentine freight transport sector, is now dependent on meeting the challenge of developing feasible freight concessions that more effectively reflect the need of both Government and concessionaire to have financially healthy and efficient rail services.

THE PRIVATE FREIGHT CONCESSIONING TO DATE HAS BEEN HIGHLY SUCCESSFUL

Despite the growing severity of the legal and economic infeasibility of the freight concessions, Argentina’s rail freight services are actually far stronger at the beginning of the new millennium that they were at the beginning of the 1990s. Based on direct interviews with major shippers, it is clear that the quantity and quality of rail freight services has significantly improved. An even better measure of shipper satisfaction is the large amount of new investment that shippers have committed to construction of rail-related loading and shipment facilities: concessionaires have estimated the investment by third parties at around P\$244 million to date.⁴ Shippers do not invest their own money in rail-related facilities unless they believe that they will benefit from those services over a number of years, and shipper investments are closely related to the ability of the concessions to offer an appropriate mix of service quality and tariff level and structure.

Responding to the improvement in services, freight shipped by rail (tons and ton-km) has more than doubled since the start of concessioning [Figure A], reversing a decline of many years under FA control. There is every reason to believe that rail traffic will continue to grow as the Argentine economy stabilizes and recommences its growth [see Figure B showing indexed GDP, total transport tons, and rail tons]. Transportable tonnage produced in Argentina is very closely related to GDP, and rail tonnage carried will be strongly influenced by GDP as well.

Economists define competition as being either “in” the market, or “for” the market. The award of exclusive rail freight concessions generally falls within the “for” the market

⁴ See report by Ferrocamera on concession status, page 2.

rubric since there will be no rail versus rail competition on the concession facilities granted. When transport is more widely defined, though, to include both truck and rail, there is clearly a great deal of competition in the freight transport market. From this perspective, improved efficiency and service quality could result in several types of benefits: rail profits could go up (benefits to the owners and, through payment of the canons, to the Government); rail tariffs could go down (benefits to rail shippers and the economy); reductions in rail tariffs could cause corresponding reductions in truck tariffs on commodities where there is rail/truck competition (more benefits to shippers and the Argentine economy). Of course, all three could occur.

To date, it does not appear that any of the concessions have been particularly profitable nor, indeed, have any concessions met the profitability targets on which the bids were originally based. What **has** happened instead is that most of the potential profits (after the impact of natural disasters and other problems discussed below) have actually been suppressed by competitive forces, and have been passed on to shippers through reduced rail tariffs. [see Figure C] Because of these tariff reductions, the Argentine **economy** has benefited enormously from the private concessioning program, far beyond the benefits that were projected in the beginning of the program. In particular, greater efficiency and heightened competition in transport have resulted in a roughly one-third reduction in freight charges by rail below that which the concessionaires proposed, and about 50 percent below the rates charged by FA before concessioning. This reduction clearly triggered a related reduction in competing rates for trucks though, of course, trucking competition probably has more influence on truck tariffs than does truck/rail competition.

Savings on rail freight charges alone (below those foreseen in the concession bids) can reasonably be estimated to be over P\$70 million annually, and the related annual savings in truck charges may well exceed the savings due to rail reductions, perhaps by several times. From another perspective, the original proposals suggested canon payments over the 30 year life of the concessions of about P\$139 million – an average of about P\$4.6 million per year. Annual savings to the economy from rail tariff reductions below those promised in the proposals are therefore over **15 times greater** than the expected benefits to the Government from canon payments. Adding in the benefits from a related reduction in trucking charges could bring this multiple even higher. Argentina's gains from rail freight concessioning have been enormous – and far too large to risk against the challenge of renegotiating the concession contracts.

THE SUCCESS OF THE PROGRAM HAS REVEALED A THREAT TO FUTURE BENEFITS

The bidding process was conducted during a time of great uncertainty about the future of the Argentine economy. The structure of the Argentine economy has changed greatly since the concessions were awarded (for example in the amounts and types of grains produced and their points of origin and destination [see Figures D, E and F -- grain production in Argentina, the changing role of soy products, and the rapid growth in exports and imports]) in ways that no one could have anticipated in the early 1990s when the proposals were submitted, nor could some of the natural disasters have reasonably been expected. In addition, the format of the bidding posed the risk of a serious problem which has now emerged full blown. Over the past two to three years, the concession

agreements have been shown to be infeasible, and the conflict is now threatening the future of Argentine rail transport.

Conflicts over the concessionaires' specific performance have begun to be destructive. The concessions were legally in default on their investment commitments from the beginning and this has made and will continue to make the generation of new finance difficult. While it is correct to say that the detailed investment commitments have not been met, it is also clear that unforeseeable changes in the Argentine freight market, and natural catastrophes such as flooding, would have made total compliance with original commitments physically impossible and economically pointless. Because the concessions have not yet been legally modified, the regulatory authority (CNRT) has taken a demanding position vis a vis the concessionaires, and the parties are at loggerheads on virtually all points. A related problem is that issues take far too long to resolve. Decree 686 also engendered debate as to the reductions actually granted and the value to be attached to them to be offset against the canons payable.⁵

THE ISSUES

Reassessment of the Core Network

A key issue to be addressed is the need for a reassessment of the rail network that is to be continued in service, and the minimum condition to which the lines in that core network must be maintained. The traffic density on the network now being operated is far too low to generate the revenues needed to maintain it (see **Figure G** on the traffic density of the concessions). **Figure G** shows that the Argentine railways typically are operating at traffic densities which are about 60 percent of the levels in Brazil, no more than 20 percent of those prevailing in the Mexican concessions, and at most five to ten percent of traffic densities on US railroads. Since traffic density is the fundamental generator of revenue in comparison to track maintenance and investment costs, this index gives a good indication of the potential economic performance of a railway. Because track already out of service has been excluded from this comparison, it strongly suggests that a further reduction of the rail network will be a necessary prerequisite to long-term economic viability of the core system.

