

# **URBAN BUS TRANSPORT REGULATION IN BUENOS AIRES**

**Patricia Brennan - Alicia Ribera**

**Private Consultants**

The historical evolution of urban transport in Buenos Aires is totally related to the different regulation policies that Government introduced through decades.

Nevertheless, the bus system regulation framework had little variations until the mid 90's where pro-active measures were taken introducing safety mechanisms to reduce accidents and upgrade bus driver conditions as well as requirements dealing with minimum capital and infrastructure in order to continue the rendering of services. At the same time, a new control agency was created and so control levels increased.

As a result of these new regulation framework the capital concentration increased and continues nowadays. In the last 5 years at least 30% of companies had been sold to others acting in the same market.

Having a non subsidized bus system and a peculiar company organization that have been mentioned worldwide as an example to follow by other developing cities, this capital concentration process appears as the necessary evolution for the system, giving at the same time uncertainty about if the present level of efficiency will be maintained.

## **INTRODUCTION**

When we talk about the Buenos Aires bus system regulation we should analyse the historical evolution of the system as well as the transport policies that have been applied in different stages.

Likewise, we should take into account some of the distinctive characteristics of the Buenos Aires urban road transport between which we should mention the high degree of enterprise fragmentation evidenced in the layout of a highly competitive network between routes and companies, and consequently a high level of self-regulation between enterprises and constant dispute among them to attract passengers offering high frequencies and quality services.

### **1. BUENOS AIRES CURRENT TRANSPORT SYSTEM**

The Buenos Aires Metropolitan Region, integrated by the Capital of the Argentine Republic and the 42 Municipalities of Buenos Aires province, which conform a functional unit with the Capital, is one of the Latin American biggest urban areas with more than 12 million inhabitants.

The region's growth rate is relatively low, 10% in the last 10 years, which means that probably before the year 2000, cities like Lima, Rio de Janeiro and Bogotá will exceed its population volume. Buenos Aires is the administrative, economic, industrial and social centre of Argentina, concentrating since 1960 the third part of the country population, with a participation of the 33.5% in 1991.

The public transportation system of the region is conformed by 298 bus lines, 5 underground lines, a light rail transit line and 7 metropolitan railroad lines.

The bus subsystem possess an extension of more than 25,000 km routes with a fleet of 15.000 units operated by 200 private companies which do not require state subsidies.

The metropolitan railroad subsystem has an 833 km expansion, 164 km (18%) are electrified connecting more than 250 stations with 4 terminals in the centre of the region. The system has been recently given to concession being operated by three private concessionaires. On the other hand, the underground subsystem has a 44 km network, connecting 76 stations, a private consortium also operates it.

The guided modes are operated by means of concession contracts while the bus companies operate under permits or concessions granted by the different agencies. The concession contracts for rail

services specify the amount of minimum services to complete between intervals, as well as the maintenance conditions of the facilities and rolling stock and the necessary investments in order to improve the service quality in a 10 years period for the surface railroads and in a 20 years period for the underground system. To such purpose the Government fixes the fares and pays a subsidy to the concessionaires.

Approximately 60.000 taxis and 2.000 rented bus operators complete the Buenos Aires transport system. As for particular automobiles, the last estimations determine a total of 3.000.000 vehicles.

## **2. HISTORICAL EVOLUTION OF THE SYSTEM**

From the beginning of the century, different stages are clearly distinguished in which the policies, the regulation and the property have had clearly different orientations, focuses and treatments. They have been influenced by each moment government global policies as well as for the world imperative tendencies.

Before 1936 tramway, subways and buses compete between each other with routes determined by themselves and fares established by Government. The system was entirely in private hands and the regulation framework was very little. No subsidies were given. In 1928 appears the first "colectivo" that at first was a shared taxi and then evolved to buses of 11 seats of capacity. These colectivos operated without any permission or concession, and their owners according to the competitive tariffs (tramway and larger buses) fixed their fares

Between 1936 and 1948 the urban transport system was operated by a private corporation with the control of tramway and subway enterprises as a result of high pressures made by these transport companies trying to avoid competition mainly from colectivos.