As part of the renegotiation of the concession agreements, the concessionaires and the government need to agree on a reclassification of the currently operated lines into three categories: main lines, secondary lines, and lines which the concessionaires consider to be uneconomic. At the same time, the concessionaires and the government need to agree to a minimum standard to which main lines and secondary lines should be maintained. In this connection the parties might want to consider adapting the U.S. Federal Railroad Administration's track standards to Argentine conditions (traffic levels and track gauge) as a reference point to denote the standard to which lines should be maintained.⁶ The

⁵ Decree 686 permitted the concessionaires to offset, against canon payments due, the value tariff reductions granted to certain shippers. Unfortunately, it has not been clear how to define or evaluate the reductions, so there has been no agreed relief granted against the canon obligations of the concessionaires.

⁶ The Federal Railroad Administration track standards are found in 49 CFR Part 213. This document is available from the U.S. Government Printing Office, and is also available on line at

government may want to consider establishing in the concession agreements some presumptive minimum technical conditions for lines which would be related to speed of trains and also to the volume of traffic. The purpose of such a presumptive minimum would be to give more certainty to the parties in this regard.⁷ It is important that the agreed network of main and secondary lines be reviewed by the government and the concessionaires periodically in light of traffic densities and revenues accruing on the lines to determine whether lines should be moved from one category to another and whether operations on some lines should be discontinued.

Revised concession agreements need to encourage putting to productive use the assets that are not included in either the main line or secondary line categories. The renegotiated concession agreements should make clear to the concessionaire that once a line is classified as uneconomic, it will be made available for use by other operators and the concessionaire will be obligated to interchange traffic with the new operator (with a reasonable division of revenues) or to grant the new operator trackage rights to customers or to interchange points with other carriers (at generally applicable trackage rights rates). If no operator appears during an agreed period (one year is suggested), the line should be declared abandoned and the rail and other track materials salvaged to the extent warranted. Revised concession agreements should address the issue of who is entitled to the proceeds of the liquidation, the concessionaire or the government. Allowing the concessionaire to use the track and other materials removed from the abandoned line will likely ensure that available resources are used most efficiently. If this approach is taken, the government should look for its compensation to the overall economic terms of the concession agreement. Where lines are abandoned, presumably the right of way would cease to be subject to the concession and the government would be able to exercise whatever rights it might have in the real estate.

Revision of the investment requirements

Each of the concession agreements contains an investment plan that is specific in both the amount of investment required and in the type and location of the investment to be made. Moreover, the concession agreements do not contain a practical mechanism that can be used to revise investment obligations in light of changing circumstances. Such a structure is unworkable in the long run under even the most stable economic conditions. In the conditions that prevailed in Argentina during the 1990's when the economy

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>. The FRA track standards specify the minimum technical standards that track must have in order for trains to operate at different speeds. For example, Class I is applicable where freight trains do not exceed 15 km/hr. Class II where they do not exceed 40 km/hr, Class III where they do not exceed 65 km/hr, etc. FRA track standards are, of course, applicable to US conditions, especially standard gauge track. Appropriate modification for Argentina would be required, but not difficult to develop.

⁷ For example, using US terminology discussed above, the renegotiated concession agreements might require that the concessionaire maintain all secondary lines at Class II or better, unless the traffic density dropped below 500,000 ton-km/km of track in which event the minimum level would be Class I. Main lines might presumptively have a minimum level of Class III unless traffic density dropped below 1,000,000 ton-km/km of track in which event the presumptive minimum would be Class II. The concessionaire would always be free to maintain the lines at higher standards, and would have the ability to agree with the concessioning authority to maintain the lines to lower standards if justified.

experienced a major transformation, the rigid and mandatory nature of the investment requirements resulted in the concessionaires being in default under the concession agreements almost from their inception. In private business investment plans are management tools -- not straight jackets. Such investment plans are subject to periodic review and revision to take account of changing economic and competitive circumstances, and specific investment projects will be subject to immediate review if the economic and competitive premises on which they were predicated change either before or even during construction of the project. Similarly with concession agreements, it is not in a country's economic interest to insist on investment of scarce and expensive capital in infrastructure projects that have become economically unviable. It is in the interest of both the government and the concessionaires to revise the investment requirements of the concession agreements to avoid requiring economically valueless investments, so long as the overall objective of ensuring a safe and effective rail network is retained.

There is ample evidence of the difficulties presented by rigid investment requirements that have not been or cannot be modified in light of changing circumstances. Perhaps the most dramatic were examples where investment plans called for investments in lines that, subsequent to the concession agreement, had been flooded and were for most of the year under several meters of water. Less dramatic but perhaps more important economically is the evidence of the evolution of the Argentine export grain and export grain transportation business. Additional storage capacity is being built in the country areas where grain can be collected and held for shipment to ports. Investments in serving such large country storage facilities located on main lines may be far more productive for the railroads than maintaining an extensive network of lightly used grain gathering lines serving a multitude of small country stations.

Before renegotiating the investment requirements of the concession agreements, the government needs to clearly establish the objectives it seeks to accomplish by including investment requirements in the concession agreement and then ensure that the investment provisions of the renegotiated agreements are tailored to fulfilling those objectives. There are generally four reasons advanced for including investment requirements in concession agreements.

First, there may be a belief that because the concession property belongs to the state, part of the price the concessionaire pays for using the property during the concession period is that the concessionaire incurs an obligation to upgrade the property so that it is returned to the government at the end of the concession period in some specified "improved" condition.

Second, there may be a concern that because the concession term is limited, and many railroad assets have long useful lives, a concessionaire might not have an interest in making economically rational and profitable investments because it may not be in a position to realize the benefits after the termination of the concession. A mandatory investment obligation could be designed to address this problem, albeit at the cost of lower canon payments to the government.

Third, the concessioning authority may be hoping to achieve a degree of cross-subsidy within the concession whereby the earnings on certain “profitable” lines are required to be used to subsidize “unprofitable” operations on other lines. A mandatory investment requirement may serve as a mechanism to impose such a cross-subsidy.

Fourth, rarely articulated but usually present when an investment requirement is included in a concession agreement, is a concern by the concessioning authority that the concessionaire will not recognize and pursue its economic self-interest in making profitable investments in the concessioned property and the government must be able to substitute its judgement for that of the concessionaire.⁸

Discussing these reasons in reverse order, implicit in the decision to concession state property and permit the concessionaire to use the property to provide services is a recognition that a private operator, in almost all cases, will use the assets to provide a set of services that is more valuable to the public (measured in terms of revenues reflecting what the public is willing to pay) in light of the resources used to provide them (measured in terms of the total cost of the enterprise, including the cost of capital) than will a government operator. Because the private operator’s focus is on maximizing profit, it has a powerful incentive on the revenue side to provide a set of services for which the public will pay the most, and on the cost side to produce those services at the least cost. Certainly the experience with FA would make it hard to argue that the government is better able to define proper investment priorities than the private concessionaires. A concession agreement that locks the concessionaire into a rigid investment plan will almost certainly impede both his search for revenues by providing new services (that may require capital investment), and his efforts to control the costs of providing the services. Finally, the concessions differ greatly among themselves in the markets they serve and products they carry [see Figure H, “Concessions carry different products”], so a rigid, “one size fits all” approach to enforcement of any capital program is inappropriate.

The concessioning authority might wish to impose some degree of cross-subsidy between profitable and unprofitable lines in a concession with the objective of keeping more active lines in the system. Assuming that there are profitable lines in each concession and further assuming that there is a reasonably competitive bidding process, the result of requiring such internal cross-subsidy is simply translated into a lower concession fee (canon) realized by the government. The Government is effectively giving up canon payments in exchange for a larger but less profitable system. If the investment requirement in the Argentine rail concession agreements was motivated by a desire to cross-subsidize unprofitable lines, the concessionaires and the government were operating on a mistaken premise that there were lines in each concession sufficiently profitable that they could cross-subsidize unprofitable lines. Neither the concessionaires nor the government anticipated the extent of truck competition and the effect it would

⁸ A variation on this theme would arise if the concessioning authority does not believe that there is an economically viable business in the assets being concessioned, and does not expect the concessionaire to make investments once that fact becomes apparent. In this circumstance, if the government is correct, the investment requirement simply becomes a mechanism to waste capital on uneconomic projects.

have on the railroad tariff structure, and on the ability of the concessionaires to subsidize anything from hard won income.

Almost all traffic handled by the Argentine railroad system today is subject to intense truck competition. No shippers feel themselves to be “captive” to the railroad. All of them have transportation alternatives to rail that they can and do use if rail service deteriorates or becomes too costly. There do not appear to be any lines in any of the concessions on which the concessionaires are earning profits exceeding their cost of capital which would permit them to cross-subsidize other lines. Truck competition will immediately compete away any excess profits.

One reason for including specific investment requirements in a concession agreement is that the state expects the concessioned asset to be returned at the end of the concession period and wants to take part of the compensation it receives for the concessionaire’s use of the asset during the concession period in the form of a “better” asset being returned than was concessioned. If the investment plan is intended to bring about this result, the state will have to specify the network it wants returned at the end of the concession period. The difficulty is that it presupposes that it is possible **today** to determine the characteristics of the asset that should be returned to the state at the end of the concession period. Where the concession is for an extended period, the futility of attempting such a prediction is obvious. There is no reason to believe that economic and competitive conditions will be any more stable in the future than they have been in the past. Thus, specification today of the network to be returned after many years and the condition in which it is to be returned is an almost certain guarantee that the network returned will be sub-optimal in both design and condition. The state will have purchased that sub-optimal network at the price of reduced canon payments or at the price of reduced investment in other more valuable projects.⁹

Concession Termination Problems

A concession (like a lease) eventually terminates and typically provides for the concessioned (or leased) assets to be returned to the concessioning authority or the lessor. This aspect of concessions and leases presents some difficult issues, especially when the concession or lease is for a relatively long term and particularly when the concessioned asset is one in which a high percentage of investment costs are sunk. At some point as the concession approaches its end, unless the concession agreement adequately protects him, the concessionaire will have an incentive to under invest in the railroad to the extent that he believes that investment cannot be recovered in the remaining years of the concession.