After years of declining with no capital investment and low fare levels, in 1948 the Government took the system in his hands and created the state owned "Transportes de Buenos Aires" (TBA) turning this company to be the only operator of the system.

Privatisation of the urban system took place between 1960 and 1963 by a bidding process that allowed the workers of Transportes de Buenos Aires to offer their work compensations to get the bus and tramway lines. Buses replaced tramway and regulation was established by Presidential Decree. The guided modes remained in State hands.

Between 1964 and 1994, the system remained without significant changes in relation to enterprise's management and state subsidy policies.

The State inaction regarding investments in guided modes of its property and the strengthen of the public road transport services, which structured a competitive network with the guided modes, promoted an increase of bus system participation upon the elimination of the need of interchanges. At the same time, bus transport mode was the one that, because of its versatility, followed the growth of the city, while rail transport modes stayed practically without modification.

Necessarily, in front of a fragmented regulating State with scarce human resources and materials, the system planning became mostly practised by the road transport enterprises. The state shirked investing in new infrastructure, leaving the administration of the system in hands of the private operators in a process in which the guided modes were deficit operating with growing degrees of inefficiency and deterioration in service quality.

### **3. PRESENT SITUATION**

The economic policy of this decade in Argentina was characterised by the implementation of a set of fiscal, monetary regulation, employment, foreign capital participation and sector development measures, which in overall, defined a new state role, interpreted in less state participation in direct provision and maintenance of the economic infrastructure and the public services.

The current stage is also characterised by a reorganisation of the state sector in order to offer adapted regulation conditions assuring an efficient administration of the whole private operators of the system by means of the creation of autarchic agencies, in charge of the control of the activity integrated by skill human resources which should act independently on the policy decisions that remain in hands of the corresponding Government Secretaries.

As a result of last years adopted policies, a process of recovery of the national economy was verified in macroeconomic terms, showed by an important growth of the Gross National Product through the reduction of the inflation rate. However the process was not associated with an improvement of the employment conditions. On the contrary, one of the most evident consequences of this authentic transformation process is the level reached by the unemployment rate which now reaches 18% in the Buenos Aires Metropolitan Area.

The privatisation of an important number of companies, basically public services and industrial production companies, mainly between 1990 and 1994, generated a posterior redimension in terms of occupied personnel that also had an impact in the unemployment rate.

Because of these mentioned policies, the emergency situation in which the public companies were in motivated the concession of the metropolitan rail and underground network. This processes begun in 1991, and became effective between the 1994 and 1995.

The private operation of the rail services generated an important recovery in guided modes transport capacity, as a result of a higher reliability and an increase quality service. This acted in detriment of the bus system passenger demand.

On the other hand, the strong fall registered in the inflation rate put an end to one of the main sources of additional revenue of the bus transport enterprises, by the possibility of providing daily important amounts of cash money in a context of high interest rates.

The new state role implied a strict control of the tax revenues and with this the elimination of evasion possibilities and avoidance of fiscal obligations from every economic agent. In this context, many transport companies had to face the need of regularising their fiscal situation by means of the payment or refinancing of their debts. Consequently the sectors' average profitability rate tended to decay.

Likewise, a group of divergent factors, derived of the new economic order, implied a considerable fall in the volume of transported passengers (in the order of 25% in the last 5 years), deepening the reduction in the profitability of the companies. In addition, the increase of the motorization rate and of the more intense use of the automobile impacted subtracting passengers from the public transportation and deteriorating the efficiency of the operation of the bus transport.

These facts have affected the profitability of the bus system which face an economic crisis at the present time due to a descent in the levels of benefits what has caused a company concentration.

As a result of these transformations, in 1995 the modal split of the trips in the region had experienced an important increment in favour of the private modes in detriment of the public ones. The passenger transference harmed particularly the bus transport, whose companies begin to attempt diverse strategies of recovery, for example the differentiation of their services, incorporating new modalities that allow them to revert the important loss of demand registered from 1992.

#### **4. BUS URBAN TRANSPORT REGULATION FRAMEWORK**

While the structural pointed changes were verified, which determined new general and particularly transport economic conditions, a new regulation framework for the bus transport was also defined, which effective application accelerated the internal restructuring processes of the activity by means of the sanction in 1994 of the Decree N° 656.