⁹ This assumes, of course, that the cost of constructing the network that the state wants returned at the end of the concession period does not exceed what the real world business can support. The evidence to date is that none of the concessions has a business base that can support the construction and maintenance of the networks the present concession agreements require them to construct, maintain, and ultimately to return to the government at the end of the concession period.

There is no easy solution to this problem. Certainly at the end of the concession the government will want the profitable main and secondary lines of the rail system returned in an appropriate physical condition to handle the type of traffic and volumes of traffic then moving over them. Because it is difficult to know at the time of renegotiation of the concession agreements what the optimal shape and condition of the network should be at the end of the concession period, the revised concession agreement should include adjustment provisions to be applied periodically through the term. One way this might work would be for the government and the concessionaires to agree at the time of renegotiation of the concession agreement which lines are “main lines” and which lines are “secondary lines” and the minimum condition to which each will be maintained. This designation would be subject to periodic review and revisions. In addition, however, it may be desirable to review and revise the termination provisions of the concession agreements to ensure that they do not provide disincentives to investment as the end of the concession period draws near.

In summary, a revision of the investment plan provisions of the concession agreements should focus on ensuring that the government receives back from the concessionaire at the end of the concession period a network of main and secondary lines that is optimally designed and maintained for the traffic it is handling. Both the main line and secondary networks should be reviewed periodically to determine whether they still makes sense in terms of changed economic and competitive conditions, as should the agreed level of maintenance for each. This approach will reasonably ensure that at the end of the concession the network is reasonably well designed and maintained for the traffic it is serving.

Truck Competition

There is a widespread belief among the rail concessionaires that they are facing unfair competition from trucks. The unfairness, they believe, results from the asserted fact that trucks do not pay for the full costs of the service they provide, and from the asserted fact that smaller trucking companies are not paying value added tax on the services they provide to shippers.

The argument that trucks do not pay for the full costs of the service they provide has two separate pieces. The first is that they are not paying for the full costs of the damage they cause to the highway network, particularly as many trucks assertedly are overloaded and therefore cause exceptional damage to the road network. To the extent that trucks travel on concessioned toll roads, a reasonable toll road concession agreement will permit the toll road owner to recover the costs of the damage trucks cause and will provide the concessionaire an incentive to ensure that trucks using the toll road are not overloaded. If the road concessionaire does not have an incentive (and the opportunity) to recover the full costs the trucks impose on the highway and to enforce weight limits, that is a problem with the concession agreement for the toll road and should be addressed in that forum.

Recovery of the costs of damage caused by the operation of trucks on public highway networks typically is achieved through some combination of vehicle registration fees, excise taxes on equipment and tires, fuel taxes, and ton-mile taxes. To the extent that

Argentina relies primarily on a fuel tax to recover from the trucking industry the cost of damage trucks cause to the non-concessioned highways, the rail concessionaires may have a valid argument. The rail concessionaires contend that they pay the same diesel fuel tax as do the trucks, yet the railways are responsible for maintenance of their infrastructure from their own revenues (indeed, they are responsible for a capital improvement program as well); they receive no help from the government. A review of the extent to which trucks are fully covering the damage they cause to the highway system appears to be warranted. If such a review shows that only some of the cost of the damage trucks do to the highways is recovered through the diesel fuel tax, compensatory measures may be warranted for the rail concessionaires to establish a level competitive playing field.

The rail concessionaires make a second argument that the trucks do not incur the cost of complying with safety regulations while they, on the other hand, have to bear the cost of complying fully with safety regulations. This argument would have merit in two circumstances: where the safety regulatory system applicable to the trucking industry is not cost justified, or where the cost of truck-caused accidents is not fully internalized into trucking industry costs. If the trucks are avoiding compliance with “safety” regulations that are not cost-justified, it is difficult to argue that the railroads are disadvantaged in any real sense. If the trucks are avoiding compliance with cost-justified safety regulations, they are only benefited if the trucking industry can pass some of the costs of its operations (including unsafe operations) to third parties. It is not clear whether the costs of accidents caused by unsafe trucking practices are fully internalized in the trucking industry’s costs by the Argentine legal system.¹⁰

The rail concessionaires’ argument that a large part of the trucking industry is not paying value added tax is, from a competitive standpoint, perhaps not as significant as may appear on the surface. With a value added tax rate of 21%, a truck competitor’s ability to avoid paying value added tax on its *sales* would give it a significant advantage so long as the truck competitor gave an otherwise valid VAT invoice to the shipper, and the truck competitor’s costs are largely labor and do not include significant purchases on which it has to pay value added tax. The rail concessionaires assert that the small trucking companies are giving VAT invoices to their shippers, thus permitting the shippers to use the VAT stated on the invoice as a credit against their VAT obligations. With respect to the second factor, though, it is reasonably clear that in the case of a small trucking company a very significant percentage of the total cost of the service provided is represented by the capital cost of the truck, fuel cost, and tires and other parts costs, all of which represent purchases on which the truck competitor would have paid VAT which would be creditable. In the case of a small owner-operated trucking company, VAT comes down to being an additional tax on wages, which, in light of intensely competitive conditions in the industry likely are low. While the trucking industry may obtain some