The decree expressly states the character of regulated service for the bus transport industry, in attention to the negative international experiences that throw the intents of deregulation of urban transport. At the same time, it understands pertinent to maintain the traditional conformation of the system, providing the continuity of the exploitations in hands of the historical companies.

Without affecting this, a particular interest in regularising the bond between the companies and the regulatory power is showed, in order to offer juridical security to the operations and a temporary horizon wide enough to reinforce the capacity of investing of the bus companies. The juridical security was highly affected because the possibility of obtaining external financing collided with the precarious exploitations, condition that did not seem to constitute enough guarantees for the financial investors.

In consequence, although the decree establishes that the exploitation of the Public Services will be developed by means of the grant of permits on the part of the Government, for a period of 10 years, providing that the procedure for the award will be the public bidding, it also contains a short-lived disposition emitted with the purpose of regularising the situation of the operators who were exploiting public services to the date of the decree, all with precarious authorisations, which giving execution to a series of requirements, would obtain the formal permits of exploitation automatically, with the same rights that those that are acquired by means of the procedure of public bidding.

This process, informally called "re-concessioning" began in 1995 and continues until today. The obtaining of the permits is conditioned to the fulfilment of the requirements established in the decree and complementary by laws, which provides that in case of neglect of the legal procedure and the other imposed conditions, the companies won't be able to invoke any right regarding what is solved on their route exploitation.

Therefore, the compensation of the benefit which meant the possibility of obtaining permits without public bidding for the routes, consisted in a set of new imposed demands to the companies like a condition for continuing in operation, which implied considerable expenses and investments that, in many cases, led them to a high degree of indebtedness.

Indeed, the regulation we are analysing provides that in order to be given a permit, the companies will have to show minimum assets according to the importance of the exploitation, worth in relation to the number of buses employed. Also, they will demonstrate that they possess a considerable real state infrastructure enough to park all the fleet, with special areas for the rest of the drivers and offices for the development of administrative tasks.

On the other hand, the new Law of Traffic and Road Safety sanctioned in 1995 imposed a set of requirements in relation to the passenger urban transport sector. They rule the maximum age admitted (10 years) and technical characteristics of the vehicles, fundamentally weight and specific dimensions, exhaust polluting emission control, rear location for the engines, and a group of safety measures for the passengers like the obligation to have speed limitation and doors opening and closing control devices.

The accomplishment to these obligations, to which was added the use of ticket expending machines, demanded as a consequence of the sanction of drivers labour protection laws, and at the moment the slow incorporation of buses equipped for the access of handicapped people ("low floor" vehicles), caused high capital expenses for the transport companies.

Finally, the companies were imposed to assure the faithful execution of the obligations regarding social security and taxes, like a condition for obtaining the permits.

## **5. ENTERPRISE CONCENTRATION IN THE URBAN TRANSPORT**

The process that we are analysing was consolidated mainly since the creation of the transport control agency. This agency is the entrusted of the procedure specified for the obtaining of the permits and also of the technical and legal verification of the execution of the requisites required to such purpose, still after the permits are given because the imposed obligations are permanent, like condition for their subsistence.

These factors, the new economic global status and the changes operated inside the sector (fall of the demand, competition of the guided modes, higher use of cars and new demands of the regulatory power, and others) have different impact in the bus companies, positioning a group of enterprises in such a critical level that it seriously endangered its continuity in the system, while the process favoured a part of the companies that strengthened on one way or another its position in front of the Government and to the groups less favoured. In front of both groups exists, also, an important set of

companies that although they have been able to get their permits, they have not improved their relative position.

The direct consequence of this process consists in the rising of a new scene for the bus transport enterprises and their relationships- between each other and with the regulatory power – from which stands out the capital concentration like one of the most important aspects of the new profile. This process of enterprise concentration implies the slow abandon of the artisan management spreading to integrate organisations like the capital companies.

### **5.1 First stage: 1990-1994**

The sanction of the Decree N° 656/ 94 opened a new perspective, until then remote, of obtaining permits and induced a part of the sector to try to regularise the situations of incipient concentration that were taking place since the beginning of the decade.