¹⁰ The government need not be indifferent to whether the trucking industry elects to incur costs in complying with safety measures or incurs the same level of costs in the form of accident compensation costs, or insurance premiums. From a competitive standpoint, however, so long as the trucking industry bears *all* the safety costs related to its activities (regulation compliance costs plus accident compensation costs) the railroad is not disadvantaged.

competitive advantage through the ability of small truckers to evade some VAT payments, the advantage likely is quite modest.¹¹

Passenger Access Payments (Peajes)

Under the terms of the concession agreements, freight concessionaires are required to permit passenger trains to operate over their tracks in return for a fee (“peaje”). Indeed, the level of the peaje was an explicit element in the bid evaluation, and there is no doubt that an expectation of revenues from track access fees played a part in the calculations of the concessionaires. These agreements for passenger track access were initially with the federal operator of passenger services (FA and FEMESA) but were transferred to the provincial governments when the Federal Government ceased operating passenger trains. Even though the contracted access fees have been reduced in response to requests from provincial governments, the provincial governments have generally refused to make their payments, even while continuing to operate trains. In fact, some provincial governments appear to be planning even more passenger services, presumably while continuing non-payment of their access fees. In some cases the obligations for unpaid access fees are as high as the unpaid canon obligations of the concessionaires (see Table 1).

Passenger operations over the lines of the freight concessionaires present two cost issues. The first issue is that of costs imposed directly on the freight concessionaire by the operation of passenger trains. So long as the freight concessionaire is not obligated to maintain its lines at a higher level than needed for freight operation and so long as the freight concessionaire has adequate track capacity available, operation of a limited number of passenger trains imposes only a modest incremental cost. An appropriate peaje for such access would be modest, based on US experience, likely in the area of P\$1.00 to P\$2.50 per train-km, depending on speed and capacity requirements.¹² If renegotiated concession agreements contain a revised passenger access charge, mechanisms should be included to ensure that the agreed amounts are actually paid.

The second issue that needs further clarification for passenger operations is that of liability. Passenger operations carry with them the prospect of an accident for which the

¹¹ The VAT tax authorities may wish to undertake a study to determine the extent to which there is actual tax leakage through non-compliance in the small trucking sector. The fact that there does not seem to be any active enforcement program suggests that the tax authorities do not believe a substantial amount of revenue is at stake, at least when compared to the likely high collection costs in administrative terms.

¹² Calculation of access charges is difficult and always approximate. Estimates vary considerably depending on assumptions about the mix of traffic, speed of operations, axle loads, etc. See ----, “Peaje Ferroviario Sobre La Red De Ferroexpreso Pampeano,” Buenos Aires, March, 2000. The suggested figure of US\$ 2.50 per train-km might be a reasonable combination of Argentine experience with practice elsewhere in the world for the higher speeds (90 Km/Hr or more) which prevail elsewhere. If there were a need to set an absolutely minimum fee for very basic access (50 km/hr or less) under conditions in which passenger trains do not conflict with freight operations, an access fee might go as low as P\$1.00 per train-km subject to negotiation if higher quality service is requested and not including any transfer of accident liability from passenger to freight. It is significant to note that, when the freight concessions use lines of the suburban passenger concessions, the (government mandated) concession agreements requires them to pay P\$4.50 per train-km between 4:00 am and 10:00 pm, and P\$1.10 per train-km from 10:00 pm, to 4:00 am.

freight concessionaire may legally be at fault in which the damages would bankrupt the freight operator. The terms of passenger train access to the freight network need to be given careful consideration, and the freight concessionaires should be protected against liability in the event of a major passenger train accident.¹³

The amount due to the freight operators from the passenger train operators with respect to past access is considerable. If a renegotiation of the concession agreements will result in a resolution of the mutual claims between the rail concessionaires and the federal government, then serious consideration should be given to resolving the claims of the freight operators against the provincial government at the same time. The passenger access rights to the freight concessions were negotiated by and on behalf of the federal government which then transferred the access rights to the provinces. The federal government established the basic concession structure under which the rail freight concessionaires have little practical ability to exclude passenger operators from their lines (and may not have the legal right to do so in any event). Moreover, the practical ability of the rail freight concessionaires to recover these amounts directly from the provinces appears to be limited. Under these circumstances, it seems reasonable that the renegotiated concession agreements would permit the freight concessionaires to set off their claims against the provinces for passenger access charges against the claims of the Federal Government against the freight concessionaires for canon payments.¹⁴ The federal government would then stand in the shoes of the freight concessionaire with respect to those claims against the provinces.¹⁵

Growth of rail traffic, particularly the opportunity to use containers (rail container traffic grew by 22 percent from 1997 to 1998), has exacerbated the problem of inadequate rail access to ports, especially Buenos Aires. Many shippers highlighted the fact that the major container ports have inadequate transport access, particularly for rail. While work is underway on this front supported by a loan from the Interamerican Development Bank, it should be accelerated if the Government wishes the freight concessions to participate in the growing opportunity for intermodal traffic.