This concentration process presented diverse ways, all irregular from the juridical point of view, and it could be because of strong capital contributions of a certain company regarding other with capital problems implying the control of the company decisions, as well as the direct take over of a company from another or different ways of association between two or more companies with the purpose of optimising exploitation resources. Most of these expressions didn't count with a formal Government recognition, meaning that each involved company presented itself like an individual operator of their services.

The eagerness to obtain permits on the exploited routes by the controlling companies motivated the appearance of the first attempts for authorisation request in order to join companies or transfer rights of a company to another. These attempts didn't obtain effective answer of the regulatory power at that moment - in order to the non-existence of legal permits and therefore of a regime that rules their transference – but they achieved juridical entity from the commercial right point of view, formalising the irregular mentioned situations.

Any time that the Decree N° 656/94 stated the character of real operator of the applicant company like a condition for obtaining the permit, the mentioned coalitions, absorptions and consolidated transfers legally became an indubitable instrument of the required nature and motivated the consent of permits in the pretended sense. This situation could be understood as the beginning of a sustained process of enterprise concentration, expressed with more intensity at the present time and that would deepen in the short and medium term.



During this period a group of transport companies has begun diversifying their activities conforming manager groups, and although transport is still their main activity they are now incorporating others. Therefore, several groups bought insurance companies, which allow them to acquire financial solvency.

Other companies formed joint ventures in order to participate in the concessioning of the rail network, joining important groups that had offered them the opportunity of learning up-to-date management and financial techniques.

Another characteristic of this stage is the incorporation in manager decision levels of the banks, which grant loans for the purchase of vehicles. This fact took place in function of the high unrecoverable rates that the banks had to confront and, facing the option of executing the credits with real guarantee that encumbered the vehicles, they decided to intervene in the operation of the companies, selecting for this purpose managers of recognised experience. Consequently, some companies changed their capital stock composition under bank protection. Obviously, the financial sector selected the companies, which already outlined like members of a new kind of organisation.

## **5.2 Second stage: 1994 until today**

The sanction of the Decree N° 656/ 94 blocked up the companies possibilities of continuing incorporating exploitations in an informal way, whereas the situations generated after the appearance of the decree would not have any state recognition and, because of the new regime application, those routes upon which exploitation permits wouldn't be obtained should be called to public offer bidding for their legally adjudication.

The end of 1996 granted the first permits of exploitation. At the present time, approximately the 85% of the system have permits and around a 5% more in their way to approval. The remaining group is seriously affected in their aspirations of getting permits, given the preoccupying economic situation in which it is, translated fundamentally in their patrimonial meagreness, the maintenance of high debts with the fiscal organisms and the impossibility of incorporating vehicles in substitution of which were down out of service because of exceeding the maximum age allowed.

The current scene offers new ways toward the enterprise concentration. As a result, the companies that already had had their permits embarked upon the incorporation of other exploitations by means of the employment of diverse mechanisms.

The first of them consists in the acquisition of most or the total of the stock capital of companies unable of obtaining by themselves the exploitation permits, by other companies or groups managers

that had already obtained it. In such way, the contribution of vehicles and strong sums of money allow to the "absorbed" company adjusting their patrimonial and fiscal situation as well as having the entirety fleet in legal conditions and therefore apply for permit regularisation, forming part of the company or group which made the economic effort.

This way of incorporation doesn't determine the disappearance of the company in question it appears in front of the Government like the owner of the exploitation, conserving its individual denomination. Nevertheless, the Administration doesn't ignore the true dimension of this phenomenon of concentration, since itself has a registration of the new compositions of the board of directors of the involved companies, showing this fact the unified control of numerous companies by determined groups.

The above mentioned is favoured by the effective regulation, which doesn't rule any norm regarding composition of the stock capital of the companies and their transference. This fact, not being a new event, constitutes a tool excessively capable in the current regularisation scene, because it presents a low level of investment risk for the companies or groups economically strengthened.

The second way of enterprise concentration consists in the processes recently faced by the Administration of "recovery" of the exploitation right of determining routes whose operators failed in their way to get their permits or accumulated enough amount of contraventions in their operation, to the point of deserving the maximum penalty ruled in the actual regime. In this way, the disposed expirations of the precarious authorisations motivate the immediate award- also precarious- of the exploitations involved to other companies of the system, those that besides possessing their corresponding permits are shown economically capable to face the new enterprise, that supposes fundamentally the acquisition of considerable amounts of modern vehicles.

The mentioned precarious awards of routes are eminently temporal and the situation must be regularised then in the briefest term that is possible. The regime of the Decree N° 656/94 imposes the realisation of public biddings to make effective the definitive award of the routes. Therefore, the way of competition is presented as a new way toward the concentration, non-existent before.

We should mention that the recently sanctioned normative as regards public biddings, contains dispositions that increase the possibilities of consolidating the already verified capital concentrations, informally in many cases, as well as they also seem to encourage the appearance of new capital associations, necessary in order to face the strong capital commitments that formulation of offers supposes.

Indeed, the method adopted in order to evaluate the bidding process assign a high score to the system operators just for being, what virtually closes or at least discourage the aspirations of effective entrance from nonsectorial capital.

On the other hand, the normative admits company's joint ventures linked with such purpose like bidders. In local terms these associations are denominated Unión Transitoria de Empresas (UTE), and participate in the Americans Joint Venture, the French group of economic interest, the Italian and Brazilians consortia and groupings of companies and temporary unions of Spanish companies.

In the passenger urban transport sector, the first UTE presented themselves as different enterprise associations whose purpose consist of benefit themselves with the development of any structure of complementary type which channalize some common aspects of the activity, or these grouped companies have in aim, like main objective of their association, "closing" virtually certain operation zone which they understand like a danger, imminent or potential, of entrance of certain operator or competitor group.

Although these associations had generally an informal nature, the possibility of being "precarious operator" of a state recovered route or being bidders in a public competition, caused the need of giving legal form to the UTE. This is to formalise a written contract, giving legal existence to the group. Consequently, these groups begun to become more solid in their conformation.

In the specific case of the call for public biddings, the assets and fleet requisites established, accentuate the tendency to the capital concentration, since the amount of efforts appear like an extremely appropriate mean in order to reach such a score to enable the award. In case of decision favouring an UTE, the normative in analysis imposes the formation of a company in which will relapse the definitive permit of the route, occurring with this consolidated legal expression to these occasional unions, those which though will pass to erect like a new juridical company they suppose in fact the operative and commercial linking of the originals companies.

It is logical to suppose that the big enterprise groups already existent will show a high degree of interest in participating in the new bidding processes, with high possibilities of success because of their patrimonial strength and the viability to obtain external financing resources for their investments, fundamentally regarding the incorporation of last generation new vehicles.

This doesn't exclude, however, the appearance of new groups of medium conformation, which have already shown their intention of concentrating capital by means of the acquisition of small routes, like a way of positioning more favourably in front of the accelerated expansion of the big capital groups.

This phenomenon allows to suppose that in a close future, the small companies today regularised will remain in the system like an exponent of the past enterprise fragmentation that characterised it, probably facing, some of them, growing difficulties in order to execute bigger investment demands imposed by the regulatory power, derived of their inferior comparative capacity of obtaining credits and necessary financing for the fleet renovation and re-equipment.

### 5.3 CONCENTRATION IN NUMBERS

The referred process of enterprise concentration could be evaluate in its whole dimension upon comparing the amount of companies which operated bus transport services towards the end of the 80's in front of the current reality considering these companies in relation of the economic groups that have been conformed.

At the end of 1987, the 120 companies operated 146 bus public transportation lines of Buenos Aires national jurisdiction possessed an average fleet of 80 vehicles and could be classified in accordance with their size as follows.