¹³ Alternatively, the peaje must be of a sufficient amount that the freight operator can obtain insurance against the potentially catastrophic liabilities passenger operations entail. If this route is taken, mechanisms must be in place to ensure that the peaje is actually paid before passenger trains are operated on the freight lines. US experience has been that it is generally cheaper for the passenger operator to obtain insurance coverage against losses resulting from passenger operation than it is for a multitude of freight railroads. If this approach is taken, the passenger operator must be required to include the freight railroad over which it operates as an additional insured and must be in a position to indemnify the freight railroad. This latter has been a serious problem under US law.

¹⁴ . Indeed, Paragraph 17 of Annex 8.4 of the concession agreement with NCA (similar conditions are part of other concessions) provided explicitly that “[e]n caso de more en el pago del peaje correspondiente a trenes de pasajeros, por un plazo superior a treinta (30) dias corridos, el Concesionario podrá compensar dichos pagos con sus obligaciones en concepto de canon de la Concesion.”

¹⁵ . This does not seem unreasonable. In agreements with the various provinces, the Federal Government required provinces operating passenger trains to hold the concessionaires harmless for passenger liabilities (as is the case with Amtrak in the U.S.) and it required the provinces to keep their accounts current on peajes payable to the concessions. It would be logical for the Federal Government to act to enforce its agreements as a condition to an overall resolution of the issues. In enforcing these agreements, the issue of liability may be as important or even more important than the issue of the peajes.

The Government's 16% Equity Interest

Under the terms of the concessions, the government received a 16% equity interest in the company holding each of the concessions (the employees received a 4% interest). The government's 16% equity interest is protected against dilution even by the sale of new shares at full market value and the government does not have to buy additional shares to obtain the benefit of this anti-dilution provision. The result of this is that the cost of raising additional equity is increased significantly and the concessionaires have focused primarily on raising new capital in the form of debt, a process which in the long run will inevitably restrict capital investment and lead to a weaker capital structure than is desirable. As part of a renegotiation of the concession agreements, the government should consider giving up its absolute protection against dilution and substitute in its place the right of first refusal on 16% of new equity issued, or, preferably, should simply sell its present 16% interest in the concessions, if that is legally possible.

The Concessionaires' Right to Use Property

When the freight concessions were created, ownership of all non-rail operating property was placed in a new agency Ente Nacional de Bienes de los Ferrocarriles (ENABIEF). Subsequently, the role of this agency was broadened to cover most Federal property management, and it was renamed Ofice Nacional de Bienes del Estado (ONABE). There is legislation pending that would put all of the property into a trust fund overseen by ONABE. A number of the properties subject to ONABE jurisdiction are vital to freight operations, particularly certain freight yards in the Buenos Aires area. The degree to which the freight concessionaires effectively control this property is unclear and the freight concessionaires do not have confidence in their ability to ensure continued control.

In a renegotiation of the concession agreements, the government and the concessionaires should agree which properties are subject to the concession, and of those which are subject to the exclusive control of the concessionaires, and which are subject to other uses by the government. There needs to be a mechanism for ensuring that those properties that are not subject to exclusive control of the freight concessionaires, but which are necessary for the operation of the concessioned properties, cannot be removed from rail use until satisfactory alternative properties have been made available for rail freight use.

Absent an attack on the problems described above, at best the rail freight concessions will be severely hampered in playing their proper role in the Argentine freight transport sector: more likely, some or all will be driven into failure.

RENEGOTIATING FEASIBLE CONCESSIONS

Short Term

Fixing the investment plan. The major problems with the investment plans are the rigidity of location-specific commitments, the inability to adjust investment projects with

respect to market and traffic changes, the lack of year-to-year flexibility to adjust to changes in business levels, and the inability to abandon track (and related investment commitments) which no longer has any transport rationale. Fixing this problem, which is the base of the non-compliance issue, will require several steps:

First, require all concessionaires to reclassify their networks into three categories: no longer needed, secondary importance, and main network. Develop an agreed definition of the condition to which track in these categories should be rehabilitated and maintained. Agree with the concessionaires on a periodic review of their networks, including classification of track and the minimum condition to which it must be maintained. This review should occur no less frequently than every five years.

Second, permit concessionaires to terminate operations on the trackage that is no longer needed, but require them to permit operations by third parties on the surplus trackage subject to a negotiated division of revenues generated and/or allowing the third party access to major delivery points, or junctions with other operators, paying track access charges in line with those paid by other operators. If no third party application appears within one year, permit abandonment of the trackage. Concessionaires could be permitted to reuse any track materials released in return for appropriate compensation to government.

Third, require the concessionaires to submit an updated investment plan based on their revised network. The revised plan should be accompanied by an investment schedule reasonably related to the traffic conditions and levels expected and the current conditions of the track, and designed to bring the networks up to the agreed minimum standards for main and secondary lines within the agreed period of time. The investment commitment should be expressed in a way that permits flexibility with respect to yearly variations and which is relatively simple to verify: one example could be to express the investment commitment as a percentage of gross revenues. The revised plans should not be location specific (except for major projects such as bridges or viaducts which are inherently location specific) in order to permit reasonable reaction to unexpected problems and market changes.

Valid concern has been expressed about the inability of the concessionaires to meet their investment commitments (see Table 2 showing that overall the concessions have made about 40 percent of the levels committed in the proposals). However, this performance should be put into perspective. As Table 2 also shows, the concessions have actually allocated about 28 percent of their revenues to infrastructure investment, a level far above the US railroad practice over the past 20 years of allocating about 5 percent of revenues to infrastructure investment. In fact, over the past 20 years, US railroads have spent about 16 percent of their gross revenues each year for track maintenance and an additional 5 percent of their gross revenues on investment outlays. The total of 21 percent for maintenance and investment (and the two categories can be hard to distinguish) is significantly below the 28 percent for investment alone in the Argentine concessions. It has not been possible to obtain spending on infrastructure maintenance in Argentina, but the total of investment and maintenance in Argentina must be well above US practice – and the US system carries far more traffic than Argentina.

Finally, in addition to monitoring of investment amounts and the required physical condition of the networks, some performance measures should be agreed in the revised plans. For example, the concessionaires can be required to establish expected track speeds and accident rates. Periodic reports of actual track speeds (or any restrictions in posted track speeds) and accident rates will give a useful early warning if investment programs are inadequate or are not being met. In either event, it should be the responsibility of the concessionaire to reach the established target or clearly establish why the target cannot (or should not) be met. The objective of the revised investment plan should be flexibility in implementation, but with reasonable controls to ensure that the targets are being met.

Ensuring Access to Property. There is a significant concern on the part of concessionaires and shippers that the interaction between the Government property agency (ONABE) and the operators is not yet well established. In many instances, especially with respect to urban properties needed for rail facilities (e.g. yards and urban port access), there is a concern that ONABE will not protect the concessionaires' access to the properties. ONABE believes that this issue can be resolved with appropriate discussion. For this reason, the revised investment plans should include a clear definition of any and all properties that the concessionaires believe will be needed for rail freight operations along with instructions by Government to ONABE either to protect such properties or to provide alternative facilities which concessionaires find acceptable.

Revising the Canon. Under the agreements as currently structured, the canon is a fixed charge payable regardless of the financial results of the concession. Moreover, under the provisions of Law 686 the concessionaires can obtain a remission of the canon if they put in place reduced tariffs in certain development areas. Some confusion apparently exists as to whether the implementing decrees of the previous administration carry over to the current administration. As a business matter, such issues which affect pricing need to be resolved rapidly.

More importantly, however, consideration should be given to restructuring the canon as part of a renegotiation of the concession agreements. The level of the canon was set based on an unrealistic set of projections regarding future traffic levels and, more importantly, future tariff levels. Table 3 shows that the concessions have actually managed to generate only a little over 80 percent of the traffic (in ton-km) which they expected. Combined with the tariff reductions resulting from competition and increased efficiency, Table 3 also shows that the concessions managed to generate only about 59 percent of the total revenues they had proposed. This meant that, in effect, they were supposed to meet the original canon (and investment targets) with about 40 percent less revenue that expected – a financially impossible task.

Moreover, by structuring the canon as essentially a fixed charge, the risk to the concessionaires from revenue volatility and shortfalls was substantially increased. The government and the concessionaires may want to restructure the canon so that it is more closely related to the business of the concession. For example, the canon could be changed to a two part payment with the first being fixed and the second being related to the gross rail freight revenues of the concessionaire. With such a structure, it is entirely

possible that the canon payments can stay the same, or even rise, but with smaller risk to the concessionaires.

Collection of the peajes. There is no question that the concessionaires have been disadvantaged by the refusal of provincial authorities to make the peaje payments they are legally obligated to pay. Part of this refusal might be due to confusion as to the correct level to be charged, part to shortage of resources, and part to a calculation that the concessions will not be able to insist on being paid. Given the significance of this issue, the Federal Government should work with the concessionaires and the provincial governments to develop an agreed access payment formula (though P\$1.00 to P\$2.50 per train-km would be a reasonable range to start) and a mechanism for ensuring that the payments are made. One alternative would be to allow the concessions to offset peaje receivables from canon payables; another alternative would be strong Federal support to the concessions to permit them to insist on either being paid or being able to deny access to operators refusing to pay.

Dispute Resolution. The rail concessionaires have complained that CNRT is slow in adjudicating disputes, though it is likely that the real problem is that CNRT does not have authority to revise the terms of the concession agreements where such revision is necessary to adjust to present day realities. As part of the renegotiation of the concession, the parties should consider including provisions giving the CNRT (or some other entity) some authority to revise or modify terms of the concession agreement when warranted by circumstance.¹⁶ At the same time, the parties should review the dispute resolution provisions to determine whether a more expeditious method should be adopted. The extent to which flexibility can be built in to the concession agreements may be limited by applicable law.

Longer Term

Multimodal access to ports and urban areas. In conjunction with the concessions, Government should develop a coordinated plan for multimodal access to all Argentine ports and congested urban areas. In some cases, such as Buenos Aires ports, this will be a complex undertaking that might justify financing from external sources.

The 16 percent ownership share. Government can reduce the severity of the impact of the 16 percent ownership restrictions by allowing the Government share to be diluted (so long as Government has the first option right to purchase its pro rata share in any new equity issued). Far better, government should consider selling its 16 percent share, subject to a requirement that all financial information currently furnished to government as shareholder would continue to be furnished to Government as owner of the underlying assets. Sale of the 16 percent share would generate badly needed fiscal resources without sacrificing any access to information that the Government already has.

¹⁶ Such a provision will require careful drafting to ensure that the interests of both the concessionaires and the government are protected. The circumstances under which agency authorized to vary the concession agreements must be carefully spelled out, as must the criteria it must use in making the changes.