Fleet scale	Companies	Fleet	Participation	Accumulated
More than 350	1	371	3.87	3.87
251 a 350	1	275	2.87	6.74
201 a 250	4	883	9.21	15.95
151 a 200	8	1369	14.28	30.23
101 a 150	11	1300	13.56	43.79
51 a 100	54	3696	38.55	82.34
Up to 50	41	1693	17.66	100.00
Total	120	9587	100.00	

At the present time, the number of companies decreased from 120 to 108 although if it is taken into account that several companies are related, the total of economic groups reaches 78. The group fleet size average is 127 vehicles. Consequently, after this process of enterprise concentration, the composition is the following:

Fleet scale	Companies	Fleet	Participation	Accumulated
More than 601	1	824	8.28	8.28
401 a 600	1	547	5.50	13.78
301 a 400	3	1043	10.49	24.26
251 a 300	1	285	2.87	27.13
201 a 250	4	865	8.70	35.83
151 a 200	9	1598	16.07	51.89
101 a 150	17	2170	21.82	73.71
51 a 100	32	2295	23.07	96.78
Up to 50	10	320	3.22	100.00
Total	78	9947	100.00	

On the other hand, an important increase in the size of the fleet of the biggest companies is registered. While in 1987 there was a single company with more than 300 units (371 vehicles), at the present time there are two companies and three group's managers who overcome the 300 units (one of them with more than 800 vehicles). In 1987 the company that operated with more than 300 vehicles represented the 3.87% of the total of the fleet in service, as long as at the present time, the companies or groups with a fleet above the suitable value represent the 24,26%.

The enterprise concentration took place because of the absorption of the small companies (less than 100 vehicles) which in 1987 totals 95 companies and at the present time only 42. The small companies held the 56% of the fleet in 1987, at the present time they operate the 26%. It is interesting to stand out that of 41 companies with less than 50 vehicles we found only 10 during the analysed period.

On the other hand, the considered medium companies (between 101 and 300 vehicles) are increasing from 24 to 31 because of the group conformation between small companies, operating nowadays 49% of the vehicles against 40% in 1987.

## 6. CONCLUSIONS

The exposed situation would derive, in the medium or long term, in new absorptions of small companies by the already consolidated groups, or in new forms of association between them. Whatever the way adopted the tendency seems to predict the definitive disappearance of the artisan and individual company, in order to open the way to a new operational activity structure.

The impact that the new bus transport system operation structure will cause, if it crystallises definitively in the profiled sense, regarding important aspects that make to the benefit of the public services, could only be evaluated once a prudential time has elapsed.

Nevertheless, it is quite obvious that the position of the Government will be modified in their relationship with the new operator groups, strongly positioned in terms of sectorial economy, subtracting degrees of freedom in its decisions.

In the same sense, although the enterprise concentration has presented an initial improvement in the quality of services, it should not be discard the appearance of situations of monopolist nature which may distort the achievement of the objectives of transport policies expounded by the Government, inspired by the principles of commercial loyalty and free competition and which might cause a future deterioration of service quality, with the consequent affectation of the users rights.

The negative enunciated aspects could only be stricken back with effective actions of the Administration that allows to perfectly lead future relationships between different system actors, which undoubtedly will present new aspects in front of which will be found scarce experience for their treatment.

The role of the Control Agency will be fundamental in the achievement of the commitment, in attention mainly to their nearness with the distortion phenomenons that could present the execution of the public services inserted in the new framework. Undoubtedly in order to carry out this task it will be required a total lack of political influence upon the Agency, in order to assure the independence of approach in the taking of technical decisions and with material and human resources proportional to the magnitude and importance of the functions to carry out.

**PATRICIAN BRENNAN.** Specialist economist in urban transport, with wide experience in regulation and administration of transport systems. She worked in the public sector in Argentina, as Manager of Passenger Urban Transport and Manager of Road Transport Permits Control, being the responsible for the regulation of the system of buses from Buenos Aires and of the road transport system (freight and passengers) of the whole country. She has specific experience in aspects of regulation and desregulation as well as in the conforming of transport control agencies.

**ALICIA RIBERA.** Lawyer, specialized in institutional and juridical aspects of transport. She has carried out in the public sector in legal advice in Buenos Aires Municipality, at the Road Transport National Commission and at the Transport Regulation National Commission. At the moment, consultant in the private sector, being devoted to the integral advice of technician-legal aspects of transport and the administrative law applied to the matter.