Truck weights and axle loads. Government should consider establishing a stronger program to police truck weights and axle load limitations in order to protect Argentine highways and level the competitive playing field between railways and trucks. This is always a difficult issue in all countries both because of the political issues and because of the difficulty of enforcement. Enforcement of loading limitations for major bulk commodities in Argentina may be slightly easier than in some other countries because the origin of shipments is relatively concentrated in a few shippers whose facilities could be surveyed effectively. It deserves emphasis that the objective of such a program is to protect the condition and use of the Argentine highways, and not necessarily to protect interests of the owners of the rail concessions.

Development of railway properties. The liquidation of FA yielded a large number of properties, urban and rural, that are no longer be needed for rail operations. In addition, it yielded a large number of properties for which there is a continuing need for rail access, or for which rail use will have to be a consideration in planning the overall development of the property. There is little question that these properties have considerable value or that they can be used for a number of critical social purposes. At the same time, there is no question that a lack of consideration of the potential rail uses can substantially harm the development of rail services in Argentina (both freight and passenger). Development of the rail properties will be an extremely complex process, both because of the large number and dispersion of the properties and, in cases such as the development of the properties around Retiro, because the projects will be highly complex and visible. The agency currently responsible, ONABE, has also recently been asked to take on additional responsibilities for national properties in addition to those inherited from the old FA (via the predecessor agency, ENABIEF). Given the complexity of the task and the increased responsibilities involved, it seems unlikely that ONABE as currently organized and staffed can handle the problems likely to arise. Consideration should be given to rethinking the role of the national government in the control over these properties and to developing adequate skills and resources for handling the problem.

Regulation. As currently structured, the Comision Nacional de Regulacion de Transportes (CNRT) occupies an uncomfortable position. CNRT is in effect being asked to occupy two positions – representative of the conceding power with regard to issues of the implementation of the rail concessions, and “regulator” of issues involving interactions among the rail freight concessions as well as issues involving competitive conditions between trucks and rail freight concessions.

The first role – representative of the conceding power – requires that CNRT take the owner’s position in disputes, and oversee the performance of the concessionaire as it lives up to its contract obligations. This is NOT an impartial role, and it is not appropriate for CNRT, when exercising this role, to be “independent” of government policy and financial supervision. The role of representing the owner, including casting the owner’s vote on the board of corporations in which government holds a share, is typically played by a small and expert group reporting directly to the Minister in charge of the sector (or to the Finance Minister or the Minister of Public Enterprises, but with policy guidance from the sectoral minister).

The second role – regulating and reviewing disputes among concessionaires as to divisions of revenues, or setting appropriate access charges, or overseeing the transport implication of takeovers or mergers of concessions, as well, of course, as regulation of competitive issues among truck and rail – is usually played by a more independent authority with funding adequate to maintain a professional staff and access to information needed to make decisions. This role is never played by employees of a Ministry because, by definition, they are not impartial. It is particularly important in this case because an employee voting shares in a rail investment cannot reasonably argue that the approach to oversight of rail disputes with trucking competitors is fair and balanced.

It is difficult to see how CNRT can fulfill both roles effectively. An improved approach would be to split the two roles, putting the concession oversight staff directly in the Ministry of Transport, while leaving the regulatory staff with the CNRT.

If this were done, however, there will need to be attention given to the approach to resolution of disputes between the Ministry staff and concessions on contract disputes. A good resolution would be to agree to submit these contract disputes to arbitration under typical arbitration procedures used in the U.S. or in Europe. Alternatively, The Minister of Transport could ask that CNRT advise the Ministry on how to resolve disputes between Ministry staff and concessionaires on concession contract issues.

Information. In both cases, a change will be needed in the approach to information furnished to the government for purposes of oversight and regulation. Because of its ownership role, government already has right of access to all of the books of account of the concessions as corporations. If the information is inadequate, or the accounting standards are not fully appropriate, government can (and has the right to) require improvements. If government decides to sell its 16 percent share, it can still negotiate an agreement under which it retains a non-voting member's access to the corporate books of account.

One of the effects of the lack of experience in setting up concession agreements was that the agreements did not clearly define all of the information needed to carry out the oversight role and regulatory role. Experience since setting up the concessions has been helpful in highlighting the information not available that will be needed. A critical condition of renegotiation should be the identification of any gaps in information needed and the agreement between government and concessionaires that such information will be provided as part of the ongoing concession requirements.

A Final Observation. Many of the issues now emerging in the Argentine freight railway concessions are typical of the problems of mixed government/private ownership and operation. At the beginning of the 1990s, the Government had neither the experience nor the expertise needed simply to sell the railways. Indeed, the political understanding of the operation of private railways did not exist in Argentina (having died, with the original concessions, soon after World War II). When the transition began, concessioning was the only option available.

The Argentine freight rail concessions have since shown themselves to be valuable participants in the transport sector and, within limits, financially viable; but, they are also clearly unable to exert any degree of market power. Most non-rail properties have been retained in public hands and are no longer controlled by the concessionaires. Unlike the suburban passenger concession (and the Subt ), where there is strong public interest justifying subsidies and other intervention, it is questionable whether there remains a public interest strong enough to justify the kind of detailed role the government is now playing. The Government should consider the possibility of simply privatizing the concessioned properties as has (in various forms) recently been done in the U.K., Canada (the Canadian National) and New Zealand.